

**PROPOSED CHANGES TO THE CONSTITUTION
(Report by the Head of Financial Services)**

1 BACKGROUND AND PURPOSE

- 1.1 The Code of Financial Management and the Code of Procurement are important elements of the Council's Constitution that detail sound governance principles for key activities. It is important that they are "live" documents that adapt to the changing needs of the Council and so they are reviewed each year.
- 1.2 The purpose of this report is to allow the Panel to propose amendments to the Council at its meeting on the 21 April.

2 CODE OF FINANCIAL MANAGEMENT

- 2.1 The draft code is attached as Appendix A and includes some minor changes to tidy up the wording as well as some more significant changes outlined below:

General (section 1.1)

Extends the requirement for an agreed written report to bodies making recommendations.

Chief Officer and Heads of Service Responsibilities (section 1.11)

The list of options that must be considered when an employee leaves have been brought forward from annex B to give them a higher profile and the consideration of opportunities for joint working has been added.

Extra requirement added - to seek improvements in the efficiency of their services.

Treasury Management (sections 4.3 and 1.5)

Changes to formalise the responsibility of Overview and Scrutiny, which reports must be considered by Council and other changes to reflect the new CIPFA code and government guidance.

Payments (section 4.4)

Extended to reflect the increased use of corporate and procurement cards and importance of obtaining VAT receipts.

3 CODE OF PROCUREMENT

- 3.1 The draft code is attached as Appendix B. The amendments are outlined below:

EU thresholds (Sections 2.1 & 2.2)

Revised to January 2010 values.

Best value guidance (Section 5.1)

Consolidated in one section

Tender options revised. (Section 6.1)

New subparagraphs:

- simplified 'rules' for framework contracts
- open and restricted tenders in line with procedures in the EU Procurement Directive. In the 'open' procedure the competition is open to any contractor who expresses an interest whereas the in the restricted procedure invitations to tender are 'restricted' to shortlisted contractors.

Selection criteria (Sections 6.3 & 6.4)

Selection criteria have been separated from evaluation criteria in line with the EU Procurement Directive. The logic is that selection criteria (features of the contractor: H&S, financial viability, equalities, capability, references, etc) removes unfit or incapable contractors whereas evaluation criteria (features of the offer: cost, performance, service levels, delivery etc) determines the best offer when compared with the requirement.

Lists of approved tenderers (Section 7)

The instructions have been revised and simplified

e-marketplace (various sections)

Whilst the e-marketplace is a major change to procurement practice the impact on the Code of Procurement is quite small because it operates within existing procedures. There are 3 modest amendments needed to incorporate the e-marketplace:

- Add the e-marketplace as the method for ordering.
- Task the Procurement Manager with making adopted catalogues and frameworks available through the e-marketplace. Requiring Heads of Service to ensure use of such adopted catalogues and frameworks through the e-marketplace.
- Including the e-marketplace as an authorised means of inviting and receiving tenders and quotes.

4 RECOMMENDATION

4.1 The Panel is asked to recommend the revised Codes to the Council.

ACCESS TO INFORMATION ACT 1985

Current Codes of Financial Management and Procurement

Contact Officers:

Steve Couper, Head of Financial Services

☎ 01480 388103

Nigel Arkle, Procurement Manager

☎ 01480 388104

Huntingdonshire District Council

**CODE OF FINANCIAL
MANAGEMENT**

DRAFT 2010

1. **FINANCIAL RESPONSIBILITIES**

1.1 **General**

Before any proposal that affects the Council's financial position is made the body or person(s) responsible for making that decision, or any body making a recommendation to that body or person, shall consider a written report, approved by the Director of Commerce and Technology, detailing the financial implications.

1.2 **The Council**

Will determine the Council's Financial Strategy and Medium Term Financial Plan (MTP), approve the annual budget and Prudential Indicators and set the level of the council tax.

Will approve the Council's Treasury Management Strategy.

1.3 **The Corporate Governance Panel**

Will ensure that the financial management of the Council is adequate and effective.

Will ensure that the Council has a sound system of internal control including arrangements for the management of risk.

Will consider the Council's Code of Corporate Governance and approve the annual statement.

Will approve the terms of reference and strategy for internal audit and comment on the annual internal and external audit plans.

Will consider the external auditor's annual management letter.

Will approve the Council's tax base and final accounts.

1.4 **The Cabinet**

Will propose to the Council:

- the Financial Strategy
- the MTP
- the annual budget and council tax level
- the a combined annual Treasury Management Strategy, Treasury Management Policy and Prudential Indicators,

after appropriate consultation, which will include the appropriate Overview and Scrutiny Panel and representatives of the business community.

Will set financial priorities, allocate and re-allocate resources in accordance with the limits in this Code, monitor and review financial performance.

1.5 **Overview and Scrutiny Panels**

Will contribute to the development of, and review the effectiveness of, the Council's Financial Strategy, MTP, Treasury Management and annual budget.

1.6 **Panels, Working Groups or Committees**
Will ensure that all decisions within their remit are made within the resources allocated within relevant budgets and are consistent with achieving the Council's objectives. If they wish to make proposals that will require additional resources these will need to be subject to the Cabinet or Council making these available.

1.7 **Members and Employees**
Will contribute to the general stewardship, integrity and confidence in the Council's financial affairs and comply with this Code and any systems, procedures, or policies relating to the financial management of the Council.

Specifically, they shall bring to the attention of the Director of Commerce and Technology any act or omission that is contrary to the provisions of this Code or the maintenance of high standards of financial probity, and provide information or explanation on matters within their responsibility to him/her, the Monitoring Officer, Internal Audit Service or the Council's external auditors.

Any member or employee who is involved in a transaction with the Council, or who has an interest in a transaction between a third party and the Council, shall declare the nature and amount, if material, as required by the Accounting Standards Body's Financial Reporting Standard on related party payments.

Any employee who becomes involved in a transaction between the Council and a third party in which he/she has an interest shall obtain advice from the Monitoring Officer as to whether decisions on this transaction shall be taken by another employee.

1.8 **The Head of Law, Property and Governance, as Monitoring Officer** or, in his/her absence, the Deputy Monitoring Officer

Will report to the Council on any proposal, decision or omission that in his/her view is likely to result in the contravention of the law or any code of practice enacted under it, fails to comply with a legal duty, represents maladministration or is unjust, in accordance with section 5 of the Local Government and Housing Act 1989.

For these purposes he/she shall have full and unrestricted access to all Council assets, systems, documents, information, employees and Members.

1.9 **The Director of Commerce and Technology, as Chief Finance Officer** or, in his/her absence, the Head of Financial Services

Will be responsible for the proper administration of the Council's financial affairs, prescribe appropriate financial systems, protocols, procedures and policies, maintain an internal audit service and report to the Council in the event of a decision or action leading to unlawful

expenditure, a loss or deficiency or an unlawful accounting entry (in accordance with section 151 of the Local Government Act 1972, section 114 of the Local Government Act 1988 and the Accounts and Audit Regulations).

Will be responsible for ensuring the final accounts are completed and published by the statutory dates and reporting the details of any material amendments specified by the external auditor to the Corporate Governance Panel.

For these purposes he/she shall have full and unrestricted access to all Council assets, systems, documents, information, employees and Members.

1.10 **The Head of Financial Services**

Will be responsible for detailed and operational aspects of the administration of the Council's financial affairs on behalf of the Director of Commerce and Technology, approving new financial systems and undertaking such duties as are set out in this Code.

