

# Public Document Pack

## Cherwell District Council

### Council

Minutes of a meeting of the Council held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 17 July 2017 at 6.30 pm

Present: Councillor Maurice Billington (Chairman)  
Councillor Jolanta Lis (Vice-Chairman)

Councillor David Anderson  
Councillor Hannah Banfield  
Councillor Andrew Beere  
Councillor Claire Bell  
Councillor Hugo Brown  
Councillor Mark Cherry  
Councillor Colin Clarke  
Councillor Ian Corkin  
Councillor Nick Cotter  
Councillor Surinder Dhesi  
Councillor John Donaldson  
Councillor Sean Gaul  
Councillor Carmen Griffiths  
Councillor Timothy Hallchurch MBE  
Councillor Chris Heath  
Councillor David Hughes  
Councillor Shaida Hussain  
Councillor Tony Ilott  
Councillor Mike Kerford-Byrnes  
Councillor James Macnamara  
Councillor Kieron Mallon  
Councillor Nicholas Mawer  
Councillor Andrew McHugh  
Councillor Alastair Milne-Home  
Councillor Richard Mould  
Councillor D M Pickford  
Councillor Lynn Pratt  
Councillor Neil Prestidge  
Councillor G A Reynolds  
Councillor Barry Richards  
Councillor Dan Sames  
Councillor Les Sibley  
Councillor Nigel Simpson  
Councillor Tom Wallis  
Councillor Douglas Webb  
Councillor Bryn Williams  
Councillor Barry Wood  
Councillor Sean Woodcock

Apologies for Councillor Ken Atack  
Councillor Mike Bishop

absence: Councillor Simon Holland  
Councillor Alan MacKenzie-Wintle  
Councillor Nigel Morris  
Councillor Sandra Rhodes  
Councillor Jason Slaymaker  
Councillor Nicholas Turner

Officers: Yvonne Rees, Chief Executive  
Scott Barnes, Director of Strategy and Commissioning  
Ian Davies, Director of Operational Delivery  
Paul Sutton, Chief Finance Officer / Section 151 Officer  
Natasha Clark, Interim Democratic and Elections Manager  
James Doble, Interim Assistant Director Transformational  
Governance / Monitoring Officer

## 19 **Declarations of Interest**

### **9. Motions.**

Councillor G A Reynolds, Declaration, as he had an Uncle who would fall into the category were there to be a major development in Shutford.

### **14. Build! Programme - Capital Budget.**

Councillor John Donaldson, Declaration, as a non-Executive Director of Cherwell Community Build and would leave the meeting for the duration of the item.

Ian Davies, Declaration, as a non-Executive Director of Cherwell Community Build and would leave the meeting for the duration of the item.

### **18. Build! Programme - Capital Budget - Exempt Appendix.**

Councillor John Donaldson, Declaration, as a non-Executive Director of Cherwell Community Build and would leave the meeting for the duration of the item.

Ian Davies, Declaration, as a non-Executive Director of Cherwell Community Build and would leave the meeting for the duration of the item.

## 20 **Communications**

The Chairman made the following announcements:

### **Chairman's Engagements**

A copy of the events he or the Vice-Chairman had attended was included in the agenda pack. The Chairman referred to the Royal Garden Party he had attended at Buckingham Palace, which had been particularly enjoyable.

### **Post**

The Chairman reminded members to collect any post from their pigeon holes.

21 **Petitions and Requests to Address the Meeting**

There were no petitions or requests to address the meeting.

22 **Urgent Business**

There were no items of urgent business.

23 **Minutes of Council**

The minutes of the meeting held on 16 May 2017 were agreed as a correct record and signed by the Chairman.

24 **Minutes**

a) **Minutes of the Executive, Lead Member Decisions and Executive Decisions made under Special Urgency**

**Resolved**

That the minutes of the meeting of the Executive and Lead Member decisions as set out in the Minute Book be received and that it be noted that since the last meeting of Council, 3 decisions had been taken by the Executive which were not included in the 28 day notice. These decisions related to Strategic Property Acquisition in Banbury; Stratfield Brake Sports Ground, Kidlington; and, New Homes Bonus: Construction Apprenticeships and Skills.

b) **Minutes of Committees**

**Resolved**

That the minutes of Committees as set out in the Minute Book be received.

25 **Questions**

a) **Written Questions**

The Chairman advised Council that one written question had been submitted with advance notice in accordance with the Constitution. The question was from Councillor Beere and addressed to the Lead Member for Planning, Councillor Clarke, and was in relation to planning applications and appeals. A written answer had been tabled at the meeting (annex to the Minutes as set out in the Minute Book).

b) **Questions to the Leader of the Council**

Questions were asked and answers received on the following issues:

Payment of council tax / NNDR by properties running as AirBnB and regulation lettings: Councillor Mawer  
Fire safety in Cherwell District Council owned buildings: Councillor Woodcock  
Voter registration: Councillor Dhesi  
Local Green Space designation of Bicester Rugby Playing fields as part of the Local Plan Part 2: Councillor Sames  
Security of Cherwell District Council owned buildings: Councillor Cherry  
Government pay cap on public sector pay: Councillor Richards  
Student debt: Councillor Mallon  
Housing of Syrian refugees: Councillor Gaul

**c) Questions to Committee Chairmen on the minutes**

There were no questions to Committee Chairman on the minutes of meetings.

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**Motions**

**a) Naming of Roads and Streets**

In presenting his motion, Councillor Mallon referred to the tabled version which contained a minor amendment to the motion included on the published agenda. It was moved by Councillor Mallon, and seconded by Councillor Woodcock that the following motion be adopted:

“To mark the centenary of the end of WW1, this council recognises those who made the ultimate sacrifice during the Great War of 1914-1918 and conflicts since then from North Oxfordshire and wishes to honour those who gave their lives and commemorate the local families they left behind.

To this end, we as the principle planning authority, let it be known that if Towns and Villages within the Cherwell District wish to honour those who died and are recorded or are on the local War Memorials by naming roads and streets in new developments after the fallen from within the parish we will look favourably on the request.

Cherwell will work with those Towns and Parishes to research and where possible accommodate such a request in any new developments that the towns and villages may have within the parish boundaries in the coming years.”

The motion was debated and subsequently agreed.

**Resolved**

That the following motion be adopted:

“To mark the centenary of the end of WW1, this council recognises those who made the ultimate sacrifice during the Great War of 1914-1918 and conflicts since then from North Oxfordshire and wishes to honour those who gave their lives and commemorate the local families they left behind.

To this end, we as the principle planning authority, let it be known that if Towns and Villages within the Cherwell District wish to honour those who died and are recorded or are on the local War Memorials by naming roads and streets in new developments after the fallen from within the parish we will look favourably on the request.

Cherwell will work with those Towns and Parishes to research and where possible accommodate such a request in any new developments that the towns and villages may have within the parish boundaries in the coming years.”

## 27 **Community Governance Review Update**

The Assistant Director – Transformational Governance submitted a report to consider the draft recommendations from the Community Governance Review (CGR) Working group, ahead of the second consultation phase which will start on 31 July 2017.

### **Resolved**

- (1) That the separation of the existing Upper Heyford Parish into two, as shown on the map at the annex to the Minutes (as set out in the Minute Book) be approved for consultation.
- (2) That, further to resolution (1), the parishes being named Upper Heyford and Heyford Park be approved for consultation.
- (3) That, further to resolutions (1) and (2), Upper Heyford Parish retaining six parish councillors, and Heyford Park having seven parish councillors be approved for consultation
- (4) That the number of Parish Councillors for Fritwell being increased by one, from six to seven be approved for consultation.
- (5) That the number of Parish Councillors for Stratton Audley being increased by two, from five to seven, be approved for consultation.
- (6) That the number of Parish Councillors for Tadmarton remaining at seven be approved for consultation.
- (7) That the number of Parish Councillors for Weston-on-the-Green being increased by one, from seven to eight, be approved for consultation.
- (8) That the number of Parish Councillors for Yarnton being increased by one, from nine to ten, be approved for consultation.

## 28 **Approval of Amendments to the Joint Contract Procedure Rules**

The Assistant Director Transformational Governance submitted a report to seek approval to amendments required to be made to the Joint Contract Procedure Rules in place at Cherwell District Council and South

Northamptonshire Council in order to ensure those Rules continue to reflect current law and procurement practice.

**Resolved**

- (1) That, subject to South Northamptonshire Council resolving in similar terms at its meeting on 19 July 2017, the changes made to the Joint Contract Procedure Rules (annex to the minutes as set out in the Minute Book) be agreed.

29 **2016/17 Treasury Management Annual Report**

The Chief Finance Officer submitted a report which presented information on treasury management performance and compliance with treasury management policy during 2016/17 as required by the Treasury Management Code of Practice.

**Resolved**

- (1) That the 2016/17 Treasury Management Annual Report, in line with the Treasury Management Strategy, be noted.

30 **Overview and Scrutiny Annual Report 2016/17**

The Assistant Director – Transformational Governance submitted a report which presented the Overview and Scrutiny Annual Report for 2016/17.

**Resolved**

- (1) That the contents of the Overview and Scrutiny Annual Report 2016/17 be noted.

31 **Build! Programme - Capital Budget**

The Chief Finance Officer submitted a report to approve the capital budget of £200,000 for pre-development costs for Phase 1(b) of the Build! project as recommended by Executive.

**Resolved**

- (1) That, in accordance with the agreed recommendations of the Executive, the capital budget of £200,000 for pre-development costs for Phase 1(b) of the Build Programme be approved.

32 **Woodpiece Road Parking Project - Capital Budget**

The Director of Operational Delivery submitted a report to consider a capital budget of £40,000 for Phase 1 of the Woodpiece Road parking project as recommended by the Executive.

