

# Financial Regulations and Contracts Procedures

**These Financial Regulations and Contracts Procedures should be considered in conjunction with the Officer Scheme of Delegation and Standing Orders in relation to the Budget and Policy Framework.**

## Financial Regulations Contents

1. Introduction
2. Legislative and Regulatory Requirements
3. The Role of Chief Finance Officer (S151)
4. Accounting Procedures
5. Financial Control
6. Audit, Anti-Fraud and Anti-Corruption
7. Banking Arrangements and Methods of Payment
8. Imprest and Petty Cash Accounts
9. Assets including Estates, Non Current Assets and intellectual property
10. Inventories (Moveable Property)
11. Stocks and Stores
12. Investments, Borrowing, Loans, Guarantees and Trust Funds
13. Income and Debtors
14. Orders for Work, Goods and Services
15. Payment of Accounts/Invoices
16. Salaries, Wages, Travels and Subsistence, and Other Expenses
17. Members' Allowances
18. Insurance
19. Risk Management
20. Security
21. Group Entities
22. Working with our Partners
23. The Council working for third parties

## **Contracts Procedures Contents**

### **A. General Information/Introduction**

- 24. Contracting Council
- 25. Extent and Application of Contract Procedures
- 26. Breach of Contract Procedures
- 27. Prevention of Corruption and Conflict of Interest
- 28. Delegated Authority
- 29. Authority to Undertake Procurement Activity
- 30. Exemptions from the Application of Contract Procedures
- 31. Waiver of Contract Procedures
- 32. Appointment of Management Consultants and Agents

### **B. Legal Framework**

- 33. Compliance with Legislation
- 34. Non Compliance with Legislation
- 35. Case Law
- 36. Freedom of Information
- 37. Local Government Transparency Code 2014

### **C. Procurement Planning**

- 38. Approval to Proceed with the Procurement Process
- 39. Conflicts of Interest
- 40. Confidentiality
- 41. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), as amended
- 42. Market Research and Consultation
- 43. Community Right to Challenge
- 44. Delivering Policy through Procurement

### **D Procurement Development**

- 45. Estimated Value of the Procurement

46. EU Spend Thresholds
47. Procurement Process
48. Below EU Spend Threshold Procurements
49. Division of Contract into Lots
50. Preparation of Procurement Documentation
51. Process Time Limits
52. Advertising the Procurement
53. Reserved Contracts
54. Award of Contracts for Social and Other Specific Services
55. Procurement Procedures
56. Collaborative Arrangements
57. Council-wide Contracts
58. Approved Lists
59. Framework Agreements
60. Central Purchasing Bodies
61. Contracts with other Public Sector Bodies
62. Joint Venture Company – TOR2
- E. Tender Preparation**
63. Tender Pack
64. Consortia
65. Sub Contracting
66. Economic Operator Financial Risk Issues
67. Contract Terms and Conditions
68. Evaluation Criteria
69. Reliance on the Capacity of Other Entities
70. Limiting the number of economic operators to be invited to Tender
71. Selection Questionnaire Template
72. European Single Procurement Document

- 73. Award Criteria
- 74. Life Cycle Costing
- 75. Use of Presentations, Interviews and Site Visits

**F. Procurement Process**

- 76. Electronic Tendering
- 77. Contracts Finder
- 78. Tender Clarification
- 79. Confidentiality of Tender Proposals
- 80. Submission, Receipt and Opening of Tenders
- 81. Receiving Late, Irregular or Incomplete Tenders
- 82. Abnormally Low Tenders
- 83. Tenders Exceeding Estimate
- 84. Tender Evaluation
- 85. Reliance on the Capacities of Other Entities
- 86. Post Tender Clarification
- 87. Approval to Award the Tender
- 88. Tender Outcome Notifications
- 89. Standstill
- 90. Contracts Finder
- 91. Debriefing

**G. Contracts Arrangements**

- 92. Contracts
- 93. Issuing and Signing Contracts
- 94. Modification of Contracts
- 95. Contract Extension
- 96. Assignment and Novation
- 97. Contract Termination

**H. Contract Management**

- 98. Contracts Register

99. Contract Monitoring and Performance Management

100. Claims and Disputes

**I. Other**

101. Gifts and Hospitality

102. Nomination of Sub Contractors and Suppliers

103. Concessions and Sponsorship

104. Grant Funding Audits

105. Internal Audits

**J. Definitions**

## Financial Regulations

### 1. Introduction

- 1.1 To conduct its business properly, Torbay Council needs sound financial management policies in place and controls to ensure compliance with those policies. In addition, the Council has additional responsibilities under statute. These Financial Regulations provide a framework of policies and controls for managing these responsibilities.
- 1.2 All local authorities are required to establish Financial Regulations to ensure the proper administration of financial affairs which have arisen from the legislative powers conferred upon local authorities and the consequential rights, powers and duties placed upon the Council, the ~~Mayor~~Leader of the Council, Members and Officers.
- 1.3 The Financial Regulations apply to every Member and Officer/employee (including agency and seconded staff) of the Council and anyone acting on its behalf. All Officers and Members have a duty to abide by the highest standards of probity in dealing with financial issues.
- 1.4 Non compliance with these regulations will be referred to the Chief Finance Officer and the Head of Devon Audit Partnership, who will take appropriate action.
- 1.5 The Financial Regulations should ensure compliance with all accounting and auditing standards, and codes of practice, which are produced by the appropriate professional accountancy bodies.
- 1.6 The Financial Regulations apply to the Council and any associated companies. The Chief Finance Officer legislative requirements apply to all council assets and liabilities included subsidiary companies. The CFO therefore has responsibility for the financial systems, financial procedures and financial regulations in use by the subsidiary companies.
- 1.~~7~~6 These Financial Regulations are intended as an aid to good financial management and outline the necessary procedures to secure the proper administration of financial affairs. ~~They should be read and construed in conjunction with the Standing Orders of the Council and shall be in addition to and not in substitution for these Standing Orders.~~ Financial regulations will also be supplemented by more detailed financial instructions issued as and when appropriate by the Chief Finance Officer or his/her nominated representative.
- 1.~~8~~7 In these regulations the following definitions apply:-
  - a) Budget Holder – as identified on the Council Financial Information Management System (a Budget Holder is allocated to every cost centre).
  - b) ~~Executive Director~~Chief Executive, Directors, Assistant Directors and Executive Heads – are the posts contained within the Council's Senior Management Structure.
  - c) Executive Head – reference to Executive Head in these regulations includes the ~~Executive Director~~Chief Executive, Directors, Assistant Directors and

Executive Head.

- d) Chief Finance Officer – the appointed Section 151 post and reference to it includes all nominated deputies appointed by the Chief Finance Officer.

## 2. Legislative and Regulatory Requirements

- 2.1 The Local Government Act 1972, in section 151, directs that there should be a specifically designated officer responsible for the proper administration of the Council's financial affairs and for reporting on these matters. The role of Chief Finance Officer has been given these responsibilities within the Council's management structure.
- 2.2 In addition the Chief Finance Officer, or his/her properly appointed nominated representatives, have duties under Sections 114 and 114A of the Local Government Finance Act 1988 see paragraph 3.5.
- 2.3 The Accounts and Audit (England) Regulations 2015 also confer further responsibilities upon the Chief Finance Officer, or his/her nominated representatives, including determination of and responsibility for the accounting systems and supporting records and systems and internal control (including internal audit). These regulations have been produced to comply with these requirements.
- 2.4 The Chief Finance Officer is also responsible for the publication of financial related notices, documents and the completion of returns as required under statute.
- 2.5 Whilst these responsibilities are specifically allocated to the Chief Finance Officer, it is the responsibility of individuals identified in paragraph 1.3 to be aware of and operate within the Financial Regulations, standing orders in Part 4 and the code of conducts and local protocols in Part 5 of the Constitution.
- 2.6 For Torbay Council schools operating under the School Standards and Framework Act 1998, ~~there are they have~~ specific Financial Regulations ~~which are a subset of these Financial Regulations~~. These ~~will have to beare~~ approved by the Chief Finance Officer in consultation with the Schools Forum.

## 3. Role of Chief Finance Officer (S151)

- 3.1 The Council supports the principles as set out in the "CIPFA Statement on the Role of the Chief Finance Officer in Local Government" (2010).
- 3.2 Delegations to Chief Finance Officer are listed in the Officer Scheme of Delegation in Part 3 of the Constitution.
- 3.3 The Chief Finance Officer is responsible for advising the Council and all decision-making persons and bodies on all financial matters. Accordingly he/she or his/her nominated representative must be consulted on all financial matters and they should be given adequate opportunity to provide written comments on any report that may have a financial impact or commitment on the Council at some point in the future.
- 3.4 The Chief Finance Officer or his/her properly authorised and nominated deputies

have a duty under Sections 114 and 114A of the Local Government Finance Act 1988 to report to the Mayor/Leader of the Council, Councillors and the Council's appointed External Auditor, if it appears that the Council, a Committee or Officer of the Council, or a Joint Committee on which the Council is represented, or the Mayor/Leader of the Council or individual Members of the Executive Cabinet, or the Executive Cabinet, or Committee of the Executive Cabinet, have acted in the following legally defined instances:

- (a) Has made or is about to make a decision which involves or would involve the Council incurring expenditure which is unlawful; or
- (b) Has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the Council; or
- (c) Is about to enter an item of account, the entry of which is unlawful; or
- (d) If it appears that the expenditure of the Council incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet the expenditure.

3.5 The Council shall provide the Chief Finance Officer with such staff, accommodation and other resources as are sufficient to allow statutory duties.

3.6 The Chief Finance Officer must consult with other appropriate statutory officers and Directors of the Council before submitting any report under Sections 114 or 114A.

#### **4. Accounting Procedures**

4.1 The Chief Finance Officer is responsible for keeping the accounting records of the Council including the Collection Fund and any third party income and expenditure. All financial systems and records maintained within any Business Unit shall be in a form approved by the Chief Finance Officer, kept up to date, and retained until after the formal completion of the external audit of the Council's accounts and issue of the Audit Opinion or as otherwise required by law or indicated in the Council's Retention of Documents Policy.

4.2 All financial documents to be retained as set out in the Council's document retention policy unless specific grant claims or statute require a longer period. Where possible all financial documents should be scanned and saved to the Council's IT network and if contractual offered to the Council's Records section for archive.

4.3 Accounting policies will be updated as necessary and reviewed by the Chief Finance Officer annually.

4.4 Accounting procedures will comply with proper accounting practice and follow principles determined from time to time by the Chief Finance Officer. No changes should be made to these practices without the prior approval of the Chief Finance Officer.

4.5 The Chief Finance Officer shall be responsible for interpreting and implementing all relevant legislation and guidance relating to the Council's finances, both revenue and capital. The Chief Finance Officer will also ensure that the Council's financial



procedures comply with all current codes of practice and will report on relevant implications to the ~~Mayor~~Leader of the Council, Members and Directors.

- 4.6 The Chief Finance Officer shall also be responsible for the Treasury Management function as defined by the relevant codes of practice.

## 5. Financial Control

### General

- 5.1 Standing Orders in relation to the Budget and Policy Framework refer to the timetable and preparation of the Council's Revenue Budget for the forthcoming year along with ~~revisions and the~~ indicative budgets for the ~~forthcoming four year period three following years and the ongoing monitoring of the~~for the Capital Investment Plan. Once approved, it is the responsibility of the ~~Executive Director~~Chief Executive, Directors, Assistant Directors, Executive Heads and all Budget Holders to ensure net expenditure is contained within the totals approved by Council, subject to any variations to these totals that may be approved by the Council. This responsibility remains even when partners incur expenditure on the Council's behalf.
- 5.2 The Chief Finance Officer, in conjunction with Directors, Assistant Directors and Executive Heads, shall produce regular reports to the ~~Chief Executive~~Executive Director, to the ~~Mayor~~Leader of the Council and the Overview and Scrutiny Board and Council on the current year's budget (including comparison with actual spending and projected out-turn).
- 5.3 The Chief Finance Officer, in consultation with the ~~Executive Director of Operations and Finance~~Chief Executive, may authorise the use of contingencies and expenditure from reserves and provisions approved as part of the Council's revenue and capital budget.
- 5.4 Within the context of these Financial Regulations the following definitions can be assumed to apply:
- (a) Approved Budgets – Those sums approved by the Council at its budget setting meeting and identified in the Council's Budget Digest as presented at that meeting (reflected in the Council's financial information management system) and approved Capital Plan. Budgets are set at a Business Unit level and subdivided into service areas. For the purpose of these Financial Regulations the approved budget is at the service area level, as shown in the approved budget digest.
  - (b) An amount is shown against an individual capital scheme or service programme.
  - (c) Virements – the transfer of money from one approved budget to another.
  - (d) Non cash transactions, such as sponsorship, land swaps, concessionary rents and similar transactions are to be accounted for at their market value and will be within the scope of these regulations.

### Revenue

5.5 The Chief Finance Officer, in consultation with the ~~Mayor~~Leader of the Council, is authorised to submit bids and accept any grant offers, including terms and conditions attached to such offers subject to the grant offer and terms and conditions being in accordance with the Council's policies and objectives. The Chief Finance Officer, in consultation with the ~~Mayor~~Leader of the Council, to determine the allocation and expenditure of any new revenue grant monies that are received during the year.

5.6 After consideration by the Chief Finance Officer ~~and subject to the approval of Council~~ when considering the end of the financial year position, any net uncommitted under-spends within a directly controllable revenue budget may be carried forward into an earmarked reserve to be used in the following financial year.

After consideration by the Chief Finance Officer, in consultation with the ~~Executive Director of Operations and Finance~~Chief Executive, when considering the end of the financial year position the following may be approved:

- (a) Individual budget under-spends of £10,000 may be carried forward at the request of the Director, Assistant Director or Executive Head.
- (b) Any net overspend (below £10,000) may also be carried forward to the following financial year and made good during that year.
- (c) Any net unspent grant, third party funds or funds committed but not spent within a directly controllable revenue budget may be carried forward into an earmarked reserve to be used in the following financial year.

5.7 Any item in the Approved Revenue Budget saved or expected to be, and additional revenue saved above approved budget is subject to the normal virement rules. This is subject to the Council's overall financial situation where, following consultation with the Chief Finance Officer, the ~~Mayor~~Leader of the Council (in respect of Executive functions) and Council (in respect to Council functions), a Director, Assistant Director or Executive Head may request that the budget saved is not spent or a virement is made to another Business Unit.

5.8 Within an approved Business Unit Budget, or between Business Units, the responsible Executive Head(s) of the Business Unit(s) may approve in-year virements provided that:

- (a) The virement does not exceed £100,000 within individual services in a Business Unit and £50,000 between Business Units;
- (b) The virement is requested in writing by the Executive Head (and a copy kept by the Chief Finance Officer or his representative);
- (c) There is no significant change of policy or significant reduction in service quality (in the opinion of the relevant Director, Assistant Director or Executive Head);
- (d) All virements above £100,000 within a Business Unit and £50,000 between Business Units must be approved by the Chief Finance Officer in consultation with the relevant Director, Assistant Director or Executive Head and the virement is included in the next budget monitoring report considered

## Torbay Council – Constitution      Financial Regulations and Contracts Procedures

by the Overview and Scrutiny Board; and

- (e) Any changes to budgets as a result of restructures, technical accounting changes including support service allocations are not subject to the virement rules.
- 5.9 Urgent decisions which are not wholly in accordance with the budget will be dealt with in accordance with the Council's Standing Orders in relation to Budget and Policy Framework and Officer Scheme of Delegation.
- 5.10 All fees and charges including fees set by statute are to be approved on an annual basis as part of the budget setting process. The Chief Finance Officer, in consultation with the ~~Mayer~~Leader of the Council, the ~~Executive~~Cabinet Lead for Finance and the ~~Executive Director of Operations and Finance~~Chief Executive, is authorised to make adjustments to fees and charges and introduce new charges in year within the approved budget if it is in the best interest for the Council and they have no adverse impact upon the revenue or capital budgets.
- 5.11 Where a permanent change to the Revenue Base Budget is being proposed (i.e. it affects more than the current financial year) the relevant Director(s), Assistant Director(s) and the Executive Head(s) concerned and the Chief Finance Officer will identify the proposed change as part of the next budget process.

### Reserves

- 5.12 The responsible officer, as identified in the Review of Reserves report approved by Council, for a reserve may authorise use of contributions to and from that earmarked reserve provided that:
- (a) The funds are used for the stated purpose of the reserve, as stated in the Review of Reserves report, in question;
  - (b) The level of such Earmarked Reserves is reported to the Overview and Scrutiny Board when the annual review of reserves report is considered (together with proposals for replenishment of the reserve in question where the Chief Finance Officer considers it appropriate);
  - (c) If the earmarked reserve is to be used for a purpose which differs from the original agreed terms of reference this must be approved by the Council; and
  - (d) The Council's finance system is to reflect the planned use of reserves in the year.
- 5.13 The Chief Finance Officer, in consultation with the ~~Mayer~~Leader of the Council, may recommend to the Council for approval in-year virements from the Council's General Fund Reserve to any Business Unit provided that the Chief Finance Officer is satisfied as to the robustness and adequacy of the Council's reserves.

