

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter:	Improving Internal Controls
Meeting/Date:	Corporate Governance Panel – 26 September 2103
Executive Portfolio:	Resources, Councillor J A Gray
Report by:	Internal Audit Manager
Ward(s) affected:	All

Executive Summary:

A report to the 24 July Panel, explained that following an internal audit review into procurement procedures, there was a need to modify or reinforce internal control processes in a number of areas. The Internal Audit Manager submitted a report to the Chief Officers' Management Team (COMT) on 2 August, that suggested a number of actions to improve internal control. All of the suggested actions were accepted by COMT.

The actions primarily fall across two general headings as shown below:

Procurement

- Amending the Code of Procurement (see Appendix 1).
- Increasing the influence of the Procurement Manager.
- Improved reporting of procurement activity to COMT and this Panel.
- Enforcing the use of, and further developing the contracts register, so that it acts as an internal control mechanism.
- Amending the Code of Financial Management (see Appendix 2)
- Signing up to the Prompt Payment Code (see Appendix 3)

Employees' Code of Conduct

- Rewrite and re-launch the code of conduct as an employee handbook.
- Introduce a code of ethics that will refer to the seven principles of public life.
- Policies associated with the handbook to be made available in one location.
- Formal 'sign up' to the handbook by all employees.
- All breaches of the handbook will be treated in accordance with the disciplinary procedures.

Changes to the employee handbook will need to be discussed with Staff Council. Changes to the Employees' Code of Conduct, will require the approval of this Panel. It is anticipated the handbook will be in use from April 2014.

Financial implications

There are no financial implications arising from the report.

Recommendation(s):

It is recommended that the Panel:

1. Recommend to the Council that they endorse the revised Code of Procurement as detailed in Appendix 1;
2. Recommend to the Council they endorse the revised Code of Financial Management as detailed in Appendix 2;
3. Recommend to the Council that it applies to become a signatory to the Prompt Payment Code as endorsed by the Department for Business Innovation & Skills; and
4. Note the actions that COMT have agreed with regard to the employees' handbook.

1. BACKGROUND TO THE REPORT

- 1.1 A recent internal audit investigation into procurement practices, highlighted procedural and control weaknesses in application of the Code of Procurement, shortcomings in compliance with the Employees' Code of Conduct and a small number of associated supporting processes.
- 1.2 The Internal Audit Manager submitted a report to the Chief Officers' Management Team (COMT) that suggested a number of actions to improve controls and reduce the likelihood of similar events reoccurring. COMT agreed all of the actions that were proposed.
- 1.3 In order to introduce a number of the actions, changes are required to the Code of Procurement and Code of Financial Management. These changes require the approval of the Panel before they can be considered by Council.

2. PROCUREMENT MATTERS

- 2.1 Three changes are being proposed to the Code of Procurement to deal with the following circumstances:
 1. Contractors appearing to have undue and inappropriate influence on the tendering process;
 2. Providing clarity to contractors as to the bid evaluation method that is to be followed; and
 3. Ensuring that Officers do not procure goods or services unless they have undertaken training and have a full understanding of the how the Code of Procurement is to be applied in respect of the procurement activity they wish to undertake.
- 2.2 The changes proposed are set out in full in Appendix 1. The main changes to the Code are contained in paragraph's 1.2, 1.3, 5.9, 6.2, 10.7 and 17.2. Minor consequential changes have been made in paragraph re-numbering and cross referral.
- 2.3 In addition to changes to the Code of Procurement, a number of initiatives are to be introduced.
 1. Managers will be required to inform the Procurement Manager of the procurement exercises they intend to undertake. The Procurement Manager will use this information to determine his own work programme and develop reports for submission to COMT and the Panel on the procurement activity.
 2. An overarching procurement strategy will be written. This will, amongst other issues, set out the long term strategic approach to procurement, how the procurement structure will deliver year on year efficiencies and savings, provide greater visibility and understanding of the procurement function and raise overall awareness of the complex regulatory framework in which procurement operates.
 3. The Procurement Manager will continue to provide both general and targeted training to Managers at all levels on procurement practices, the Code of Procurement and the e-marketplace.