**Resolved**

- (1) That the creation of a capital budget of £40,000 necessary to carry out the Phase 1 works be approved with delegated authority given to the Chief Finance Officer to approve the final cost.

33 **Yvonne Rees, Chief Executive**

On behalf of Council, the Chairman welcomed Yvonne Rees, the new Joint Chief Executive for Cherwell District Council and South Northamptonshire Council.

The Chief Executive thanked Members for the welcome she had received and commented that she was excited by her new role and she looked forward to working with Members and officers to address the future challenges and opportunities at both Cherwell District Council and South Northamptonshire Council.

34 **Exclusion of the Press and Public**

**Resolved**

That under Section 100A of the Local Government Act 1972, the public and press be excluded from the meeting for the following items of business on the ground that, if the public and press were present, it would be likely that exempt information falling under the provisions of Schedule 12A, Part 1, Paragraph 3 would be disclosed to them, and that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

35 **Questions on Exempt Minutes**

There were no questions on exempt minutes.

36 **Build! Programme - Capital Budget - Exempt Appendix**

**Resolved**

- (1) That the exempt appendix be noted.

37 **Woodpiece Road Parking Project - Capital Budget - Exempt Appendix**

**Resolved**

- (1) That the exempt appendix be noted.

### **Strategic Property Acquisition Update**

The Chief Finance Officer submitted an exempt report which provided an update on a strategic property acquisition.

#### **Resolved**

- (1) As set out in the exempt minutes.
- (2) That the reasonable assumptions within the development appraisals completed both in-house and by Gerald Eve be accepted.

The meeting ended at 8.20 pm

Chairman:

Date:





## **Council**

**Monday 17 July 2017**

### **Agenda Item 8 (a), Written Questions**

**Question From: Councillor Andrew Beere**

**Question To: Lead Member for Planning, Councillor Colin Clarke**

**Topic: Planning Applications and Appeals**

### **Question**

Please could you supply the following information based on figures since 2016, when the Whole Council was elected with 3 member wards.

1. The number of household applications by ward across the District.

And for the District as a whole

2. The number of Major residential [10 plus units] and commercial / industrial / infrastructure applications
3. The number of Major and Minor applications that have been deferred once placed on the published agenda

And associated with Planning aspects

4. The cost of Legal representation, including counsel advice / representation in that period related to Appeals and Inquiries.

### **Response**

1. The number of household applications (Dev Type 021) received between 05/05/2016 and 06/07/2017 is as follows:

Ward	Total
Adderbury, Bloxham and Bodicote	70
Banbury Calthorpe And Easington	73
Banbury Cross and Neithrop	33
Banbury Grimsbury And Hightown	35
Banbury Hardwick	23
Banbury Ruscote	19
Bicester East	40
Bicester North and Caversfield	38
Bicester South and Ambrosden	50
Bicester West	49
Cropredy, Sibfords and Wroxton	139
Deddington	155
Fringford and Heyfords	93
Kidlington East	63
Kidlington West	77
Launton and Otmoor	115

Total 1,072

2. The total number of major residential application in that same period was 65.
3. Deferred applications at Committee since May 2106 as follows – 5 for formal site visit; 3 for further info; 1 at applicants request; 2 to allow simultaneous consideration with another application.

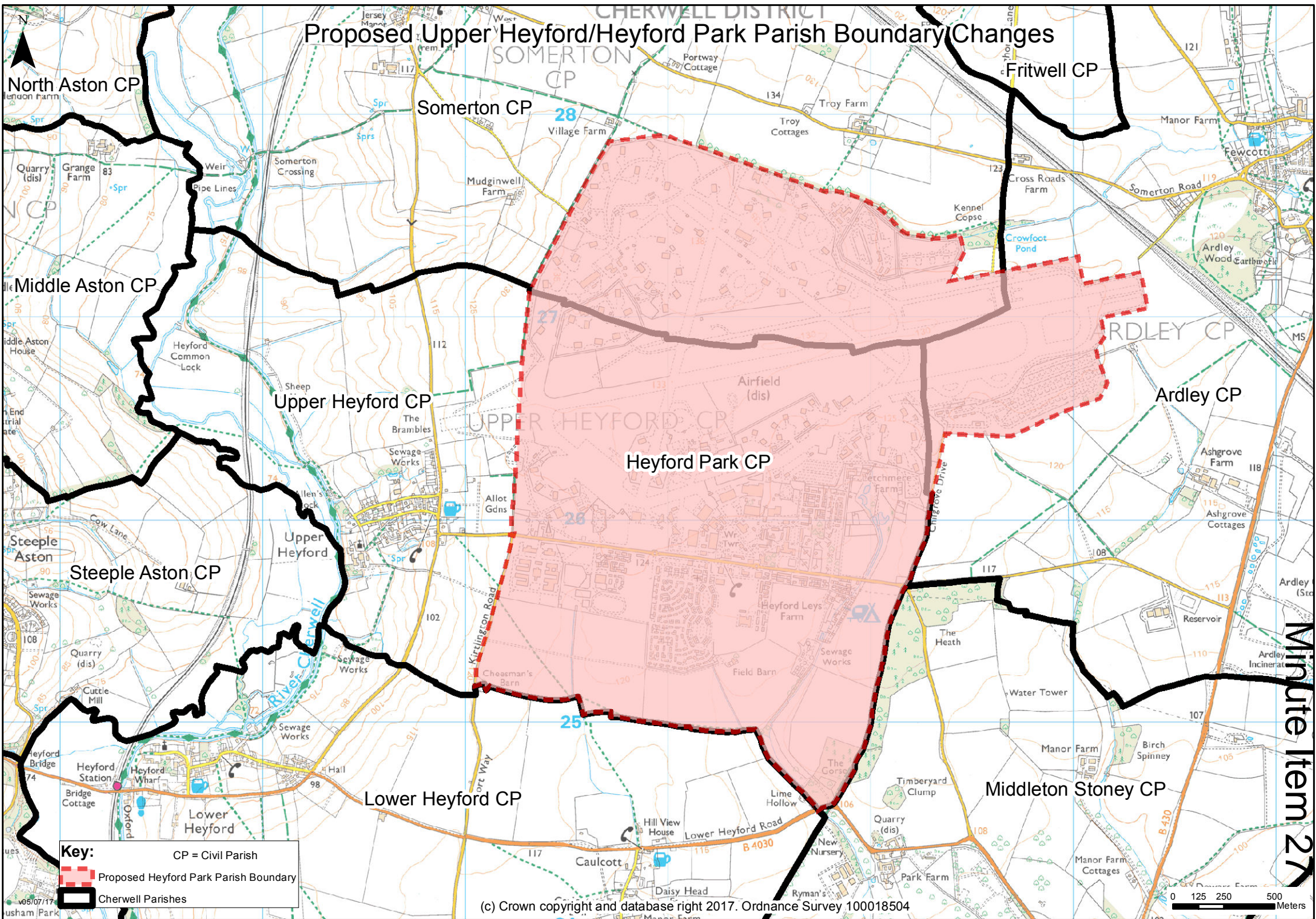
In that same time 4 applications were withdrawn by applicants before Committee

4. The cost of legal representation at inquiries and in preparation for such appearances is £28,488.



This is the cost of counsels' fees defending appeals/inquiries; it doesn't include internal recharges for officer time, or the cost of experts used at inquiries.



# Proposed Upper Heyford/Heyford Park Parish Boundary Changes



**Key:**

- CP = Civil Parish
-  Proposed Heyford Park Parish Boundary
-  Cherwell Parishes



# Minute Item 28

## CHERWELL DISTRICT COUNCIL and SOUTH NORTHAMPTONSHIRE COUNCIL

### CONTRACT PROCEDURE RULES

#### Made under Section 135 of the Local Government Act 1972

**A note on Interpretation:** reference to *Council* throughout these Rules refers to both Cherwell District Council and South Northamptonshire Council. Any rules peculiar to Cherwell District Council or South Northamptonshire Council alone are set out in text boxes at the appropriate points.

#### 1 INTRODUCTION

Supplemented by complementary rules in the Council's Constitution, including its Financial Procedure Rules, these Contract Procedure Rules, which are made under sections 135 (1) and (2) of the Local Government Act 1972:

- provide the foundation for achieving value for money in pursuit of the aims and objectives stated in the [Joint Corporate Procurement Strategy and Action Plan](#)
- promote transparency, non-discrimination and equal treatment in pursuit of the Council's procurement objectives
- ensure compliance with the obligations governing the spending of public money contained in the Public Contracts Regulations 2015 and deter fraud
- ensure that small and medium enterprises have better access to Council Contracts by simplifying the procurement process for Contracts below the [EU Procurement Thresholds](#), increasing transparency, and reducing bidding costs
- govern the way in which the Council buys works, supplies and services, whether to meet a current need identified by the Council directly or in response to an expression of interest received from a relevant body under the community right to challenge
- govern the way in which the Council *sells* the things it owns, and accordingly support the Council's statutory duty to obtain the best price reasonably obtainable in the disposal of assets belonging to it
- require officers with responsibility for purchasing or disposal to comply.

#### 2 SCOPE OF CONTRACT PROCEDURE RULES

These Rules (and those complementary rules in the Council's Constitution, including its Financial Procedure Rules) apply to **all** spending on works, supplies and services by the Council. They also apply to the disposal of **all** Council assets.

The Rules also apply whether the Council is dealing on a commercial basis with entities in the private sector or the public sector.

These Rules must also be followed where the Council decides to accept an expression of interest received from a relevant body under the community right to challenge.

Further, the Rules apply to arrangements which the Council wishes to enter into in consequence of its having received grant funding from an outside body to procure a service, or to receive an income in return for giving another body the right to run a service.