1.11 **Chief Officers and Heads of Service**

Whilst Chief Officers will take ultimate responsibility for their employees' actions, the Council's management structure is based on Heads of Service or, in a few cases, Chief Officers taking prime responsibility for a service and its related budget.

The Manager responsible for a budget:

- may incur financial commitments and liabilities in accordance with this Code, the Council's Scheme of Delegation and resources allocated in budgets that have been released subject to Annex B. In particular they may make purchases of goods and services, subject to the requirements of the Code of Procurement, and employ staff, in accordance with the Officer Employment Procedure Rules. They will normally delegate appropriate elements of this responsibility to members of their staff. Annex B deals with the implications of the turnover contingency and includes the requirement that, when an employee leaves, the Head of Service to determine whether:
 - the post is kept vacant for a period before a decision is made,
 - the post can be deleted,
 - a restructuring should be proposed,
 - joint working with another body should be considered
 - the post should be filled at the end of a defined period,
 - it should be filled as soon as possible,
 - it should be filled as soon as possible and temporary employees or consultants are engaged to provide cover in the meantime.

- will be responsible for regular and effective monitoring and forecasting of the financial position relating to their services.
- will be responsible for proper financial and resource management and the prevention of fraud and corruption within the services and functions under their control.
- will determine the inherent risks, within their services, to the achievement of the Council's priorities and establish, maintain and document adequate systems of risk management and internal control, in consultation with the Internal Audit Service, and ensure that relevant employees or Members are familiar with such systems.
- will be responsible for providing in a timely manner, the information necessary to ensure that the final accounts can be completed by the statutory deadlines.
- will be responsible for annually reviewing their services to identify any aspects where surplus capacity could be utilised to reduce the net cost of the Council's services. All identified opportunities shall be introduced unless Cabinet or both the Executive Councillor for Finance and of the relevant service consider it would not be appropriate.
- will be responsible for seeking improvements in the efficiency of their services.
- will be responsible for identifying opportunities and then bidding for grants or contributions from other bodies to support the achievement of the Council and Community objectives through their services.
- will be responsible for maximising the income from fees and charges relating to their service in accordance with Annex C.

1.12 **Internal Audit**

Will be responsible for providing an independent and objective opinion on internal control, risk management and governance systems. In accordance with its terms of reference it shall undertake audit reviews that focus on areas of greatest risk to the Council's control environment in accordance with a programme agreed annually by the Director of Commerce and Technology after consultation with Heads of Service.

For these purposes internal audit shall have full and unrestricted access to all Council assets, systems, documents, information, employees and Members.

2. **FINANCIAL AND SERVICE PLANNING**

2.1 **In the Summer - Overall Review**

The Cabinet shall review the financial performance of the Council in the previous year, compared with the annual budget, on the basis of a report prepared by the Head of Financial Services in conjunction with Heads of Service.

2.2 **In the Autumn - Financial Strategy**

The Cabinet, after consultation with the relevant Overview and Scrutiny Panel and any appropriate organisations or bodies, shall recommend to the Council a Financial Strategy which will be used to determine the overall financial limits within which the annual budget and MTP will be prepared.

2.3 **In the Winter - Annual Budget and MTP**

The Cabinet shall, after consultation with the relevant Overview and Scrutiny Panel, recommend to the Council an annual budget for the next financial year and a MTP for the succeeding four years, incorporating both capital and revenue expenditure, which is consistent with corporate and service strategies and the Financial Strategy. This budget will include the allocation of resources to individual services and capital projects.

2.4 **In the Spring - Service Financial Plans**

Following approval of the annual budget each Head of Service shall update their Service Plan(s) to reflect the approved budget and how the resources allocated will be used to meet service objectives in the forthcoming year.

3. **CONTROLLING FINANCIAL PLANS**

3.1 **Financial Monitoring**

Heads of Service will be responsible for regular and effective monitoring and forecasting of the financial position relating to their services.

The financial performance of each service and capital project will be reviewed by Chief Officers quarterly on the basis of monitoring statements prepared by Heads of Service in conjunction with the Head of Financial Services.

The financial performance of the Council will be reviewed by Cabinet quarterly on the basis of monitoring statements prepared by the Head of Financial Services in conjunction with Heads of Service.

Heads of Service will ensure that relevant Executive Councillors are regularly informed of the progress in delivering approved MTP schemes.

3.2 **Commitments to Expenditure in Future Years**

No new commitment to expenditure beyond the current budget year may be made unless it;

- is consistent with the achievement of the Council's objectives and other relevant Strategies, **and**
- is compatible with the Council's MTP and Financial Strategy, **and, either**
- can be met from within currently approved and released resources. If it is to be funded from savings, these must be defined, permanent and not already earmarked for the achievement of the Council's savings targets, **or**
- is funded from a budget transfer in accordance with section 3.5 below.

If the Head of Service has any concerns about their proposal meeting these requirements they must consult the Head of Financial Services.

3.3 **Grants, Cost Sharing and S106 agreements**

Where a Head of Service proposes to take advantage of grants from other organisations, or some other form of cost sharing, whereby they will be able to deliver additional or improved services, consistent with their Service Plan, without creating any current or future commitment to additional net expenditure they may do so subject to:

- the funds being dependent upon a particular project or service being provided but, in the case of S106 agreements, the location or some other aspect is at the Council's discretion.
- informing the Head of Financial Services of the details
- consulting the relevant Executive Councillor(s) if the proposal exceeds £30,000 revenue or £50,000 capital in any one year or on any discretionary element of a S106 sum.

A Head of Service may utilise sums of money received under S106, or equivalent, agreements where there is no discretion. The Head of Financial Services should be informed of the details.

3.4 **Approvals for additional spending with a net impact**

Proposals for increases to the total allocated to a budget in the current year (Supplementary Estimates) and their impact in future years may be approved by the Cabinet subject to the revenue impact not exceeding £300,000 in aggregate in any financial year. The impact of such approvals will be included in appropriate financial reports within the budget/MTP process and, once Council have noted these items, the Cabinet's limit will be re-set. A transfer of a sum from capital to revenue

will have a revenue impact and so will count as a request for additional spending.

In all other cases the approval of the Council will be required.

3.5 **Approvals for additional spending with compensating savings**

Proposals that require initial funding but will then result in net surpluses or savings that are at least sufficient to produce a break-even position will be supported in principle if they are:

- consistent with increasing the achievement of the Council's objectives and compatible with relevant Strategies.
- achievable within the Council's Financial Strategy.
- supported by a robust business case which includes a risk assessment.
- supported by the Chief Officers' Management Team.

The Director of Commerce and Technology may approve such a scheme following consultation with the relevant Executive Councillor for the service and the Executive Councillor for finance. The relevant budget(s) and MTP will be appropriately adjusted.

3.6 **Budget Transfers**

The Council has five main types of budgets:

- **Service Revenue Budgets**
Service budgets relate to the provision of services directly to the public and are defined as the lowest level included in the report to Council when the budget is approved. They include depreciation relating to capital assets and recharges from Management Units and Overhead Budgets.
- **Capital Scheme Budgets**
These provide the funding to complete a defined capital project and are likely to include some recharges from Management Units and Overhead Budgets. When the project is completed a charge for depreciation is made to the appropriate Service Revenue Budget.
- **Management Unit Budgets**
Management Unit budgets collect together the costs of employees, and their ancillary costs that relate to supporting services, before they are recharged to service budgets or overhead budgets based on the degree of benefit that is being received.
- **Overhead Budgets**

Overhead budgets collect together a relevant portion of management unit costs together with other related costs before they are recharged based on the degree of benefit that is being received. Examples include the costs of office provision or of the Printing Service.

