

Notice of meeting of

Audit & Governance Committee

To:	Councillors B Watson (Chair), Brooks (Vice-Chair), Bowgett, Jamieson-Ball, Scott, Kirk and R Watson
Date:	Wednesday, 4 November 2009
Time:	5.30 pm
Venue:	The Guildhall, York

AGENDA

1. Declarations of Interest

At this point Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

2. Minutes (Pages 3 - 16)

To approve and sign the minutes of the meeting of the Audit & Governance Committee held on 21 September 2009.

3. Public Participation

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Committee's remit can do so. The deadline for registering is **5:00 pm on Tuesday, 3 November 2009**.

4. Draft Revised Contract Procedure Rules (Pages 17 - 54)

This report asks Members to comment on the format and content of a set of draft Contract Procedure Rules and to agree their referral to the Executive for onward approval at Full Council.

5. Corporate Debt Policy (Pages 55 - 74)

This report asks Members to review and comment on the content and format of a draft Corporate Debt Policy and to agree its referral to the Executive for onward approval at Full Council.

6. Urgent Business

Any other business which the Chair considers urgent under the Local Government Act 1972.

Democracy Officer:

Name: Fiona Young

Contact details:

- Telephone – (01904) 551027
- E-mail – fiona.young@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details are set out above.

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Scrutiny Committees

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

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City of York Council

Committee Minutes

MEETING	AUDIT & GOVERNANCE COMMITTEE
DATE	21 SEPTEMBER 2009
PRESENT	COUNCILLORS B WATSON (CHAIR), BROOKS (VICE-CHAIR), BOWGETT, JAMIESON-BALL, SCOTT AND R WATSON
APOLOGIES	COUNCILLOR KIRK
IN ATTENDANCE	COUNCILLOR MOORE (EXECUTIVE MEMBER FOR CORPORATE SERVICES) STEVE NICKLIN (DISTRICT AUDITOR) ALISTAIR NEWALL (DISTRICT AUDIT)

PART A - MATTERS DEALT WITH UNDER DELEGATED POWERS

15. DECLARATIONS OF INTEREST

Members were invited to declare at this point in the meeting any personal or prejudicial interests they might have in the business on the agenda.

Cllr Scott declared a personal, non prejudicial interest in agenda item 15 (Proposal for Constitutional Amendment: Removal of the Shadow Executive from the Formal Decision Making Framework), as a member of the Shadow Executive but not in receipt of any Special Responsibility Allowance for this role.

16. EXCLUSION OF PRESS AND PUBLIC

RESOLVED: That the press and public be excluded from the meeting during consideration of agenda item 13 (Security issues at the Mansion House), on the grounds that it contains information relating to an individual, which is classed as exempt under paragraphs 1 and 3 of Schedule 12A to Section 100A of the Local Government Act 1972 (as revised by The Local Government (Access to Information) (Variation) Order 2006).

17. MINUTES

RESOLVED: That the minutes of the Audit and Governance Committee meeting held on 29 June 2009 be approved and signed by the Chair as a correct record.

18. PUBLIC PARTICIPATION / OTHER SPEAKERS

With the approval of the Chair, Cllr Galvin, the Lord Mayor, addressed the meeting with reference to agenda item 13 (Security Issues at the Mansion House). He urged Members to support the proposed improvements to

security, in order to fulfil the Council's duty of care to its staff, the Civic party and the historical objects in the Mansion House.

19. AUDIT AND GOVERNANCE COMMITTEE FORWARD PLAN 2009

Members considered a report which presented an indicative rolling forward plan of items expected to be brought to the Committee during the remainder of the 2009/10 municipal year and beyond.

As previously proposed, the number of Committee meetings had been increased to six in each municipal year. Group Leaders had been consulted on this proposal and no objections had been received. The plan, attached as Annex 1 to the report, reflected the deferral of three items from the current meeting to future meetings, as agreed with the Chair and Vice Chair.

Members were invited to approve the plan as drafted or to identify any further items they wished to add. Agreement was also sought on a date for the additional meeting to be held in November to consider the Contract Procedure Rules and the Debt Policy.

RESOLVED: (i) That the Committee's Forward Plan for the period up to July 2010, as set out in Annex 1, be noted and approved.