The Rules **do not apply**, however, to:

- contracts of employment
- contracts with Counsel
- grant/funding agreements<sup>1</sup>
- contracts awarded by the Council to a distinct legal entity over which it exercises a control that is similar to that which it exercises over its own departments *and* that distinct legal entity carries out more than 80% of its activities for the Council or other local authorities which control it *and* there is no direct private capital participation in that distinct legal entity<sup>2</sup>
- arrangements concluded by the Council with other public bodies within a framework of genuine cooperation between the participants which is aimed at ensuring the public services they have to perform are provided with a view to achieving objectives they have in common *and* which is governed solely by considerations and requirements relating to the pursuit of objectives in the public interest *and* less than 20% of the activities concerned by the co-operation are performed on the open market<sup>3</sup>.

All contract letting must at all times comply with Public Procurement Legislation (defined in [section 3](#) below) irrespective of local needs or objectives. EU Treaty Principles, in particular, apply to all Council procurement activity, not just to contracts that exceed the relevant EU thresholds (see [section 6](#)).

The Monitoring Officer may amend these Rules where required by statutory change or administrative error.

### 3 DEFINITIONS

Significant terms or phrases used in this document are defined as follows:

<p><b>South Northamptonshire Council</b></p> <p><b>Cabinet</b> means the Council's Cabinet.</p>
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**Contract** means an agreement between the Council and any other organisation, including another public authority, made by formal agreement or by issue of a letter of acceptance or official purchase order for Works, Supplies or Services.

**Contracts Finder** means a web-based portal provided, under that name, by or on behalf of the Cabinet Office, on which the Council must publish Contract opportunities and Contract awards in conformity with these Rules.

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<sup>1</sup> A grant is a gift of funds for a specific purpose. The recipient is not obliged to deliver any goods or services to the Council, although the Council may claw back grant which has not been spent or is misapplied.

<sup>2</sup> Formerly, the *Teckal* exemption, now Regulation 12(1) of the Public Contracts Regulations 2015

<sup>3</sup> Formerly, the *Hamburg* exemption, now Regulation 12(7) of the Public Contracts Regulations 2015

**Contracts Register** means the centrally held Contracts Register providing data to aid the management, administration, scrutiny and audit of all Contracts entered into by the Council with a value exceeding £5,000.

**Corporate Contract** means an exclusive agreement between the Council and a supplier which facilitates the placing of orders for known quantities of Supplies and Services on standard terms over a predetermined period which, if the total value of all purchases that could be made under the Corporate Contract exceeds the relevant value in the [EU Procurement Thresholds](#) (see [section 5](#) for determining Contract values), must be no more than 4 years. In this context, the agreement and the orders together constitute a single contract (albeit one in which the scope of the Corporate Contract regularly changes as orders are placed and fulfilled). It is this characteristic that distinguishes the arrangement from, but which otherwise shares similarities to, a [Framework Agreement](#)

**Corporate Procurement Manager** means the officer with responsibility for the Council's procurement function.

**CPR** means the contract procedure rules set out in this document and supplemented by complimentary rules in the Council's Constitution, including its Financial procedure Rules.

**Cherwell District Council**

**Executive** means the Council's Executive.

**EU** means the European Union.

**EU Procurement Law** means EU Directive 2014/24 (consolidated into English law as the Public Contracts Regulations 2015), EU Treaty Principles, relevant case law and any subsequent directives or legislation relating to EU procurement.

**EU Treaty Principles** means the principles of transparency, equal treatment, proportionality and non-discrimination in the letting of any Contract.

**FoI** means the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Code of Recommended Practice for Local Authorities on Data Transparency (September 2011) and any subsequent amendment or legislation relating to information disclosure.

**Framework Agreement** means an agreement or other arrangement between the Council (whether acting alone or jointly with other public bodies) and one or more suppliers which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the Council may place one or more orders with the supplier in the period during which the Framework Agreement applies. Until any orders are placed under the Framework Agreement there is no legally enforceable obligation to supply or purchase any Supplies or Services in connection with it. The placing of orders for Works, Supplies or Services through a Framework Agreement (whether established by the Council or by another public body) will satisfy the call for competition provided Value For Money can be demonstrated. In such cases there is no requirement to subject individual orders to competition because a competitive process will already have been undertaken to establish the Framework Agreement under which they are placed. Where it is proposed to establish a Framework

Agreement, and the potential value of all orders that could be placed under it may exceed the relevant value in the [EU Procurement Thresholds](#) (see [section 5](#) for determining Contract values) then its term must be limited to 4 years or less pursuant to EU Procurement Law.

**ITQ** means an invitation to Quote.

**ITT** means an invitation to Tender (or to negotiate, as the case may be).

**JPSG** means the Joint Procurement Steering Group comprising a **Core Group** of:

- The Section 151 Officer
- The Monitoring Officer
- The Chief Finance Officer (unless represented as Section 151 Officer)

or their nominees, who shall, in relation to Contracts exceeding £150,000 in value or amount, make appropriate determinations at key stages of the procurement lifecycle in accordance with the JPSG Core Group's terms of reference as set out in paragraph 2.1 of [Appendix 1](#), and a **Strategy Group** comprising:

- The JPSG - Core Group and
- Heads of Service invited from those who have undertaken substantial procurement activity over the period since the last Strategy Group meeting
- The relevant Council Member(s) responsible for procurement (to be invited as appropriate and at least annually) and
- Such other Council Members as any of the Core Group may invite on a case by case basis

or their nominees, who shall provide a strategic and scrutiny role in relation to the Council's procurement function in accordance with the JPSG – Strategy Group's terms of reference as set out in paragraph 2.2 of [Appendix 1](#).

**Monitoring Officer** means the Head of Law and Governance, who is designated as such under Section 5(1) of the Local Government and Housing Act 1989.

**Most Economically Advantageous Offer** means the offer that is the most economically advantageous from the point of view of the Council taking into account such things as price, quality, technical merit, aesthetic and functional characteristics, environmental characteristics, potential Social Value, production processes, running costs, cost effectiveness, life-cycle costs, after sales service, technical assistance, delivery date/delivery period and period of completion.

**OJEU** means the Official Journal of the European Union, and **OJEU Notice** means a notice advertising the relevant Contract opportunity that is sent to OJEU in conformity with EU Procurement Law.

**Partnership** means an arrangement involving the Council and one or more organisations from any sector who share the responsibility for agreeing and/or then delivering a set of planned actions and outcomes. The Council may be a major or a minor participant in any such partnership. The CPR does not apply to the creation of any such Partnership but may apply to any activity of the Partnership connected with the letting of Contracts.

**Principal Procurement Decision** means any key procurement decision affecting any Contract where the total cost of that Contract would, were it to be awarded, exceed the allocated revenue budget by more than 5% or £25,000 (whichever is the greater) and/or the allocated capital budget by more than 5% or £100,000 (whichever is the greater), or which falls to be made for the purpose of responding to an expression of interest received from a Relevant Body exercising its Right to Challenge, or awarding a Contract arising from such expression.

**Project Officer** means the officer designated by the relevant Head of Service as having responsibility for the planning and co-ordination of any particular procurement project. For the avoidance of doubt, the Project Officer may also be the relevant Head of Service. The Project Officer is accountable for the delivery of the project on time, within budget, and in accordance with all relevant internal procurement rules and Public Procurement Legislation. The Project Officer must have no personal or professional connection with any organisation bidding for a Contract and must recuse himself or herself from a procurement exercise immediately the potential conflict of interest arises and nominate a substitute Project Officer able to progress the procurement exercise fairly, transparently and impartially.

**Public Procurement Legislation** means all relevant external procurement rules and regulations, including the Local Government Act 1988 Part II, the Local Government (Contracts) Act 1997, the Local Government Act 1999, the Local Government Act 2000, the Public Services (Social Value) Act 2012, the Localism Act 2011 and EU Procurement Law (including EU Treaty Principles).

**Quotation** means a priced bid for the provision of Works, Supplies or Services applicable to procurements between £2,500 and £100,000.

**Relevant Body** means a voluntary or community body, a charitable body, a parish council, two or more employees of the Council or such other persons or bodies as may be specified by regulations made by the Secretary of State.

**Relevant Service** means a service provided in the exercise of any of the Council's functions, either by the Council using its own workforce, or provided on its behalf under a service contract or some other arrangement.

**Right to Challenge** means the right embodied in the Localism Act 2011 for a Relevant Body to express an interest in providing or assisting in providing a Relevant Service on behalf of the Council.

**Section 151 Officer** means the officer appointed by the Council for the purposes of Section 151 of the Local Government Act 1972 to administer the financial affairs of the Council.

**Services** means any undertaking that does not constitute Works or a Supply, and includes a Relevant Service.

**Social Value** means the economic, social and/or environmental well-being to which the Council must have regard before commencing an exercise to procure a Contract for the provision of Services to which [EU Procurement Law](#) applies.

**Supply** means the purchase, hire or lease of any goods or materials (including electricity, substances, growing crops and things attached to or forming part of any land) and their siting or installation where this is incidental to the Supply, and **Supplies** shall be construed accordingly.



**Tender** means the formal process for obtaining priced bids for Works, Supplies and/or Services and which must be followed for procurements with a value exceeding £100,000.

**TUPE Regulations** means the [Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#) (as amended by the [Collective Redundancies and Transfer of Undertakings \(Protection of Employment\) \(Amendment\) Regulations 2014](#)), which preserves the continuity of employment and terms and conditions of employees who are transferred to a new employer in cases where Services are outsourced, insourced or assigned by the Council to a new supplier.

**Value For Money** means the optimum combination of whole life costs, quality and other benefits.

**Works** means the construction, repair or maintenance of a physical asset.

## **CONTRACTS**

### **4 CONFIDENTIALITY**

All information supplied by a bidder invited to submit a Quotation or Tender for a Contract shall be treated in confidence except where references are required to be sought for the purpose of establishing a bidder's credentials, or where disclosure is required to meet an obligation contained in the Public Procurement Legislation (such as supplier debriefing following completion of a competitive tender exercise).