### Capital

- 5.14 For each financial year Council will have an approved:-
- (a) Capital Strategy

(b) Asset Management Plan

(c) Capital Plan

- 5.15 Each quarter the Chief Finance Officer, in consultation with the Mayor/Leader of the Council, may approve any variations to the approved capital plan for new or existing schemes provided that the Chief Finance Officer is satisfied that the proposed variations will be contained within the overall approved Capital Budget Plan or that additional (and adequate) funding resources have been identified.
- 5.16 Any bids (or support for a partners bid) for capital grants and contributions over £100,000 to be notified to the Mayor/Leader of the Council and Chief Finance Officer prior to submission, to ensure the scheme is in line with Council priorities and funding and resource implications have been assessed. This will include any match funding and future revenue costs.
- 5.17 Prior to the approval of any scheme, the funding for the scheme and any future revenue costs must be identified and deemed to be achievable by the Chief Finance Officer.
- 5.18 The Chief Finance Officer, in consultation with the Mayor/Leader of the Council, is authorised to determine the allocation and expenditure of any new (ring fenced) capital grants or contributions that are received during the year.
- 5.19 The Chief Finance Officer, in consultation with the Mayor/Leader of the Council, may also approve any variation to timings for projects within the 4 years of the capital plan on a quarterly basis.
- 5.20 The allocation of any un-ring fenced grants or contributions to a service will be determined by the Chief Finance Officer taking into account the overall budget position of the Council and any expectations/conditions of the awarding body.a Council decision. Any schemes to be funded under the Prudential Code will also be a Council decision as set out in 5.269 below.
- 5.21 The Budget Holder, in consultation with the relevant Executive Cabinet Lead, is authorised to approve allocations of generic capital funding within an allocation to a service to individual projects within the overall total funding approved.
- 5.22 If the Council receives additional income not linked to a specific project such as a capital receipt, or has an under spend on a specific scheme this will be applied in the first instance to fund the existing €Capital pPlan. If the funding is in excess of the resources required to fund the existing €Capital pPlan it will be allocated to a general capital reserve pending further decision by the Council.
- 5.23 If an urgent and unforeseen need arises to undertake a project not included in the current approved Capital Plan, or to accelerate the preparation or commencement of an unapproved scheme the proposal shall be referred to the Chief Finance Officer at the earliest opportunity and before a substantial amount of preparatory work (i.e. costing more than £5,000) is undertaken and only if agreed by Chief Finance Officer, in consultation with the Mayor/Leader of the Council, the proposed capital scheme will be submitted for approval to the Council.
- 5.24 It is expected that individual projects should include a contingency. The approved

Capital Plan will also include a capital contingency, which as a target should be 1% of the Capital Plan. Use of this contingency will be determined by the Chief Finance Officer in consultation with the MayerLeader of the Council.

- 5.25 If any variation to the programme has a material impact upon the revenue budget in the current or future financial year(s), such as increased running costs or prudential borrowing, this must be approved by Council.
- 5.26 Any decision by Council to utilise prudential borrowing must be made with regard to the prudential framework, the approved prudential indicators and policies as set out within the approved Capital Strategy.
- 5.27 The Council maintains a Capital Reserve list as part of the approved Capital Plan. Any new resources received by the Council, if in excess of the resources required to fund the Capital Plan, should, in the first instance, be used to fund schemes maintained on the reserve list.
- 5.28 All capital expenditure incurred must comply with the CIPFA definition of capital as set out in the relevant accounting proper practice. The Chief Finance Officer will be the arbiter of disputes in relation to the eligibility of any expenditure.
- 5.29 All capital expenditure must be recorded accurately including asset reference to ensure the information on all Council assets, and their component parts, is correct within the Council's asset register.

## 6. Audit, Anti-Fraud and Anti-Corruption

### Internal Audit Function

- 6.1 The Chief Finance Officer shall maintain an adequate and effective system of internal audit of its accounting records and its system of internal control in accordance with proper Internal Audit practices, as governed by responsibilities under Section 151 of the Local Government Act 1972, and the Accounts and Audit Regulations 2015.
- 6.2 The internal audit service provided by the Devon Audit Partnership shall follow professional standards and guidelines in accordance with the Code of Practice for Internal Audit in Local Government in the United Kingdom issued by the Chartered Institute of Public Finance and Accountancy (CIPFA). The Code requires that an authority should have in place an approved Internal Audit Strategy which describes how the internal audit service will be delivered, and formally defines the purpose, authority and responsibility of internal audit.
- 6.3 The main objectives of the internal control system are to:
- (a) ensure adherence to management policies and directives in order to achieve the organisation's objectives;
  - (b) safeguard assets;
  - (c) secure the integrity, relevance, reliability, confidentiality and availability of information and resources, so ensuring as far as possible the completeness and accuracy of records;

- (d) ensure compliance with statutory requirements; and
- (e) ensure risks are identified and appropriately managed.

6.4 The Chief Finance Officer, or authorised representative, shall have authority in connection with an audit to:

- (a) visit all establishments and premises of the Council and other partners where the Council has a legal interest or an open book agreement;
- (b) have access to such documents which relate to the accounts of the Council, as may appear to be necessary for the purpose of the audit;
- (c) call for the production of cash, stores or other property in the custody of any employee of the Council;
- (d) require from any employee information and explanations necessary for that purpose;
- (e) remove and keep in safe custody any books, records, vouchers and other material that may be relevant; and
- (f) receive access at user level and/or system level to any computing or communications device, including access to interactively monitor and log traffic on Torbay Council's networks in accordance with the Council's Information Security Policy Framework.

6.5 The Head of Devon Audit Partnership (on behalf of the Chief Finance Officer) shall produce audit reports as appropriate and when an audit report is issued, the Head of the Business Unit concerned should respond in writing with an agreed action plan on any recommendations made without delay.

6.6 Where it appears that there is an opportunity of increasing the financial efficiency, economy or effectiveness of any Business Unit, the Head of Devon Audit Partnership shall, in conjunction with the Chief Finance Officer and the relevant Director(s), Assistant Director(s), Executive Head (s) or other authorised officer, investigate any relevant aspect of the work of any Business Unit and shall be empowered to make recommendations thereon. This includes appropriate value for money exercises.

6.7 The Head of Devon Audit Partnership shall have the right of direct access to, and freedom to report to, all senior management including the ~~Executive Director~~Chief Executive and Members.

6.8 Devon Audit Partnership shall be responsible for supplying to, or obtaining, such information required on behalf of itself or the Audit Committee or Overview and Scrutiny Board or other nominated sub-committee or working party or carry out any investigations requested, subject to the appropriate resources being available to undertake such investigations.

### **External Audit Function**

6.9 The Chief Finance Officer shall be responsible for:-



- (a) Ensuring an external audit function is being provided.
- (b) Liaising with external audit in all issues relating to the Statement of Accounts, Annual Governance Statement, specific grant audits and Value for Money.
- (c) Ensuring the above documents are available for External Auditors within agreed timescales and providing supporting documentation to enable External Auditors to provide an audit opinion.

### **Anti-Fraud and Anti Corruption**

- 6.10 The Chief Finance Officer will be responsible for a Council wide anti-fraud and anti-corruption policy. All members and officers, partners and suppliers are expected to act with integrity, adhere to that policy and not tolerate fraud or corruption in the administration of its responsibilities whether inside or outside of the Council.
- 6.11 Members and officers ~~shall to~~ comply with the Council's codes of conduct relating to the register of interest and gifts and hospitality.
- 6.12 The Chief Finance Officer will be responsible for ensuring whistle blowing procedures are in place.
- 6.13 The Chief Finance Officer and the Head of Devon Audit Partnership shall be notified forthwith by the ~~Executive Director~~Chief Executive, Directors, Assistant Directors, or the Executive Heads concerned, of any circumstances which suggests the possibility of irregularity in the exercise of the functions of the Council. The Chief Finance Officer or the Head of Devon Audit Partnership shall, on confirmation of the irregularity, be empowered to undertake any investigation considered necessary including informing the Police and shall inform the ~~Executive Director~~Chief Executive and Monitoring Officer of the full circumstances in accordance with the Council's Anti -Fraud and Anti-Corruption Policy and Protocol.

## **7. Banking Arrangements and Methods of Payment**

### **Bank Accounts**

- 7.1 The Chief Finance Officer is authorised to make arrangements regarding the Council's bank accounts, including the opening and closing of any account, and tendering for banking services. No charges/debits shall be set up on the bank accounts without the written consent of the Chief Finance Officer. All accounts must be in the name of Torbay Council.
- 7.2 The Chief Finance Officer must be notified of all bank accounts held. All bank accounts and balances need to follow the Council's banking procedures including online banking.
- 7.3 All transactions in the Council's bank accounts are to be included in the Council's finance system.
- 7.4 The Chief Finance Officer is authorised to agree the overdraft facilities and the charges for the operation of the Council's bank accounts with the bank.
- 7.5 All charges made by the Bank must be verified as being levied in accordance with

the scale of charges current at the time the charge was incurred.

- 7.6 All bank accounts shall, wherever practicable, be reconciled with cashbooks and/or other relevant records at least once each month.

### **Methods of Payment**

- 7.7 Payments from the above-mentioned bank accounts, by cheque, Clearing House Automated Payments System (CHAPS), electronic data (BACS), direct debit, via Bankline or any other agreed format, shall only be made in accordance with procedures agreed by the Chief Finance Officer.
- 7.8 All cheques, or similar agreed documents authorising payment, shall be signed by, or bear the facsimile signature of the Chief Finance Officer or other officers authorised in writing by the Chief Finance Officer.
- 7.9 All cheque payments should be made on crossed cheques unless otherwise directed and authorised by the Chief Finance Officer.
- 7.10 Where bank accounts are used for imprest accounts then two authorised signatures shall appear on the cheque.
- 7.11 Changes to the authorised signatures or the mandate can only be made through the Chief Finance Officer.
- 7.12 The Chief Finance Officer, or authorised deputies, is responsible for the transfer of funds from one bank account to another.
- 7.13 The Chief Finance Officer shall be responsible for the production of the electronic data for payments due, the forwarding to the processing centre and security.
- 7.14 All cheques and procurement cards shall be ordered only on the authority of the Chief Finance Officer, or authorised deputies, who shall ensure that arrangements are made for their safe custody and recording. Where procurement cards are issued, a record must be kept of the issue and signed by the receiving officer/~~member~~ confirming acceptance of the applicable conditions.
- 7.15 Only Procurement cards under the Government Approved Scheme are to be issued. No other debit or credit cards are permitted.
- 7.16 A voucher and/or receipt are required for all procurement card transactions, and where the goods include VAT, a VAT invoice/receipt must be obtained.
- 7.17 For any payment of £250,000 and over the following additional authorisations will be required:
- (i) Crossed cheques for £250,000 or over will be countersigned by a second signatory;
  - (ii) CHAPS payments will require electronic authorisation by a minimum of two authorised officers; and
  - (iii) A manual payment voucher for £250,000 or over will be countersigned by a bank signatory.



7.18 The Chief Finance Officer shall arrange such safeguards as are deemed necessary and practicable including ensuring that the following duties, as far as possible, are the responsibility of separate officers:

- (a) The checking of creditors invoices;
- (b) The control of cheques and like forms;
- (c) The preparation of cheques and electronic payment data;
- (d) The signing of cheques and like forms;
- (e) The despatch of cheques or electronic data;
- (f) The entry of cash accounts; and
- (g) The reconciliation of bank balances.

## **8. Imprest and Petty Cash Accounts**

- 8.1 The Chief Finance Officer, or authorised deputies, may advance a fixed imprest to an Officer of the Council for the purpose of meeting petty cash expenses. Each imprest or Petty Cash Account shall be of such an amount as the Chief Finance Officer, or authorised deputies, may determine in consultation with the Executive Head or other authorised officer, but shall not exceed the sum anticipated to be sufficient to meet such expenses for a period of two months, (unless there are exceptional circumstances necessitating a higher level and this is agreed by the Chief Finance Officer or authorised deputies).
- 8.2 The Chief Finance Officer, or authorised deputies, shall prescribe such conditions in connection with petty cash disbursements as is deemed desirable.
- 8.3 Petty Cash items shall be limited to minor items of expenditure and in the case of individual items, shall not exceed £100 except by arrangement with the Chief Finance Officer or authorised deputies.
- 8.4 No payments should be made from Petty Cash/Imprest Accounts where there may be HMRC implications. Petty Cash/Imprest Accounts should not be used for:-
- Travel and subsistence claims;
  - Working lunches;
  - Private phones (work usage);
  - Salaries and wages;
  - Entertaining (employees and non-employees);
  - Periodic Payments;
  - Construction Industry Scheme work; or
  - Governor Expenses.
- 8.5 All Executive Heads or authorised deputies shall maintain a list of all persons authorised to sign petty cash vouchers on their behalf and a copy of this list, including specimen signatures and initials shall be supplied to the Chief Finance Officer and the Payments section.

- 8.6 A voucher and/or receipt are required for all petty cash and imprest account transactions and, where the goods include VAT, a VAT invoice/receipt must be obtained. Vouchers and/or receipts should be forwarded to the Payments section with the claim for reimbursement. The relevant Executive Heads shall certify these claims as correct or such person(s) nominated for that purpose.
- 8.7 No income is to be paid into a petty cash account, other than reimbursement cheques.
- 8.8 No personal cheques are to be cashed via a petty cash account.
- 8.9 Petty cash imprests must be reconciled and balanced on a regular basis, and agreed to the bank statement (including un-presented cheques) where a bank account is in use. Imprests must be balanced at the 31 March each year to ensure the expenditure is changed to the correct financial year.
- 8.10 Every Officer holding a petty cash imprest shall certify to the Chief Finance Officer the amount of that imprest at 31 March each year.
- 8.11 The conditions for operating an imprest through a bank account must be agreed with the Chief Finance Officer, or authorised deputies, with the minimum of 2 signatories required.
- 8.12 Imprest accounts operated through a bank account must not go into overdraft.
- 8.13 Executive Heads shall inform the Chief Finance Officer in advance when employees who hold an impress account either leave the employ of the Council or otherwise cease to be responsible for the imprest. Whenever an Officer in charge of the imprest hands over, leaves or ceases to have custody of the imprest, the Executive Head, shall ensure that a prior check is made of the imprest concerned and that a handing over certificate is signed by the outgoing and incoming Officer.
- 8.14 Executive Heads or their authorised deputies may exercise delegated power to make ex-gratia payments to Officers, recognised volunteers and customers in a sum not greater than £50 as compensation for damage to or loss of property. Such payments can only be made when the incident occurred during normal Council activities and where such payment is calculated to facilitate or is conducive or incidental to the discharge of any of the functions of the Council. All requests for payment must be authorised and be supported with full written details of the incident and resulting damage/loss, reason for payment and evidence (e.g. receipts) of the actual cost of repair or replacement.
- 8.15 Where it is considered that £50 is insufficient to compensate for any damage or loss, then the individual may submit without delay details of the incident and related damage/loss to officers in the Claims Handling Section who will determine if the Council is legally liable to pay compensation via the standard claims handling procedure. If it is determined that no legal liability exists in respect of the loss/damage then no payment will be made.

## 9. Assets including Estates, Non Current Assets and intellectual property

### Asset Records

- 9.1 The Chief Finance Officer shall commission the TDA to maintain a terrier and asset register of all assets owned or leased in by the Council in a form approved by the Chief Finance Officer to comply with proper accounting practice. The asset register shall record: the holding body (if applicable); purpose details; nature of Council's interest; and rents payable, with particulars and terms of tenancies granted. The terrier is to be regularly reconciled to records held in the asset register.
- 9.2 TDA, the Chief Finance Officer and other appropriate officers shall co-operate in the preparation and maintenance of an asset register in suitable format and containing all the relevant information to comply with proper accounting practice. The valuation of assets, including an assessment of componentisation and asset life, shall be carried out as necessary to comply with proper accounting practice. The asset register (finance module) to contain details of accounting treatment and asset classification including current cost and historic cost records as required. The asset register (finance module) is required to comply with proper accounting practice.
- 9.3 The ownership of the asset register and terrier remains with the Council, though the TDA will maintain the records held and ensure an annual reconciliation.
- 9.4 All non-current assets should be recorded on the asset register, but valuations are only required for those individual assets where the value is estimated to be over £25,000. Where a group of assets e.g. computer equipment, collectively totals in excess of this amount, an entry should be made on the register to reflect this.
- ~~9.5 For assets valued under the CIPFA Transport Infrastructure Code of Practice valuations are only required for those individual assets or a group of similar assets where the value is estimated to be over £250,000.~~
- 9.56 The Monitoring Officer shall have the custody of all title deeds and leases under security arrangements agreed with the Chief Finance Officer.
- 9.67 Intellectual property is something unique that the Council has physically created. To protect internally developed intellectual property from theft and copying, Executive Heads should consider registration e.g. trade marks for logos or copyright for software created. Protecting these assets makes it easier to take legal action against anyone who steals or copies it.
- 9.78 If intellectual property is registered, the Executive Head must notify the Chief Finance Officer so the asset can be added to the asset register and the same safeguards that apply to the Council's other assets can be applied to these assets.