- **Technical Budgets**
These include items such as interest on investments, the reversal of depreciation charges and the Minimum Revenue Provision and will not be available for transfer to other budgets except in meeting the specific purpose for which they were established.

Whilst most budgets will reflect a net cost, some will identify an expected surplus.

The transfer of resources within, or between, any of the types of budgets is supported in principle when it will make it more likely that the Council will achieve its service objectives and targets or enhance value for money. There do, however, need to be some limitations for effective financial management and to ensure that Executive Councillors, Cabinet and Council are aware of, and involved in, the more significant changes or where there is a financial implication.

The limitations fall into three categories. The first relates to Technical Budgets and recharges and Annex A details the budget transfers that will not be permitted in relation to them. The second relates to budgets for pay, national insurance and pension contributions and Annex B explains why and how budget transfers relating to these items are limited. Finally, the required involvement of Members is defined below.

The Council's management structure is based on Heads of Service or, in a few cases, Chief Officers taking responsibility for these budgets.

The **Manager responsible for a budget** may approve a budget transfer within and between the budgets they are responsible for providing it is:

- Consistent with increasing, or at least maintaining the achievement of service objectives and compatible with the Council's Financial and other relevant Strategies.
- Not to or from a Technical Budget or a recharge or from a pay, NI or pension contributions budget unless permitted by Annexes A or B.
- Not from capital to revenue
- Supported by their Chief Officer
- Notified to the Head of Financial Services

- Within the following limits if between budgets (there shall be no financial limits within a budget):
 - Revenue to revenue £60k
 - Revenue to capital £60k
 - Capital to capital £60k

Similarly, a **Chief Officer** may, subject to the same criteria, approve budget transfers between any budgets that are their responsibility or the responsibility of their staff.

The **Chief Officers' Management Team** may, subject to the same criteria except for the enhanced limits shown below, approve budget transfers between any budgets:

- Revenue to revenue £120k
- Revenue to capital £120k
- Capital to capital £120k

Cabinet may approve budget transfers of up to:

- Revenue to revenue £300k
- Revenue to capital £300k
- Capital to capital £300k

In all cases, any previous transfers in the same financial year relating to those budgets shall be aggregated for determining whether the limit has been exceeded, however once the impact of any approval has been included in a relevant financial report to Council, the Cabinet's limit will be re-set.

In all other cases the approval of the Council will be required.

3.7 **Re-phasing of Expenditure**

The re-phasing of expenditure and consequent transfer of budget between years may be made by the relevant Head of Service, following consultation with the Head of Financial Services, providing that it is consistent with service objectives and compatible with the Council's Financial and other relevant Strategies. Revenue expenditure will only, normally, be rephased to later years if it relates to a specific project with identified funding in the current year, that has been delayed for reasons outside of the control of the relevant Head of Service. The amount is further limited by the net underspending on that Head of Service's relevant budget(s) in the current year.

3.8 **Price Changes**

Allocation to individual Budgets of any provision for inflation or other purposes will be determined by the Head of Financial Services.

3.9 **Project Appraisals**

All proposals for changes to the MTP will require an explanatory appraisal, unless the Head of Financial Services considers that the item

is of a technical nature. Appraisals for new and modified schemes will be made available to Members, via the Council's intranet, by the date on which the related reports are circulated.

4. **CASH AND CREDIT MANAGEMENT**

4.1 **Banking**

The Director of Commerce and Technology is responsible for all Council banking arrangements and shall maintain (an) account(s) with (an) appropriate bank(s) with a credit rating equivalent to 'Long Term AA-' or better in the data published by Fitch IBCA. All transactions involving income or expenditure shall be dealt with through the Council's bank account(s).

4.2 **Income**

All employees receiving money (including cash, cheques, credit card payments etc.) must comply with the relevant procedures issued by the Head of Customer Services to ensure that the sums are properly recorded, receipted and banked.

The Head of Financial Services shall manage a debt collection service on behalf of the Council and all sums due must be registered by raising an invoice on the Council's Financial Management System or some other system or procedure approved by the Head of Financial Services.

4.3 **Treasury Management**

All Treasury Management activities will be undertaken in accordance with the Council's annual Treasury Management Strategy, which includes its policies, objectives, approach to risk management and its prudential indicators. The Strategy will comply with the Code of Practice for Treasury Management and the Prudential Code for Capital Finance,, both published by the Chartered Institute of Public Finance and Accountancy (CIPFA), and reflect any published Government advice..

The Council shall have overall responsibility for Treasury Management and will formally approve the annual Treasury Management Strategy and receive an annual and mid-year report on treasury management activities.

The Cabinet will be responsible for the implementation and regular monitoring of treasury management activity and the Treasury Management Advisory Group (previously CRAG), which consists of three Cabinet members will act as an informal liaison group with the officers responsible for treasury management.

The Overview and Scrutiny (Economic Well-being) Panel will be responsible for the scrutiny of treasury management.

The execution and administration of treasury management is delegated to the Head of Financial Services who will establish treasury management practices for the operation of the function which will

ensure compliance with the Strategy and create appropriate systems of monitoring and control.

4.4 **Payments**

Payments due to external suppliers of goods and services must be made either:

- through the Council's purchase ledger system with payments being made direct to the supplier's bank account wherever this is practicable.
- by corporate card or procurement card
- by direct debits or standing orders

in each case complying fully with the relevant procedures for that system, particularly the requirement to obtain official VAT receipts, as determined by the Head of Financial Services.

5. **ACCOUNTING PROCEDURES**

5.1 The Council will follow the best practice guidance contained in the Accounting Code of Practice and other relevant publications produced by CIPFA in the preparation and maintenance of its accounts.

5.2 **Statement of Accounts**

The annual Statement of Accounts shall be presented to the Corporate Governance Panel for approval within the prescribed statutory timescale.

5.3 **Records**

Each Head of Service is responsible for maintaining records of financial transactions and commitments and employee time, in forms agreed with the Head of Financial Services, and for ensuring that all financial transactions are properly recorded in the appropriate financial period and to an appropriate account within the Council's Financial Management System.

5.4 **Retention of Documents**

Documents required for the verification of accounts, including invoices, shall be retained in a retrievable format for any statutory period, or otherwise for six years or such other time that is specified by the Head of Financial Services.

5.5 **Contingent Assets and Liabilities**

Any Officer who is aware of a material and outstanding contingent asset or liability shall notify the Head of Financial Services, who shall include details in the Council's accounts or in a Letter of Representation to be presented to the Council's external auditors in respect of those accounts.

5.6 **Stock**

The Head of Financial Services shall determine, after consultation with the relevant Head of Service, when Stock accounts shall be maintained. This will normally be where the value of the items are significant or the items are considered to be vulnerable to loss or theft.

In such cases the relevant Head of Service shall ensure that a certified stock-take is carried out in the last week of March each year, and that records of receipt and issue of all stock are maintained throughout the year in a manner agreed with the Head of Financial Services.