This general duty to maintain confidentiality is, however, subject to the Council's **statutory responsibilities** under Fol.

Fol does permit non-disclosure of information which is commercially sensitive, and the Project Officer is therefore recommended to instruct any bidder invited to submit a Quotation or Tender to:

- state clearly which, if any, of the information or other material supplied with their Quotation or Tender is commercially sensitive; and
- explain why, in the bidder's own opinion, commercial sensitivity attaches to that information or other material.

However, whilst bidders may specify in their Quotation or Tender that information or other material being supplied to the Council is commercially sensitive and therefore exempt from disclosure, the Project Officer must make bidders aware when inviting Tenders or Quotations that such information shall be regarded by the Council as having indicative value only and that the Council may nevertheless be obliged to disclose such information if an Fol request is received.

Note under Fol that the Council alone is responsible for determining at its absolute discretion whether confidential, commercially sensitive or other information is exempt from disclosure or is to be disclosed in response to a request for information.

### **5 CALCULATING THE VALUE OF A PROPOSED CONTRACT**

When calculating the value of a proposed Contract, the Project Officer should have regard as follows:

- values are total lifetime Contract values, not annual values;
- account must be taken of the potential for exercising any options or any rights of renewal or extension;
- values exclude VAT;
- the estimated value of a Framework Agreement or a Corporate Contract is the total value of all of the purchases which could be made by the Council under that arrangement;
- where a Contract length is unfixed or imprecise, its value shall be assessed on the basis of the amount the Council might spend on it over 48 months;
- where procurement activity is undertaken jointly with another public body, the value of the Contract to each organisation shall be combined for the purpose of determining the applicability of [EU Procurement Thresholds](#) (and the issue of a Contract Notice to OJEU);
- a Contract must not be packaged in such a way that is chiefly intended to evade the point at which any rule in the CPR or the Public Procurement Legislation may apply; but consideration can be given to dividing a proposed Contract into Lots to make them more accessible for small and medium enterprises.

## 6 EUROPEAN PROCUREMENT THRESHOLDS

EU Procurement Law shall be complied with in respect of all Contracts having a value that exceeds the relevant EU threshold for the Works, Supplies or Services being procured (see [EU Procurement Thresholds](#)).

**The consequences of failing to do so are severe, whether before a Contract is formally awarded or in the aftermath of that decision:**

**Before the Contract is Signed** the Council:

- Must automatically suspend its award upon receiving, and pending the conclusion of, a legal challenge to that decision.
- May be ordered to set aside any unlawful decisions taken during the tender process or to amend any unlawful documentation.
- Could be liable to pay damages to any bidder proving loss arising from the Council's actions.
- May be required, by virtue of Part 2 of the Localism Act 2011, to pay all or part of any fine or other EU financial sanction levied against the Government for an infraction of EU Procurement Law in circumstances where the Council has demonstrably caused or contributed to the imposition of that financial sanction.

**After the Contract is Signed** the Council:

- Could be liable to pay damages to any bidder proving loss arising from the Council's actions.
- May, in any case of serious abuse of EU Procurement Law, be required to cancel its Contract (where a court declares that Contract to be *prospectively ineffective*) and pay a fine.
- May, in any other case, be ordered to shorten the term of its Contract or pay a fine or both.
- May be required, by virtue of Part 2 of the Localism Act 2011, to pay all or part of any fine or other EU financial sanction levied against the Government for an infraction of EU Procurement Law in circumstances where the Council has demonstrably caused or contributed to the imposition of that financial sanction.

Given the draconian consequences that may occur for failing to comply with the public procurement regime, the message is clear: "follow the rules".

Further, EU Treaty Principles apply to all Contracts, not just to those that exceed the EU thresholds.

## 7 COMMENCING A PROCUREMENT

**No procurement shall commence without there being sufficient budget available to cover the estimated cost of the Works, Supplies or Services being procured, or an outside body providing grant for the procurement of Works, Supplies or Services having given a binding commitment to the Council to provide those funds.**

Further, for all procurements above £25,000 the Project Officer shall first consider and agree with the Corporate Procurement Manager an approach to the procurement that is most likely to achieve the procurement's intended outcomes and objectives, having regard, therefore, to such matters as:

- the likely total cost of the project;
- the amount and source of the money earmarked for it;
- the length of the proposed arrangement;
- the procedure to be adopted for achieving effective competition;
- the proposed procurement timetable;
- whether procurement jointly with another public body would be of benefit;
- how Value for Money and/or Service improvements may be achieved;
- how Social Value might be secured for the Council's area by the procurement;
- details as to whether TUPE is likely to apply (see section 9); and
- any risk to the Council in undertaking (or not undertaking) the procurement.

### Dealing With Expressions Of Interest Received Under The Right To Challenge

The Council has a **duty** to consider any expression of interest received from a Relevant Body wanting to run a Relevant Service on behalf of the Council. The Council shall fulfil that duty as follows.

Where an expression of interest for a Relevant Service is received by the Council, the head of service responsible for the service to which the Relevant Service relates shall:

- inform the Corporate Procurement Manager and the Head of Law and Governance of its receipt without delay; and
- forthwith check that it meets the minimum requirements specified in the Localism Act 2011 and accompanying regulations. Expressions of interest must contain:

1	information about the financial resources of the Relevant Body (and the financial resources of any consortium member or sub-contractor with whom the Relevant Body proposes to deliver the Relevant Service)
2	evidence of the Relevant Body's capability to provide or assist in providing the Relevant Service (and the capability of any consortium member or sub-contractor with whom the Relevant Body proposes to deliver the Relevant Service)
	Information about the Relevant Service sufficient to identify it and the

3	geographical area to which it relates
4	information about the outcomes to be achieved, particularly how the provision or assistance will add Social Value to the Council's area and how it will meet users' needs
5	details about how, in any case where the Relevant Body consists of Council employees, those employees will engage with other employees of the Council affected by the Relevant Service

For each and every expression of interest received, the relevant head of service shall issue the necessary notifications required by the Localism Act 2011 and accompanying regulations in consultation with the Corporate Procurement Manager and the Head of Law and Governance, including publication as necessary on the Council's website.

The relevant head of service shall report each and every expression of interest to its Executive or Cabinet as appropriate, and seek recommendation from it to **accept**, **reject** or **modify** that expression as appropriate.

Where recommendation is made to **accept** the expression of interest the Council shall, following notification of the Council's acceptance to the Relevant Body, **proceed to carry out a procurement exercise in respect of the Relevant Service in conformity with the CPR**. It shall also specify in such manner as it thinks fit (which must include publication on the Council's website):

- the **minimum period** that will elapse between:
  - the date of the Council's decision to accept the expression of interest, and
  - the date on which it will begin the procurement exercise for the Relevant Service, and
- the **maximum period** that will elapse between those dates.

An expression of interest may only be **rejected** where:

1	it does not comply with any of the requirements specified in the Localism Act 2011 and accompanying regulations
2	the Relevant Body provides information in the expression of interest which in the opinion of the Council, is in a material particular inadequate or inaccurate
3	the Council considers, based on the information in the expression of interest, that the Relevant Body or, where applicable (a) any member of the consortium of which it is a part, or (b) any sub-contractor referred to in the expression of interest is not suitable to provide or assist in providing the Relevant Service
4	it relates to a Relevant Service where a decision, evidenced in writing, has been taken by the Council to stop providing that service
5	the expression of interest relates to a Relevant Service (a) provided, in whole or in part, by or on behalf of the Council to persons who are also in receipt of a service provided or arranged by an NHS body which is integrated with the Relevant Service; and (b) the continued integration of such services is, in the opinion of the relevant authority, critical to the well-being of those persons
6	the Relevant Service is already provided under Contract to the Council or otherwise the subject of a procurement exercise
7	the Council and a third party have entered into negotiations for provision of the Relevant Service, which negotiations are at least in part conducted in writing

8	the Council has published its intention to consider the provision of the Relevant Service by a body that 2 or more specified employees of the Council propose to establish
9	the Council considers that the expression of interest is frivolous or vexatious
10	the Council considers that acceptance of the expression of interest is likely to lead to contravention of an enactment or other rule of law or a breach of statutory duty

Where recommendation is made to **reject** the expression of interest the relevant head of service shall notify the Relevant Body accordingly, giving reasons for that decision, and shall also arrange publication of the notification in such manner as he thinks fit on behalf of the Council, which must include publication on the Council's website.

Recommendation may be made to **modify** an expression of interest **by agreement** with the Relevant Body. The relevant head of service shall notify the Relevant Body of any such recommendation, giving details of the modification sought and the reasons for that decision, and shall also arrange publication of the notification in such manner as he thinks fit on behalf of the Council, which must include publication on the Council's website.

## 8 ROLE OF JPSG

The JPSG – Core Group's terms of reference are set out in paragraph 2.1 of Appendix 1.

The JPSG – Strategy Group's terms of reference are set out in paragraph 2.2 of Appendix 1.

## 9 REQUIREMENTS IN RELATION TO TUPE

TUPE, and the interpretation of it, **changes frequently**, and only a brief reference to it is therefore contained within these Rules. The Shared HR and OD Manager and / or the Head of Law and Governance can provide further TUPE guidance and advice as necessary or appropriate.

Whenever a new supplier is appointed to take over the provision of an existing Service, employees of the original supplier engaged in the provision of that Service (or the Council, if the Service was provided in-house) may be affected by transferring that Service to another provider. If so, it will be necessary to form a view as to whether TUPE applies, and the advice of the Shared HR and OD Manager *and* the Head of Law and Governance **must** therefore be obtained by the Project Officer before commencing a procurement project.

If a Contract is likely to involve a transfer of Council staff then it is important that the Project Officer arranges for the Shared HR and OD Manager to begin consultation with the relevant employees that will be affected at an early stage. This is good practice and the Council has a statutory obligation to consult under TUPE.