### Asset Disposals and Leases

- 9.98 For approval purposes a disposal is deemed to be applicable for both a freehold disposal and any lease where the term is in excess of 40 years.
- 9.109 The Council shall commission the TDA to undertake the arrangements for the lease or disposal in line with the terms specified by the relevant budget holders and these Financial Regulations and Contracts Procedures.

9.140 Officers will identify surplus assets for disposal or lease in accordance with the Officer Scheme of Delegation.

9.112 Officers will identify operational assets for lease in accordance with the Officer Scheme of Delegation.

9.12 Proceeds of asset disposal will be allocated in accordance with the approved Capital Strategy. Any proposal by a service to utilise the proceeds for a specific purpose or recommend to Council the disposal of the asset at below market value will need to be agreed by Chief Finance Officer in light of the overall financial position of the Council and any, as yet unachieved, capital receipts target.

9.13 All disposals or leases shall be subject to a formal process prior to entering into a written contract. All disposal and leases shall comply with the Council's Contracts Procedures. All disposal or leases above a market value of £10,000 (in the opinion of a RICS qualified valuer) must be conducted via the Council's Electronic Tendering System. This process shall include details of the asset and any conditions and specifying a reasonable closing date by which expressions of interest must be received. Standard forms of documentation shall be used where possible. The disposal or lease process can include the use of a public auction or similar competitive method such as a property listing website for at least ten working days in preference to the Electronic Tendering System.

9.14 In accordance with Contracts Procedures, disposal and lease tender processes in respect of property expected to be greater than £50,000 must be electronically sealed. The Electronic Tendering System is set up to electronically seal tenders above £50,000. Verifiers are set up in the system, which are Officers who are able to electronically unseal Tenders. Verification may only be undertaken by an authorised Verifier who has duly been approved by the Monitoring Officer and Procurement Service.

9.15 There are instances where a disposal tender process is also subject to Public Contract Regulations. This is usually when the disposal involves an element of land development. In these instances, advice should be sought from the Procurement Service.

9.16 Regulation 9.13 to 9.15 shall not apply to any of the following types of disposals or leases:-

(a) Grants of leases to existing tenants where security of tenure may exist and the terms of the lease not significantly changed (whether or not their existing tenancies have come to an end);

(b) Where the Grants of leases or licences relates to an asset where:

the market rent for an annual market rent does not exceed £10,000 per annum; or

the market value of the asset does not exceed £25,000 and

the length of the lease is less than 10 years;

(c) Disposals of land acquired under compulsory purchase powers to the original

owners of that land or their successors;

(d) Disposals of freehold in land where the interest disposed of is estimated not to exceed £10,000 in market value in the professional opinion of a member or fellow of RICS; Note the Council does not dispose of freehold property unless under statute but will consider a long term lease or if exceptional circumstances.

(e) Long term lease under the Councils Community Asset Transfer Policy.

9.17 The Chief Finance Officer (in consultation with the ~~Mayor~~Leader of the Council and Monitoring Officer) may give written authorisation to waive the requirements of Regulation 9.13 to 9.15 where he/she is satisfied that the proposed disposal or lease will be in the best interest of the Council and that the proposed terms of the disposal or lease are unlikely to be bettered by complying with Regulation 9.13 to 9.15.

9.18 All disposals and leases are to be accounted for on a gross basis showing the market value of the transactions. Any form of non cash transaction such as an exchange of land, nomination rights, or a concessionary rent below market value or similar transaction forms part of a budget holders' financial control (as set out in section 5 above).

9.19 Where a disposal or lease of land or buildings has been expressly approved by Council or the ~~Mayor~~Leader of the Council, that decision shall be actioned by Officers.

## Acquisitions

9.20 Where an asset has been identified for acquisition, if the market value of the asset is less than £50,000 the Officer Scheme of Delegation applies, if in excess of £50,000 the ~~Mayor~~Leader of the Council (where the acquisition is within the budget approved by the Council) or Council (if the acquisition is outside the budget and policy framework) shall approve the acquisition of that asset. In both cases this is subject to the funding being identified for the purpose, any ongoing revenue implications considered and will then be included in the ~~e~~Capital ~~s~~Strategy. ~~Where an acquisition of land or buildings has been expressly approved by Council (so far as part of the Capital Investment Strategy) or the Mayor, that decision shall be actioned by Officers.~~

## 10. Inventories (Moveable Property)

10.1 Items of moveable property are defined as any equipment used by a service in their duties including office equipment, specialist equipment, IT equipment including mobile phones, laptops and iPads.

(Note: Stock items used for service delivery such as printing and highways stock, and items for sale see section 11 below.)

10.2 All Executive Heads shall be responsible for preparing and maintaining an inventory of moveable property, in a standard form agreed by the Chief Finance Officer (see 10.5 below), for each of the establishments under their control. All inventory records should be held electronically on the Council's network.

- 10.3 The inventory will record an adequate description of all moveable items of equipment, office machinery, ICT and communication equipment and other property belonging, held on leasing agreement, donated to, or on trust to the Council, valued at over £500. Where there are vulnerable items these should be recorded in inventories irrespective of price.
- 10.4 All Executive Heads shall be responsible for the physical security and inventory of all computer hardware and software within their business units in accordance with ICT security policy (where this has not been purchased through ICT Services as set out in 10.2 above). Where hardware and software is purchased through ICT Services or has been assigned a Torbay asset number, ICT Services will maintain an appropriate inventory record.
- 10.5 Details on the inventory should include:
- (a) The name of supplier;
  - (b) The normal location of the item;
  - (c) The original purchase price;
  - (d) Any relevant model or serial numbers, etc; and
  - (e) Lease, loan and trust agreement details.
- 10.6 All property belonging to the Council and covered by the inventory category must be recorded in inventories immediately on receipt and notified to the Council's Insurance Section where the cost is more than £500. Where practicable, inventory items should be marked in a suitable manner as being the property of the Council.
- 10.7 Inventories shall be checked and certified as correct and complete by an authorised officer on an annual basis and copies of the inventories shall be supplied to the Chief Finance Officer on request. Deficiencies and/or surpluses should be reported to the Chief Finance Officer for action by the Devon Audit Partnership.
- 10.8 Inventory items deemed to be surplus to requirements and saleable old materials shall be disposed of only on the written authority of the Executive Head or authorised deputies. Where appropriate, items should be offered to other areas of the Council before being put up for use by other groups or offered for sale. Executive Heads shall obtain the best possible prices when disposing of redundant and obsolete items.
- 10.9 The Chief Finance Officer or authorised representative shall, at all reasonable times, have access to all property of the Council to audit the inventory.

## **11. Stocks and Stores**

- 11.1 Each Executive Head shall be responsible for the care and custody of stock including items for sale and stores for items used by the service in their business unit.
- 11.2 Stores shall not be in excess of reasonable requirements.

- 11.3 Records controlling the receipt and issue of all stores and equipment shall be kept in a form to be approved by the Chief Finance Officer.
- 11.4 The Chief Finance Officer, or authorised representative, shall be entitled to check stores and be supplied with such information relating thereto as may be required for the accounting, costing and financial records of the Council. They shall take such action as deemed necessary to deal with any discrepancies shown in any items of stock revealed at any time. In the event of the Executive Head, or authorised representative, becoming aware of any deficiency or theft a report should be made to the Chief Finance Officer immediately so appropriate action may be taken.
- 11.5 The Executive Head or other authorised officer shall certify that the quantities of stocks and stores held at 31 March each year are reasonable and necessary and, except where agreed by the Chief Finance Officer, that there has been adequate continuous and cyclical stocktaking carried out independently of the person in charge of the store/stock concerned.
- 11.6 The valuation method used for the year end stock valuation will be approved by the Chief Finance Officer.
- 11.7 Surplus and obsolete stocks, having ensured that they cannot be of use elsewhere within the Council, shall be disposed of by competitive tender or public auction unless the Chief Finance Officer, in consultation with the appropriate Executive Head, decides otherwise.
- 11.8 Whenever an Officer in charge of stores hands over, leaves or ceases to have custody of the stores, the Executive Head shall ensure that a prior check is made of the stores concerned and that a handing over certificate is signed by the outgoing and incoming Officer.

## **12. Investments, Borrowing, Loans, Guarantees and Trust Funds**

- 12.1 Treasury management activities will comply with the CIPFA Code of Practice for Treasury Management in the Public Services and the Council has formally adopted the following clauses:
- i. The Council will create and maintain, as the cornerstones for effective treasury management:
    - (a) A treasury management policy statement, stating the policies, objectives and approach to risk management of its treasury management activities;
    - (b) Suitable treasury management practices (TMPs), setting out the manner in which the Council will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities;
    - (c) A Minimum Revenue Provision Policy; and
    - (d) An Investment Strategy.

- ii The content of the policy statement and TMPs will follow the recommendations contained in Sections 6 and 7 of the Code, subject only to amendment where necessary to reflect the particular circumstances of this organisation. Such amendments will not result in the organisation materially deviating from the Code's key principles.
  - iii The Council will receive reports on its treasury management policies, practices and activities, including, as a minimum, an annual strategy and plan in advance of the year, a mid-year review and an annual report after its close, in the form prescribed in its TMPs.
  - iv The Council delegates responsibility for the implementation and regular monitoring of its treasury management policies and practices to the Audit Committee, and for the execution and administration of treasury management decisions to the Chief Finance Officer, who will act in accordance with the organisation's policy statement and TMPs.
- 12.2 All Treasury Management decisions will adhere to the annual Treasury Management Strategy and Annual Investment Strategy approved by Council.
- 12.3 Investment of Council funds shall be made by the Chief Finance Officer in the name of Torbay Council or nominated deputies.
- 12.4 The Treasury Management Strategy (in line with the CIPFA Code for Treasury Management in Local Authorities and any other relevant legislation in force at the time) shall be adhered to at all times. [The Strategy to include Non Treasury Investments such as loans, investment properties, pension guarantees and other guarantees.](#)
- 12.5 The Chief Finance Officer shall be authorised to invest temporarily or utilise such surplus monies of the Council as may seem proper and in the Council's interest.
- 12.6 Investments to any one borrower shall not exceed the limits determined by the Chief Finance Officer in line with the overall counter party creditworthiness policy.
- 12.7 The Chief Finance Officer shall be responsible for the safe custody of securities and shall maintain a record of all such borrowing.
- 12.8 The Chief Finance Officer will ensure that the borrowing requirements of the Council including overdrafts are in accordance with the CIPFA Prudential Code for Capital Finance and do not exceed the Authorised Limit approved by Council.
- 12.9 All borrowing transactions must be approved by the Chief Finance Officer or his authorised deputies.
- 12.10 All Trust Funds shall be administered by the Chief Finance Officer acting on the behalf of the legally appointed trustees.
- 12.11 All officers acting as trustees by virtue of their official position have a legal duty to exercise due care of valuables, documents, securities etc. and shall appropriately deposit them.
- 12.12 The requirements of the Charities Acts legislation must, where appropriate, be



observed.

- 12.13 The granting of a loan or a guarantee to a third party for a service purpose, which is part of the Council's policy and budget framework. The Chief Finance Officer has delegated powers to approve a loan or guarantee if value is under £50,000.

### 13. Income and Debtors

#### Income

- 13.1 Income is defined as all forms of income receipts, including internet payments, cash, bank credits, debit and credit card payments, cheques and self billing. This section also applies to partners dealing with income and cash on behalf of the Council.
- 13.2 Arrangements for the collection of all money due to the Council shall be subject to the approval and control of the Chief Finance Officer
- 13.3 All books of accounts, all official receipt forms or books, licences, tickets and all documents or vouchers representing receipts for cash or other forms of income, shall be in the form approved by the Chief Finance Officer. The Executive Head of the appropriate service or his/her nominated officer shall be responsible for the ordering, control and issue of these documents and all receipts and issues thereof shall be properly recorded and acknowledged.
- 13.4 Receipts by credit or debit card, including internet payments are acceptable where proper arrangements have been made for this facility. The Chief Finance Officer and Senior Information Risk Owner (SIRO) must approve all new card payment facilities and outlets offered by the Council [and these must be subject to a Data Protection Impact Assessment which is approved by Chief Finance Officer, Data Protection Officer and SIRO](#). All new requests should initially be made to the Corporate Debt and Incomes Manager.
- 13.5 All money received on behalf of the Council shall be promptly receipted and shall without delay be either paid to the Chief Finance Officer or banked in full in the Council's name as instructed. Such banking shall be made daily or at such intervals as the Chief Finance Officer may decide, but in any event not less frequent than once per week and in any case where the cash and cheques exceeds the insurance level of the respective safe or other facility used for holding the income.
- 13.6 Executive Heads shall be responsible for the safe custody of cash and items having a cash value entrusted to the care of their Business Unit. The arrangements made for safe custody shall be subject to review and authorisation by the Chief Finance Officer.
- 13.7 Where a new safe is required the Executive Head shall be responsible for notifying the Insurance Manager of the required level of cover, type of safe to be purchased and its proposed location to ensure insurer's requirements are met. The Chief Finance Officer shall be consulted prior to the purchase of any safes to ensure the insurance limits are adequate for the Council's needs.
- 13.8 Maximum limits of cash holdings shall be agreed with the Chief Finance Officer and must not exceed the insurance limit of the safe concerned.

- 13.9 Collecting officers shall ensure that all cheques received are correctly dated, the words and figures agree and are signed. Wherever possible, cheques should be endorsed on the reverse with the cheque card details (i.e. number, valid date and value).
- 13.10 In all cases cheques should be marked on the reverse with either the appropriate Business Unit date stamp or a source reference (i.e. account number, Business Unit, waybill number and payer's reference) before banking.
- 13.11 Postal Remittances:
- (a) All postal opening duties shall be clearly defined and supervised by the appropriate Executive Head or an authorised deputy and two officers should empty all post boxes;
  - (b) All post shall be opened promptly in the presence of two officers and all cheques must be marked on the reverse with the appropriate Business Unit date stamp. Cash remittances received via the post **must** be promptly and accurately recorded by the responsible officers and paid in as agreed in 13.5 above.
- 13.12 Transfer of monies from one member of staff to cashiers must be properly recorded and receipted.
- 13.13 Money held on the Council's behalf must at all times be kept separate from private or unofficial money and must never be used for private or unauthorised purposes.
- 13.14 All cash collection devices shall be emptied at frequent and regular intervals as laid down by the Chief Finance Officer in consultation with the Executive Head. This shall be done by two officers who shall agree and certify the amounts of cash collected, or such arrangements as the Chief Finance Officer may determine.
- 13.15 Personal cheques shall not be cashed or money loaned out of cash held on the behalf of the Council.

### Debtors

- 13.17 Debtors are defined as all forms of income due including sundry debtors, car parking, libraries, s106 (and CIL) agreements, rent, fines, benefit overpayments, council tax and NNDR.

[13.18 All income due shall be recognised by the raising of a debtor. This includes any income raised on any service specific financial systems.](#)

- 13.198 Executive Heads shall notify the Chief Finance Officer as early as possible of all money due to the Council under contracts, leases, tenancy agreements, agreements for the sale of property and any other agreements involving the receipt of money by the Council.

- 13.2049 The Executive Head or other authorised officers shall provide such particulars of charges for work done, goods supplied or services rendered on behalf of the Council and of other amounts due, as the Chief Finance Officer may require ensuring prompt recording of all funds receivable by the Council. Sundry Debtor invoices and credit notes should be raised promptly and shall be produced in

keeping with current FIMS procedures, guidance, training and advice. Invoices should not normally be raised for amounts of less than £100. Executive Heads or other authorised officers including partners should arrange, wherever possible, for all amounts to be collected at the actual time or in advance of the supply of goods or rendering of the service and paid in by such method as agreed by the Chief Finance Officer.

13.219 A credit note should only be raised where the invoice was incorrectly raised. In all other case the write off procedure should be followed.

13.242 The Chief Finance Officer, in consultation with Executive Heads, will review all outstanding debt at year end and will estimate the value of debt that is likely to be uncollectible.

13.232 Debtor Account Write-Offs and any debt on any service specific financial systems, excluding Council Tax, NNDR and Housing Benefit Overpayments will be dealt with as follows:

- (a) The Debtor Administrator for the individual income systems will recommend debts for write off to Executive Heads;
- (b) Executive Heads of the service raising the charge shall be empowered, after giving due consideration to all the circumstances involved, to write off individual debts below £1,000 and shall inform the Chief Finance Officer of the action taken;
- (c) For all other sums of £1,000 or above the Executive Heads shall request that the Chief Finance Officer approves the write off of the debt, in consultation with the Executive Cabinet Lead for Finance;
- (d) The Chief Finance Officer will maintain a written record of any amounts over £1,000. A quarterly report shall be made to the Overview and Scrutiny Board of the total amounts written off which exceed £5,000, by category and stating the reason for write-off.

13.243 For Debtor write offs for Council Tax, NNDR and Housing Benefit Overpayments, the following will apply:

There will be statutory debts raised under the above debt types, which after due consideration of the circumstances relating to an account, it may be considered as un-collectable and it is appropriate to write off the outstanding balance. The outstanding balances for write off's will be identified, written off and reported on a quarterly basis each financial year as follows:

- (a) The Corporate Debt and Incomes Manager will consider a sample of debts (e.g. five for each debt type) and will sign that that they are appropriate accounts to be written off;
- (b) The Corporate Debt and Incomes Manager will sign the Write Off Report, that all of the accounts will have been subject to a checking process by two relevant members of staff, before the debt is recommended for write off on the system; and

- (c) For debts over £5,000 the Chief Finance Officer will sign off the Write Off Report.