(ii) That the additional meeting to consider the Contract Procedure Rules and the Debt Policy be held at 5:30 pm on Wednesday, 4 November 2009.

REASON: To ensure that the Committee receives regular reports in accordance with the functions of an effective audit committee.

20. ANNUAL GOVERNANCE REPORT - AUDIT COMMISSION

Members considered a report which brought to their attention the Audit Commission's Annual Governance Report (AGR) and sought approval for a suggested response and for changes to the 2008/09 Financial Statements. It was noted that the version of the AGR circulated with the agenda at Annex A was incorrect. The correct version had since been published with the agenda on-line and copies had been circulated to Members at the meeting.

The audit of the Council's accounts would continue until the statutory deadline of 30 September. However, during the course of the audit to date a number of material 'non-trivial' mis-statements had been identified, which the Council intended to amend. These were set out in Appendix 2 of the AGR. Mis-statements considered immaterial, and which the Council did not propose to amend, were set out in Appendix 3. The Chair and the Section 151 Officer would be asked to sign a Letter of Representation to confirm this.

The AGR indicated that an unqualified opinion would be given by 30 September, subject to the satisfactory resolution of the material matters

identified. It also acknowledged significant improvements in the process for closing the accounts. However, further improvements would be sought in 2009/10. The AGR contained an Action Plan highlighting areas for improvement, which would be monitored by a Governance Group chaired by the Director of Resources.

RESOLVED: (i) That the matters set out in the Annual Governance Report (AGR) be noted.

REASON: To ensure the proper consideration of the opinion and conclusions of the External Auditor in respect of the annual audit of accounts and review of the Council's arrangements for ensuring value for money.

(ii) That the action plan arising from the report, as set out in Appendix 5 of the AGR, be noted.

REASON: To ensure that appropriate action is being taken by Officers to address the matters raised by the External Auditor further to his report.

(iii) That approval be given to amend the 2008/09 Statement of Accounts in respect of those items identified in Appendix 2 of the AGR.

(iv) That approval be given not to amend the 2008/09 Statement of Accounts in respect of those items identified in Appendix 3 of the AGR.

(v) That the amended Statement of Accounts 2008/09 be approved.

(vi) That the Letter of Representation be approved for signature by the Chair, on the basis that it sufficiently reflects the views and beliefs of this Committee as those charged with governance at the Council.

REASON: To ensure compliance with International Accounting Standards and relevant legislative requirements.

(vii) That the anticipated receipt of an unqualified Audit Opinion, on both the Statement of Accounts 2008/09 and the Council's arrangements for securing economy, efficiency and effectiveness in its use of resources, be noted.

REASON: To ensure that the Committee is aware of any matters arising from the annual audit of the Statement of Accounts.

(viii) That the improvements to the closure of accounts process in 2008/09 be noted.

21. USE OF RESOURCES 2008/09: AUDIT COMMISSION REPORT

Members considered a report which introduced the Audit Commission's summary of their findings from the Use of Resources Assessment for the financial year 2008/09, now operating within the Comprehensive Area Assessment (CAA) framework.

The Audit Commission's report was attached as Annex A. It concluded that the Council had performed adequately in its use of resources during 2008/09, based upon an overall score of 2. Due to changes in the assessment process, this score was not comparable with the previous year's score of 3. The report highlighted strong performance across a number of Key Lines of Enquiry (KLOEs), in particular the Council's provision of value for money services, risk management arrangements and commissioning of services.

Ongoing improvements would continue to be monitored, where appropriate, through the Council's Improvement Plan and Corporate Strategy, and by the Strategic Officer Governance Group.

In response to questions from Members, the District Auditor confirmed that:

- Comparative information would be included in next year's Assessment;
- Details of the performance of other authorities would be available on the Audit Commission's website towards the end of the year;
- Budget process issues could impact upon more than KLOE area.

RESOLVED: That the report, and the progress the Council is making in addressing the addressing the areas for improvement identified in this and previous reports, be noted.

REASON: To ensure the maintenance of an effective internal control environment at the Council.

22. GRANT CLAIM CERTIFICATION REPORT 2007/08 - AUDIT COMMISSION

Members considered a report which presented the Grant Claim Certification Report for 2007/08 produced by the Audit Commission (GCCR).