4. Changes to the Contracts Register are being investigated to improve controls that deal with the approval of contract terms and conditions. These changes will reduce the likelihood of documents being issued to contractors without being scrutinised and/or approved by either Legal Services or the Procurement Manager.
5. The Council has a target of paying all invoices within 28 days of receipt. Invoices can be paid sooner in urgent cases. The controls that govern the early payment of invoices are to be reviewed to ensure that they are being used properly and only when required. COMT have also agreed that the Council should apply to become a signatory to the Prompt Payment Code (Appendix 3).

3. EMPLOYEE HANDBOOK

- 3.1 The Employees Code of Conduct is to be re-written. An employee handbook will be prepared. The handbook will deal with Code of Conduct matters and contain a Code of Ethics which will cover both the current key values and behaviours and the seven principles of public life (Nolan principles).
- 3.2 The handbook will also reference those related policies and procedures that employees are required to adhere to, e.g. acceptable use of IT resources, data protection/freedom of information, health and safety, as well as new policies, e.g. the use of social media.
- 3.3 Whilst accepting that not all employees have network access, the initial aim is for the handbook to be held and updated electronically. All employees will be required to 'sign up' to the handbook on an annual basis to indicate their acceptance of its contents.

Some employees may be reluctant to 'sign up' in this way; a training/education programme will be delivered to explain the standards of behaviour and conduct that is expected. Breaches of the handbook will be dealt with in accordance with the Disciplinary Policy and Procedure.

4. CODE OF FINANCIAL MANAGEMENT

- 4.1 One of the difficulties experienced during the internal audit review was identifying payments against the correct contract. This caused difficulties with cross checking payments to the Contracts Register.
- 4.2. It has been accepted that the specific Contract Register reference number shall be recorded on all contractual payments, rather than continue with the freeform narrative. This change requires an amendment to be made to paragraph 5.3 of the Code of Financial Management. For ease of reference, this is included at Appendix 2.

5. TIMETABLE FOR IMPLEMENTATION

- 5.1 Any changes to the Code of Procurement and Code of Financial Management will be reported to the Council meeting on 13 November 2013. They will be adopted from that date if approved.

5.2 It is anticipated that the employee handbook will be completed and launched by April 2014.

6. LIST OF APPENDICES INCLUDED

Appendix 1 – Code of Procurement

Appendix 2 – Code of Financial Management (extract)

BACKGROUND PAPERS

Enhancing Control – Report to COMT, 2 August 2013

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CODE OF PROCUREMENT

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 Throughout the Code, reference to Manager shall mean Managing Director, Assistant Director, Head of Service, General Manager, Service Manger or Team Manager as appropriate. A Manager shall be responsible for procuring all goods and services that require the quotation or tender procedures as set out in this Code to be followed.
- 1.3 No Manager shall procure any goods or services valued at £5,000 or more unless they have attended training provided by the Procurement Manager and consider themselves to have such detailed knowledge and understanding of this Code and how it shall be applied in respect of the total value of the procurement being considered.
- 1.4 This Code applies to the procurement, commissioning, hire, rental or lease of -
- a. land and buildings, roads or other infrastructure;
 - b. vehicles or plant;
 - c. equipment, furniture and fittings;
 - d. construction and engineering works;
 - e. information and communication technology - hardware and software;
 - f. goods, materials and services;
 - g. repairs and maintenance;
 - h. consultants, agents and professional services.
- 1.5 This Code does not apply to purchases made from internal management units.
- 1.6 The Code applies also to the sale of assets and goods by the Council where the appropriate Manager estimates that the assets, goods or services to be sold exceed £1000. Where the value is estimated to be less than £1000 then the 'Sale of Equipment' procedures contained within the Inventory procedures shall be followed.
- 1.7 The Council includes the Cabinet, Panels, Committees or other body or person(s) acting in accordance with delegated authority on behalf of the Council.
- 1.8 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.