Debts which are written off in the quarterly process which exceed £5000 will be reported to Overview and Scrutiny Board and Council, by debt type and stating the reason why the debt has been written off.

#### **14. Orders for Work, Goods and Services**

- 14.1 Orders must be issued for all work, goods and services supplied to the Council (including those supplied under a call off contract or where supplier pro-forma orders are used) and must be produced via the Council's Financial Information Management System (FIMS) except in the following circumstances:

Invoice payments relating to:-

- Rent
- Taxes e.g. NNDR and Council Tax
- Utility Bills e.g. Electric, Gas, Water, Telephones, TV Licences and Internet Charges
- Other Electronic Ordering Systems
- Programmed Contract Work where an official Contract Payment Certificate has been used.
- Supporting People Contracts – interface and periodic payments should be used where possible
- Temporary creditor, for 'one off' supplier payments

Or payments where it is inappropriate to obtain an invoice including:-

- Grants
- Refunds/overpayments
- Other - in agreement and format with the Payments Manager.

Any further exceptions must be agreed by the Payment Manager with the Executive Heads concerned and with the Chief Finance Officer.

- 14.2 A list of all persons approved to authorise orders within Business Units will be maintained by the FIMS Team and displayed on the Council's intranet site. Executive Heads are responsible for ensuring these lists are complete and accurate.
- 14.3 Authorisation controls shall be maintained within the FIMS system. Each Executive Head shall review authorisation permissions regularly and ensure that the FIMS

## Torbay Council – Constitution      Financial Regulations and Contracts Procedures

Team is notified of any changes to the authorisation structure immediately.

- 14.4 The Chief Finance Officer may allow orders to be auto 'Goods Received' in the FIMS system where it has been proven that authorisation has occurred in a system prior to the order being raised (i.e. Mayrise).
- 14.5 The Chief Finance Officer has the discretion to change the authorisation / Goods Receipting tolerance levels (either in totality or for individual contracts) if he is satisfied that it is in the best interest of the Council and that any associated risks have been minimised.
- 14.6 Orders shall be produced in keeping with current FIMS guidance, training and advice (including Purchase Order Processing FAQs).
- 14.7 Orders shall comply with current contracts and framework agreements where they exist.
- 14.8 Suppliers should be aware of contractual conditions and liabilities imposed by the Council.
- 14.9 No order shall be issued for goods, work or services unless the cost is covered by the approved annual budgets, a supplementary estimate or by virement approved by paragraph 5.8 above or delegated powers.
- 14.10 Every officer issuing an official order (or ordering via any other approved medium) shall ensure, and be able to show that, as far as is reasonable and practicable and with regard to the sums of money involved, that the best terms are obtained in respect of each transaction (as per Contracts Procedures).
- 14.11 The Chief Finance Officer may approve alternative arrangements for the ordering of goods etc., where circumstances or trading necessity make this desirable. Such approval must be given in writing.
- 14.12 Verbal orders must only be given in cases of urgency and must only be given by officers who have the appropriate budgetary responsibility. Where a verbal order is made, it must be confirmed no later than the next working day by the issue of an official order, endorsed 'confirmation order'. With regard to major emergencies, reference should be made to paragraphs ~~154~~.16 and ~~154~~.17 below.
- 14.13 The Chief Finance Officer shall assist Executive Heads to ensure that they are able to obtain the fullest possible price advantage in line with any appropriate corporate purchasing policy. Devon Audit Partnership will assist Executive Heads by carrying out relevant Value for Money exercises where resources allow.
- 14.14 Each Executive Head or other authorised officer is authorised, in accordance with this Constitution and powers delegated by the Council or the Leader of the Council, to incur normal recurring and non-recurring expenditure, subject to the following conditions:
  - (a) Budgetary provision has been made for the expenditure by way of revenue or supplementary estimate or compensating income is recoverable from a third party; and

- (b) The quotation and tendering procedures described by the Contracts Procedures and these Financial Regulations have been observed and it has been demonstrated that value for money has been obtained, unless minuted authority has been given by the Council or Chief Finance Officer for their waiving.

14.15 In cases where orders have been lost by suppliers, confirmation of the order shall be given by sending a 'copy' of the order. This copy needs to be endorsed as being a copy as opposed to resending the original.

14.16 In the case of a major emergency (as declared by the ~~Executive Director~~Chief Executive or his/her authorised deputy), the ordering of goods, works or services may be undertaken by 'non-authorised' officers (i.e. no budgetary responsibility) as part of the Emergency Team. This may constitute the issue of verbal order. However, evidence of such orders must be appropriately documented with the senior officer responsible for dealing with the emergency informing of any costs likely to lead to significant expenditure by the Council.

14.17 In the case of an emergency and where officers identify a need for expenditure of a strategic nature, then the requirements of this Constitution should prevail.

## **15. Payment of Accounts/Invoices**

15.1 The payment of all money due from the Council shall be made by the Chief Finance Officer or authorised deputies, with the exception of payments made from imprest accounts and petty cash in line with section 8 above. (Note: Special arrangements have been made for some schools.)

15.2 Each Executive Head shall arrange for invoices to be sent in the first instance to the Payments Section and any exceptions to this must be previously agreed with the Payments Manager or deputy. In accordance with directions to be specified on the orders, the supplier shall be asked to quote the name of the Business Unit, the number of the order, details of the goods or service supplied and the place where the work was done or goods delivered.

15.3 Where purchases have been made using an approved Purchase Card scheme where one exists, it is the responsibility of each Executive Head to ensure that all card statements are checked, reconciled and authorised and that the goods/services are for business use and comply with all the current guidelines issued for Purchase Cards.

15.4 Invoices shall not be made out by officers of the Council except in any case or category of cases agreed by the Chief Finance Officer. Paper invoices shall only be accepted on which details are written in ink, typewritten, printed or computer generated. All invoices from VAT registered suppliers are required to be a valid VAT invoice in accordance with HMRC requirement. Emailed invoices can only be accepted if they are sent directly to the Payment Section by the supplier and where appropriate should quote a Financial Information Management System (FIMS) order number. Electronic invoices may be accepted from suppliers if they meet the Council's prescribed conditions in line with Statutory Legislation.

15.5 No amendments shall be made to an invoice. Incorrect invoices should be returned

to the supplier for replacement. At the discretion of the Payments Manager or deputy, invoices which do not include a valid FIMS order number may be returned to the supplier requesting further information before payment is made.

- 15.6 The authorisation of an invoice implies that the responsible officer(s) has examined, verified and certified that:
- (a) The goods/services have been received, examined and approved as to quality and quantity, or that services rendered or work done have been performed satisfactorily;
  - (b) They conform to the order;
  - (c) The price is in accordance with the quotation, contract or current market rate, whichever is applicable or is otherwise reasonable;
  - (d) The arithmetic accuracy of the invoice is correct and that all trade and cash discounts, other proper allowances and other credits due have been deducted;
  - (e) The expenditure has been properly incurred, has been duly authorised and is within the financial provisions;
  - (f) The cost allocations are correct;
  - (g) The invoice has not previously been passed for payment and is a proper liability of the Council;
  - (h) Where items of moveable property are purchased costing more than £500, an entry has been made in the appropriate Inventory;
  - (i) Where the purchase is over £25,000 for a single item, an appropriate entry has been made in the Council's Asset Register maintained by the Chief Finance Officer
  - (j) Where the value exceeds £5,000 Officers must ensure that the Contracts Register, available via the Procurement Service, is completed.
  - (k) The duties of “ordering; receiving goods, works and services” and then “certifying the relative invoices for payment” has not be performed by the same officer, subject to the Chief Finance Officer being informed if such a separation of duties in any individual instance is impracticable.

The above checks should be undertaken irrespective of the order or payment mechanism used.

- 15.7 A list of officers authorised to certify invoices/vouchers shall be sent by each Executive Head to the FIMS Systems Team, including specimen signatures and initials. All amendments to the list shall be notified to the Chief Finance Officer in writing.
- 15.8 Invoices not received centrally (by prior agreement) shall be date stamped, examined by the Business Unit promptly and submitted within 3 working days to the Payments Section for payment. Care should be taken to ensure that ‘prompt



## **Torbay Council – Constitution      Financial Regulations and Contracts Procedures**

payment' discounts are not lost or any penalties incurred (i.e. late payment fees).

15.9 There are certain circumstances when it may be necessary to make a 'Manual' Payment:

- (a) Invoices received (where a POP order was not required, as per 15.1);
- (b) Payment required, but no invoice received and POP order not required as per 15.1; or
- (c) Special arrangements, due to the nature of the service (i.e. Occupational Health); or one-off payments at the discretion of the Payments Manager.

Although these types of payments are classified as 'Manual', the method by which they are actually paid could vary, i.e. via a paper voucher or an electronic process. Authorisation for such payments (where appropriate) are in line with the Council's main Financial system, and a list of the types of payments falling into the above categories is held within the Payments Section 'Processes & Procedures' document (subject to change).

15.10 The Payments Section shall examine, in so far as is considered necessary, all invoices passed for payment and shall be entitled to make all such enquiries and to receive such information and explanations as are necessary to ensure that the invoices are in order.

15.11 Subject to the foregoing regulations being complied with, the Payments Section shall pay all invoices passed for payment.

15.12 All paid invoices and certificates shall be retained by the Chief Finance Officer, or authorised officer, in line with the Council's Retention of Documents Policy.

15.13 Each Executive Head, or authorised deputy, shall be responsible for prompt processing of invoices. This includes both FIMS and manually processed invoices and shall imply the following:

- (a) Prompt despatch of manually certified invoices to the Payments Section;
- (b) Prompt receipt goods/services (also known as GRN) on the FIMS system;
- (c) Prompt response to system generated Business Event Manager messages with regard to mismatched (held) invoices on the FIMS system; and
- (d) Prompt response to emails from the Payment Section with regards to logged invoices.

## **16. Salaries, Wages, Travelling, Subsistence and Other Expenses**

16.1 All staff must comply with the current version of the Council's Human Resources Policies in respect of salaries, wages, travelling subsistence and other expenses.

## **17. Members' Allowances**

17.1 Allowances for the ~~Mayor~~Leader of the Council and councillors shall be paid in accordance with the Council's approved Members' Allowance Scheme as set in the



Council's Constitution.

**18. Insurance**

- 18.1 The Insurance Manager, in consultation with the Director of Corporate Services and Chief Finance Officer, shall effect all approved insurance cover and negotiate all claims and maintain necessary records.
- 18.2 Each Executive Head shall give prompt notification to the Insurance Manager of all new risks to be insured, any existing risks for which cover is no longer required and any changes to existing policies.
- 18.3 If there has been a failure by an Executive Head (or equivalent) to take reasonable precautions to prevent or minimise accidental injury, loss or damage or a disregard to Health and Safety requirements or the Council's Risk Management policy an uninsured loss (excess) may be charged to the client department concerned.
- 18.4 Each Executive Head must notify the Insurance Manager as soon as is practically possible and then confirm in writing details of any loss, liability or damage or any event likely to lead to a claim against the Council.
- 18.5 Executive Heads must assist the Insurance Manager by supplying all information required promptly in order that the Insurance Manager may comply with current legislation and enable claims to be settled as quickly as possible.
- 18.6 The Insurance Manager shall, at regular intervals, provide other Executive Head with details as to the progress and eventual settlement of all claims made on their behalf.
- 18.7 The Executive Heads shall maintain a continuous review of insurance cover held, which must include a regular review of valuations and the types of risks covered by existing policies.
- 18.8 All appropriate Council employees shall be insured by fidelity guarantee insurance.
- 18.9 No indemnities shall be given without the written authority of the Assistant Director of Corporate and Business Services, who will inform the Council's insurers when appropriate.
- 18.10 The Director of Corporate Services and the Chief Finance Officer in consultation with the Insurance Manager shall administer the Council's Insurance Fund and take appropriate decisions regarding all insurance strategies. This will include financing expenditure from the fund to mitigate future risks in line with the protocol for managing the Insurance Fund.
- 18.11 The Insurance Manager will determine whether leased out property is insured by the Council or tenant. Where the tenant does not insure, the TDA will recover the insurance charge on behalf of the Council, through the lease.

**19. Risk Management**

- 19.1 Directors, Assistant Directors and Executive Heads shall ensure that risk is managed effectively in each service area within the agreed Performance and Risk

Framework by ensuring all staff are aware of the Strategy and the processes detailed within it.

- 19.2 Executive Heads and Service Managers will identify and manage risks within their area of responsibility and these shall be communicated directly to the Director of Commercial Services for inclusion on the appropriate Risk Registers.

## **20. Security**

- 20.1 Each Executive Head is responsible for maintaining proper security of assets used by their service such as cash, keys and equipment at all times and shall consult the Chief Finance Officer where security is thought to be defective or where it is considered that special security arrangements may be needed.
- 20.2 The loss of any assets must be reported to the Head of Devon Audit Partnership and the Chief Finance Officer.
- 20.3 Each Executive Head is responsible for maintaining proper security of all buildings, furniture and equipment under their control. They shall ensure that all members of their staff are aware of the Corporate Security Policy, of their responsibility for the security of offices, the possession of keys and other means of access.

## **21. Group Entities**

- 21.1 Council associates and subsidiary companies shall comply with accounting treatments and reporting as required by Chief Finance Officer to meet Council reporting requirements.

## **22 Working with our Partners**

- 22.1 All Council arrangements with partners, in whatever legal form, that involves the Council's expenditure, income, service provision, assets, liabilities or data will apply the Financial Regulations and comply with the Council's information governance, system access and user requirements as if they were staff employed by Council. Where appropriate they will also comply with the Council's Code of Corporate Governance.

- 22.2 Financial Regulations apply to individuals and companies acting as staff although not employed as such e.g. agency staff, seconded staff and other contractual arrangements.

[22.3 The Financial Regulations apply to the Council and any associated companies. The Chief Finance Officer legislative requirements apply to all council assets and liabilities included subsidiary companies. The Chief Finance Officer therefore has responsibility for the financial systems, financial procedures and financial regulations in use by the subsidiary companies.](#)

- 22.43 Working arrangements with partners to include, but not exclusively, companies the Council has a shareholding in, joint committees, pooled budgets, specific client/contractor relationships, Health Act joint working and shared services. Executive Heads are to inform the Chief Finance Officer of any working arrangement entered into to ensure all parties are aware of their responsibilities in

relation to Financial Regulations.

22.54 The Chief Finance Officer:-

- (a) Must ensure that the accounting arrangements to be adopted when working with our partners are satisfactory;
- (b) Consider overall corporate governance arrangements and legal issues, in consultation with the Monitoring Officer, when arranging contracts with external bodies;
- (c) Ensure risks have been fully appraised before agreements are entered into with external bodies; and
- (d) Must protect Council data.

22.65 The Chief Finance Officer must ensure, where appropriate, partners:-

- (a) Are aware of their responsibilities under the Council's Financial Regulations and Contracts Procedures in particular Council procurement and contract guidance, and Information Governance standards;
- (b) Permit an "open book" access to information as required by the Chief Finance Officer;
- (c) Provide information the Council relies on in a form and to a timetable as defined by the Chief Finance Officer or relevant contract;
- (d) Must not incur expenditure which will be funded by the Council without establishing that an approved budget exists and the approval of Council's Budget Holder;
- (e) Can not authorise a payment from the Council to themselves;
- (f) Access to the Council's finance and other systems is to be approved by the Chief Finance Officer or Executive Head. Access to be reviewed on an annual basis; and
- (g) Have agreed and formally accepted the roles and responsibilities of each of the partners involved in the project before the project commences.

22.76 Where partner uses the Council's Financial Management Information System (FIMS) on behalf of the Council. The Executive Head in consultation with the Chief Finance Officer is to ensure that the partner fulfils the Council's requirements in relation to its statutory duties and the Constitution including these Financial Regulations.

22.87 For the avoidance of doubt partners must adhere to the Council's Financial Regulations and guidance on income, rental agreements, write offs and credit notes.

22.89 Partners must also adhere the Council's Financial Regulations and Information

Governance in relation to information held by or accessed by partners on other Council's systems e.g. Asset Register and Paris.

22.109 The Chief Finance Officer is to approve access to Council systems for internal (Devon Audit Partnership) and the Council's appointed External Auditors

**23. The Council working for third parties**

23.1 All proposals for working with third parties are to be fully costed. Where these costings exceed £25,000 approval from the Director of Corporate Services or Chief Finance Officer is required before contracts are drawn up or when applying for a contract opportunity through a tender process.

23.2 Advice should be sought from the Procurement Service when applying for a contract opportunity through a tender process.

23.3 The Chief Finance Officer, in consultation with Executive Heads, must ensure:-

- a) That the Council is not put at risk from bad debts wherever possible;
- b) The contract is not subsidised by the Council;
- c) That wherever possible, payment is received in advance of delivery of the service;
- d) That such contracts do not impact adversely upon the services provided by the Council; and
- e) Insurance arrangements are in place.