The GCCR, attached at Annex 1, reviewed the Council's arrangements for the preparation and administration of grant and subsidy claims. It showed that the Council had been responsible for certifying claims to the value of £142m in 2007/08 and concluded that a general improvement could be demonstrated from the previous year, with fewer claims being subject to amendment and more submission deadlines met. However, it did suggest a number of further specific improvements to the Council's approach.

Following discussions on the review, an action plan had been agreed with the Audit Commission, as set out in Appendix 5 to their report. Corporate Finance would play a key role in ensuring that these actions were

implemented. To promote consistency and ensure adequate quality control, the Technical Finance Manager had been given responsibility for overall co-ordination of grant administration activity within the Council.

In response to concerns raised by Members regarding the late submission of the Sure Start grant claim, Officers confirmed that there had been an improvement this year, although the submission had still been late. The District Auditor agreed that the Council's approach to tackling such issues, by introducing corporate standards, was the correct one.

RESOLVED: (i) That the content of the Grant Claim Certification report 2007/08 be noted.

REASON: To confirm that Members have considered the effectiveness of the Council's grant administration activity, and in particular the areas for improvement identified in the report.

(ii) That the agreed action plan presented in Appendix 5 to the Audit Commission report be noted.

REASON: To confirm that Members are satisfied with the proposed improvement arrangements.

23. EXTERNAL FUNDING/GRANT GUIDANCE MANUAL

Members considered a report which invited them to discuss and comment upon a draft External Funding / Grant Guidance Manual, which would form part of the supplementary guidance to the Financial Regulations.

The draft Manual was attached as Annex A to the report. Its purpose was to establish principles of good practice to underpin an improve the way in which the Council applied for and distributed grants and certified grant expenditure. In this, it sought to address the recommendations of the Audit Commission regarding actions required to improve performance in processing grants claims. Further guidance would be provided by an 'operational' handbook for Officers to be produced by the Grants and Partnership Team within the next 12 months.

Officers confirmed that training on the new Manual would be incorporated into existing grants training and awareness would be raised at senior management level via Departmental and Corporate Management Team meetings.

RESOLVED: That the draft External Funding / Grant Guidance Manual at Annex A to the report be approved.¹

REASON: To ensure that the Council implements improvements to its external funding and grants applications, claims and distribution processes.

Action Required

1. Take steps to include the Guidance Manual in the supplementary guidance to the Financial Regulations

SA

24. INTERNATIONAL FINANCIAL REPORTING STANDARDS

Members considered a report which informed them of the implications of the pending the introduction of the International Financial Reporting Standards (IFRS) to the public sector and the change in financial reporting from UK General Accepted Accounting Practice (GAAP).

The transition to IFRS would affect many areas of the organisation. As well as influencing financial reporting, it could also have an impact upon budgeting, investment decisions and performance targets and might require process and systems changes. Areas of change for local authorities to consider during the transition period were listed in paragraph 11 of the report.

Although IFRS would not be implemented in full until 2010/11, the need to include comparative information for 2009/10 in the first IFRS-based Statement of Accounts meant that the effective date of transition was 1 April 2009.

An outline project plan for successful implementation, including production of the Statement of Accounts in IFRS format by 30 June 2011, was attached at Annex A to the report. A project team had been created from staff within Corporate Finance, to engage with relevant staff across the authority, raise awareness of IFRS and embed the changes efficiently. Further reports would be brought to keep Members updated on the progress of the project.

RESOLVED: That the pending introduction of IFRS for local government be noted.

REASON: So that Members are aware of the purpose of the introduction of IFRS to the public sector, namely to bring the benefits of consistency and comparability for financial reporting across the global economy and to follow private sector best practice.

25. REGULATION OF INVESTIGATORY POWERS (RIPA) INSPECTION OUTCOMES AND ACTIONS

Members considered a report which informed them of the outcome of the Surveillance Commissioner's inspection in June 2009, the Council's proposed response to the Commissioner's recommendations, and possible changes to the relevant legislation.