## 10 COMPETITIVE PROCESS

### (a) Number of Tenders/Quotations to be Invited

This rule 10(a) shall apply unless the call for competition is to be waived in accordance with the procedure prescribed in section 17, or the Council's requirement for Works,

Supplies or Services is to be satisfied using an established Framework Agreement or Corporate Contract from which the Council is expressly entitled to benefit.

While a formal competitive tendering exercise may be conducted by the Council in relation to any procurement of any value, such a process **must** be undertaken by the Council for all Contracts above £100,000 (see table below).

For Contracts below £100,000, Tenders may not be required and a Contract can be awarded on the basis of Quotations received and evaluated in accordance with Value for Money requirements **PROVIDED** all stages of that exercise are nevertheless recorded in writing sufficient to demonstrate the decisions taken are robust, fair and auditable.

Where there are a sufficient number of organisations suited to bid for a particular Contract, the Council may limit the number of potential bidders from whom it may seek Tenders/Quotations as follows:

Estimated Contract Sum	Minimum Number of Bidders Invited to Tender
Works, Services or Supply Contract exceeding relevant <a href="#">EU Procurement Thresholds</a>	Determined in consultation with the Head of Law and Governance, having regard to EU tendering requirements <sup>4</sup>
Works, Services or Supply Contract between £100,000 and relevant <a href="#">EU Procurement Thresholds</a>	3 Tenders invited
£25,000 to £100,000	3 written Quotations (unless the proposed Contract is likely to be of interest to enterprises from other EU Member States in which event 3 Tenders meaningfully advertised shall be required in accordance with EU Treaty Principles)
£2,500 to £25,000	2 Quotations (in writing wherever possible)
Up to £2,500	Procurement Card, petty cash etc. transaction

#### (b) Advertising a Contract Opportunity

This section applies where Tenders or Quotations are required to be obtained (see [section 10\(a\)](#)) and the use of an established Framework Agreement or Corporate Contract from which the Council is entitled to benefit is not appropriate.

The Project Officer is reminded that, whilst generally the most effective means of achieving Value for Money in any Contract is to advertise it publicly by, e.g., notice on the Council's website or in an appropriate trade journal or the local press, the following forms of Contract advertisement **must** by law be undertaken in addition to any other means of advertising the Contract opportunity chosen by the Project Officer:

<sup>4</sup> E.g., regulation 65 (3) of the PCR 2015 states that the minimum number of candidates who are invited in a restricted procedure to complete the ITT shall be 5, providing that at least this number have been assessed as sufficiently qualified after completing a SQ or equivalent. This number can be increased if desired, but not decreased.



<b>Estimated Contract Sum</b>	<b>Contract Notice to OJEU</b>	<b>Contracts Finder<sup>5</sup></b>
Contracts for Works, Services or Supplies <u>above</u> EU Procurement Thresholds	The OJEU Notice must be placed in advance of any other advertisement of that Contract opportunity	The Contract opportunity must be published on Contracts Finder 24 hours of the OJEU notice
Contracts for Works, Services or Supplies between £25,000 and EU Procurement Thresholds	Optional	It is not mandatory to advertise a Contract in this band on Contracts Finder, but if a choice is exercised to advertise that Contract publicly, then the Project Officer must advertise/also advertise on Contracts Finder

**(c) Shortlisting Applicants to Tender**

**Shortlisting for Contracts above the EU Procurement Thresholds**

If, in advertising a Contract opportunity, the Project Officer wishes to assess the suitability, or unsuitability, of applicants to perform a Contract for the purpose of reducing the number of applicants to a smaller number who are to proceed to a later stage of the process (i.e., to shortlist organisations prior to inviting Tenders), and the Contract value is above the EU Procurement Thresholds, then the Contract advertisement shall state that any person, firm or organisation wishing to express an interest in the Contract must do so by completing and returning to the Council, by a date specified in the advertisement (being not less than 30 days), a Standard Selection Questionnaire in the standard form prescribed by central government or a document or certificate of equivalent effect ('SQ')<sup>6</sup>.

All SQs accordingly received shall be assessed to determine the acceptability, experience, financial standing, capability and capacity of the organisation concerned to deliver the Works, Supplies or Services required.

The Corporate Procurement Manager shall have responsibility for co-ordinating such pre-qualification process, including receiving completed SQs, and, from those considered eligible to bid for the Contract, the Corporate Procurement Manager and the Project Officer shall together compile a shortlist of persons, firms or organisations from whom Tenders may be invited. That shortlist shall have regard to the minimum number of Tenders required in accordance with the Table in section 10a.

When the selection process has been completed, the Corporate Procurement Manager shall inform unsuccessful applicants that they were not selected to tender, together with brief reasons as to why they were not so selected.

<sup>5</sup> The Public Contracts Regulations 2015 require that if a Contract is advertised, the opportunity must be published on Contracts Finder instead of, or in addition to, other portals or websites whenever the value of the contract is greater than £25,000.

<sup>6</sup> Such as a European Procurement Passport or equivalent

## Shortlisting for Contracts below the [EU Procurement Thresholds](#)

The Council is prohibited by Public Procurement Legislation from demanding a SQ in relation to any Contract opportunity below the [EU Procurement Thresholds](#) for services or supplies, although it may ask applicants to answer a suitability assessment question provided the question is:

- relevant
- proportionate and
- intended only to elicit information or evidence which the Council requires for the purpose of assessing whether applicants meet minimum standards of suitability, capability, legal status or financial standing.

In complying with this stipulation, the Project Officer shall have regard to any guidance issued by the Minister for the Cabinet Office, which may include guidance on how to establish and assess, without using SQs, whether applicants meet requirements or minimum standards relating to suitability, capability, legal status and financial standing.

### (d) Getting Tenders and Quotations

Where Quotations or Tenders are required, the documentation comprising the ITT or the ITQ shall be based on relevant model documents available from the Corporate Procurement Manager.

In either case, the competitive procedure the Project Officer has determined to follow (and which, for openness and transparency, should be recorded in the ITT or ITQ) must be sufficiently structured to ensure the Quotations or Tenders received can be properly compared and evaluated in accordance with Value for Money requirements.

A Tender contest may be conducted by the Project Officer using either the open or restricted procedure. Open tendering means that the opportunity to bid for the Council's Contract shall be open to any supplier who can Tender for the Works, Supplies or Services in accordance with the Council's advertised requirements. In such cases, the Council must consider and evaluate all qualifying bids received. The restricted procedure involves a tender process in which the Council limits the number of prospective tenderers to those who have been shortlisted by it in accordance with the pre-qualification procedure prescribed at section 10(c).

No departure from either the open or restricted tendering procedure in favour of another procurement procedure permitted by Public Procurement Legislation, including the Negotiated Procedure, the Competitive Dialogue Procedure, the Competitive Procedure with Negotiation or the Innovation Partnership Procedure, shall be permitted without the authorisation of JPSG – Core Group.

### (e) Evaluation Criteria

Any ITT or ITQ must contain details as to the criteria for awarding the Contract to which it relates. Those criteria must be robust, fair, auditable, compliant with any relevant Public Procurement Legislation and, for any ITT, weighted wherever possible.

The award criteria may be based on price alone or on that which represents the Most Economically Advantageous Offer received. In relation to Contracts above the [EU Procurement Thresholds](#), any award *must* be based on the Most Economically Advantageous Offer.



## Lowest Price

Awards based on price alone do not permit Value for Money considerations and so will only ever be suitable for Supply Contracts of very low value where the Supplies required can be specified in significant detail at the outset and no after sales service or other special requirements are needed in connection with that Supply.

## Most Economically Advantageous Offer

Where the Council intends to award a Contract on the basis of the proposal which is the Most Economically Advantageous Offer received, the criteria (and any sub-criteria) to be used in the evaluation shall, as a minimum:

- be pre-determined,
- be listed (in the ITQ) in order of importance,
- be weighted (in the ITT) according to their respective importance (unless, on objective grounds, it is not possible to provide any such weightings),
- be strictly observed at all times throughout the competition for the Contract,
- be framed so as to best achieve any Social Value reported under [section 8](#)
- reflect the principles of Best Value,
- include price,
- be capable of objective assessment, and
- have regard to environmental impact and sustainability considerations relevant to the Works, Supplies or Services being procured.

Where it is possible to apply a scoring matrix to the proposed evaluation criteria, the Contract must be awarded to the tenderer obtaining the highest overall score (i.e., the Most Economically Advantageous Offer) from the evaluation process.

The evaluation must be carried out by a panel consisting of the Project Officer and at least one other officer of appropriate seniority, supported by the Corporate Procurement Manager. None in the evaluation panel must have any personal or professional connection with any organisation bidding for the Contract and must in the event of any conflict of interest or potential for such conflict recuse themselves from involvement in the evaluation and nominate a substitute officer able to conduct the evaluation fairly, transparently and impartially.

All decisions, scores, judgements and observations of the evaluation panel **must** be recorded in writing and held by the Corporate Procurement Manager for the purpose of demonstrating in the event of challenge or otherwise as required that the decisions taken were robust, fair and auditable.

### (f) Award

(**Note** that if the project budget is **not** sufficient to meet a preferred supplier's tendered rates and prices ahead of Contract award then the Project Officer **must** secure additional project funds before accepting the relevant tender. The Project Officer should therefore refer to the Finance Procedure Rules for relevant and appropriate guidance on project budget increases. Further advice can be provided by the Chief Finance Officer).