5.7 **Insurance**

The Head of Financial Services shall obtain insurance to protect the Council or minimise its potential losses from risks including those to employees, property, equipment and cash. Any decision not to insure significant risks must be based on a detailed risk assessment.

5.8 **Write-off of Irrecoverable Debts**

The Head of Customer Services, or in his/her absence the Head of Financial Services, is authorised to write-off debts with an individual value of up to £5,000, or of a greater amount after consultation with the Executive Councillor responsible for finance, having taken appropriate steps to satisfy himself/herself that the debts are irrecoverable or cannot be recovered without incurring disproportionate costs.

A summary report of debts written-off shall be submitted to the Cabinet quarterly.

6. **ASSETS**

6.1 **Definition**

An asset is an item of land, building, road or other infrastructure, vehicle or plant, equipment, furniture and fittings or information and communications technology, (hardware and software) with a life exceeding one year.

6.2 **Control of Assets**

Each Head of Service is responsible for ensuring that the assets relating to their services are properly safeguarded, managed and maintained, and used only to achieve the Council's objectives. This will include establishing and maintaining appropriate security, control systems and records. They will need to consult relevant officers in relation to specialist items and, where vehicles are concerned, the officer holding the Council's Operating Certificate who has specific statutory responsibilities.

6.3 **Ongoing Review**

The Head of Law, Property and Governance will lead a working group of officers that will maintain an ongoing review of the management, control and recording of assets.

6.4 Acquisition

The purchase of assets must be in accordance with the procedures specified in the Council's Code of Procurement, having regard to the value of the asset, and follow taking advice from relevant specialist colleagues in appropriate cases e.g. IT, vehicle management, legal, procurement.

The relevant Head of Service shall inform the Head of Financial Services within 10 working days of the acquisition of an asset which meets the definition for capital expenditure.

6.5 Disposal

The sale of assets must be in accordance with the procedures specified in the Council's Code of Procurement, having regard to the current value of the asset, and follow taking advice from relevant specialist colleagues in appropriate cases e.g. IT, vehicle management, legal, procurement.

The relevant Head of Service shall inform the Head of Financial Services within 10 working days of any disposal of an asset included in the Asset Register.

6.6 Capital Expenditure

The purchase or improvement of any asset will normally be treated as capital expenditure. However, expenditure of less than £10,000, or £5,000 in the case of vehicles, plant and equipment, will not normally be treated as capital expenditure unless the Head of Financial Services considers it is in the Council's interests to do so.

6.7 Leases

Finance and operating leases are to be used only if they are in the Council's financial interest and with the specific formal approval of the Head of Financial Services.

6.8 Valuations

In order to comply with accounting requirements assets will be re-valued at five yearly intervals by an appropriately qualified person according to the type of asset. Interim valuations or updating by reference to a suitable index will be necessary in the intervening years.

TECHNICAL BUDGETS

The following budgets cannot be reduced by officers in order to permit extra expenditure on another budget except where this is part of the specific purpose for which they were established.

- Any contingency, unless it complies with the approved rules for the use of the general contingency or is an adjustment to reflect the technical application of the contingency (e.g. allocation of inflation from an inflation contingency)
- Capital charges
- Commutation Transfer
- Minimum Revenue Provision
- Pension Liabilities (as opposed to pension contributions)
- Interest paid
- Interest received
- Any recharge or allocation from a management unit or overhead account.

BUDGETS FOR PAY

(Pay is deemed to include, NI and Pension Contributions for the purpose of this annex)

1. The Council does not provide for a 100% of the costs of its employees. This is because experience shows that it is generally impossible to avoid gaps when people leave and are replaced. It is also common for the new employees to be on a lower point in the grade than the person who left.
2. Obviously it is unlikely that each pay budget will be equally affected in any particular year and therefore, to simplify budget monitoring, each pay budget includes 100% of employee costs but there is a negative, centrally held, contingency that represents the saving that the Council's overall budget is based on.
3. Therefore no use of savings, virement or rephasing relating to a pay budget, whether temporary or permanent, will be permitted unless this annex is complied with.

Employees Leaving

4. In order to maximise the likelihood of achieving this saving a Head of Service must, whenever an employee gives their notice, determine whether:
 - a. the post is kept vacant for a period before a decision is made,
 - b. the post can be deleted,
 - c. a restructuring should be proposed,
 - d. joint working with another body should be considered
 - e. the post should be filled at the end of a defined period,
 - f. it should be filled as soon as possible,
 - g. it should be filled as soon as possible and temporary employees or consultants are engaged to provide cover in the meantime.
5. In deciding on which option to take the Head of Service should take appropriate HR and financial advice. The decision must include consideration of any need for temporary or permanent regradings, acting up allowances, honoraria, employees or consultants. Allowance must also be made for an appropriate saving, to help achieve the contingency budget, as determined by the Head of Financial Services.
6. Heads of Service will also need to liaise with HR to arrange recruitment advertising and ensure that the recruitment arrangements comply with the process agreed by Employment Panel.

Other Adjustments and Virement

7. If any other proposal is made to transfer (in accordance with paragraph 3.6) or rephrase (in accordance with paragraph 3.7) a pay budget, a budget reduction, as determined by the Head of Financial Services, shall be made in order to allow the contingency budget to be reduced.

Exceptions

8. If the Head of Service can demonstrate to their Director the **critical** nature of maintaining immediate service cover in certain key work areas then the requirements of paragraph 4 above will not apply and the saving/budget reduction may be reduced or nil. Examples where this might apply would be if vacancies would result in insufficient employees with the necessary abilities or skills to run refuse rounds or to safely open swimming pools. Agency, or equivalent employees, must be available with the necessary skills and/or abilities.

9. If the Head of Service can demonstrate that a critical backlog of work has resulted from continuing vacancies such that the service to the public is seriously compromised or net additional costs would become unavoidable the saving/budget reduction may be reduced. Examples where this might apply would be dealing with benefit applications or collecting council tax income. Agency, or equivalent employees, must be available with the necessary skills and/or abilities.

MAXIMISING INCOME FROM FEES AND CHARGES

The Manager responsible for a budget is:

- responsible for annually reviewing their services to identify any aspects that are not currently, but could be charged for. Charges for such aspects shall be introduced unless Cabinet **or** both the Executive Councillor for Finance and of the relevant service consider it would not be appropriate.
- responsible for reviewing and varying fees and charges at least annually for services under their control, after consultation with the relevant Executive Councillor(s) and the Chairman of any relevant Panel. In doing so, they:
 - shall ensure that relevant legislation that specifies the charges to be made or constrains them in any way is complied with.
 - shall, after having regard to the charges of any alternative service providers with whom the Council is competing, seek to maximise income, net of applicable costs, unless it will have a clearly detrimental impact on the achievement of the Council or Community objectives.
 - may introduce differential pricing to particular client groups where these are expected to stimulate demand and generate additional net income which would otherwise not be obtained.
 - may set prices lower than could be reasonably achieved if this is demonstrably the most cost effective way of achieving Council or Community objectives and the necessary funding is available. Use of this option requires approval of Cabinet **or** both the Executive Councillor for Finance and of the relevant service.
 - may set fees and charges that allow an element of discretion if it can be demonstrated that this will lead to an overall benefit to the Council. It is important that any use of discretion is recorded so that it can be clearly shown that decisions have been made fairly and consistently.
 - shall keep appropriate records to demonstrate that the required actions have been undertaken and how the decisions were reached.