The Regulation of Investigatory Powers Act 2000 (RIPA) provided a legal framework for surveillance and other activity that would otherwise breach a person's right to privacy under the Human Rights Act 1998. The Commissioner's report praised the policies and procedures developed by the Council for the use of its powers under the Act and identified four recommendations for improvement, as follows:

- Determine the role of Veritau Ltd. in representing a relevant public authority;

- Legal Services to take a more proactive role in dip-sampling of RIPA authorisations;
- Draw up a policy for the use of private investigation companies (including Veritau) as agents;
- Arrange refresher training for applicants and authorising officers.

Actions proposed in response to these recommendations were detailed in paragraphs 9 to 12 of the report.

Following recent public debate about the way in which authorities had applied RIPA, the government was considering changes to the Codes of Practice and the powers available to local authorities. The City of York had responded to consultation on these proposals, emphasising the need to continue with surveillance and the entirely proper way that this Council had used it.

RESOLVED: That the action proposed by Officers to address the inspector's recommendations, as set out in paragraphs 9 to 12 of the report, be noted and supported.¹

REASON: To ensure continued compliance with RIPA and its Codes of Practice.

Action Required

1. Implement the agreed action plan

SA

26. KEY CORPORATE RISK MONITOR - QUARTER 2 2009/10

Members considered a report which provided an update on the Council's corporate risk register for quarter two of the 2009/10 financial year.

The report provided a narrative update only, as the register was being revised to include the six new Key Corporate Risks (KCRs) identified by a formal risk refresh carried out by the Corporate Leadership Group (CLG) on 25 June 2009. These were set out in paragraph 7 of the report. Existing KCRs which the CLG had chosen to retain were set out in paragraph 6. Those which had been removed or incorporated into other KCRs were identified in paragraph 5. Full details of the revised KCRs were provided in Annex A. Further risk management training would be available for Members next January, and not this autumn as stated in the report. Details would be circulated shortly.

In response to Members' request at their last meeting (Minute 7 refers), Annex B to the report provided further information on the financial risks associated with the Accommodation Review Project. In response to Members' questions about whether the project would achieve the £5m savings promised at the outset, Officers explained that the differing elements of the projected savings, some of which would accrue over time due to changes in working practices and some of which related to capital receipts that had not yet been realised, meant that the current position was not certain. However, this did not pose a serious risk to the project and controls were in place to manage the budget, hence the low risk rating.

RESOLVED: (i) That the new risks that will comprise the quarterly KCR monitor, as set out at in the tables at paragraphs 6 and 7 and in Annex A to the report, be noted and approved.¹

REASON: To ensure that risks to the Council are continuously reviewed and updated.

(ii) That the financial risks associated with the Accommodation Review Project, as set out in Annex B, be noted.

REASON: To ensure that the risks associated with the financing of the project are well managed.

(iii) That the Member risk management training to be delivered in autumn 2009 be noted.

REASON: So that Members are aware of the opportunity to attend formal risk management training.

Action Required

1. Incorporate the new KCRs in the risk register

SA

27. MANSION HOUSE SECURITY AND INSURANCE

Members considered a report which responded to their request on 31 March 2009 for further information regarding the security arrangements at the Mansion House (Minute 41 of that meeting refers) and set out some proposed improvements.

The report detailed current security and insurance arrangements, previous capital bids that had been submitted to fund improvements, and potential solutions to issues identified, with estimated costs. The following options were presented for Members' consideration:

A – Insurance arrangements

Option 1 – maintain current insurance levels, as outlined in Annex 1.

Option 2 – ensure all contents are fully covered under an 'all risks' policy.

Option 3 – ensure full cover for selected items in the Civic Collection. This was the preferred option. Officers reported at the meeting that it could be achieved with no increase in current premiums, subject to a security survey.

B – Building / yard security

Option 1 – support those proposed 'stage 1' improvement measures set out in paragraph 13 of the report which can be met from existing budgets.

Option 2 – refer those 'stage 1' measures with budgetary implications to the Executive for consideration.

Option 3 – recommend that a further report on 'stage 2' measures, as outlined in paragraph 14, be submitted to the Executive for future consideration.

Option 4 – take the view that the security risks identified are not significant enough to warrant any improvement measures.

In addition, the report suggested a number of improvements to the security of the building yard etc. that could be made immediately and at little cost. These were detailed in paragraph 14, together with the suggested ‘Stage 2’ measures referred to in Option 3 above.