23.4 Executive Heads will provide any documentation or information the Chief Finance Officer requires for financial reporting.

## Contracts Procedures

### A. General Information/Introduction

#### 24 Contracting Council

- 24.2 Torbay Council (the Council) is the Contracting Council. This means that all Contracts are let on behalf of the Council as a whole and no Business Unit, Service, Team or other part of the Council has the legal capacity to enter independently into any Contract.
- 24.3 The Council remains the Contracting Council when entering into collaborative Contracts where the Council procures goods, services or works jointly with other public sector organisations but may not carry out the procurement process.
- 24.4 The administration, monitoring and ensuring compliance with these Procedures shall be the responsibility of the Chief Finance Officer and the Monitoring Officer.

#### 25. Extent and Application of Contract Procedures

- 25.1 These Contract Procedures are made under Section 135 of the Local Government Act 1972.
- 25.2 These Procedures apply to all Contracts for goods, services and works for and on behalf of the Council, including ad-hoc one-off requirements and they will be applied by any Officer or agent of the Council undertaking any purchasing or procurement activity on behalf of the Council.
- 25.3 These Procedures will also apply in respect of Contracts for the disposal of assets (such as land) and the awarding of leases for which some form of application or bidding process is undertaken or where it becomes a procurement as defined in section 9 of the Financial Regulations.
- 25.4 These Procedures will also apply in respect of the award of any grant funding for which some form of application or bidding process is undertaken.
- 25.5 These Procedures apply to all expenditure by the Council irrespective of the funding source (except where specific terms and conditions attached to a third party funding source determines the method in which the Contract is to be let) and includes expenditure that has been devolved in any way.
- 25.6 These Procedures set out minimum standards and compliance is vital in:
1. Meeting legislative requirements;
  2. Demonstrating probity in the procurement process;
  3. Delivering economy, efficiency and effectiveness through competition; and
  4. Avoiding practices that may restrict, distort or prevent competition.

25.7 The only exemptions to these Procedures are those detailed in paragraph 30 (Exemptions from the Application of Contract Procedures).

## **26. Breach of Contract Procedures**

### *26.1 Reporting and Disciplinary Action*

Any non-compliance or breach of these Procedures will be reported immediately on discovery to the Procurement Service, who will escalate it to the Monitoring Officer and Chief Finance Officer.

The Monitoring Officer will undertake an investigation where deemed necessary. The investigation findings will be reported to the Chief Executive and appropriate Director/Assistant Director and as appropriate to, the relevant Senior Officers, and appropriate Members.

Investigation findings will be referred to Human Resources where any breach of these Procedures requires further action in accordance with human resources policies, including disciplinary action.

Failure to report any known non-compliance or breach may result in disciplinary action being taken against the Officer who failed to report the non-compliance or breach.

### *26.2 Implications of Non-Compliance*

Any non-compliance or breach of these Procedures can seriously impact upon the legal standing of the Contract and can increase the ability of unsuccessful economic operators to seek redress through the courts. The consequences to the Council of non-compliance or breach of these Procedures are wide ranging and may result in:

- damage to the Council's reputation;
- suspension of the procurement process;
- removal of individual bidders from the process;
- suspension of the implementation of any decisions made in relation to the outcome of a procurement process;
- termination of a procurement process;
- requirement to retender the Contract;
- reduction to the term of a Contract;
- termination of a Contract;
- payment of damages or compensation to a bidder or bidders;
- payment of a civil financial penalty;
- repayment of grant funding;
- exclusion from bidding for grant funding.

**27. Prevention of Corruption and Conflict of Interest**

- 27.1 Officers have a duty in law to avoid any form of behaviour or conflict of interest that might distort or restrict competition or award of a contract are subject to the risk of being challenged. All Officers involved in any purchasing or procurement activity must declare any vested interests, whether direct or indirect, that could conflict with the best interests of the Council, this includes where they have an interest in any person(s) said to be affected by the outcome of the purchasing or procurement activity.
- 27.2 Officers must comply with the Code of Conduct for Employees and not offer, promise, give or receive any gift or reward in respect of the award or performance of any contract.
- 27.3 Officers are advised that any inappropriate behaviour that is deemed contrary to the Bribery Act 2010 could result in dismissal and the matter may be reported to the police.

**28. Delegated Authority**

- 28.1 The Officer Scheme of Delegation sets out arrangements for tenders to be issued and acceptance of contracts to be awarded.

**29. Authority to Undertake Procurement Activity**

- 29.1 Officers undertaking procurement activity must be appropriately trained and as a minimum have completed the induction level Procurement Module on i-Learn.

**30. Exemptions from the Application of Contract Procedures**

- 30.1 An exemption or waiver from these Contract Procedures may only be applied for where:
- a. the proposed Contract is of a very specialist nature and there are insufficient suitable Contractors in the market to fully comply with these Procedures; and/or
  - b. the proposed Contract is required urgently. The urgency must be brought about by events that were unforeseeable by and not attributable to the Council and which will result in loss or damage to the Council if the suspension or exemption is not allowed; and/or
  - c. it would be in the best interests of the Council or local people not to comply in full with these Procedures; and
  - d. the appropriate due diligence checks have been undertaken on the economic operator (where the request relates to the Award of a new Contract, as opposed to extending an existing arrangement) prior to submitting the request to waive Contract Procedures. Details of the due diligence requirements can be found in the Waiver Process Guidance available from the Procurement Service.

30.2 Officers must note the following before applying for a Waiver:

1. lack of planning and/or internal process delays will not constitute special, exceptional or emergency circumstances;
2. exemptions from these Procedures must not be applied for retrospectively;
3. exemptions from these Procedures must not be applied for where the value of the Contract will exceed the relevant EU Spend Threshold.

### **31. Waiver of Contract Procedures**

31.1 Written authorisation, using the agreed process and Waiver Request Form, is required to waive these Procedure requirements.

31.2 Any request to waive these Procedures must be approved by both the Procurement Service and Chief Finance Officer, before the Officer can proceed with the Award.

31.3 Where the value of the contract exceeds £50,000, consultation must be undertaken with the approval will be required from the Mayer~~Leader of the Council~~ or relevant Executive Cabinet Lead Member and the relevant Director/Assistant Director before the Officer can proceed with the award.

31.4 A waiver should not exceed 12 months from date of expiry of existing contract or proposed start date of new contract or supply.

31.5 Where authorisation is given to waive Contract Procedures an appropriate contract must be issued to the supplier and the details of the award entered onto the Contracts Register.

31.6 The Procurement Service must keep a record of all cases where an exemption from these Procedures has been requested and authorised, or declined and will report these to the Joint Operations Management~~Senior Leadership~~ Team on a six monthly basis.

### **32. Appointment of Management Consultants and Agents**

32.1 Any consultant, architect, surveyor, engineer or any other external agent appointed to act on behalf of the Council must be procured in accordance with these Procedures.

32.2 It is a condition of appointment that any consultant, architect, surveyor, engineer or any other external agent appointed to act on behalf of the Council in relation to any procurement process or management of Contracts will:

- (a) Have a Contract condition that ensures that copyright in respect of anything created or completed by that external agent in relation to the appointment will be the property of the Council. Where issues arise in respect of copyright, Officers are required to seek guidance and advice from Legal Services.
- (b) Sign a Confidentiality Agreement and declare any conflict of interest that may arise prior to starting any procurement process and again prior to completing



the tender evaluations. Where a significant conflict of interest arises the consultant must not be part of the tender evaluation process.

- (c) Comply in full with the requirements of the EU Directives, Public Contract Regulations, these Procedures, all relevant legislation and all Council policies;
- (d) Provide evidence that they are trained in and competent in public procurement;
- (e) Produce to the nominated Council Officer, on request, all relevant records and documentation relating to the procurement process or contract being managed on behalf of the Council;
- (f) On completion of the procurement process or contract being managed provide to the nominated Council Officer all relevant records and documentation related to the activity.

32.3 No consultant shall make a decision on whether to award a tender or whom to award it to.

## **B. Legal Framework**

### **33 Compliance with Legislation**

These Contract Procedures comply fully with:

- (a) The requirements of the EU Consolidated Public Procurement Directive, which takes precedence over national and local procurement legislation and Regulations; and
- (b) The Public Contract Regulations 2015, which take precedence over local procurement Regulations.

Every procurement process undertaken on behalf of the Council must be run in an open, fair and transparent manner.

Where a procurement process relates to the spending of European or UK Grants any requirements in relation to how those funds are spent, including ESIF Compliance Guidance, will take precedence over local procurement Regulations.

### **34. Non Compliance with Legislation**

#### **34.1 *Failure to Comply with the Public Contracts Directives and Legislation***

Any failure to comply in full with the requirements of the Directives and Regulations can result in the Council becoming subject to Court action and / or enforcement action by the EU.

34.2 The penalties include:

1. Prohibition from entering into a Contract;
2. Shortening of Contract terms;
3. Fines when a complaint is upheld (including civil financial penalties, damages and compensation);
4. Contract termination;
5. Repayment of EU funds, where applicable.

34.3 In addition, whenever legal proceedings relating to a Tender Award decision are commenced by an aggrieved Economic Operator, the procurement process is required to be suspended.

34.4 Failure to comply can also adversely affect future access to EU funds available to the Council.

#### 34.5 *Mystery Shopper*

The Government's Mystery Shopper service allows Economic Operators to raise concerns anonymously about unfair public procurement practice. The government then investigates and resolves these concerns. The service also carries out spot checks of procurement opportunities advertised on Contracts Finder. The results of Mystery Shopper investigations are published, so if the Council is investigated for any suspected non-compliance with the Regulations this information will be in the public domain.

#### 34.6 *Reports to the Cabinet Office*

Under the Public Contract Regulations the Council is required to report to the Cabinet Office on any Contracts where it has not complied with the Regulations and must also maintain comprehensive written reports relating to every Contract, Framework Agreement and dynamic purchasing system established. Report requirements and templates can be obtained from the Procurement Service.

34.7 Reports must be available to the Cabinet Office on request, along with any other information the Cabinet Office may require the Council to provide in order to enable them to inform the European Commission. Failure to comply with reporting requirements or the Public Contracts Regulations may result in the Cabinet Office taking action against the Council.

### 35. **Case Law**

35.1 There is a growing body of case law relating to public procurement, as public policy and regulation has eased access to legal remedies for unsuccessful applicants for public Contracts. Some of this case law has had a significant impact on procurement procedure.

- 35.2 All available standard procurement and Contract documentation held by the Procurement Service will be updated to meet new legal requirements arising from case law. Therefore any Officer undertaking procurement activity is required to use only the current version of the standard templates, available from the Procurement Service.
- 35.3 Officers must not amend or alter any of the standard information contained within the procurement and Contract documentation without the prior approval of the Procurement Service.

**36. Freedom of Information**

- 36.1 The Freedom of Information Act 2000 provides individuals with a right of access to information held by all public sector bodies such as the Council, creating openness and transparency.
- 36.2 There is a presumption that Contractual information should be made available for disclosure if requested. However, Officers should be aware of the potentially anticompetitive implications of disclosing detailed Contractual information in the period around a procurement process taking place.
- 36.3 The Information Compliance Team is the central processing department for all FOI requests and all requests received by Officers must be directed to them, Officers must not respond directly to any FOI request.
- 36.4 The Information Compliance Team will seek advice from the Procurement Service prior to responding to any such FOI requests.

**37. Local Government Transparency Code 2014**

- 37.1 The Code of Recommended Practice for Local Authorities on Data Transparency is issued under section 2 of the Local Government, Planning and Land Act 1980 (“the Act”) and sets out key principles for local authorities in creating greater transparency through the publication of public data.
- 37.2 The Local Government Transparency Code 2014 states that:
- (a) Local authorities must publish details of every invitation to Tender for Contracts to provide goods and/or services with a value in line with the local authority’s Procedures or advertised Tenders, which is £50,000.

For each invitation, the following details must be published:

- (a) title
- (b) description of goods and/or services sought
- (c) the start, end and review dates
- (d) the local Council department responsible

37.3 The Council is meeting this requirement by mandating that all advertised procurement processes must be conducted via the Council's Electronic Tendering System, refer to paragraph 76 (Electronic Tendering).

- (b) Local authorities must also publish details of any Contract, commissioned activity, purchase order, Framework Agreement and any other legally enforceable agreement with a value that exceeds £5,000. For each Contract, the following details must be published:
  - (e) reference number
  - (f) title of agreement
  - (g) the local Council department responsible
  - (h) description of the goods and/or services being provided
  - (i) supplier name and details
  - (j) the sum to be paid over the length of the Contract or the estimated annual spending or budget for the Contract
  - (k) the start, end and review dates
  - (l) whether or not the Contract was the result of an invitation to quote or a published invitation to Tender

37.4 The Council is meeting this requirement by mandating that all Contracts over £5,000 are published on the Council's Contracts Register, see paragraph 98 (Contracts Register).

## **C. Procurement Planning**

### **38 Approval to Proceed with the Procurement Process**

38.1 Where there is an agreed budget in place or the spend is in the approved Capital [Programme Plan](#) the relevant budget holder has the authority to approve the undertaking of a procurement process and the subsequent award of the contract.

38.2 Where there is no approved budget in place or the spend is not in the approved Capital [Programme Plan](#) then the Officer must obtain Council approval before any commitment to spend is made.

### **39. Conflicts of Interest**

39.1 In order to avoid any distortion of competition and ensure equal treatment of economic operators, the Council is legally required to take all appropriate measures to effectively identify, remedy and prevent any conflicts of interest that may arise during the course of a procurement process.

- 39.2 This requirement applies to all Officers, Members, staff within external organisations, consultants acting on behalf of the Council and any other individuals, such as service users, who are involved at any stage of the procurement procedure or have the ability to influence the outcome of that procedure.
- 39.3 Officers are required to follow the Declaration of Interest and Confidentiality procedure set out in the Procurement Guidance, when undertaking any purchasing activity governed by these Procedures. This includes the requirement for all individuals to complete Declaration of Interest and Confidentiality Agreement prior to any involvement in the process. Agreements must be sent to the Procurement Service, who will assess the information and advise the Officer whether the individual is able to participate in the procurement process.

#### **40. Confidentiality**

- 40.1 All Officers, Members, staff within external organisations, consultants acting on behalf of the Council and any other individuals, such as service users who are involved at any stage of the procurement procedure must:

- treat all information provided to them in the strictest confidence;
- ensure all information or documents provided are not disclosed to any third party;
- return to the Procurement Service all copies of any information provided, in whatever format they may exist, within 21 days of a request to do so.

and will be required to complete a Declaration of Interest and Confidentiality Agreement to confirm this.

- 40.2 The Council must not disclose information which has been provided by an economic operator and designated as being confidential by that economic operator, this includes but is not limited to technical or trade secrets and the confidential aspects of Tenders.
- 40.3 Officers must take account of any requirements for the disclosure of information under the Public Contracts Regulations, Freedom of Information Act and any other requirement or permission that is applicable under the law.
- 40.4 Where procurement procedure requires the sharing of confidential information with economic operators, such as details relating to the transfer of staff, this must not be disclosed unless the economic operator has signed and submitted an appropriate Confidentiality Agreement.
- 40.5 The submission of Confidentially Agreements and the issue of any confidential information must be undertaken electronically via the Council's Electronic Tendering System.

**41. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), as amended**

- 41.1 TUPE Regulations may apply when a service contract is transferred from one external economic operator to another or where Council staff are being outsourced.
- 41.2 Under both TUPE and Public Contract Regulations there is a requirement for the Council to share anonymous information relating to the staff who may be eligible to transfer.
- 41.3 In the case of external contracts the incumbent economic operator has a legal obligation to provide that information, but must be given sufficient notice of the requirement to provide the information prior to the issue of the tender documents.
- 41.4 Where Council staff are being outsourced Officers must involve Human Resources at the earliest opportunity in order to ensure that all the relevant staff information, pension liabilities and bond requirements can be provided to bidders.
- 41.5 Information relating to transferring staff must only be supplied to economic operators who have signed and returned a Confidentiality Agreement and all information supplied must be anonymous.
- 41.6 Any clarification questions during the tender process must be submitted via the Council's e-Tendering portal and not to incumbent economic operator's direct, in order to maintain confidentiality in relation to the identify of bidders.

**42. Market Research and Consultation****42.1 *Preliminary Market Consultation***

Pre-procurement market research and consultation can be conducted with a view to:

- preparing the procurement; and
- informing economic operators of the procurement plans and requirements.

- 42.2 Preliminary market consultation activities must be appropriately advertised in order to provide the opportunity for all potential economic operators to participate. All activities must be conducted in a non-discriminatory and transparent manner and without distorting competition.
- 42.3 Advice obtained in a preliminary market consultation process can be used in the subsequent planning and conduct of the procurement procedure. This is provided that the advice does not have the effect of distorting competition and does not breach requirements for non-discrimination and transparency.
- 42.4 Technical advice or input into the preparation of a specification or procurement process from a specific economic operator who has a commercial interest is not permitted.

42.5 *Prior Involvement of economic operators*

Where an economic operator has advised the Council or been involved in preparing the procurement procedure Officers must take appropriate measures to ensure that competition is not distorted by the economic operator bidding for the contract and those measures must be documented.