Huntingdonshire District Council

**CODE OF
PROCUREMENT**

DRAFT 2010

1. INTRODUCTION

- 1.1 The Code of Procurement defines the regulatory and legal framework for procurement. It has been adopted in accordance with the requirements of Section 135 (2) of the Local Government Act 1972.
- 1.2 This Code applies to the procurement, commissioning, hire, rental or lease of -
 - ◆ land and buildings, roads or other infrastructure;
 - ◆ vehicles or plant;
 - ◆ equipment, furniture and fittings;
 - ◆ construction and engineering works;
 - ◆ information and communication technology - hardware and software;
 - ◆ goods, materials and services;
 - ◆ repairs and maintenance; and
 - ◆ consultants, agents and professional services.
- 1.3 This Code does not apply to purchases made from internal management units.
- 1.4 The Code applies also to the sale of assets and goods by the Council where the appropriate Head of Service estimates that the assets, goods or services to be sold exceed £1,000. Where the value is estimated to be less than £1,000 then the 'Sale of Equipment' procedures contained within the Inventory procedures shall be followed.
- 1.5 The Council includes the Cabinet, panels, committees or other body or person(s) acting in accordance with delegated authority on behalf of the Council.
- 1.6 All procurements or sales made by or on behalf of the Council shall comply with this Code, subject to any overriding requirements of the Council's Rules of Procedure and Code of Financial Management and British or European Union law or regulation.
- 1.7 Throughout the Code, reference to contractor(s) or sub-contractor(s) shall mean any person, company or supplier who has -
 - ◆ requested to be on an approved or ad-hoc approved list of tenderers;
 - ◆ been approached to provide a quotation or tender;
 - ◆ provided a quotation or tender; or
 - ◆ been awarded a contract in accordance with the provisions of this Code.
- 1.8 The Head of Financial Services shall annually review all the financial values contained in the Code to take account of the impact of inflation. The Head of Financial Services shall inform all Heads of Service of any amendments to the values prior to the 1st April from which they shall be operative.

2. REPORTING PROCEDURES AND EU COMPLIANCE

2.1 EU Procurement Directives require the Council, to report procurements likely to exceed EU thresholds, both at the start of the year and on an ad-hoc basis as new or changed requirements arise. The EU thresholds are:

Threshold	Supplies	Services	Works
£	£ 156,442	£ 156,442	£ 3,927,260
(Euros)	(€193,000)	(€193,000)	(€ 4,845,000)

(Thresholds as at 1 Jan 10)

2.2 Financial Year Start Reporting

At the start of each financial year (1 April) Heads of Service shall:

- ◆ provide the following information to the Procurement Manager -
 - Details of each contract expected to be advertised in the following year;
 - An estimate of the total value for each discrete procurement area where the spend is likely to exceed £100,000;

- ◆ advertise very brief details of each contract expected to be advertised in the following year. The advertisement shall take the form of a Prior Indicative Notice (PIN). The publishing of a PIN does not commit the Council, but can reduce timescales if the requirement is subsequently advertised through Official Journal of the European Union (OJEU).

A PIN is also required if the estimate of the aggregated value of the contracts for a given coding class exceeds the published PIN thresholds:

Threshold	Supplies	Services	Works
£	£ 607,935	£ 607,935	£ 3,927,260
(Euros)	(€750,000)	(€750,000)	(€ 4,845,000)

(Thresholds as at 1 Jan 10)

Contract values are the Council's aggregated spend and not individual Directorates or Services. Therefore, the Procurement Manager shall advise the Head of Service if their aggregated spend is to be advertised as a PIN.

Aggregated values can be calculated by one of the following methods -

- ◆ the total value purchased over the last financial year; or
- ◆ the estimated value of all contracts expected to be placed in the next financial year or the term of the contract if that is longer; or
- ◆ where the contract is open-ended or of uncertain duration, such as those for the hire of goods or for the delivery of a particular service, the value is based on the estimated average monthly expenditure multiplied by 48 (4 years).

2.3 Through Year Reporting

Heads of Service shall report, using a PIN where time permits, new or additional requirements likely to meet or exceed EU thresholds as they arise.

2.4 End of Year Reporting

The Department of Communities and Local Government seeks a report each year from all Councils regarding contracts awarded through OJEU during the previous year. By the 30 Apr each year, Heads of Service shall provide the Procurement Manager with the following details for contracts placed through OJEU procedures -

- ◆ Common Procurement Vocabulary (CPV) code. The CPV is a standardised single classification system for public procurement to identify the subject of a contract and is detailed on the OJEU notice;
- ◆ Service Provider (contractor) Nationality;
- ◆ Award Procedure (from the OJEU notice); and
- ◆ Justifications if Negotiated procedure;
- ◆ Value.

3. CONTRACTS REGISTER

3.1 Heads of Service shall keep a record, using the Contracts register, of -

- ◆ all tenders and quotes (greater than £10K);
- ◆ the reasons (if appropriate) for not advertising on the Council's Latest Opportunities Internet site;
- ◆ all those contractors that were requested to quote or tender;
- ◆ the reasons why those particular contractors were selected to quote or tender;
- ◆ if applicable, the reasons why less than three contractors were selected to quote or tender;
- ◆ contract renewal date (if appropriate); and
- ◆ file or other reference to the contract and location of the hard copy.

4. METHODS OF ORDERING

4.1 All orders shall be placed through one of the following recognised methods-

- ◆ An order raised on the e-marketplace.
- ◆ A Procurement Card Order.
- ◆ A Manual Purchase Order.

4.2 Where there is an exception requirement and the relevant Director or Head of Service considers that the work is of an emergency nature necessary to enable the service to continue and none of the ordering methods are suitable, the relevant Director or Head of Service shall record the details of the exceptional requirement and the action taken for future Audit.

5. 'BEST VALUE' AND SOURCING POLICY

5.1 The Council seeks 'Best Value' in all procurement activity. 'Best Value' being:

- ◆ The opportunity to obtain leverage (better prices and service) for volume.
- ◆ Regulatory compliance.
- ◆ Transparent and efficient procurement processes.
- ◆ Appropriate social, environmental and equality outcomes.
- ◆ Minimum procurement overhead.

5.2 Sourcing policy is determined by the needs of 'Best Value' and in order of preference is:

(a) Adopted catalogues or framework contracts. An adopted catalogue or framework is the preferred contract for the Council's business within a defined category (a type or group of goods or services). The Procurement Manager shall make available adopted catalogues or framework contracts on the e-marketplace or publish details of the contract or framework in Procurement Protocols & Guidelines. Heads of Service shall ensure that orders for such categories are placed through the e-marketplace using appropriate 'adopted' catalogue or framework contract. The Procurement Manager shall keep under review the continued suitability of any such catalogues, contracts or framework agreements.

(b) Collaborative procurements with other public bodies or authorities.

(c) Council let corporate contracts.

5.2 Some categories are managed corporately by specialist areas. The Procurement Manager shall provide a list of specialist categories and Heads of Services shall ensure all requirements for such categories are referred to the relevant specialist.

5.3 Any procurement estimated to exceed £30,000, which is not covered by the exceptions in paragraph 5.8 below, must be referred to the Procurement Manager before the procurement process is commenced. The discussion will cover:

- ◆ Scope and objectives of the procurement;
- ◆ Budget and costing;
- ◆ Tender methods;
- ◆ Product and market information;
- ◆ Timescales; and
- ◆ Deliverables.