Value	Authority to Award
Up to £150,000	Relevant Head of Service to approve Project Officer's award

(unless a Principal Procurement Decision) <sup>7</sup>	recommendation, detailed reasons for such award to be noted in writing on the Project Officer's project file for audit purposes.
Over £150,000 (unless a Principal Procurement Decision)	Unanimous decision of the JPSG – Core Group following the Corporate Procurement Manager's submission of a report to it on the outcome of the competition, including the Project Officer's recommendation on Contract award.
Over £500,000 (unless a Principal Procurement Decision)	Unanimous decision of the JPSG – Core Group in consultation with the Lead Member/portfolio holder responsible for the procurement following the Corporate Procurement Manager's submission of a report to it on the outcome of the competition, including the Project Officer's recommendation on Contract award.
Principal Procurement Decision	<b>Cherwell District Council</b> Executive decision unless delegated by Executive to JPSG – Core Group.
	<b>South Northamptonshire Council</b> Cabinet decision unless delegated by Cabinet to JPSG – Core Group.

All unsuccessful bidders submitting Tenders or Quotations for evaluation by the Council must be informed of the outcome of the competition, including the name of the winning bidder and a brief explanation as to why they were unsuccessful on that particular occasion (for further guidance on *Debriefing*, see [section 10\(g\)](#) below).

#### (g) Standstill ('Alcatel') Period and Award Notices

Acceptance of any tender governed by EU Procurement Law is subject to a standstill period before any Contract with the preferred tenderer can be concluded. The standstill period (also known as the 'Alcatel' period for the case (Alcatel Austria and Others v Bundesministerium für Wissenschaft und Verkehr (C-81/98)) from which the law emerged) describes the period between communication of the outcome of the tender process to all those who participated in it and the formal conclusion of the Contract and is intended to provide such participants with an opportunity to challenge the award of a Contract (e.g., because the Council has failed to follow the stated/prescribed tender procedure) before the Contract is finally concluded at the end of the standstill. The period is **10 days** if the Council's decision is communicated electronically or **15 days** from despatch if sent by any other means. In either case the standstill must end on a working day. Project Officers are recommended to send decision notices electronically.

<sup>7</sup> By way of reminder, a Principal Procurement Decision means any key procurement decision affecting any Contract where the total cost of that Contract would, were it to be awarded, exceed the greater of 5% or £25,000 of budgeted revenue expenditure and/or 5% or £100,000 of budgeted capital expenditure, or which falls to be made for the purpose of responding to an expression of interest received from a Relevant Body exercising its Right to Challenge, or awarding a Contract arising from such expression

The standstill period is triggered only by sending an award decision notice to all those who bid for the Contract which contains an explanation of:

- the criteria used to make the award
- the reasons for the Council's decision, including the characteristics and relative advantages of the successful tenderer
- the scores of both the successful tenderer and the recipient of the notice
- the reasons why the recipient did not meet any technical specification (where applicable)
- the name of the bidder awarded the Contract and
- the date on which the standstill period is expected to end

The requirement to notify bidders in this way, coupled with the sanctions available to them which may arise from any failure by the Council to follow EU Procurement Law (see [Section 6](#)), highlights the need for a robust, fair and auditable evaluation process.

## **11 INSURANCE**

At the commencement of any procurement exercise, the Project Officer and the Chief Finance Officer shall together determine the type and level of insurance cover required in relation to a particular procurement. The Project Officer shall ensure the successful bidder has any required insurance cover in place before performance of the Contract begins, and shall further ensure, at appropriate intervals, that such cover is maintained by the supplier throughout the Contract period.

## **12 PARENT COMPANY GUARANTEES AND PERFORMANCE BONDS**

Before commencing any tendering exercise for a Contract exceeding £150,000 in value of amount, the Project Officer and the Chief Finance Officer shall together determine the need for, and value of, any parent company guarantee and/or performance bond necessary in relation to that procurement.

The Chief Finance Officer may also require any Contract below £150,000 to be supported by a parent company guarantee and/or performance bond for such amount as the Chief Finance Officer may consider necessary or appropriate in all the circumstances.

In determining the need for appropriate guarantees, regard should be had to using performance bond and/or a parent company guarantee only in specific and justified circumstances where the contract is judged to be at high risk of supplier or performance failure. Key points include: is the contract with the ultimate parent company; is the balance sheet commensurate with the liabilities in the contract; what proportion of the net assets are represented by the maximum liability under the contract; and to what extent are the assets are tied to the contracting party?

**The Project Officer shall ensure the successful tenderer has any required parent company guarantee and/or performance bond in place before the Contract is commenced.**

## 13 TENDER ADMINISTRATION: PROCEDURE FOR ISSUING AND RECEIVING TENDERS

### (a) Issuing of tenders

The Project Officer **must** liaise with the Corporate Procurement Manager for the purpose of making all arrangements for the issue of ITTs and the receipt of submissions and proposals in response through the electronic procurement system operated by the Council for this purpose. No other method of Tender administration is permitted without the express consent of, and involvement with, the Corporate Procurement Manager.

### (b) Submitting tenders

All Tenders must be returned strictly in accordance with the instructions prescribed in the invitation to Tender and must not be returned directly to the Project Officer, a Council Member or to any consultant acting on the Council's behalf.

**Every ITT shall state that no Tender shall be considered unless it is returned to the Council as prescribed in the invitation to Tender by the date and time specified in the ITT.**

Tenderers shall be responsible for ensuring their Tender is received by the Council by the specified time and date ~ late Tenders cannot be considered for evaluation or acceptance by the Council in any circumstances, even if the Tenderer asserts their Tender was sent before the return date.

If late tenders are received then the Project Officer must on such receipt advise the tenderer(s) concerned that their Tender was received late to the Council thereby preventing its consideration, and inform them that the Tender shall either be returned to them as they may require or otherwise destroyed by the Council after a period of 14 days.

### (c) Abnormally Low Tenders

Where the rates and price(s) submitted by one or more tenderers is prima facie abnormally low or otherwise unrealistic, the Corporate Procurement Manager has a legal duty to ask the tenderers concerned in writing to clarify their Tender proposals within the parameters prescribed by Regulation 69 of the Public Contracts Regulations 2015 and shall, with the Project Officer, assess the merits or otherwise of the explanations given before making any recommendation as to approval or rejection of those Tenders as appropriate.

## 14 NEGOTIATING CHANGES TO BIDS RECEIVED

The following provisions apply to negotiations with bidders for any Council Contract, and the consequential amendments to Tenders and Quotations, otherwise than in accordance with any formalised negotiation process permitted by the Public Procurement Legislation.

All negotiations with any bidder between receipt of formal Tenders/Quotations and the award of a Contract on fundamental aspects of the Contract, variations in which are

likely to distort competition or cause discrimination, and in particular on prices is prohibited.

However, certain post Tender/Quotation discussions with bidders are permitted if these are conducted for the purpose of:

- clarifying with a bidder details of any errors of arithmetic discovered in their Tender/Quotation in order that they may either confirm or withdraw the Tender/Quotation or amend it in order to correct those errors; or
- clarifying or supplementing the content of a Tender/Quotation or the requirements of the Council, and providing that this does not involve discrimination or unfairness to any other entity participating, or who participated, in the Tender/Quotation exercise.

Amendments to Tenders and Quotations, once agreed, shall be put in writing and signed by the tenderer.

## 15 QUALIFIED SUBMISSIONS

Tenders or Quotations must not be qualified or accompanied by statements that might be construed as rendering them equivocal. Any bidder whose submission is found to contain a qualification which would give that organisation an unfair advantage over other participants in the competitive process must be asked either to withdraw the qualification or withdraw the bid. The Monitoring Officer's decision as to whether or not a submission is in an acceptable form will be final.

## 16 VARIANT BIDS

A variant bid is a modified or alternative Tender or Quotation. A bidder may submit a variant proposal in addition to one that conforms to the requirements of the original specification provided:

- express provision is made for this in the ITT/ITQ documentation and any notice or advertisement relating thereto;
- the variant bid is free of qualifications, states all cost implications, identifies all deviations from the project specification or brief and all risks and contingencies and nevertheless complies with the Council's minimum core requirements; and
- the Project Officer does not commit the Council to considering any such bid received.

If a variant bid is considered, it must be evaluated in accordance with the award criteria specified in the ITT or ITQ, and a tenderer may be awarded a Contract on the basis of a variant bid if this meets the Council's minimum core requirements.

## 17 WAIVERS

The Council does not have the power to waive the applicability of Public Procurement Legislation.

Subject to Public Procurement Legislation, therefore, and in particular to EU Procurement Law (see further section 6), the requirement to seek Tenders or Quotations may be waived as follows:

<b>Value</b>	<b>Authority to Waive</b>
Below £10,000	Head of Service in consultation with Corporate Procurement Manager
Above £10,000	Monitoring Officer and Section 151 Officer

Exceptions where the rules can be waived are set out in Appendix 3.

## **18 ELECTRONIC AVAILABILITY OF CONTRACT DOCUMENTS**

Under EU Procurement Law, the Council must, in relation to Contracts above the [EU Procurement Thresholds](#), offer by electronic means unrestricted, full and direct access free of charge to the procurement documents from the date of publication of the OJEU Notice, including the invitation to tender, specification, project brief, conditions of contract and other supporting documentation intended to describe or determine the various elements of the procurement or the procedure. Further, all such documentation must be drafted and readily available electronically to potential bidders before the relevant contract notice is submitted to OJEU.

While electronic availability of contract documents is mandatory in relation to contracts the award of which is governed by EU Procurement Law, the Project Officer should, in liaison with the Corporate Procurement Manager, consider applying the benefits of electronic procurement to contract opportunities that fall below the [EU Procurement Thresholds](#).

## **19 COUNCIL TERMS OF CONTRACT**

Wherever practicable, model forms of Contract developed or approved for use by the Council must be used as the basis for contracting with any entity to whom is awarded a Contract by the Council.

Where Quotations are to be invited (see [section 10a](#)) and a model Contract is not readily available, and nor has one been prepared by the Head of Law and Governance specifically for use in connection with the relevant procurement, then any Contract entered into by the Council shall be placed on a Council Purchase Order or otherwise approved by the Head of Law and Governance.