42.6 Where no measures can be put in place to ensure compliance with the requirement for equal treatment the economic operator must be excluded from the procedure.

42.7 This requirement also applies if it is identified at any time during the procurement process that an economic operator has gained a competitive advantage.

**43. Community Right to Challenge**

43.1 The Community Right to Challenge means community organisations can submit an Expression of Interest to the Council to run local services. This right is granted under the Localism Act 2011.

43.2 A procurement process is triggered if an expression of interest is accepted. Timescales for undertaking the procurement must take into account any contract already in place for the provision of that service and contracts must not be terminated early on the basis of acceptance of an expression of interest.

**44. Delivering Policy through Procurement**

44.1 The Council's policy objectives must be considered in all procurement processes and where appropriate and proportionate, incorporated into the strategy, evaluation process and the terms and conditions of the contract.

44.2 Policy objectives which must be considered as a minimum are:

*(i) Sustainable Procurement*

Consideration must be given to the ways of procuring resource and energy efficient alternatives, paying attention to the Council's Environmental Policy.

*(ii) Public Services (Social Value) Act 2012*

The Public Services (Social Value) Act 2012 requires the Council, when procuring public services, to consider how the service they are procuring could bring added economic, environmental and social benefits. Also consider whether to consult on these issues, for instance with potential users or suppliers of the service in question.

*(iii) Supporting Local Small and Medium size Enterprises (SMEs)*

Consideration must be given to the local supply chain and how the process can support the local community and local SMEs, within the rules of still ensuring an open fair and transparent process.

*(iv) Supporting the Voluntary, Community and Social Enterprise (VCSE) Sector*

Consideration must be given to VCSE Sector and how the process can support the VCSE Sector, within the rules of still ensuring an open fair and transparent process.

*(v) Local Authority Equality Duty*

Consideration must be given to meeting the Equality Duty within the procurement process, wherever it is appropriate and proportionate.

*(vi) Council Policy and Strategy*

In addition to national legislation, policy and guidance there is range of Council policies and strategies which, where relevant, must be considered within the procurement process.

## **D. Procurement Development**

### **45. Estimated Value of the Procurement**

- 45.1 The calculation of the estimated value of a procurement shall be based on the total amount payable including any contract extension options. Account shall be made of the total estimated value of all the business units across the Council.
- 45.2 The contract shall not be sub divided, nor should the choice of the method used to calculate the estimated value shall not be made with the intention of avoiding the application of these Procedures, nor shall it be sub divided.
- 45.3 In the case of Framework Agreements or Dynamic Purchasing Systems (DPS), the estimated procurement value shall be the total estimated value of all the contracts envisaged for the total term of the Framework or DPS.
- 45.4 Where a contract is proposed to be awarded in the form of lots, account shall be taken of the total estimated value of all the lots.
- 45.5 The estimated value of the procurement for goods and services is calculated by taking:
1. The value of the total amount payable for the full term of the contract, including extensions and is for 48 months or less; or
  2. The value of the total amount payable for each month multiplied by 48 if the term of the contract, including extensions, is for more than 48 months, or over an indefinite period;

Or, where there is

3. A requirement over a period of time for goods, or services that are for the same type or have similar characteristics and for that purpose a series or contracts are entered into, or a contract with renewable terms is being used,



the value shall be calculated by taking the spend from the previous 12 months, taking into account any expected changes in the next 12 months.

The estimated value of the procurement for works shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the Contractor by the Council which are necessary for executing the works.

**46. EU Spend Thresholds**

46.1 Officers must refer to the procurement intranet pages for the current EU spend threshold values.

46.2 Where an estimated value of a procurement is equal to or exceeds the EU spend threshold values, then the Public Contracts Regulations 2015 apply to the procurement process. However there are exceptions whereby the Public Contracts Regulations 2015 also apply in certain aspects to a procurement which has been estimated at below the EU spend thresholds.

**47. Procurement Process**

47.1 The procurement process selected must be in accordance with the table below. Refer to paragraph 45 (Estimated Value of the Procurement) for instructions on how to calculate this estimated value.

<b>Goods/Works/Services Estimated Value of the Procurement</b>	<b>Procurement Process</b>	<b>Authority*</b>
<b>Up to £10,000</b>	Obtain one written quotation. To ensure best value, good practice is to obtain more than one quote  Where spend is £5,000 or more publish details on the Contracts Register.	Budget holder
<b>£10,001 to £25,000</b>	Request written quotes either by post or email from minimum of three preselected economic operators. One of which must be a local SME or VCSE (refer to paragraph J Definitions for the definition of local). Retain written evidence	Budget holder

<p><b>Goods/Works/Services</b></p> <p><b>Estimated Value of the Procurement</b></p>	<p><b>Procurement Process</b></p>	<p><b>Authority*</b></p>
	<p>to demonstrate the economic operator selected offers best value. Publish details on the Contracts Register.</p>	
<p><b>£25,001 to £50,000</b></p>	<p>Offer the opportunity to a minimum of three preselected economic operators. One of which must be a local SME or VCSE (refer to paragraph J Definitions for the definition of local). Procurement process to be run in accordance with these Procedures, using the Council’s standard tender templates and through the e-tendering portal.</p>	<p>Budget holder</p>
<p><b>£50,001 to EU Spend Threshold</b></p>	<p>Advertised invitation to Tender. Procurement process to be run in accordance with these Procedures.</p> <p>Procurement process to be run in accordance with the Public Contract Regulations in certain aspects.</p>	<p>Directors, Assistant Directors, Executive Heads or authorised deputies in consultation with the Procurement Service</p>
<p><b>EU Spend Threshold and Above</b></p>	<p>Advertised invitation to Tender. Procurement process to be run in accordance with the Public Contract Regulations</p>	<p>Directors, Assistant Directors, Executive Heads or authorised deputies in consultation with the Procurement Service</p>

\* In accordance with paragraph 38 (Approval to Proceed with the Procurement Process)

47.2 Where the Contract relates to the spending of funds provided by an external body the procurement process selected must comply with any requirements or thresholds set by the funder or guidance (such as DCLG’s ESIF Compliance Guidance Note), which will take precedence over the processes set out in 47.1 above.

**48. Below EU Spend Threshold Procurements**

48.1 The Public Contract Regulations stipulate that the following applies to below EU spend threshold procurement processes:

- (a) Must be published on Contracts Finder;
- (b) Restricted Procedure is not permitted;
- (c) Selection Criteria used to assess the meeting of minimum standards or Criteria must be relevant to the subject matter of the procurement and proportionate;
- (d) Selection Criteria used to assess the meeting of minimum standards or Criteria must be in accordance with guidance issued by the Cabinet Office.

**49. Division of Contract into Lots**

49.1 When planning a procurement, consideration must be given to whether the contract could be subdivided into separate lots.

49.2 If it is decided not to subdivide the contract into separate lots, the main reasons for this decision must be provided in the procurement specification and also in the OJEU notice if applicable.

**50. Preparation of Procurement Documentation**

50.1 All procurement documents must be prepared and made available for the start of the procurement process. In terms of a restricted procedure, this includes the Pre Qualification Questionnaire (PQQ) and the Invitation to Tender (ITT) documents.

**51. Process Time Limits**

51.1 The table below details the timescales for a procurement process which exceeds EU Spend Thresholds and the process is undertaken electronically.

Procedure	Timescale
Open	30 days  15 days if PIN is dispatched between 35 days and 12 months before OJEU Notice

Procedure	Timescale
Restricted	30 days for the PQQ 25 days for the ITT 30 days for the PQQ and 10 days for the ITT if a PIN is dispatched between 35 days and 12 months before OJEU Notice
Light Touch	No specific timescales – recommendation is to adopt the Open or Restricted Procedure
Further Competition	No specific timescales

51.2 When fixing the time limits for the receipt of tenders and requests to participate, the complexity of the contract and the time required for the economic operator to complete the tender must be considered.

51.3 For procurement processes which are below the EU Spend Thresholds, the timescale for receiving submissions should not be less than 10 working days.

**52. Advertising the Procurement**

52.1 All procurement processes under £50,000 do not need to be advertised as economic operators can be pre selected, however, one of the pre selected economic operators must be a local SME or VCSE (refer to paragraph J Definitions for the definition of local), unless it can be demonstrated that this requirement cannot be met.

52.2 All procurement processes over £50,000 must be advertised via the Council’s Electronic Tendering System, refer to paragraph 76 (Electronic Tendering) and must be advertised via the Government’s Contracts Finder, refer to paragraph 77 (Contracts Finder).

52.3 If it is determined as necessary due to the specialist nature of the market, in addition, further advertising in trade journals for example is permissible.

52.4 For procurement processes which exceed the EU Spend Threshold:

- a. a Contract Notice must be published in the Official Journal of the European Union (OJEU), which is submitted via the Council’s Electronic Tendering System, refer to paragraph 76 (Electronic Tendering).
- b. all procurement documentation must be made electronically available from the date of the publication in OJEU. There are exceptions regarding procurement documents which are confidential in nature. Refer to the procurement service for advice in this instance.

- c. a Prior Information Notice (PIN) can be published in order to inform the intention of planned procurements in the future. The aim being to either advertise a bidder day or to enable the market to prepare. Using a PIN can then enable procurement process timescales to be shortened. Refer to paragraph 51 (Process Time Limits).
- d. a Prior Information Notice (PIN) can also be used as a call for competition provided that the appropriate information about the procurement is made available. This then removes the requirement for a Contract Notice to be published and only the economic operators who expressed an interest against the PIN are invited to Tender.

### **53. Reserved Contracts**

53.1 The Council may reserve the right to restrict participation in a procurement procedure:

- a. to sheltered workshops and organisations whose main aim is the social and professional integration of disabled or disadvantaged people or who are able to perform the contract within as part of a sheltered employment programme. In order to qualify to bid for a reserved contract at least 30% of the organisation's employees or the employees of the workshop must be disabled or disadvantaged workers; or
- b. for certain social and other specific services to economic operators fulfilling the criteria to be considered a Social Enterprise or Public Service Mutual. Where this is the case contracts must not be put in place for more than 3 years and may not be awarded to an economic operator that has held the same reserved contract within the past 3 years.

### **54. Award of Contracts for Social and Other Specific Services<sup>1</sup>**

54.1 Contracts for social and other specific services may be tendered using a light touch regime. The opportunity must be advertised by means of either a Contract Notice or Prior Information Notice and the results of the tender must be made known by the publication of a Contract Award Notice.

54.2 The resultant procurement does not have to meet the requirements set out in the Public Contracts Regulations in relation to the procedure used, conditions of participation or timescales, but it must be reasonable and proportionate and the process must be undertaken in accordance with these Contract Procedures.

### **55. Procurement Procedures**

55.1 The most appropriate procurement procedure should be selected from the following:

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<sup>1</sup> Officers should refer to Procurement Team for details of the services to which this applies.

Procedure	Definition
Open	A procedure leading to the award of a contract whereby all interested economic operators may submit a tender without providing the opportunity to short list.
Restricted	<p><b>NOT PERMITTED FOR BELOW EU THRESHOLD SPEND</b></p> <p>A two-stage procedure leading to the award of a contract, the first stage following a pre selection process which determines the economic operators who are subsequently invited to submit a tender.</p>
Competitive Procedure with Negotiation	A restricted procedure (as detailed above) with the addition of the ability to negotiate with economic operators at the award stage. This is to be used only where the requirements are not sufficiently defined to enable award of a contract based on the specification and the project is not sufficiently complex to warrant Competitive Dialogue.
Competitive Dialogue	A flexible procurement procedure for use only in complex projects where there is a need for the Council to discuss all aspects of the proposed contract with economic operators.
Innovation Partnership	A procedure to be used only where the Council is aiming to develop an innovative product, service or works, which it then has the intention of purchasing. This may involve a number of partners and different phases of development.
Framework Agreement	An ‘umbrella agreement’ that sets out the terms under which individual contracts (call-offs) can be made through the period of the agreement.
Dynamic Purchasing System	A completely electronic system, which may be established by the Council and is open throughout its duration for the admission of economic operators and is used to purchase commonly used goods, works or services.

**56. Collaborative Arrangements**

- 56.1 Where it is of benefit to the Council, taking into account any adverse affect on the local economy or voluntary sector, opportunities to collaborate with other public bodies on procurement processes should be sought.
- 56.2 Where a collaborative procurement process occurs, it is the Procedures/governance arrangements of the public body leading the procurement which will apply unless the lead body specifically agrees otherwise.
- 56.3 Where an appropriate collaborative national or regional contract is available to use, consideration must be given to utilising these contracts, taking into account any adverse affect on the local economy or voluntary sector.

**57. Council-wide Contracts**

- 57.1 Council-wide contracts are contracts that have been put in place for across Council use in relation to commonly and frequently purchased goods, works and services, such as stationery, agency staff, catering and car-hire.
- 57.2 Prices and terms have been agreed to achieve value for money for the Council as a whole and the Council is legally obliged to use these contracts once they have been put in place.
- 57.3 Council-wide contracts may also take the form of an approved list or framework agreement. Use of these approved lists and framework agreements are mandated where they have been put in place to facilitate corporate spending. Refer to paragraph 58 (Approved Lists) and paragraph 59 (Framework Agreements).
- 57.4 Council-wide contracts, approved lists and framework agreements enable direct purchasing and avoid the administrative costs and time involved in sourcing and purchasing goods and services with individual suppliers. The administrative costs and time taken can negate any savings on goods or services that can sometimes be found cheaper elsewhere.

**58. Approved Lists**

- 58.1 The set up and use of approved lists are restricted to a contract value below the EU Spend Threshold. See paragraph 45 (Estimated Value of the Procurement) for how a contract value is calculated. The approved list may have a single economic operator or multiple economic operators.
- 58.2 The approved list must only be set up following a procurement process in accordance with these Procedures. All approved lists must be maintained in an open, fair and transparent manner.
- 58.3 Call offs from the approved list must be in accordance with the terms laid out in the approved list.

**59. Framework Agreements**

- 59.1 Framework agreements are umbrella agreements under which individual contracts can be called-off either through a further competition or direct award, dependent on the terms of the agreement. The framework agreement may have a single economic operator or multiple economic operators and may have multiple lots.
- 59.2 The use of framework agreements, set up by either the Council or other public bodies, may be mandated for certain categories of spend. Call-offs from the framework agreement must be in accordance with the terms laid out in the framework agreement.
- 59.3 Framework agreements set up by third party organisations may only be utilised once written approval has been obtained from the Procurement Service, who will undertake the necessary checks to ensure the Council is legally able to use it.
- 59.4 Framework agreements established by the Council will be procured in accordance with the Public Contracts Regulations. If the intention is to share access to the framework with other Public Bodies, these must be appropriately named within the tender documentation and a user agreement must be signed by the public body before they are able to utilise it.
- 59.5 Call offs from the framework must be in accordance with the terms laid out in the framework agreement.

**60. Central Purchasing Bodies**

- 60.1 The Council may procure goods services or works through a central purchasing body once written approval has been obtained from the Procurement Service, who will undertake the necessary checks to ensure the Council is legally able to use it.
- 60.2 Where the Council undertakes procurement through such a body it shall be deemed to have complied with the Regulations to the extent that the central purchasing body has complied with them.

**61. Contracts with other Public Sector Bodies***61.1 Contracts Awarded to Organisations Controlled by the Council*

The Council is able to directly award a contract, without the requirement for a procurement procedure, to an organisation over which it exercises direct control, in its own right or jointly with other public bodies, where:

- a. the Council has control over both the strategic objectives and significant decisions of the organisation (either directly or indirectly through another organisation it controls); and
- b. more than 80% of the activities carried out by the organisation are on behalf of the Council, i.e. the organisation generates 80% of its income from the Council or activities undertaken on behalf of the Council; and



- c. there is no direct private capital participation in the organisation that gives the private capital provider any control over the organisation.

An organisation directly controlled by the Council may also make a direct award of a contract to the Council, where the above criteria are met.

### *61.2 Contracts Awarded to Other Public Sector Bodies*

The Council is able to directly award a contract, without the requirement for a procurement procedure, to other public bodies where:

- a. the Contract establishes co-operation between the public bodies with the aim of ensuring any public services they have to perform are able to achieve shared objectives; and
- b. that co-operation is governed solely by considerations relating to the public interest; and
- c. less than 20% of the activities that will be undertaken are performed on the open market.

## **62. Joint Venture Company – TOR2**

62.1 The Council has a Joint Venture Council-wide contract with TOR2. Under the terms of the Council's Contracts Procedures the Council is obliged to offer the following to TOR2 in the first instance:

- a. Any highways works contract values of £250,000 or less
- b. Any works under £50,000 that come under the following categories:
  - 1. scaffolding
  - 2. demolitions and alterations
  - 3. excavations and concrete
  - 4. brick, underpinning and stone works
  - 5. roofing works
  - 6. woodwork
  - 7. plumbing
  - 8. electrical work
  - 9. internal and external finishes
  - 10. glazing
  - 11. painting and decorating

12. external work (including ironmongery) and drainage.

If written confirmation is obtained that confirms TOR2 have declined this offer of works, then the works must be procured in accordance with these Contract Procedures.