5.4 Staff involved in procurements are encouraged to think ahead and seek the advice of the Procurement Manager at an early stage.

5.5 Where there is no adopted contract or framework, Heads of Service shall, wherever practicable, seek to maximise contract values with other Heads of Service to secure lower costs. The Council nevertheless wishes to balance

the effort of going to the market with the effort and efficiency of the procurement process. Heads of Service after determining the proposed contract's total value shall then follow one of the procurement procedures detailed below. These procedures shall be used in all procurements or sales bar those exceptions at paragraph 5.8.

Estimated Total Value of Procurement	Requirement
Up to £5,000	Estimates or offers shall be obtained and recorded to ensure the Head of Service has obtained Best Value. Staff are encouraged to obtain competitive quotations (e-marketplace, email, web or paper) where this is practical.
£5,001 to £30,000	At least 3 quotations or offers shall be invited, unless the Head of Service has complied in full with paragraph 6.1e of this Code.
£30,001 to European Union Procurement Threshold	Competitive tenders shall be obtained using one of the tendering options in this Code, and a formal written contract prepared in accordance with paragraph 11.2.
Above the EU Threshold specified below	The appropriate EU procurement directive shall be complied with.

5.6 Total value is the cost of all elements of the procurement (eg: installation, testing, training, maintenance, etc). The Head of Service shall ensure that a procurement is not split or otherwise disaggregated. Regard should be had to the value of follow on work that may result from an initial phase of work.

5.7 Achieving 'Best Value' needs valid competition and valid competition is dependant on the existence of an 'open' market with the selected Contractors having the interest, capability and capacity for the work or business being offered. Wherever possible a minimum of three competitive tenders or quotations shall be sought. In selecting contractors to provide a tender or quotation Heads of Service shall ensure that wherever possible -

- The selection process they are using is fair and equitable, and that no favouritism is shown to any one contractor (eg the requirement is not an extract of a contractor's product specification).
- Checks are made to ensure that contractors are interested in this type of business.

- Repeat or 'automatic' invitations to the 'same' contractor or group of contractors are avoided, particularly where previously invited to bid and had failed to do so.
- Competition is stimulated by seeking our new suppliers from within and outside of the district.
- Tender requirements are not excessively restrictive and specifications are not excessive.
- 'No-bids' are checked for the reasons for a contractor's failure to bid.

5.8 Exceptions

Nothing in this Code shall require tenders to be sought: -

- (a) for purchases made from a Purchasing Agent (ESPO, OGC Buying Solutions)
 - ◆ where there is a single supplier 'call-off contract' or catalogue created with fixed prices, or
 - ◆ where the contract is created to our requirements, or
 - ◆ where there is a multi-supplier framework and further competition has been undertaken through competitive quotes.
- (b) for purchases through local authority, government body or agency, police, health or other similar public authority, where the procurement rules of that organisation have been approved by the Procurement Manager and the contract is created in co-operation, agreed joint requirements or partnership.
- (c) for purchases made at public auction;
- (d) where the relevant Director or Head of Service -
 - ◆ considers that the work is of an emergency nature or is necessary to enable the service to continue; or
 - ◆ with the Head of Financial Services' agreement, considers that it is in the Council's best interest in negotiating a further contract for works, supplies or services of a similar nature with a contractor who is currently undertaking such work. The relevant Director or Head of Service shall report details of all work awarded to the Director of Central Services who shall make a record in a register kept for that purpose; and to the next meeting of the Cabinet.

6. TENDER AND FORMAL QUOTATION PROCEDURES

6.1 Tendering and Formal Quotation Options

Heads of Service shall select one of the following procedures. If any alternative procedure is proposed then approval of the Cabinet is required before the proposed procedure is followed. In selecting contractors to invite to tender Heads of Service shall comply with paragraph 5.7.

Option	Requirement
(a) Framework	All contractors on the framework (or lot if split into lots) shall be invited to tender/quote. No public notice is required and general Terms & Conditions are set in the original framework contract but additional Terms & Conditions specific to the requirement may be permitted. Vetting (paragraph 6.3) is not normally required as the contractor was vetted as part of the original framework competition.
(b) List of Approved Tenderers	Tenders shall be invited from at least three contractors selected from an approved list established in accordance with paragraph 7 of this Code. Vetting (paragraph 6.3) is not normally required as the contractor was vetted to join the list.
(c) Open Tenders and Quotations	<p>Public notice shall be given in one or more newspapers and/or in an appropriate trade journal. The notice shall state the nature and purpose of the contract, where further information and documentation can be obtained, and state the closing date for the process. Where the Head of Service is satisfied that Expressions of Interest received from a Contracts Register Notice represent contractors with genuine interest and capacity, then no further public notice is required.</p> <p>An Invitation to Tender (ITT) or Request to Quote (RFQ) is sent to all contractors expressing an interest. All ITTs and RFQs shall include an appropriate questionnaire to permit</p> <p>vetting of contractors in accordance with paragraph 6.3 of this Code.</p>
(d) Restricted Tenders & Quotations	The requirement to advertise is the same as paragraph 6.1 (c) above. ITTs or RFQs are <i>restricted</i> to a shortlist of contractors selected after vetting in accordance with paragraph 6.3 of this Code

<p>(e) Single Tenders / Quotations</p>	<p>A Head of Service after consulting the Director of Central Services may obtain a single tender (or quotation – see paragraph 6.1 above) when:</p> <ul style="list-style-type: none"> • Prices are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available. • Work to be executed or goods, services or materials to be supplied consist of repairs to or the supply of parts of existing proprietary machinery, equipment, hardware or plant and the repairs or the supply of parts cannot be carried out practicably by alternative contractors. • Specialist consultants, agents or professional advisers are required and <ul style="list-style-type: none"> • there is no satisfactory alternative; or • evidence indicates that there is likely to be no genuine competition; or • it is in the Council’s best interest to engage a particular consultant, agent or adviser. • Products are sold at a fixed price, and market conditions make genuine competition impossible. • The proposed contract shall form part of a serial programme. The contract terms shall be negotiated with a contractor, using as a basis for negotiation the rates and prices contained in an initial contract that was awarded following a competitive tendering process that complied with this Code. No more than two serial contracts shall be negotiated from an initial contract • No satisfactory alternative is available. If the Single Tender option is used, the Head of Service shall: <ul style="list-style-type: none"> • notify the Director of Central Services who shall make a record in a register kept for that purpose; • retain records that demonstrate that the best price or value for money has been obtained from the negotiations with the contractor.
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6.2 Invitations To Tenders and Requests for Quotations

Heads of Service shall ensure that all ITTs and RFQs include;

- (a) approved contract terms in accordance with paragraph 11.2 of this Code;
- (b) a statement regarding Freedom of Information Act 2000 (FOIA) compliance:

“All information supplied to the Authority will be subject to the provisions of the Freedom of Information Act 2000 and as such may be disclosed by the Authority when required to do so under the Act. When such disclosure is necessary the Authority shall use reasonable endeavours to consult with the provider of the information prior to disclosure”.

6.3 Selection Criteria

- (a) The Head of Service shall undertake sufficient vetting to ensure that all contractors -
- ◆ comply with minimum standards of Insurance;
 - ◆ have the necessary Health & Safety policy and performance and (where applicable) membership of the Contractor's Health and Safety Scheme or equivalent health and safety standard;
 - ◆ are financial viability based on a risk based assessment;
 - ◆ have an appropriate environmental policy;
 - ◆ comply with equalities legislation and policy; and
 - ◆ possess the experience and capacity required.
- (b) The procurement manager shall provide an appropriate questionnaire for the purpose of vetting contractors.