RESOLVED: (i) That the risks to the Mansion House building and yard area and individuals using or working in the Mansion House be noted and acknowledged.

(ii) That the proposed ‘Stage 1’ improvements detailed in paragraph 14 of the report, to mitigate some of the potential risks at no cost or at a cost that can be contained within existing budgets, be supported.¹

(iii) That it be noted that capital funding up to approximately £9k may be available to effect the minor potential security improvements outlined in the ‘Stage 1’ proposals.

(iv) That with regard to insurance arrangements Option 3 be supported, as set out in paragraph 7.

(v) That the submission of a report to the Executive on the ‘Stage 2’ proposals in paragraph 14, together with any associated costs, be supported.²

REASON: In order to address the potential security issues identified in the report.

Action Required

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|---|----|
| 1. Take steps to implement the Stage 1 improvements | SA |
| 2. Schedule report on Executive Forward Plan | SA |

28. PROPOSAL FOR CONSTITUTIONAL AMENDMENT: REMOVAL OF THE SHADOW EXECUTIVE FROM THE FORMAL DECISION MAKING FRAMEWORK

Members considered a report which presented a proposal by Cllr Gillies to alter the Council’s Constitution so as to remove the Shadow Executive from the decision making process.

The report outlined the current terms of reference for the Shadow Executive, which had no decision making powers but was supported by Officer resources in terms of preparing reports and servicing meetings. There was no legal requirement for the Council to have a such a body and a telephone survey of 10 similar or neighbouring authorities had indicated that none of these authorities had a formally constituted Shadow Executive.

Cllr Gillies' comments in support of his proposal were set out in paragraph 4 of the report. He contended that the Shadow Executive was redundant under the new decision-making procedures, since the Scrutiny committees offered a robust alternative, and that its removal would save officer time and other costs.

Following a full discussion on the content of the report, Cllr R Watson moved, and Cllr Jamieson-Ball seconded, that the proposal be referred to Full Council without any recommendation from this Committee.

Cllr Scott then moved, and Cllr Bowgett seconded, that this motion be amended so as to ask the Monitoring Officer to produce a more detailed report on the potential effects of the proposal and the alternative arrangements operated by other authorities, for consideration at the next ordinary meeting of this Committee, in December 2009, before the matter was referred to Full Council.

The Monitoring Officer then advised that his interpretation of the process set down in the Constitution for the referral of such proposals was that the matter must be referred to Full Council and that the Audit & Governance Committee had no powers to prevent or delay such referral.

A vote was then taken on Cllr Scott's amendment to Cllr R Watson's motion. 3 Members voted for and 3 against the amendment. The Chair used his casting vote to vote for the amendment, which was declared CARRIED. A vote on the motion as amended produced the same result and it was therefore

RESOLVED: That the Monitoring Officer be asked to produce a more detailed report on the potential effects of the proposal and the alternative arrangements operated by other authorities, for consideration at the next ordinary meeting of this Committee, in December 2009, before the matter is referred to Full Council.

REASON: To enable all potential consequences of Cllr Gillies' proposal to be fully examined by this Committee before they make a recommendation to Full Council in respect of the proposal.

29. THE LOCAL GOVERNMENT OMBUDSMAN'S ANNUAL REVIEW YEAR ENDING 31 MARCH 2009

Members considered a report which presented the Annual Review of the Local Government Ombudsman (LGO), setting out data on complaints against City of York Council processed by the LGO during 2008/09.

The report outlined the remit and powers of the LGO in relation to complaints made against local authorities. During 2008/09 the LGO had received 57 complaints concerning City of York Council, of which 28 had been forwarded to the investigations team. 30 decisions had been taken during the year. In twelve cases no evidence of maladministration had

been found and in seven cases the LGO had used their discretion not to investigate. Four cases were considered to be outside the jurisdiction and seven had been decided as local settlements. The only area of performance judged as outside the target range was the speed of the Council's responses to enquiries from the LGO, which was 35 days on average compared to the target of 28 days. Further information comparing York's performance to that of other authorities, as requested by the Standards Committee when they considered the LGO's report 28 August, was attached at Appendix A.

It was suggested that in future the LGO's annual reports be made available on the Council's website, in the pages relating to complaints, as well as being reported to the Standards Committee and the Audit and Governance Committee.