- 1.9 Throughout the Code, reference to contractor(s) or sub-contractor(s) shall mean any person, company or supplier who has -
- a. requested to be on an approved or ad-hoc approved list of tenderers;
 - b. been approached to provide a quotation or tender;
 - c. provided a quotation or tender; or
 - d. been awarded a contract in accordance with the provisions of this Code.
- 1.10 The Assistant Director (Finance & Resources) shall annually review all the financial values contained in the Code to take account of the impact of inflation. The Assistant Director (Finance & Resources) shall inform all Managers 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 (as at 1 January 2012) are:

Threshold	Supplies	Services	Works
£ Sterling	£ 173,934	£ 173,934	£ 4,348,350
€ Euro	€ 200,000	€ 200,000	€ 5,000,000

2.2 Financial Year Start Reporting

No later than the 1 April each year, Managers shall:

- a. provide the following information to the Procurement Manager -
 - i. Details of each contract expected to be advertised in the following year;
 - ii. An estimate of the total value for each discrete procurement area where the spend is likely to exceed £100,000;
- b. 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
£ Sterling	£ 653,253	£ 653,253	£ 4,348,350
€ Euro	€ 750,000	€ 750,000	€ 5,000,000

Through Year Reporting

- 2.3 Managers shall report, using a PIN where time permits, new or additional requirements likely to meet or exceed EU thresholds as they arise.

End of Year Reporting

- 2.4 By the 30 April each year, Managers shall provide the Procurement Manager with the following details for contracts placed through OJEU procedures -
- a. 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);
 - b. Provider (contractor) Nationality;
 - c. Award Procedure (from the OJEU notice);
 - d. Justifications if Negotiated procedure; and
 - e. Value.

3. CONTRACTS REGISTER

- 3.1 Managers shall keep a record, using the Contracts register, of
- a. all tenders and quotes greater than £5,000;
 - b. the reasons (if appropriate) for not advertising on the Council's 'Latest Opportunities' internet site;
 - c. all those contractors that were requested to quote or tender;
 - d. the reasons why those particular contractors were selected to quote or tender;
 - e. if applicable, the reasons why less than three contractors were selected to quote or tender;
 - f. contract renewal date (if appropriate); and
 - g. 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:
- a. An order raised on the e-marketplace.
 - b. A procurement card order.
 - c. A manual purchase order.
 - d. A purchase order raised on the financial management system.
- 4.2 Where there is an exception requirement and the relevant Assistant Director or Manager 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 Assistant Director or Manager 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:

- a. The opportunity to obtain leverage (better prices and) for volume.
- b. Regulatory compliance.
- c. Transparent and efficient procurement processes.
- d. Appropriate social, environmental and equality outcomes.
- e. Minimum procurement over.

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 service). 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. Managers 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.

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

Tenders

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

- a. for purchases made from a Purchasing Agent (ESPO, Government Procurement) where:
 - i. there is a single supplier 'call-off contract' or catalogue created with fixed prices, or
 - ii. the contract is created to our requirements;
- 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 Assistant Director or Manager -
 - i. considers that the work is of an emergency nature or is necessary to enable the service to continue; or
 - ii. with the Assistant Director (Finance & Resources) 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 Assistant Director or Manager shall report details of all work awarded under 5.4 d above to:

- i. the Head of Legal and Democratic Services who shall make a record in a register kept for that purpose; and
- ii. the next meeting of Cabinet.

5.5 Any procurement estimated to exceed £50,000, which is not covered by the exceptions in paragraph 5.4 above, must be referred to the Procurement Manager before the procurement process is commenced. If a Manager does not wish to accept the Procurement Manager's advice on any significant aspect the matter will be determined by the relevant Assistant Director. The discussion will cover:

- a. Scope and objectives of the procurement;
- b. Budget and costing;
- c. Tender methods;
- d. Product and market information;
- e. Timescales; and
- f. Deliverables.