6.4 Evaluation Criteria

Except to the extent that the Cabinet in a particular case or specified categories of contract otherwise decides, all formal quotations or tenders that are being sought shall:

- (a) be based on a definite written specification, which shall include environmental performance (where relevant to the requirement) including:
- ◆ low energy and water consumption.
 - ◆ elimination of substances hazardous to health and the environment.
- (b) include award criteria, which if it is not to be the lowest price, shall be agreed by the appropriate Director;
- (c) include specific weightings applied to individual award criteria.
- (d) if appropriate, include a requirement for a performance bond and liquidated damages.

6.5 Non-Traditional Procurement

If a Head of Service believes that by following one of the procurement procedures detailed in paragraph 5.5 above, that the procurement process will not provide him with the most appropriate method of service delivery, the most competitive prices, allow for continuous improvements in service delivery, or stifle procurement innovation, then he may suggest alternative procurement strategies.

The Head of Service shall produce, in accordance with guidance issued by the Director of Central Services and prior to proceeding with the procurement, a

written procurement strategy that shall be approved by the Director of Central Services and the Cabinet.

7. LISTS OF APPROVED TENDERERS

7.1 The Council uses 2 types of list of approved contractors:

- (a) Third party vetted lists of contractors that are compiled and maintained by an external organisation. Only external organisations approved by the Director of Central Services, after consultation with the Head of Financial Service and the other relevant Heads of Service shall be adopted. The Procurement Manager shall ensure that the external organisation and approved list of contractors is detailed in Procurement Protocols & Guidelines.
- (b) If a Head of Service believes that the approved list of tenders does not allow him to obtain sufficient competition for 'Best Value', the Head of Service shall write to the Director of Central Services and copied to the Head of Financial Services seeking approval to source additional contractors or create an ad-hoc list of approved tenderers.

7.2 Subject to approval as required in paragraph 7.1(b) the Head of Service shall:

- ◆ issue a public notice inviting applications for inclusion on a specific approved list for the supply of goods, services or materials.
- ◆ vet (as detailed at paragraph 6.3) all contractors replying to the public notice or who have requested within the previous 12 months to be considered for work of a similar nature;
- ◆ only include contractors satisfactorily completing the checks;
- ◆ ensure the ad-hoc list shall only be used for seeking tenders for the supply of goods, services or materials specifically detailed within the original public notice;

7.3 The Director of Central Services in conjunction with the Head of Financial Services and relevant Heads of Service shall review the continued suitability of any List of Approved Tenderers periodically and at least prior to the third anniversary of its initial or further adoption.

8. SUB-CONTRACTS AND NOMINATED SUPPLIERS

8.1 Quotations or tenders for sub-contracts to be performed or for goods, services or materials to be supplied by nominated sub-contractors shall be invited in accordance with this Code.

8.2 The relevant Head of Service is authorised to nominate to a main contractor a sub-contractor whose quotation or tender has been obtained in full accordance with this Code.

9. RECEIPT AND OPENING OF TENDERS AND QUOTATIONS

- 9.1 Where tenders or quotations are invited in accordance with this Code no tender or quotation will be considered unless -
- ◆ contained in a plain envelope which shall be securely sealed and shall bear the word “Tender” or “Quotation”, the Unique Reference Number (URN) from the Contract Register followed by the subject to which it relates; or
 - ◆ the tender or quotation has been received via the e-marketplace ‘sealed quote’ facility; or
 - ◆ it has been sent electronically to a specific e-mail address, which the appropriate Head of Service shall obtain from the Head of Information Management.
- 9.2 Further to paragraph 9.1 above -
- ◆ the envelope shall not bear any distinguishing matter or mark intended to indicate the identity of the sender. Contractors shall be notified accordingly. Such envelope shall be addressed impersonally to the Head of Democratic and Central Services if it contains a “Tender” or the appropriate Head of Service if it contains a “Quotation”; and
 - ◆ the Head of Information Technology shall ensure that the e-mail address is secure and can only be accessed by the Director of Central Services or officers specifically appointed by him.
- 9.3 All envelopes or e-mails received shall be kept securely and shall not be opened or accessed until the time appointed for their opening.
- 9.4 All tenders or quotations invited in accordance with this Code shall be opened at one time only and by at least two officers -
- ◆ tenders shall be opened by officers nominated by the Director of Central Services and by the appropriate Head of Service. The Head of Financial Services shall be notified of the time and place appointed for the opening; and
 - ◆ quotations shall be opened by the appropriate Head of Service and/or his nominee(s).
- 9.5 All tenders or quotations upon opening shall be recorded in writing on either a tender or quotation opening record, as is appropriate. The format of the opening record shall have been previously agreed with the Director of Central Services and Head of Financial Services. The Form of Tender or Quotation and any accompanying documentation shall be marked with the date of opening, and signed by all officers present at the opening. The tender or quotation opening record shall be signed by at least two officers present at the opening.
- 9.6 The original opening record shall be retained by the Head of Democratic and Central Services in respect of tenders, and the relevant Head of Service in respect of quotations.
- 9.7 Any tenders or quotations received after the specified time shall be returned promptly to the contractor by the Head of Democratic and Central Services or his nominated officer in respect of tenders, or by the appropriate Head of

Service or his nominated officer in respect of a quotation. The tender or quotation may be opened to ascertain the name of the contractor but no details of the tender or quotation shall be disclosed.

10. ACCEPTANCE OF TENDERS AND QUOTATIONS

10.1 The appropriate Head of Service shall evaluate all the tenders or quotations received in accordance with the award criteria set out in the bid documentation and shall accept, subject to the provisos set out in this paragraph, either -

- ◆ the lowest priced tender or quotation; or
- ◆ the most economically advantageous tender or quotation, as evaluated against the award criteria.

10.2 Tenders or quotations exceeding the approved estimate may only be accepted once approval to further expenditure is obtained.

10.3 If the lowest priced, or most economically advantageous exceeds £30,000

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- ◆ but is within 15% of the original estimate, the appropriate Head of Service may accept the quotation without seeking further competition; and
- ◆ is in excess of 15% of the original estimate then a competitive tender exercise in accordance with paragraph 6.3 above shall be carried out, unless the appropriate Head of Service has consulted and obtained the approval of the Director of Central Services and relevant executive councillor that the quotation can be accepted.

10.4 A tender or quotation shall not be accepted -

(a) where payment is to be made by the Council and -

- ◆ it is not the lowest priced tender or quotation, or
 - ◆ the most economically advantageous tender or quotation in accordance with the award criteria set out in the tender or quotation documentation;
- or

(b) if payment is to be received by the Council and the tender or quotation is not the highest price or value;

(c) unless -

- ◆ the Cabinet have considered a written report from the appropriate Head of Service, or
- ◆ in cases of urgency, the Director of Central Services has consulted and obtained the approval of the relevant executive councillor. Tenders or quotations accepted in this way shall be reported by the appropriate Head of Service to the next meeting of the Cabinet.

10.5 Where post-tender negotiations have been undertaken in accordance with paragraph 10.6 below, the appropriate Head of Service shall only accept the lowest priced tender received. A tender other than the lowest shall not be accepted until the Cabinet have considered a written report from the

appropriate Head of Service, and recommended acceptance of a tender other than the lowest.