**E. Tender Preparation****63 Tender Pack**

63.1 Standard templates and guidance on completing the templates for the procurement of goods, services and works are maintained and developed by the Procurement Service. These are available to Officers on request from the Procurement Service.

63.2 Officers are required to use the current version of standard templates for each procurement process undertaken.

63.3 Where a variation to a standard template is required the Officer should consult with Procurement Services prior to any changes being made.

**64. Consortia**

64.1 Officers may require members of the consortium to assume a specific legal form if awarded the contract, to the extent that it is necessary for the satisfactory performance of the contract.

64.2 Where economic operators are proposing to create a separate legal entity, such as a special purpose vehicle (SPV), they should provide details of the actual or proposed percentage shareholding of the constituent members within the new legal entity as part of their tender submission.

64.3 All members of the consortium will be required to provide the information required in all sections of the 'selection' section of the tender response as part of a single composite response.

64.4 Consortium arrangements may be subject to future changes. Economic operators can provide updated information regarding these arrangements so that a further assessment can be carried out (by applying the selection criteria to the new information provided). The Council reserves the right to deselect the economic operator prior to any tender award, based on an assessment of the updated information.

**65. Sub Contracting**

65.1 Where the economic operator proposes to use one or more sub-contractors to deliver some or all of the contract requirements, the economic operator must provide information regarding members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.

65.2 Arrangements in relation to sub-contracting may be subject to future change and may not be finalised until a later date. However, where information provided in the tender submission indicates that sub-contractors are to play a significant role in delivering key contract requirements, any changes to those sub-contracting arrangements may affect the ability of the economic operator to proceed with the procurement process or to provide the supplies and/or services required. Therefore economic operators should notify the Council immediately of any change in the proposed sub-contractor arrangements. The Council reserves the right to deselect the economic operator prior to any tender award, based on an assessment of the updated information.

## **66. Economic Operator Financial Risk Issues**

### *66.1 Financial Information*

The financial assessment must be undertaken in a manner that is proportionate, flexible and not overly-risk averse. All economic operators, whatever their size or constitution, should be treated fairly and with equal diligence during the financial appraisal process and arbitrary minimum requirements should not be imposed which may have the unintended effect of barring new business from tendering. For example: no SMEs, public service mutuals or third sector organisations should not be inadvertently disadvantaged by the financial assessment process.

66.2 Officers must refer to the Procurement Guidance and Standard Tender Templates for further guidance regarding the financial assessment process.

### *66.3 Business Insurance Requirements*

Officers must seek advice from Insurance Services with regard to the appropriate types and levels of insurance required for each contract. The resultant requirements must be stipulated in the tender documents and contract.

### *66.4 Bonds and Guarantees*

Guarantees and bonds can be either financial or performance guarantees, or a hybrid of both. However, with the exception of pension bonds, they only come into effect after the economic operator has failed to perform its Contractual obligations,

1. Deed of Guarantee - Officers must consult with the Procurement Service and Chief Finance Officer, at the outset of any procurement and at each stage of the process, on whether a deed of guarantee is required and:
  - (a) the total value of the contract exceeds £250,000;
  - (b) there is some concern about the stability of the economic operator.

Details of the Council's requirements must be clearly stated in the tender documents.

2. Parent Company Guarantee - Officers must consult with the Chief Finance Officer, at the outset of any procurement and at each stage of the process, on whether a Parent Company Guarantee is required when an economic operator is a subsidiary of a parent company and:

- (c) the total value of the Contract exceeds £250,000;
- (d) award is based on evaluation of the parent company; or
- (e) there is some concern about the stability of the economic operator.

Details of the Council's requirements must be clearly stated in the tender documents.

3. Performance, Conditional or On Demand Bonds - Officers must consult with the Chief Finance Officer, at the outset of any procurement and at each stage of the process, on whether a Bond is required, where:

- (f) the total value of the Contract exceeds £1,000,000; or
- (g) it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the Contract; or
- (h) there is concern about the stability of the economic operator.

Details of the Council's requirements must be clearly stated in the tender documents.

4. Pension Bond - Where the Contract involves the transfer of Council staff to an external organisation Officers must consult with the Chief Finance Officer and Human Resources/Pension Service, at the outset of any procurement and at each stage of the process, on whether a Bond is required to cover potential pension liabilities.

Details of the Council's requirements must be clearly stated in the tender documents.

#### *66.5 Other Performance Measures*

Consideration must be given to what appropriate types of contract performance measures need to be in place as these will need to be clearly stated in the tender documents and the contract. The selection must be based upon a risk assessment and what is appropriate and proportionate and based upon a risk assessment and a consideration of the effect on SMEs and resultant bid costs.

- (a) Contract management and monitoring procedures;
- (b) Step in rights;
- (c) Liquidated Damages;
- (d) Default Payments;
- (e) Service Credits; and
- (f) Escrow arrangements.

Details of the Council's requirements must be clearly stated in the tender documents.

## **67. Contract Terms and Conditions**

67.1 Advice should be sought in relation to the application of the most appropriate contract terms and conditions, which must be included as part of the procurement documents. They will either be:

- (a) An industry standard suite of Contracts, JCT, NEC, ICE
- (b) The Councils Standard Contract Terms and Conditions
- (c) Framework Agreements
- (d) Framework User Agreements
- (e) Call Off Contracts

The Procurement Service will seek advice from Legal Services in relation to the appropriate application of Contract Terms and Conditions.

### *67.2 Council Standard Terms and Conditions*

Clauses within the general terms and conditions section of the contract must not be amended, deleted or marked not applicable.

Clauses within the key provisions section of the contract may only be amended or marked not applicable in consultation with Procurement or Legal Services.

### *67.3 Review and Amendment of Contract Clauses*

Contract clauses must not be amended once the tender process has commenced or following contract award without the approval of the Procurement Service.

## **68. Evaluation Criteria**

68.1 Contracts must be awarded on the basis of the evaluation criteria laid out within the tender, which consists of the following:

- a) Exclusion Grounds
- b) Selection Criteria
- c) Award Criteria

Selection and award criteria must be treated separately. All criteria, sub-criteria and weightings must be clearly detailed within the tender documents.

- a) *Exclusion Grounds*

There are mandatory and discretionary grounds for excluding an economic operator from participating in a procurement process, in accordance with the Public Contract Regulations 2015. To protect the Council these grounds must be applied to all economic operators participating in procurement processes with an estimated procurement value of £50,000 or above.

Officers should refer to the Procurement Guidance for further information on the mandatory and discretionary exclusions.

*b) Selection Criteria*

The selection criteria may relate to:

- a. suitability to pursue a professional activity;
- b. economic and financial standing;
- c. technical and professional ability.

Requirements must be limited to those that are appropriate to ensure the economic operator has the legal and financial capacities and the technical and professional abilities to perform the contract to be awarded. In addition requirements must be proportionate to the value, subject matter and level of risk of the contract.

Officers must refer to the Procurement Guidance and Standard Tender Templates when establishing all selection criteria and these must be declared within the tender documents.

## **69. Reliance on the Capacity of Other Entities**

- 69.1 Where an economic operator relies on the capacity of other entities in relation to economic and financial standing or technical and professional ability, Officers are required to obtain proof from the economic operator of the commitment of those other entities.
- 69.2 In some cases this will also involve the requirement for the other entity to respond some or all of the mandatory exclusions, discretionary exclusions and selection criteria, as appropriate to that entities involvement in the delivery of the contract.
- 69.3 Officers should refer to the Procurement Guidance for further information on this requirement.

## **70. Limiting the number of economic operators to be invited to Tender**

- 70.1 In the Restricted, Competitive with Negotiation, Competitive or Innovation Partnership Procedures, Officers can limit the number of suitable economic operators to be invited to tender, following the assessment of the suitability criteria. The minimum number this can be limited to is five for restricted and three for all others.

## **Torbay Council – Constitution      Financial Regulations and Contracts Procedures**

70.2 Where the minimum number is not available, the number of economic operators invited must be sufficient to ensure genuine competition.

70.3 Officers must refer to the Procurement Guidance when establishing criteria for limiting the number of economic operators to be invited to tender.

### **71. Selection Questionnaire Template**

71.1 Officers must use the appropriate standard Selection Questionnaire, which can be found within the tender pack, for all procurements where the estimated value of the procurement is above £50,000.

71.2 This Selection Questionnaire has been set up using a standard set of questions in accordance with guidance issued by the Cabinet Office under the Public Contract Regulations.

### **72. European Single Procurement Document**

72.1 From 18 April 2017 the Council will be required to accept the European Single Procurement Document as preliminary evidence instead of certificates published by public authorities or third parties.

### **73. Award Criteria**

73.1 The award of a contract must be based on the most economically advantageous tender assessed from the point of view of the Council.

73.2 The award criteria must be linked to the subject matter of the contract and ensure the possibility of effective competition.

73.3 Officers must refer to the Procurement Guidance for further information on award criteria.

### **74. Life Cycle Costing**

74.1 Life cycle costs consist of all the costs over the life cycle of a product, service or work.

74.2 Where life cycle costing is used as one of the criteria for establishing the most economically advantageous tender this must be declared within the tender documents, including what data must be provided and the method that will be used to determine these costs.

74.3 Officers must refer to the Procurement Guidance for further information when using this criteria within their procurement process.

### **75. Use of Presentations, Interviews and Site Visits**

75.1 Where presentations, interviews or site visits are necessary in enabling Officers to establish the most economically advantageous tender this must be declared within

the tender documents. The documents must clearly state the purpose and where applicable the criteria and weightings.

75.2 Where used, all economic operators must be included and all relevant information including questions must be issued to them in advance via the Electronic Tendering system. Officers must refer to the Procurement Guidance for further information when using this criteria within their procurement process.

## **F. Procurement Process**

### **76 Electronic Tendering**

76.1 All requests for quote between £25,000 and £50,000 must be conducted via the Council's Electronic Tendering System.

76.2 All procurement processes over the £50,000 spend threshold must be conducted via the Council's Electronic Tendering System.

76.3 Where it is determined that the use of the Electronic Tendering System is not appropriate for a particular procurement process, written approval must be obtained from the Procurement Service.

76.4 For above EU spend threshold procurements, all tender documents must be offered unrestricted and with full direct access via the Council's Electronic Tendering System from the date the OJEU notice is published. There are exceptions regarding procurement documents which are confidential in nature. Refer to the Procurement Service for advice in this instance.

### **77. Contracts Finder**

77.1 In accordance with the Public Contracts Regulations and Transparency Code details of all advertised procurement processes with an estimated procurement value of £50,000 or above must be published on Contracts Finder either from the date the OJEU notice is published or for non OJEU, immediately after it is advertised via the Electronic Tendering System.

### **78 Tender Clarification**

78.1 Clarification questions and responses during the tender process must be conducted via the Council's Electronic Tendering System. Unless the question is innovation based, the response must be provided to all economic operators. The identity of the economic operator who raised the question must remain confidential.

78.2 Clarification questions are limited to any questions relating to the tender documentation or to the procurement process as a whole. Questions relating to the negotiation of any of the substantive terms of the tender are not permitted.

78.3 Clarifications or refinements to the tender documents are permitted during a procurement process, provided that the tender documents are reissued via the



Electronic Tendering system and the changes are clearly notified. The submission deadline must be reviewed and extended if the changes are significant.

**79. Confidentiality of Tender Proposals**

79.1 All details of tender submissions must remain private and confidential. External agents acting on behalf of the Council must sign a Confidentiality Agreement.

**80. Submission, Receipt and Opening of Tenders**

80.1 Tenders must be submitted via the Council's Electronic Tendering System and in accordance with the requirements set out in the tender documentation.

80.2 The Electronic Tendering System is set up to electronically seal tenders above £50,000. Verifiers are set up in the system, which are Officers who are able to electronically unseal tenders. Verification may only be undertaken by an authorised verifier who has duly been approved by the Monitoring Officer and Procurement Service.

80.3 All tenders shall be electronically unsealed at the same time, in the presence of an Officer and a verifier, after the prescribed submission date and time. The verifier must be independent of the procurement process.

80.4 The Electronic Tendering System keeps an electronic record of the tenders opened and automatically classifies tenders which have been received late, as in after the prescribed date and time.

**81. Receiving Late, Irregular or Incomplete Tenders**

81.1 A tender submission can be rejected for the following reasons, which must be laid out within the Tender document instructions:

- a. It is incomplete or vague;
- b. Is submitted later than the prescribed date and time;
- c. Not in accordance with the approved format;
- d. Is in breach of any condition contained within it.

81.2 Where there are errors or discrepancies in the tender response, the economic operator must be given the details, via post tender clarification, in order to confirm or withdraw the submission. A correction of an error or omission submitted via the Electronic Tendering System can be accepted if it is determined that the economic operator has gained no unfair advantage.

81.3 A late tender submission must not be accepted unless prior written approval has been obtained from the Procurement Service. This will only be provided for procurement processes below the EU Spend Thresholds and where it can be determined that an unfair advantage has not been gained from it being late.

**82. Abnormally Low Tenders**

- 82.1 Where a price has been assessed as being abnormally low the Council must require the economic operator to explain the price proposed. The Council must take into account the guidance given within the Public Contracts Regulations when assessing the economic operator's explanation and may only reject the tender where the evidence provided does not satisfactorily account for the low price or where the economic operator has obtained state aid and that state aid has resulted in a distortion in competition.
- 82.2 Where necessary, in order to appropriately evaluate the evidence provided, the Officer should seek advice from Corporate Finance. The Officer should also seek guidance from the Procurement Service in relation to satisfactory grounds for acceptance or rejection.

**83. Tenders Exceeding Estimate**

- 83.1 Where the budget has not been declared within the tender and submitted tenders exceed the estimate or budget approval to proceed with the tender evaluation must be obtained as per the Approval to proceed Criteria in paragraph 38 (Approval to Proceed with the Procurement Process).
- 83.2 If the lowest tender obtained exceeds the threshold applicable to the process selected, written approval to proceed must be obtained from the Procurement Service or the procurement process must be restarted or abandoned.
- 83.3 Where the maximum budget has been declared the tender documents must state the requirement for all bids to be within that stated budget and any bids exceeding the stated budget will be excluded from the process. If any economic operator's bid is found to exceed the stated budget that economic operator shall be excluded from any further participation in the process.

**84. Tender Evaluation**

- 84.1 All tender submissions received must be evaluated in accordance with the pre determined evaluation criteria, set out in the invitation to tender documents issued. Criteria, sub criteria, weightings and the attributed breakdown must not be changed from what was published in the tender documents and must be applied consistently for all tender submissions.
- 84.2 Tender evaluation processes must be recorded on a suitable evaluation matrix and once completed uploaded to the Council's Electronic Tendering System. All criteria, sub criteria and scoring must be detailed for each tender submission to enable a complete assessment of what scores are attributed to each criteria set. Reasons for scores allocated must be recorded which provides an appropriate justification and is used to complete the tender outcome letter.
- 84.3 An evaluation process for every compliant tender received must be fully completed. It must not be stopped part way through because it has been assessed that they won't be successful. Economic operators are entitled to a full assessment of the

submission, which must be provided in their tender outcome letter and available to facilitate a de brief if requested. Officers must not provide tender feedback to economic operators without the prior approval of the Procurement Service.

**85. Reliance on the Capacities of Other Entities**

- 85.1 Where the economic operator is reliant on the skills, professional qualifications or financial standing of other entities in order to perform the contract, those other entities must be evaluated against any PQQ or Selection Criteria relevant to that reliance.
- 85.2 Where there are grounds for the mandatory exclusion of an entity or does not meet the relevant criteria the economic operator must be required to replace that entity and an assessment of the replacement entity against the relevant criteria must be undertaken.

**86. Post Tender Clarification**

- 86.1 Post tender clarification means clarification with the economic operators after the tender has been submitted and only for the purpose of clarifying or supplementing the content of their tenders or the requirements of the Council, providing this does not involve discrimination.
- 86.2 Negotiations on fundamental aspects of the tender submission, including the contract terms and conditions and variations in which are likely to distort competition, and in particular on prices, are not permitted.
- 86.3 Post tender clarifications must be conducted via the Council's Electronic Tendering System or via a formal meeting with an electronic record held. Consideration must be given as to whether the question relates and should be asked to just one or all economic operators.
- 86.4 If post tender clarification results in a material change to the contract, written approval to proceed must be obtained from the Procurement Service or the procurement process must be restarted or abandoned.

**87. Approval to Award the Tender**

- 87.1 In accordance with the stated evaluation criteria, approval to proceed with the tender award must be obtained as per the Approval to Proceed Criteria in paragraph 38 (Approval to Proceed with the Procurement Process).
- 87.2 The approval must be formally documented and signed, using the Contract Approval Request Form, available to Officers on request from the Procurement Service.
- 87.3 If a decision is reached to not award the tender, the Officer must advise all economic operators, via the Electronic Tendering System, detailing the reason for the decision.