5.6 Where there is no adopted contract or framework, Managers shall, wherever practicable, seek to maximise contract values with other Managers 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. Managers 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 5.4.

Estimated Total Value of Procurement	Requirement
Up to £5,000	At least 1 written estimate or offer (e-marketplace, email, web or paper) shall be sought and recorded. Further estimates or offers should be sought where a Manager considers that there is reasonable possibility that this could result in a saving to the Council.
£5,001 to £50,000	At least 3 written quotations or offers shall be invited, unless the Manager has complied in full with paragraph 6.1e of this Code. The Manager will consider whether the nature of the procurement is such that a full competitive tendering would be likely to be beneficial to the Council by reducing cost (by more than the cost of tendering) or risk.
£50,001 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.

- 5.7 Total value is the cost of all elements of the procurement (e.g. installation, testing, training, maintenance, etc). The Manager shall ensure that a procurement is not split or otherwise disaggregated and may choose to competitively tender requirements less than £50,000;
- 5.8 Achieving 'Best Value' needs valid competition and valid competition is dependent 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 Managers shall ensure that wherever possible -
- a. the selection process they are using is fair and equitable, and that no favouritism is shown to any one contractor (e.g. the requirement is not an extract of a contractor's product specification);
 - b. checks are made to ensure that contractors are interested in this type of business;
 - c. 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;
 - d. 'new' contractors are sought and invited to tender or quote;
 - e. the geographic area of the search for potential contractors is widened; and
 - f. 'no-bids' are checked for the reasons for a contractor's failure to bid.

- 5.9 A Manager shall not invite quotations or tenders from any contractor or sub-contractor who has participated in the preparation of documentation or were involved in other preparatory work for the contract, unless they:
- a. have sent an email to the Head of Legal and Democratic Services clearly setting out the contractor/sub-contractor involvement and expressly stating why this does not constitute an unfair competitive advantage or a conflict of interest; and
 - b. receive an email response from the Head of Legal and Democratic Services that clearly agrees to the inclusion of the contractor/sub-contractor in the quote/tender process.

6. TENDER AND FORMAL QUOTATION PROCEDURES

Tendering and Formal Quotation Options

- 6.1 Managers 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.

Option	Requirement
(a) Framework	All contractors on the framework (or lot if split into lots) shall be invited to submit a tender or quotation. 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	<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 Manager 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 vetting of contractors in accordance with paragraph 6.3 of this Code.</p>

<p>(d) Restricted Tenders & Quotations</p>	<p>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>
<p>(e) Single Tenders or Quotations</p>	<p>A Manager after consulting the Head of Legal and Democratic Services may obtain a single tender or quotation when:</p> <ul style="list-style-type: none"> a. Prices are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available. b. 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. c. Specialist consultants, agents or professional advisers are required and <ul style="list-style-type: none"> i. there is no satisfactory alternative; or ii. evidence indicates that there is likely to be no genuine competition; or iii. it is in the Council's best interest to engage a particular consultant, agent or adviser. iv. Products are sold at a fixed price, and market conditions make genuine competition impossible d. 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. e. No satisfactory alternative is available. If the single quote/tender option is used, the Manager shall: <ul style="list-style-type: none"> i. seek approval of the Head of Legal and Democratic Services who shall make a record in a register kept for that purpose; ii. retain records that demonstrate that the best price or value for money has been obtained from the negotiations with the contractor.

	<p>f. A Manager can approve a single tender for ongoing maintenance of propriety systems provided:</p> <ul style="list-style-type: none"> i. there is evidence that it is a propriety system; ii. the initial contract award was compliant with this Code; iii. the renewal is for a period not greater than 4 years (this is the time interval the EU uses to calculate contract value for ongoing contracts); iv. the ongoing value does not exceed the EU threshold; and v. the direct award is recorded in the single tender register.
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Invitations to Tenders and Requests for Quotations

6.2 Managers shall ensure that all ITTs and RFQs include:

- a. approved contract terms in accordance with paragraph 11.2 of this Code;
- b. the following statement regarding Freedom of Information Act 2000 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.”