Where Tenders are to be invited (see [section 10a](#)) and a model Contract is not readily available, or the Project Officer considers the relevant model is not appropriate given the nature, value and/or complexity of the Works, Supplies or Services wishing to be acquired, then such a Contract shall be in a form prepared and/or approved by the Head of Law and Governance.

## **20 EXECUTION OF CONTRACTS**

Every Contract which exceeds £150,000 in value or amount shall be executed under seal.

Every Contract below £150,000 in value or amount may be executed under seal or may be signed on behalf of the Council by a signatory authorised to do so by the Council's constitution.

## 21 CONTRACT COMMENCEMENT

As a general rule, the Project Officer shall not authorise performance of any Contract, nor raise any Purchase Order in connection with it, unless and until all of the documents comprising the Contract have been executed by all of the parties to it, unless the Purchase Order itself comprises the Contract (see [section 19](#)).

However, where there are exceptional circumstances requiring a successful tenderer to commence performance of a Contract prior to its execution as a matter of urgency (to avoid delay and increased costs on the Contract), the Project Officer must satisfy the Monitoring Officer and the Section 151 Officer before authorising such commencement that:

- the supplier has confirmed in writing its unequivocal commitment to:
  - perform the Contract in accordance with the established terms, and
  - execute the document comprising those terms when it is availableand to indemnify the Council against any breach of such undertakings;
- any performance bond or parent company guarantee required under the terms of the Contract has been received from the supplier's surety or parent company or the surety or parent company has written to the Project Officer confirming the relevant organisation's agreement to be bound by the terms of such performance bond or parent company guarantee from the date of such communication;
- a certificate of insurance has been received from the supplier's insurers to confirm all requisite insurance cover is in place; and
- the Chief Finance Officer has undertaken appropriate financial checks on the supplier to establish its financial capability to undertake the Contract.

## 22 RECORD RETENTION

All Contracts executed under seal (including the winning Tender and any documentation supplementary thereto) shall be held by the Head of Law and Governance for safe keeping.

All other procurement documentation, including all expressions of interest, Pre-qualification Questionnaires, ITTs, unsuccessful Tenders, Quotations and Contracts executed under hand, shall be held by the relevant Head of Service in accordance with any relevant records management and/or records retention policy adopted by the Council.

For the avoidance of doubt, all unsuccessful Tenders and Quotations and any documentation ancillary thereto shall be kept safe and secure by the relevant Head of Service for a period of 12 months from the date of Contract award whereupon such documents shall be destroyed.

## 23 PUBLISHING CONTRACT AWARDS

The Contracts Register comprises a corporate record of all "live" Contracts over £5,000 entered into by the Council, whilst Contracts Finder comprises a record of all Contracts entered into by the Council over £25,000 that it is required by law to publish.

Accordingly, all Heads of Service **must** ensure that details of all the Contracts in their service area over £5,000 are entered **promptly** and **accurately** on the Contracts



Register and that, similarly, all Contracts in their service area over £25,000 are entered on Contracts Finder

## **24 CONTRACT ASSIGNMENTS/ NOVATION**

There may be occasions when the supplier to whom an award of Contract was originally made gives notice to the Council that it has transferred responsibility for performance of the Contract to another organisation. Alternatively, that other organisation may give notice to the Council that it has taken on the responsibility for the Contract from the original supplier. Or the Council may itself wish to transfer any responsibilities it may have under a Contract to another organisation. In any such circumstances, the Project Officer must seek assurance from the Head of Law and Governance on (i) whether the transfer is compatible with EU Procurement Law (ii) is otherwise permitted under the terms of the relevant Contract and, if so, (iii) the binding documentation needed to formalise the proposed arrangement; and must also arrange for the Chief Finance Officer to undertake (in relation to Contracts transferred by an existing supplier) appropriate financial checks on the new supplier to establish its financial capability to undertake the Contract.

## **25 PARTNERSHIPS AND PARTNERING**

Whilst the CPR does not apply to the creation of any Partnership, the CPR will apply to:

- the creation of any other type of collaborative working arrangement which the Council does not define as a Partnership within the meaning set out in the CPR but which may nevertheless embody an ethos of partnership by, for example, the sharing of risk and/or open book accounting; and
- the procurement of any Works, Supplies or Services arising out of or connected with any Partnership with which the Council is involved or such other collaborative working arrangement.

Where the Council is acting jointly with another public body for the procurement of Works, Supplies and/or Services the procurement rules and procedures of the lead organisation effecting that procurement (where that is not the Council) shall apply rather than the CPR. The lead organisation must accordingly confirm that it does have relevant procurement procedure rules that are commensurate with the CPR and that it will ensure these are adhered to. Any such Contract awarded by such lead organisation must however be ratified by the Council in accordance with section 10(f).

## **26 REFERENCES**

References are important for suppliers, especially for SME suppliers seeking to grow their businesses. Often a successful contract with the public sector is a valuable potential reference for a small firm, and refusing to provide references can act as a barrier to the growth for business, having a negative impact on the marketplace and the overall economy.

Where, therefore, a supplier has or has previously entered into a Contract with the Council for Works, Supplies or Services, any request from that supplier for a reference in relation to that Contract should be accepted by the Project Officer, especially if that supplier has performed well and/or has exceeded the Council's expectations.

There is no legal impediment to providing references but any opinions offered by the Project Officer must be backed by contemporaneous records. For example if



commenting on supplier performance, such evidence might include the achievement (or not) of delivery milestones or performance against KPIs. Subjective assessments, for example of customer satisfaction, suppliers' performance, aptitude, helpfulness, cultural fit with the authority, etc. should, however, be avoided by the Project Officer.

## 27 CONTRACT VARIATIONS

Any variation to a concluded Contract for Works, Supplies or Services (including an extension to the length of any such Contract or a replacement of the original supplier) ('[the Variation](#)') is only permissible if the Variation IN PRINCIPLE:

- demonstrably represents Value For Money or is otherwise in the Council's best interest to progress, and
- can be funded from an approved budget, and
- entails no diminution in any Social Value identified at the commencement of the Contract, and
- does not affect a Service in relation to which an expression of interest has been received under the Right to Challenge which either remains to be considered by the Council or which the Relevant Body does not intend to revive

**and** that Variation IN PRACTICE:

- is (irrespective of its monetary value) evidenced in writing, authorised in accordance with a clear, precise and unequivocal review clause or option that stated in the original contract the nature and scope of possible modifications or options available to the Council and which does not alter the overall nature of the contract, **or**
- entails the necessary procurement of additional Works, Services or Supplies that were not included in the original procurement but where a change of supplier cannot be made for economic/technical reasons and would cause significant inconvenience or substantial duplication of costs for the Council provided any price increase is not higher than 50% of the price of the original Contract, **or**
- arises from circumstances which the Council acting diligently could not foresee, does not alter the overall nature or scope of the original requirement, and does not increase the price by more than 50% of the value of the original contract **or**
- is intended to give effect to a universal or partial succession to the position of the original supplier by a new supplier following corporate restructuring, including takeover, merger, acquisition or insolvency, provided the new supplier fulfils all qualitative selection criteria initially established, the succession does not entail other substantial modifications to the original contract and is not otherwise aimed at circumventing Public Procurement Legislation; **or**
- does not (irrespective of its monetary value) (i) render the original contract materially different in character nor (ii) introduce conditions which would have allowed for the admission of other candidates, the acceptance of other tenders or attracted additional participants nor (iii) change the economic balance of the contract in favour of the contractor nor (iv) extend the scope of the contract considerably; **or**
- has a price value below the [EU Procurement Thresholds](#) and the cost of the change represents no more than 10% of the Contract's initial value for Service and Supply contracts (15% of the Contract's initial value for Works contracts) provided the change does not alter the overall nature of the contract.

Any variation outside these requirements would require the conduct of a tender process for a new contract unless an exception referred to in Section 17 would apply.

## 28 CONTRACT MANAGEMENT

Heads of Service shall be responsible for the management of all Contracts within their service area (and, for the purpose of this and the following paragraphs in section 28, "Contract" shall include all and any collaborative working arrangements of the type described in section 25).

Contract management is the active monitoring and control of all aspects of the relationship between a supplier and the Council, the aim of which is to ensure the effective delivery of the Works, Supplies and/or Services the subject of the Contract to the agreed price and standard and which is consistent with all legal requirements and financial propriety.

For Contracts within their service area exceeding **£100,000** in value or amount (including any such Contract let in connection with a Partnership with which the Council is involved, whether or not the Council let that Contract) Heads of Service shall produce a report to the Corporate Procurement Manager at the end of each financial year documenting:

- the quality of any Supplies or Service provided under any such Contract;
- any problems, issues or disputes (whether in relation to non-performance or otherwise) that arose or which have arisen in respect of any such Contract during the previous financial year;
- whether the supplier has performed the Contract on time and within budget, giving reasons for any delays or cost overruns;
- whether any Social Value perceived at the outset of the procurement has been realised;
- any variations and/or changes to the Contract effected during the previous financial year; and
- where appropriate, proposals for managing the end of the Contract.

**Such report shall be considered by the Head of Law and Governance and the Chief Finance Officer who may make appropriate recommendations on the subject matter of or matters arising from such report.**

The Project Officer shall have day to day responsibility for the administration of a particular Contract.

A résumé of the roles and responsibilities of Project Officers, Heads of Service and Directors is set out in Appendix 2.

## 29 TERMINATION

No dispute shall be settled, and no Contract shall be cancelled, without the advice of the Head of Law and Governance and the Chief Finance Officer having first been sought as to the legality of any such step and the financial implications arising therefrom.