RESOLVED: That the content of the Local Government Ombudsman's report be noted and that the proposal to make this and future reports available on the Council's website be endorsed.¹

REASON: For information, and in the interests of transparency.

Action Required

1. Make the LGO's report available on the Council's website SA

30. REVIEW OF THE AUDIT & GOVERNANCE COMMITTEE'S TERMS OF REFERENCE (ARTICLES & FUNCTIONS)

[See also under Part B Minutes]

Members considered a report which proposed the appointment of an independent adviser to the Audit & Governance Committee, as part of a review of the Committee's Terms of Reference.

Details of the current Terms of Reference, as set out in the Council's Constitution, were attached as Annex A to the report. The addition of an independent adviser would be in line with best practice as set down by CIPFA and recent Audit Commission and CLG Select Committee recommendations responding to the Icelandic Banks collapse.

An extract from the Select Committee report, stating that audit committees should recruit an independent member to assist in their scrutiny of treasury management arrangements, was provided at Annex B. However, co-opted members could not be appointed to audit committees which had power to approve the accounts. It was therefore suggested that one or more independent advisers be appointed for this purpose, on a non-voting basis.

RESOLVED: That the intention to carry out a review of the Articles and Functions of the Audit & Governance Committee, with any revisions to be presented to the next meeting for onward approval to Full Council, be noted.

REASON: So that the Committee is aware of the work being undertaken and to ensure that a further report is included on the work plan.

PART B - MATTERS REFERRED TO COUNCIL

31. THE INTRODUCTION OF A CORPORATE APPROACH TO HANDLING PETITIONS AND E-PETITIONS

Members considered a report which detailed how petitions were currently being dealt with across the Council, set out a potential corporate approach to handling petitions and proposed the introduction of e-petitioning via the internet.

The report had been prepared in response to a referral back by Council of this Committee's recommendation, at their meeting in January 2009 in respect of petitions (Minute 37 of that meeting refers), and to requests made by this Committee on 31 March 2009 (Minute 41 of that meeting refers) and by the Working Group tasked with looking at the detailed implementation of changes to the Council's decision-making structure. It also responded to a requirement in the Local Democracy, Economic Development and Construction (LDEDC) Bill currently before Parliament for local authorities to have a system for dealing with both paper and electronic petitions and to publicise their responses to petitions.

Following consultation with Directors, the IT&T team and the Monitoring Officer, the following options were presented for Members' consideration:

Option 1 – introduce an e-petitions facility and Corporate Petitions Register using the ModGov committee management system (CMS) at no extra cost and with immediate effect. This was the recommended option.

Option 2 – defer a decision on the introduction of one or both these facilities.

Option 3 – invite the Head of IT&T and TC to examine in more detail the migration of these facilities (currently with EDRMS). This would cause delay.

Option 4 – no change to current practice. This would fail to address forthcoming legislative change.

Members commented that the report did not address the issue raised at the Council meeting on 21 January 2009 regarding the definition of 'residents' whose signatures on a petition could trigger a debate at full Council. Officers agreed to bring this information to the next ordinary meeting of the Committee, in December 2009.¹

RECOMMENDED: That Council approve the introduction of a Corporate Petitions Register and e-petitions facility, as outlined in the report, based initially upon using the facilities currently available within the ModGov CMS.

REASON: In order to comply with the legislative requirements of the forthcoming LDEDC Bill.

Action Required

1. Bring this information to the next meeting

SA

32. REVIEW OF THE AUDIT & GOVERNANCE COMMITTEE'S TERMS OF REFERENCE (ARTICLES & FUNCTIONS)

[See also under Part A Minutes]

Members considered a report which proposed the appointment of an independent adviser to the Audit & Governance Committee, as part of a review of the Committee's Terms of Reference.

Details of the current Terms of Reference, as set out in the Council's Constitution, were attached as Annex A to the report. The addition of an independent adviser would be in line with best practice as set down by CIPFA and recent Audit Commission and CLG Select Committee recommendations responding to the Icelandic Banks collapse.