- c. within the tender/quotation document that the contractor or sub-contractor has to submit, a clear statement that explains if the bid is to be evaluated on the basis of lowest price or the most economically advantageous basis.

Selection Criteria

6.3 The selection of contracts and vetting of contractors shall be undertaken in the following manner.

- a. Manager shall undertake sufficient vetting to ensure that all contractors
 - i. comply with minimum standards of Insurance;
 - ii. 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;
 - iii. are financial viable based on a risk based assessment;
 - iv. have an appropriate environmental policy;
 - v. comply with equalities legislation and policy; and
 - vi. possess the experience and capacity required.

- b. The Procurement Manager shall provide an appropriate questionnaire for the purpose of vetting contractors.
- c. Managers wishing to have a Pre-Qualification Questionnaire returned in electronic format (Excel) must tell bidding suppliers to use the designated email address “procsupport@huntingdonshire.gov.uk” and inform the Procurement Manager of the closing date. The Procurement Manager shall forward the Pre-Qualification Questionnaires to the Manager after the closing date.

Evaluation Criteria

- 6.4 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:
 - i. low energy and water consumption.
 - ii. 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 an Assistant Director or the Managing Director;
 - c. include specific weightings applied to individual award criteria.
 - d. if appropriate, include a requirement for a performance bond and liquidated damages

Non-Traditional Procurement

- 6.5 If a Manager believes that by following one of the procurement procedures detailed in paragraph 5.6 above, that the procurement process will not provide him with the most appropriate method of delivery, the most competitive prices, allow for continuous improvements in delivery, or stifle procurement innovation, then he may suggest alternative procurement strategies.

The Manager shall produce in accordance with guidance issued by the Head of Legal and Democratic Services and prior to proceeding with the procurement, a written procurement strategy that shall be approved by the Assistant Director (Finance & Resources) and the Cabinet.

7. LISTS OF APPROVED TENDERERS

- 7.1 The Council uses two 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 Head of Legal and Democratic Services, after consultation with the Assistant Director (Finance & Resources) and the other relevant Manager(s) shall be adopted. The Procurement Manager shall ensure that the external organisation and approved list of contractors is detailed in Procurement Protocols & Guidelines.

- b. Ad-hoc list of approved tenderers. If a Manager believes that the approved list of tenders does not allow him to obtain sufficient competition for 'Best Value', the Manager shall write to the Head of Legal and Democratic Services and the Procurement Manager 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 Manager shall:

- a. issue a public notice inviting applications for inclusion on a specific approved list for the supply of goods, services or materials.
- b. 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;
- c. only include contractors satisfactorily completing the checks;
- d. 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 Head of Legal and Democratic Services in conjunction with the Assistant Director (Finance & Resources) and relevant Managers 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 Manager 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 -

- a. 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 Contracts Register followed by the subject to which it relates; or
- b. the tender or quotation has been received via the e-marketplace 'sealed quote' facility; or
- c. it has been sent electronically to a specific e-mail address, which the appropriate Manager shall obtain from the IMD Service Manager.

9.2 Further to paragraph 9.1 above -

- a. 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 Legal and Democratic Services if it contains a "Tender" or the appropriate Manager if it contains a "Quotation"; and