### DISPOSAL OF ASSETS

## 30 PROCEDURE FOR THE DISPOSAL OF COUNCIL ASSETS

Where the estimated value of an asset is **£50,000** or more, or where the full Council or Cabinet/Executive so determines, disposal of that asset shall, unless a valuer with

relevant qualifications has certified that an alternative method of disposal would better achieve the Council's aims and objectives, be conducted in one of the following ways using approved agents if appropriate:-

- **Sale by Tender**

- **Ad-hoc Tenders** - At least 14 days notice to be given in such local newspapers circulating in the Council's area and/or in such national journals as the relevant Head of Service considers desirable stating the nature of the asset and inviting tenders for its purchase and stating the last date when tenders will be accepted; or
- **Approved List** - Public notice to be given in respect of a particular transaction in the same manner as that described in *Ad-hoc Tenders* above inviting applications from interested persons to be placed on a list to be approved by the full Council or Cabinet from which prospective purchasers shall be selected and invited to submit tenders.

- **Sale at a Named Figure**

An assessment of the value of the asset shall be made by a valuer with relevant qualifications. The relevant Head of Service shall issue particulars of the asset and the price to all enquiring persons. Details of the asset shall be publicly advertised on at least one occasion and, in the case of land or property, a sign board erected upon the site.

- **Invited Offers**

The asset shall be advertised in accordance with the rules for Sale by Tender but no figure shall be placed in the particulars and interested parties shall be asked to make offers for consideration by the Council. In order to give guidance to prospective purchasers a minimum figure may be quoted where appropriate.

- **Sale by Public Auction**

Properly qualified and experienced auctioneers shall be commissioned to act on behalf of the Council in offering for sale by auction assets in the Council's ownership.

## **COMPLIANCE**

### **31 STANDARDS OF CONDUCT AND OBSERVANCE OF RULES**

All employees involved in the award or the potential award of any Contract or the disposal or potential disposal of any asset shall:

- act with integrity and honesty; and
- exercise all fairness and impartiality; and
- comply with these Contract Procedure Rules; and
- respect the Officer's Code of Conduct; and
- observe any policy adopted by the Council on measures to combat bribery and corruption

and shall report instances of suspected fraud and other irregular activity connected with such award or disposal under any whistleblowing policy adopted by the Council.

ANY MANIFEST OR MATERIAL DEPARTURE FROM THESE RULES OR THE OFFICER'S CODE OF CONDUCT OR ADOPTED ANTI-BRIBERY POLICY IS A DISCIPLINARY OFFENCE.

## PROCUREMENT STEERING GROUP

### TERMS OF REFERENCE

#### 1. INTRODUCTION

1.1 **JPSG** means the Joint Procurement Steering Group comprising a **Core Group** of:

- The Section 151 Officer
- The Monitoring Officer
- The Chief Finance Officer (unless represented as Section 151 Officer)

or their nominees, and a **Strategy Group** comprising:

- The JPSG - Core Group and
- Heads of Service invited from those who have undertaken substantial procurement activity over the period since the last Strategy Group meeting.
- The relevant Council Member(s) responsible for procurement (to be invited as appropriate and at least annually) and
- Such other Council Members as any of the Core Group may invite on a case by case basis

or their nominees.

1.2 The JPSG – Core Group may transact its business electronically.

The JPSG – Strategy Group shall meet quarterly. It may otherwise transact its business electronically.

#### 2. TERMS OF REFERENCE OF THE JPSG

2.1 The function of the JPSG – Core Group is to:

- Consider and, if appropriate, approve the award of all Contracts between £150,000 and £500,000 in value or amount, and
- Consider and, if appropriate, approve the award of all Contracts above £500,000 in value or amount in consultation with the Lead Member/portfolio holder responsible for the procurement.

PROVIDED the decision to be taken is not required to be determined by the Executive or Cabinet as a Principal Procurement Decision

2.2 The function of the JPSG – Strategy Group is to:

- Perform a strategic and scrutiny role in relation to the Council's commissioning programme and all matters relating to the Council's contracting policy,
- Provide a forum for Project Officers to discuss policy development, seek strategic advice and raise questions, issues and problems with Contract policy,

- Define and spread best-practice as it relates to contracting and Contract management and monitoring,
- Provide advice to Officers as appropriate on contracting issues, and
- Advise Members and the Chief Executive on the need for any revision to the CPR, including changes to financial thresholds.

### **3. PROCEDURES FOR THE JPSG**

- 3.1 The JPSG – Core Group and the JPSG – Strategy Group shall both be chaired by the Monitoring Officer or his/her nominee.
- 3.2 The Corporate Procurement Manager shall convene all meetings of the JPSG – Core Group and the JPSG – Strategy Group, and at least two working days before such meeting the Corporate Procurement Manager shall send to every member an agenda and copies of all reports.
- 3.3 Members of the JPSG – Core Group and the JPSG – Strategy Group, or their nominees, shall attend any meeting of them when requested to do so.
- 3.4 Minutes shall be made by the Corporate Procurement Manager of the proceedings of the JPSG – Core Group and the JPSG – Strategy Group.

### **4. PERSONNEL, PROPERTY AND INFORMATION TECHNOLOGY MATTERS**

- 4.1 Every report to the JPSG – Core Group which has information technology implications shall be referred to the Assistant Director, Commercial Development and innovation before the report is considered.
- 4.2 Every report to the JPSG – Core Group which has staffing implications shall be referred to the Shared HR and OD Manager before the report is considered.
- 4.3 Every report to the JPSG – Core Group which has land and property implications shall be referred to the Head of Regeneration and Housing before the report is considered.

## ROLES AND RESPONSIBILITIES

### Directors:

- Oversee procurement activity within their Directorate and;
- Ensure the requirements of the CPR are upheld at all times.

### Heads of Service

- Ensure there is sufficient budget available for the Works, Supplies and/or Services to be acquired by their Project Officer;
- Ensure that the procurement proceeds in all respects in conformity with the CPR;
- Make Contract awards affecting their service with a value below £150,000 (excepting any such project authorisations or Contract awards as may arise from the Right to Challenge, which shall fall to be made by the Council's Executive or Cabinet, as appropriate);
- Respond to expressions of interest received under the Right to Challenge, and issue relevant notifications as appropriate;
- Report to the Executive or Cabinet as appropriate seeking recommendation to approve, reject or modify any expression of interest received under the Right to Challenge;
- Publish in Contracts Finder and record on the Council's Contracts Register the detail of all Contracts exceeding £25,000 and £5,000 respectively that are awarded in connection with their service area;
- Manage all Contracts within their service area;
- Waive the call for competition (in accordance with the procedure prescribed in [section 17](#)) in relation to procurements below £10,000;
- Produce yearly Contract management reports to the Corporate Procurement Manager in accordance with [section 28](#); and
- Sign Contracts below £150,000 on the Council's behalf.

### Project Officers

- Plan and co-ordinate specific procurement projects;
- Obtain all necessary authorisations (whether from their Head of Service, the JPSG – Core Group, Cabinet or Executive, as the case may be) prior to progressing any stage of a procurement project;
- Draw up or revise Contract specifications;
- Liaise with the Head of Law and Governance to ensure the Contract forms chosen for use in connection with the procurement are fit for their intended purpose;
- Collate and assemble all tender documentation;
- Preserve the confidentiality inherent in any competitive process, particularly in relation to tender evaluation reports, working papers and minutes of meetings;
- Undertake competitive processes, particularly bid evaluations, in such a way as to ensure all bidders are treated fairly and equally;
- Prepare reports to Cabinet or Executive (as the case may be), the JPSG – Core Group, the JPSG – Strategy Group or Service Heads as appropriate;
- Ensure all necessary permissions are concluded before their Contract begins;
- Administer and monitor their Contracts on a day to day basis to ensure compliance with the specified standards;
- Ensure from time to time that information held on Contracts Finder and the Contracts Register is fully up-to-date; and

**GROUNDS ON WHICH COMPETITION CAN BE WAIVED**

1. The rules respecting the requirement to run a competition for Works, Supplies or Services in this CPR may be waived, and a Contract may be awarded directly to a supplier of such Works, Supplies or Services without competition, in any of the specific cases and circumstances laid down in paragraphs (2) to (9) of this Appendix 3. In any other cases, the use of this procedure is not allowed.

 **Competition can generally be waived:**

2. Where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been received in response to an open or restricted procedure, provided the original conditions of the contract are not substantially altered.
3. Where the contract can only be performed by a particular supplier because (i) the contract is for a unique work of art or artistic performance (ii) competition is absent for technical reasons or (iii) the Works, Supplies or Services required are protected by exclusive rights including intellectual property rights BUT ONLY in the case of (ii) and (iii) above where no reasonable alternative exists and the absence of competition is not due to an artificial narrowing down of the parameters of the procurement.
4. In cases of extreme urgency brought about by events unforeseen by the Council where the time limits applicable to other procedures cannot be complied with, as long as such circumstances are not in any event attributable to the Council.

 **Competition can also be waived for supply contracts where:**

5. The products involved are manufactured purely for the purposes of research, experimentation, study or development and the contract does not include quantity production to establish commercial viability or to recover research and development costs.
6. Additional deliveries by the original supplier are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, and a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance PROVIDED contracts let in reliance on this ground, and any recurrent contracts, do not exceed 3 years.
7. The supplies are quoted and purchased on a commodity market.
8. The supplies or services are purchased on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations.



**Competition can also be waived for new works and services which repeat similar works or services already entrusted to the current supplier Provided:**

- such works or services are in conformity with a basic project for which the original contract was awarded in accordance with one of the other procurement procedures; and
- the basic project indicated the extent of possible additional works or services and the conditions under which they would be awarded; and
- as soon as the first project was put up for tender, the possible use of this procedure was disclosed and the total estimated cost of subsequent works or services were taken into consideration when determining the contract value; and
- the order for such new works or services is issued within the period of 3 years following the conclusion of the original contract.