An extract from the Select Committee report, stating that audit committees should recruit an independent member to assist in their scrutiny of treasury management arrangements, was provided at Annex B. However, co-opted members could not be appointed to audit committees which had power to approve the accounts. It was therefore suggested that one or more independent advisers be appointed for this purpose, on a non-voting basis.

RECOMMENDED: That Council approve the appointment of one independent adviser to the Audit & Governance Committee and that the Articles be amended to reflect this change.

REASON: To ensure that the composition of the Committee reflects and meets best practice and professional requirements.

B Watson, Chair

[The meeting started at 5.30 pm and finished at 8.30 pm].

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Audit & Governance Committee

4 November 2009

Report of the Assistant Director of Resources (Customer Service & Governance)

Draft Revised Contract Procedure Rules

Summary

- 1 The purpose of this paper is to present to Audit & Governance Committee (A&G) for discussion and comment the draft revised Contract Procedure Rules (CPRs), for onward referral to Executive and approval by Council.

Background

- 2 The council's previous Financial Regulations included the Contract Procedure Rules (Procurement Regulations), which were introduced in 2006 and formed supplementary guidance to the Constitution. The purpose of the rules is to ensure that works, goods and services are procured in a way that is carefully regulated, lawful, ensures transparency and accountability, represents value for money and serves to deter fraud and corruption. Recently the Financial Regulations excluding the original procurement regulations were revised and approved by Council on 15 October 2009. New CPRs were to follow as a separately identifiable set of rules in their own right.
- 3 The current procurement regulations have provided an effective regulatory framework that has allowed the organisation to operate with minimum risk. They were however written on the basis that lowest cost was the key driver and not value for money (VFM) and as a result officers trying to take account of 'quality' and 'sustainability' when procuring works, goods and services had several layers of officer and member decision-making to negotiate before a contract could be awarded. The revised CPRs try to ensure that the council can react quicker, improve suppliers experience in tendering for work and improve efficiency in procurement.

More for York

- 4 Procurement is a key workstream within the More for York Programme and it is planned to deliver £3.4m savings over the next three years. A comprehensive review of the Procurement policies and the Contract Procurement Rules will be needed in the new year but in the meantime

there are urgent changes to the CPRs to enable work to commence. A further set of revisions will come forward in the new year to reflect the need for clearer guidance and advice and to reflect changes in procurement practice that will increase control of spend and facilitate more effective procurement.

The Contract Procedure Rules

- 5 The purpose of the revised draft CPRs (Annex A) is to provide a more flexible set of rules whilst maintaining the key principles of the current rules but reflecting the more devolved decision making framework adopted by the council. The revised rules remove some of the unnecessary processes such as requesting permission to use a Most Economical Advantageous Tender (MEAT) approach to evaluate a tender in providing a more concise user friendly document.
- 6 The CPRs form part of the Financial Regulations along with a number of additional supplementary guidance documents. Keeping the CPRs as a separate document means that the rules are more manageable, easier to understand and assists in keeping the regulatory framework up to date.
- 7 One key change that Executive will be asked to approve is in relation to the council's Key Decision limit (Article 13 of the Constitution). The Executive scheme of delegation requires that all Key Decisions be reserved to the Executive unless specifically delegated to an Executive Member or an Officer or where the Leader and Chief Executive are acting in case of urgency. In the context of procurement a Key Decision is currently one where the aggregate contract value is £500,000 or more.
- 8 In order to facilitate the procurement process the Executive will be asked to specifically delegate to the Chief Finance Officer (CFO) in consultation with the Monitoring Officer (MO), the authority to approve procurements with values in excess of £500,000 where they are 'routine' as defined by the Corporate Procurement Guidance Manual. The definition of a routine contract is set out at Annex B to this report. Procurements not defined, as 'routine' will need to go to Executive for approval.
- 9 This request is based on good business sense. The issue of Key Decisions only came to light when the CPRs were revised. There are a large number of procurements many of them 'routine' and above £500,000. This will avoid the Executive agenda becoming filled with routine procurement decisions. As reports should be on the Executive agenda four months in advance this could hinder the council's ability to deliver business as usual.