- b. the IMD Service Manager shall ensure that the e-mail address is secure and can only be accessed by the Head of Legal and Democratic 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 -
 - a. Tenders shall be opened by officers nominated by the Head of Legal and Democratic Services and by the appropriate Head of Service/Service Manager. The Procurement Manager shall be notified of the time and place appointed for the opening.
 - b. Quotations shall be opened by the appropriate Manager and/or his nominee(s) and one other Officer. The Internal Audit Manager shall be notified of the time and place appointed for the opening.
- 9.5 All tenders or quotations upon opening shall be recorded in writing on either a tender or quotation opening record unless the Contracts Register is being completed contemporaneously. The format of the opening record shall have been previously agreed with the Head of Legal and Democratic Services and Assistant Director (Finance & Resources). 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 and record the method that has been selected to evaluate the bids received. If the Contracts Register has been completed, then all of the required fields will be completed as per the guidance issued by the Procurement Manager.
- 9.6 The original opening record shall be retained by the Head of Legal and Democratic Services in respect of tenders, and the relevant Manager in respect of quotations. A copy of the opening record shall be provided to the Internal Audit Manager.
- 9.7 Any tenders or quotations received after the specified time shall be returned promptly to the contractor by the Head of Legal and Democratic Services or his nominated officer in respect of tenders, or by the appropriate Manager or his nominated officer in respect of a quotation.
- 9.8 Late tenders shall be rejected once any other tender/quotation has been opened. 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 Manager 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 -
 - a. the lowest priced tender or quotation; or

- b. 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 quotation exceeds £50,000 but -
 - a. is within 15% of the original estimate, the appropriate Manager may accept the quotation without seeking further competition; or
 - b. is in excess of 15% of the original estimate then a competitive tender exercise in accordance with paragraph 6.1 above shall be carried out, unless the appropriate Manager has consulted and obtained the approval of the Head of Legal and Democratic Services, the Procurement Manager 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 -
 - i. it is not the lowest priced tender or quotation, or
 - ii. 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 -
 - i. the Cabinet have considered a written report from the appropriate Head of Service/Service Manager, or
 - ii. in cases of urgency, the Head of Legal and Democratic 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 Manager 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 Manager 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/Service Manager, and recommended acceptance of a tender other than the lowest.

Arithmetical Errors and Post-Tender Negotiations

- 10.6 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.

10.7 Post-tender negotiations shall not be used to degrade the original specification unless:

- a. the capital or revenue budget is exceeded; or
- b. other special circumstances exist;

in which case the Head of Legal and Democratic Services and Procurement Manager shall decide which of those contractors who originally submitted a tender or quotation shall be given the opportunity to submit a further bid based upon a degraded specification. This decision shall be recorded in writing.

10.8 In evaluating tenders, the appropriate Manager 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 -

- a. only be undertaken where permitted by law and where the appropriate Manager and Head of Legal and Democratic Services and Assistant Director (Financial & Resources) 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;
- b. be conducted by a team of officers approved in writing by the Head of Legal and Democratic Services and Assistant Director (Financial & Resources);
- c. be conducted in accordance with guidance issued by the Head of Legal and Democratic Services; and
- d. not disclose commercially sensitive information supplied by other bidders for the contract.

10.9 The appropriate Manager 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). Managers 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 -

- a. Any contract where the estimated total value is likely to exceed £50,000, paragraph 11.2 shall apply.
- b. Any framework or contract formally adopted by the Council.
- c. Purchasing Agency (e.g. ESPO, Government Procurement) arranged contracts and orders.

- d. 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.
 - e. 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 £50,000 in value shall be in writing in a form approved by the Head of Legal and Democratic Services who shall also determine the format of any contract for a lesser value. Managers shall ensure that advice of the Head of Legal and Democratic Services 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 Manager after consulting with the Assistant Director (Finance & Resources) and the Head of Legal and Democratic Services 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 Managers 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 £50,000 shall be forwarded by the Head of Legal and Democratic Services. Where the total value of the contract is less than £50,000 the relevant Manager shall make arrangements for the retention of all the original documentation.
- 11.5 Managers 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 Managers shall include the specific T&Cs listed in the Procurement Protocols & Guidance in all contracts. Where a Manager considers a term or condition inappropriate they shall seek advice of the Head of Legal and Democratic Services 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 Managers shall ensure that:-