**88. Tender Outcome Notifications**

- 88.1 All successful and unsuccessful economic operators must be notified of the tender award decision at the same time, via the Electronic Tendering System. Suitable template formats are available from the Procurement Service.
- 88.2 The unsuccessful notification must provide:
- a. The full reasons for the tender award decision and should include: the characteristics and relative advantages of the successful tender.
  - b. The identity of the successful economic operator.
  - c. The percentage breakdown score of the evaluation criteria and sub criteria for the economic operator receiving the notice, and for the economic operator who has been awarded the tender.
  - d. The start and end date of the standstill notice must also be included, if applicable, see paragraph 89 (Standstill).

Any further written or verbal debriefing must not be offered within the notification or at any other time and Officers must immediately refer any such enquiries from economic operators to the Procurement Service.

**89. Standstill**

- 89.1 For procurement processes that are above EU Spend Thresholds, a mandatory minimum standstill period of 10 calendar days (which must start and end on a working day), from notification of the tender outcome, before the resultant contract can be entered into.
- 89.2 Following the completion of the standstill period, an Award Notice must be published in the Official Journal of the European Union, which is submitted via the Council's Electronic Tendering System, refer to paragraph 76 (Electronic Tendering).

**90. Contracts Finder**

- 90.1 In accordance with the Public Contracts Regulations and Transparency Code details of all advertised contracts awarded with a value of £50,000 or above must be published on Contracts Finder either from the date the OJEU Award notice is published or for non OJEU, immediately after the tender outcome notifications.

**91. Debriefing**

- 91.1 Any requests for further written or verbal debriefing, or any complaints, correspondence, threat of legal challenge or court proceedings must be immediately notified to the Procurement Service who will provide the necessary advice and guidance on how to proceed.

**G. Contracts Arrangements**

Note: This Procedure (so far as it relates to Contracts entered in the course of the discharge of executive functions) complies with the requirements of Article 8 of the Local Authorities (Executive and Alternative Arrangements) (Modifications of Enactments and Further Provisions) (England) Order 2001 (SI 1517/2001) and power to modify this Procedure may not be delegated by the Council.

**92 Contracts**

- 92.1 Any Contract with a value exceeding £25,000 entered into on behalf of the Council in the course of discharge of any function (whether executive or Council) shall be made in writing (and in a form in accordance with Financial Regulations and these Procedures).
- 92.2 All Contracts with a value exceeding £50,000 must be made under the common seal of the Council attested by at least one Officer.
- 92.3 Where a procurement process was undertaken, the contract terms and conditions must be those that were issued within the tender pack.
- 92.4 The economic operator's terms and conditions may only be used in exceptional circumstances and must be reviewed and approved by Legal Services and Insurance Services prior to signing.
- 92.5 Prior to issuing a Contract, Officers must obtain from the economic operator evidence of compliance with any contractual requirements, such as insurances, disclosure and barring service checks and policies and procedures.
- 92.6 An economic operator shall not be allowed to commence performing the contract prior to the formal contract documents being signed, without the agreement of Legal Services.
- 92.7 In the case of framework agreements an economic operator shall not be permitted to participate in any call-off from the framework until such time as their agreement has been duly signed by the economic operator and the Council.
- 92.8 Other organisations may not use a framework agreement or contract put in place by the Council without having duly signed the user agreement.

**93. Issuing and Signing Contracts**

- 93.1 The following process must be followed for issuing and signing contracts
- a. Two copies of the contract shall be issued to the economic operator in a format that cannot be altered (i.e. hard copy or if issuing electronically as a PDF) by the recipient.
  - b. The contract must be signed by the economic operator before it is signed by the Council's Authorised Officer.

- c. To ensure the contract is in place prior to the commencement date the economic operator should be advised of the date by which the signed contract must be returned.
- d. Contracts must be either signed by at least two Officers of the Council (one of whom is the Authorised Officer or any senior solicitor in the employment of the Council who is duly authorised by the Council for the purposes of this Procedure) or made under the common seal of the Council attested by at least one Officer.

#### **94. Modification of Contracts**

- 94.1 Written authorisation, using the agreed process and Contract Modification Request Form, is required to modify a contract without a new procurement procedure being followed. Any request must be approved by the relevant Procurement Service, the Monitoring Officer and the Chief Finance Officer if there is a financial impact, before the Officer can proceed with the modification of the contract.
- 94.2 Where authorisation is given, the modification must be issued in accordance with the contract change procedure and for above EU Spend Threshold Contracts the appropriate OJEU notice must be submitted where required.
- 94.3 The Procurement Service must keep a record of all cases which have been requested and authorised, or declined and will report these to the Senior Leadership Team on a six monthly basis.
- 94.4 Contracts and framework agreements may only be modified during their term without a new procurement procedure for the following cases:
  - a. Where the modification has been provided for in the original procurement documentation and the modification does not alter the overall nature of the contract or framework agreement;
  - b. A change of contractor cannot be made for economic or technical reasons provided that any increase in price does not exceed 50% of the value of the original contract;
  - c. A change of contractor would cause significant inconvenience or substantial duplication of costs for the contracting authority provided that any increase in price does not exceed 50% of the value of the original contract;
  - d. The need for the modification has been brought about by circumstances which a diligent Council would have not for seen, the modification doesn't alter the overall nature of the contract and provided that any increase in price does not exceed 50% of the value of the original contract;
  - e. The modification is not substantial in accordance with Regulation 72, paragraph 8 of the Public Contract Regulations 2015;

- f. For above EU Spend threshold contracts, where the modification, or cumulative value of modifications, is below the spend threshold value and is 10% of the initial contract value for service and supply contracts and 15% of the initial contract value for works contracts, provided that the modification does not alter the overall nature of the contract or framework agreement.

**95. Contract Extension**

- 95.1 Contracts may only be extended where the option to do so has been incorporated into the tender documents, formal contract documents and OJEU Notice where applicable.
- 95.2 Approval for any extension to a contract must be obtained as per the approval to proceed Criteria in paragraph 38 (Approval to Proceed with the Procurement Process), ensuring that all reasonable checks have been undertaken before the contract is extended.
- 95.3 Extensions must be issued in accordance with paragraph 93 (Issuing and Signing Contracts), ensuring evidence of compliance with any contractual requirements has been re checked, such as insurances, disclosure and barring service checks and policies and procedures.

**96. Assignment and Novation**

- 96.1 All written contracts must contain a clause which does not enable the economic operator to assign or novate a contract without the prior written approval of the Council.
- 96.2 Where an Officer becomes aware that an existing economic operator has or may be subject to a company reorganisation, where they may be taken over or merged with another company or simply assigned to another or even otherwise disposed of that will result in the assignment or novation of a contract, the advice of Legal Services must be sought.

**97. Contract Termination**

- 97.1 All written contracts must contain a clause enabling the Council to cancel the contract.
- 97.2 Contracts up to £100,000 may be terminated early by agreement of the parties prior to the expiry date or in accordance with the termination provisions set out in the contract.
- 97.3 Approval to terminate a contract must be obtained as per the approval to proceed Criteria in paragraph 38 (Approval to Proceed with the Procurement Process). Legal Services, the Chief Finance Officer and Monitoring Officer must be consulted on any proposed termination of a contract over £100,000 in value.

**H. Contract Management**

**98 Contracts Register**

98.1 The Council must publish details of any contract, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value that exceeds £5,000. Officers must ensure, following letting of the contract, that the Contracts Register, available via the Procurement Service, is completed.

98.2 The Contracts Register must be updated where a contract is extended or varied or terminated.

**99. Contract Monitoring and Performance Management**

99.1 Contracts awarded by or on behalf of the Council must be monitored and managed throughout the contract term to ensure delivery of the contracted goods, services or works in accordance with the contract requirements and performance standards.

99.2 Contract monitoring and management arrangements must be proportionate to complexity, value and risk associated with the contract.

99.3 The Executive Head will appoint an appropriate Officer to carry out regular reviews of the economic operator's performance against the requirements and key performance indicators specified in the contract and monitor compliance against contractual requirements. All review meetings must be recorded in writing.

99.4 Where an economic operator fails to meet requirements the Executive Head must take timely and appropriate action, in accordance with any default procedures stipulated within the contract, to address any non-compliance including termination in the absence of appropriate remedial action by the economic operator.

99.5 Compliance with contractual requirements, such as insurances and the use of specific staff, consortia member or sub-contractors must be checked throughout the life of the contract and as a minimum annually. Where the economic operator is no longer able to comply with any contractual requirement advice must be sought from Legal Services on the action to be taken to address the non-compliance, including termination in the absence of any appropriate alternative solutions.

**100. Claims and Disputes**

100.1 Any disputes must be dealt with in accordance with the dispute procedure set out in the contract. Officers must consult with Legal Services in the event of any dispute or on receipt of any correspondence threatening legal claim or formal legal claim.

**I. Other**

**101. Gifts and Hospitality**



101.1 The Council's Codes of Conduct for Members and Employees and Local Protocol on Gifts and Hospitality must be followed in respect of contracts. Specifically, the following must not be accepted:

- a. Any gift or hospitality from any economic operator or potential economic operator;
- b. Hospitality includes drinks, meals, entertainment, overnight accommodation, travel and holidays, but does not include a lift in a private or company car, a taxi, or refreshments in the course of office duty.

## **102. Nomination of Sub Contractors and Suppliers**

102.1 Where it is being stipulated that a specific sub-contractor is to be used or nominated to a main contractor, this is only permissible if this sub-contractor has been selected in compliance with these Procedures.

## **103. Concessions and Sponsorship**

103.1 Where the Council seeks economic operators who want to pay the Council for the right to provide services on the Council's premises, a procurement process is required in accordance with these Procedures, in compliance with the requirements as laid out in the EU Concessions Directives and the resultant UK Regulations when they come into force.

## **104. Grant Funding Audits**

104.1 Where an external funder is carrying out an audit in relation to funding provided to the Council and spend of the funding required a procurement process to be undertaken, Officers must:

- a. Agree any written any response relating to the procurement process with the Procurement Service prior its submission; and/or
- b. Involve the Procurement Service in any meetings with the auditor that relate to the procurement process.

## **105. Internal Audits**

105.1 Where an internal audit raises concerns or identifies areas of non-conformance in relation to procurement practice and compliance with these Contract Procedures the Procurement Service must be consulted on any remedies required to rectify the issues or areas of non-conformance.

## J. Definitions

Term	Definition
<b>Approved List</b>	Shall mean a list of pre-selected and approved economic operators
<b>Authorised Officer</b>	Shall mean an Officer, <a href="#">employee (including agency workers with written authority)</a> <a href="#">or persons seconded to the Council</a> with the authority to make a decision or undertake the particular activity
<b>Award</b>	Shall mean the process by which the Council shall determine to whom the contract will be awarded in accordance with the criteria listed at Regulation 30 of the Public Contracts Regulations 2006 as amended in 2009
<b>Award Notice</b>	Shall mean the official notice used to notify the details of contracts awarded
<b>Call Off Contract</b>	Shall mean a contract awarded under a framework agreement
<b>Central Purchasing Body</b>	Shall mean a contracting authority which: <ul style="list-style-type: none"> <li data-bbox="639 1238 1364 1317">☐ acquires goods or services intended for one or more contracting authorities;</li> <li data-bbox="639 1335 1364 1413">☐ Awards public contracts intended for one or more contracting authorities; or</li> <li data-bbox="639 1431 1364 1543">☐ concludes framework agreements for work, works, goods or services intended for one or more contracting authorities.</li> </ul>
<b>Competitive Dialogue Procedure</b>	Shall mean the flexible procurement procedure for use only in complex projects where there is a need for the contracting authority to discuss all aspects of the proposed contract with economic operators
<b>Competitive Procedure with Negotiation</b>	Shall mean the flexible procurement procedure for use in projects where the Council's requirements are not sufficiently well defined to allow for award without some negotiation on those requirements with out some form of negotiation with the economic operators who have submitted a bid

<b>Term</b>	<b>Definition</b>
<b>Confidentiality Agreement</b>	Shall mean a contract through which one or more parties agree not to disclose information covered by the agreement
<b>Constitution</b>	Shall mean the document which sets out the <del>basic</del> -rules governing the Council's business
<b>Contract</b>	A legally binding agreement between two or more parties
<b>Contract Procedures</b>	Shall mean the rules and processes in place to ensure the Council is compliant with legislation, fair and accountable in its dealings with economic operators and obtains value for money
<b>Contract Value</b>	Shall mean the proposed price of the contract to be awarded
<b>Contracting Authority</b>	Shall mean a public authority or body governed by public law
<b>Contracts Finder</b>	Shall mean the government website on which the Council must advertise all opportunities above £50,00 and publish details of the subsequently awarded contracts
<b>Council</b>	Shall mean Torbay Council
<b>Council-wide Contract</b>	Shall mean the contracts to be used by all Officers for frequently purchased goods, works and services, which the Council is contractually bound to use for said goods, works and services and which the economic operator has a legal right to expect all purchases to be made from
<b>Criteria</b>	Shall mean the standards against an economic operator's tender will be assessed
<b>Directives</b>	Shall mean the EU Public Contracts Directives currently in force

Term	Definition
<b>Dynamic Purchasing System</b>	Shall mean a completely electronic system, which may be established by the Council and is open throughout its duration for the admission of economic operators and is used to purchase commonly used goods, works or services
<b>Economic Operator</b>	Shall mean the generic term to cover a contractor, supplier, service provider, applicant, bidder, candidate, tenderer, company or organisation
<b>Electronic Tendering System</b>	Shall mean the internet based system used to facilitate the complete tendering process, covering advertising, issuing and receiving tender related information, evaluation and contract Award
<b>EU</b>	European Union
<b>EU Directives</b>	Shall mean the same as Directives
<b>EU Spend Threshold</b>	Shall mean the contract value thresholds set by the EU above which the Public Contract Regulations 2006 apply
<b>Framework Agreement</b>	Shall mean an ‘umbrella agreement’ that sets out the terms under which individual contracts (call-offs) can be made through the period of the agreement
<b>Joint Venture</b>	Shall mean the commercial arrangement between the Council and a private sector partner for the purpose of undertaking a particular business activity
<b>Innovation Partnership</b>	Shall mean the procurement procedure to be used only where the Council is aiming to develop an innovative product, service or works, which it then has the intention of purchasing
<b>Light Touch Regime</b>	Shall mean the regime under which certain social and other specific services may be procured
<b>Local SME or VCSE</b>	Shall mean a small or medium sized enterprise or voluntary and community sector enterprise that is located and operated from within the Torbay local authority

Term	Definition
	<p>boundary, i.e. postcodes TQ1 to TQ5</p> <p>Or where, there is no such organisation within the Torbay local authority boundary, one that is located and operated from within Teignbridge or South Hams district councils boundaries, i.e. postcodes TQ6 to TQ14</p>
<b>Main Contractor</b>	Shall mean the economic operator who is responsible for engaging, overseeing and managing sub-contractors
<b>OJEU</b>	Official Journal of the European Union
<b>Open Procedure</b>	Shall mean a procedure leading to the Award of a Contract whereby all interested economic operators may submit a tender without providing the opportunity to short list
<b>Parent Company Guarantee</b>	Shall mean a guarantee given by a parent company in relation to the economic operator's performance of the contract under which the parent company is obliged to remedy any breach or default
<b>PQQ</b>	Shall mean Pre Qualification Questionnaire
<b>Procurement Documents</b>	Shall mean all of the documents required by an economic operator in order to respond to a PQQ or submit a tender
<b>Public Body</b>	Shall mean an organisation whose work is part of the process of government but is not a Government department
<b>Public Contract Regulations</b>	Shall mean the legislation incorporated in to English law concerning public procurement, which can be found at: <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>
<b>Regulations</b>	Shall mean the same as Public Contracts Regulations
<b>Reserved Contract</b>	Shall mean a contract that may only be bid for by economic operators who meet specific criteria, as laid out in the Public Contracts Regulations

<b>Term</b>	<b>Definition</b>
<b>Restricted Procedure</b>	Shall mean a two-stage procedure leading to the award of a contract, the first stage following a pre-selection process which determines the economic operators who are subsequently invited to submit a tender.
<b>Selection</b>	Shall mean the process by which applicants will be selected to move forward to the next stage of the procurement process, in accordance with the criteria listed at Regulations 23, 24 and 25 of the Public Contracts Regulations 2006 as amended in 2009.
<b>Selection Questionnaire</b>	Shall mean the questionnaire used to vet economic operators to ensure they meet the required standards
<b>SME</b>	Small and Medium Enterprises
<b>Procedure</b>	Shall mean these Contract Procedures
<b>Standstill</b>	Shall mean a period of at least ten calendar days (communicated via electronic means) following the notification of an award decision, for contracts tendered via OJEU, during which the Council must not enter into the contract or framework agreement.
<b>Sub-Criteria</b>	Shall mean the standards that sit below the main criteria, against which the economic operator's tender will be assessed
<b>Tender</b>	Shall mean an invitation to bid for a contract or an economic operator's written offer for a contract
<b>Tender Award</b>	Shall mean the award of a contract following a procurement process
<b>User Agreement</b>	Shall mean the agreement signed by other public bodies in order to allow them to use a contract or framework agreement
<b>Verifiers</b>	Shall mean the Officers authorised to unseal tenders

<b>Term</b>	<b>Definition</b>
<b>VCSE</b>	Voluntary and Community Sector Enterprise
<b>Weighting</b>	Shall mean the score allocated to each criteria and sub-criteria against which the economic operator's tender will be assessed