10.6. Arithmetical Errors and Post-Tender Negotiations

Contractors can alter their tenders or quotations after the date specified for their receipt but before the acceptance of the tender or quotation, where examination of the tender or quotation documents reveals arithmetical errors or discrepancies which affect the tender or quotation figure. The contractor shall be given details of all such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing his offer.

In evaluating tenders, the appropriate Head of Service may invite one or more contractors who have submitted a tender to submit a revised offer following post-tender negotiations.

All post-tender negotiations shall -

- ◆ only be undertaken where permitted by law and where the appropriate Head of Service, Head of Legal and Estates and Head of Financial Services consider additional financial or other benefits may be obtained which over the period of the contract shall exceed the cost of the post-tender negotiation process;
- ◆ be conducted by a team of officers approved in writing by the appropriate Head of Service, Director of Central Services and Head of Financial Services;
- ◆ be conducted in accordance with guidance issued by the Director of Central Services; and
- ◆ not disclose commercially sensitive information supplied by other bidders for the contract.

Post-tender negotiations shall not be used to degrade the original specification unless the capital or revenue budget is exceeded, or the appropriate Director or Head of Service considers other special circumstances exist, in which case all those contractors who originally submitted a tender shall be given the opportunity to re-tender.

The appropriate Head of Service shall ensure that all post-tender negotiation meetings are properly minuted with all savings and benefits offered clearly costed. Following negotiations but before the letting of the contract, amendments to the original tender submitted shall be put in writing by the contractor(s) and shall be signed by him.

11. TERMS OF BUSINESS AND THE FORM OF CONTRACTS

11.1 All orders placed by the Council shall be on the Council's Terms and Conditions (T&Cs). Heads of Service shall not use Contractor's documentation to order, acknowledge, instruct to proceed or make any other commitment where the documentation makes any reference to the Contractor's T&Cs. Where a contractor formally insists on trading on T&Cs other than the Council's T&Cs, the Procurement Manager shall be informed, except for -

- ◆ Any contract where the estimated total value is likely to exceed £30,000, paragraph 11.2 shall apply.
- ◆ Any framework or contract formally adopted by the Council.
- ◆ Purchasing Agency (eg ESPO, OGC BuyingSolutions) arranged contracts and orders.
- ◆ Orders of a total value of less than £ 5,000 where the goods or service are purchased on a 'retail' basis on terms available to the general public.
- ◆ Orders for software where the licence is for 'standard' product but not where customisation, development or on-site service is required for the 'standard' product.

11.2 Every contract that exceeds £30,000 in value shall be in writing in a form approved by the Head of Legal and Estates who shall also determine the format of any contract for a lesser value. Heads of Section shall ensure that advice of the Head of Legal and Estates is sought at a stage as early as practicable (normally before the issue of an Invitation to Tender).

11.3 In the case of any contract for the execution of works or for the supply of goods, services or materials, the Head of Service after consulting with the Head of Financial Services and the Head of Legal and Estates shall consider whether the Council should require security for its due performance and shall either certify that no such security is necessary or shall specify in the specification of tender the nature and amount of the security to be given. In the latter event, the Council shall require and take a bond or other sufficient security for the due performance of the contract.

11.4 Heads of Service shall produce the final version of all contracts in 2 copies and present both to the Authorised Officer for signature. Once signed by the contractor, the signed contract, all original documents, including specifications, drawings, tender documents and correspondence relating to a contract exceeding a total value of £30,000 shall be forwarded by the Head of Legal and Estates. Where the total value of the contract is less than £30,000 the relevant Head of Services shall make arrangements for the retention of all the original documentation.

11.5 Heads of Service shall maintain a record (in the form detailed in the Procurement Protocols & Guidance) for their area of each contract or agreement (both written and verbal agreements).

11.6 Heads of Service shall include the specific T&Cs listed in the Procurement Protocols & Guidance in all contracts. Where a Head of Service considers a term or condition inappropriate they shall seek advice of the Head of Legal and Estates on the modification or deletion of the term or condition.

12. LETTERS OF INTENT

12.1 Letters of intent provide a contractor with the authority to proceed prior to the award of a contract. However, letters of intent have two main disadvantages:-

- (a) if the contract is not awarded the contractor is entitled to payment regardless as to whether the work was actually needed;
- (b) the Council's negotiating position is weakened as the contractor may believe actual award of contract is a formality and therefore, the contractor may refuse to accept conditions that are seen as disadvantageous.

12.2 Heads of Service shall ensure that:-

- (a) all letters of intent are in a form approved by Head of Legal and Estates;
- (b) all letters of intent are signed by an Authorised Officer with sufficient authority for either the value of the intended contract or the estimated value of any 'extension' period defined in the letter of intent.

13. RETENTION OF DOCUMENTS

13.1 Heads of Service shall ensure that every contract or quotation is assigned the Unique Reference Number (URN) from the Contract Register, which is to be used in all correspondence. Any Division or Service reference may be included in addition to the URN shall comprise abbreviation for the Division and year. Formal amendments to a contract or order should also be given unique numbers showing the order in which the amendments were made.

13.2 Documentation retention periods are dictated by the Statute of Limitations and (where applicable) EU requirements. The following rules apply:-

- (a) retention for 12 years from the date of completion of the contract for contracts made under deed;
- (b) retention for 6 years from the date of completion of the contract: -
 - ◆ Contract Documents
 - ◆ Hire/Rental Agreements
 - ◆ Successful Tenders
 - ◆ Summary of Tender Opening
 - ◆ Disposal Board papers
 - ◆ Evaluation reports
 - ◆ Goods Received Notes
 - ◆ HM Customs and Excise Import documentation
 - ◆ Invitations to Tender/Quotation Requests
 - ◆ Maintenance/Software licence agreements
 - ◆ Specifications
 - ◆ Successful Quotations
 - ◆ Suppliers' Advice Notes;
- (c) retention for 3 years after the last entry -
 - ◆ Stock and Purchase Record Cards or Registers;
- (d) retention for 2 years after the financial year to which the document relates -
 - ◆ Unsuccessful Quotations.
 - ◆ Unsuccessful Tenders.

14. FREEDOM OF INFORMATION ACT 2000 (FOIA)

14.1 Heads of Sections shall ensure that the handling of requests for procurement information complies with the detailed guidance published as Procurement Protocols & Procedures and the general FOIA guidance published by the Council's Freedom of Information Officer.

15. CONSULTANTS

15.1 It shall be a condition of the engagement of any consultant, agent or professional adviser who is to be responsible to the Council for the management or supervision of a contract on its behalf, that in relation to that contract he shall -

- ◆ comply with this Code as though he were an employee of the Council;
- ◆ at any time during the carrying out of the contract produce to the appropriate Head of Service, on request, all the records maintained by him in relation to the contract; and
- ◆ on completion of the contract transmit all records that he has produced or received that relate to the contract to the appropriate Head of Service.

16. PROCUREMENT TRAINING

16.1 The Procurement Manger shall create, maintain and arrange the delivery of training for officers undertaking procurement duties.

16.2 Heads of Service shall ensure that all officers routinely undertaking purchasing or procurement duties have undertaken appropriate training.

16.3 Head of People, Performance and Partnerships shall record the details of staff that have completed suitable procurement training.