- a. all letters of intent are in a form approved by Head of Legal and Democratic Services; and
- 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. POST-TENDER DEBRIEFS

13.1 For all contracts greater than £5,000 Managers shall maintain records of selection and evaluation scoring and where requested by participating suppliers, provide a suitable post-tender debrief. For contracts greater than £50,000, the advice of the Procurement Manager shall be sought on the format and scope of the debrief

14. LOCAL GOVERNMENT ACT – COMMUNITY RIGHT TO CHALLENGE

14.1 The Local Government act permits relevant bodies (charities, community bodies, town & parish councils and staff) to submit Expressions of Interest to provide Council services. The Procurement Manager shall maintain and publish a timetable for the submission of Expressions of Interest. All Expressions of Interest received from relevant bodies should be forwarded to the Information and Research Officer.

15. RETENTION OF DOCUMENTS

15.1 Managers 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 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.

15.2 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:-
 - i. Contract Documents
 - ii. Hire/Rental Agreements
 - iii. Successful Tenders
 - iv. Summary of Tender Opening
 - v. Disposal Board papers
 - vi. All selection and evaluation scoring and reports
 - vii. Goods Received Notes
 - viii. HM Customs and Excise Import documentation
 - ix. Invitations to Tender/Quotation Requests
 - x. Maintenance/Software licence agreements
 - xi. Specifications
 - xii. Successful Quotations
 - xiii. Suppliers' Advice Notes;

- c. retention for 3 years after the last entry:-
 - i. Stock and Purchase Record Cards or Registers
- d. retention for 2 years after the financial year to which the document relates:-
 - i. Unsuccessful Quotations.
 - ii. Unsuccessful Tenders.

16. FREEDOM OF INFORMATION ACT 2000 (FOIA)

- 16.1 Managers 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.

17. CONSULTANTS

- 17.1 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 -
 - a. comply with this Code as though he were an employee of the Council;
 - b. at any time during the carrying out of the contract produce to the appropriate Manager, on request, all the records maintained by him in relation to the contract; and
 - c. on completion of the contract transmit all records that he has produced or received that relate to the contract to the appropriate Manager.
- 17.2 The Manager responsible for appointing any consultant, agent or professional adviser under paragraph 17.1 shall provide them with a copy of this Code.

18. PROCUREMENT TRAINING

- 18.1 The Procurement Manger shall create, maintain and arrange the delivery of training for Officers undertaking procurement duties.
- 18.2 Managers shall ensure that all Officers undertaking purchasing or procurement duties where the gross value of the procurement is £5000 or more shall have undertaken appropriate training.
- 18.3 LGSS HR and Payroll Services shall arrange to record the details of staff that have completed suitable procurement training.

End of Code.

Appendix 2

CODE OF FINANCIAL MANAGEMENT PROPOSED CHANGES

5.3 **Records**

Each Budget Manager 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.

In respect of all contractual payments where the contract was required to be recorded on the Contracts Register in accordance with paragraph 3.1 of the Code of Procurement, the Budget Manager shall ensure that all invoices or payment records authorised for payment shall include in the 'Our Reference' field in Council's Financial Management System (e-financials), the unique Contract Register reference. This number shall be in the same format/style as allocated by the Contract Register.

End of changes proposed.

PROMPT PAYMENT CODE

The prompt payment code is administered by the Institute of Credit Management on behalf of the Department for Business Innovation & Skills.

Code signatories undertake to:

Pay suppliers on time

- within the terms agreed at the outset of the contract
- without attempting to change payment terms retrospectively
- without changing practice on length of payment for smaller companies on unreasonable grounds

Give clear guidance to suppliers

- providing suppliers with clear and easily accessible guidance on payment procedures
- ensuring there is a system for dealing with complaints and disputes which is communicated to suppliers
- advising them promptly if there is any reason why an invoice will not be paid to the agreed terms

Encourage good practice

- by requesting that lead suppliers encourage adoption of the code throughout their own supply chains