10. Substantial changes to the rules include:
- a) allowing commissioning officers to procure on a MEAT basis;
 - b) allowing award of contact on 'lowest cost' or MEAT providing cost is within budget;
 - c) devolving the waiver approval to the local Chief Officer with additional 'light touch' checks for regulatory and Legal issues;
 - d) non-lowest cost approval above tender threshold transferred to CFO from members;
 - e) addition of proper competition rules for use of frameworks.
- In addition there are a number of minor changes which include:
- a) removal of duplicated information already contained elsewhere in the Constitution;
 - b) separation of the CPRs from the Financial Regulations;
 - c) future proofing in terms of electronic solutions;
 - d) updating of terminology to reflect current regulations, corporate policy and strategy;
 - e) provision of indexing and page numbering.
 - f) Changes to the Financial regulations regarding petty cash to enable the use of purchasing cards
 - g) Changes to reflect change in EU thresholds (down from £150k to £139k)
 - h) Change to reduce limit of verbal quotations from £30k to £20k
- 11 The revised rules will not be effective unless all relevant officers and members are aware of the changes and any new rules. It is intended that once approved by council a formal training programme will be delivered in the autumn to help raise awareness and embed the rules across the organisation.

Consultation

- 12 The draft CPRs have been issued to all finance managers for consultation purposes along with other key officers across the council. This report provides the opportunity for member consultation before the final draft is taken to Executive for onward approval to Council.

Options

- 13 This report is for consultation purposes so there are no specific options available other than to recommend that the existing regulations are kept.

Analysis

14 Not applicable to this report.

Corporate priorities

15 The implementation of effective financial control is critical in contributing to the delivery of an 'Effective Organisation' and helps to underpin and support all priorities that form the Corporate Strategy.

Implications

- (a) **Financial** – Financial implications are contained within the Annex to the report.
- (b) **Human Resources (HR)** - There are no implications.
- (c) **Equalities** - There are no implications.
- (d) **Legal** - The legal implications with regard to the constitution are set out at paragraph 6-8.
- (e) **Crime and Disorder** - There are no implications.
- (f) **Information Technology (IT)** - There are no implications.
- (g) **Property** - There are no direct implications.

Risk Management

16 The organisation is at risk if it does not have effective and appropriate Contract Procedure Rules that provide for proper stewardship and integrity of its procurement arrangements. The rules also need to ensure that the council can operate efficiently and effectively in delivering its services and projects.

Recommendations

- 17 Audit & Governance members are asked to:
- a) comment on the format and content of the draft CPRs attached to this report at Annex A and recommend that they are sent to Executive for onward approval at Council;

Reason

To seek A&G members' views as to whether the draft Contract Procedure Rules are appropriate in maintaining the integrity of the council's procurement arrangements.

- b) approve the recommendation to Executive/Council in respect of the delegation of routine procurements (Annex B) to be delegated to the CFO and MO (Paragraph 6-8).

Reason

To ensure that the council can continue to deliver business as usual and that only none 'routine' procurements are referred to Executive for approval.

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Ext 2261

Chief Officer Responsible for the report:

Tracey Carter
Assistant Director (Transformation & Efficiency)

Report
Approved

Date 21st October
2009

Specialist Implications Officer(s)

Wards Affected Not applicable

All

For further information please contact the author of the report

Background Papers

None

Annexes

Annex A – Contract Procedure Rules
Annex B – Definition of 'Routine' procurements



CITY OF YORK COUNCIL

Interim until July 2010

**Contract Procedure Rules
(Draft)**

Version 1.1 October 2009

City of York council
Contract Procedure Rules

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CONTRACT PROCEDURE RULES

1 Introduction

1.1 The council has a duty to make best use of its assets and finances on behalf of council Tax payers and the wider community. It is extremely important therefore, that works, goods and services are procured in a way that is carefully regulated, lawful, ensures transparency and accountability, represents value for money (VFM) and serves to deter fraud and corruption. All contractual commitments made by the council must:

- comply with all relevant statutory provisions and European Union (EU) Public Procurement Directives e.g. Construction Industry Tax;
- offer best value and protect the council from any loss arising from the failure of a contractor to perform the contract;
- be made properly and in a fair and equitable manner, in a way that enables the council to demonstrate the reasonableness, lawfulness and probity of the decision to award a contract to any given person or third party organisation;
- ensure that the council pays a fair and proper price

1.2 The following rules and procedures for procuring works, goods and services (the Rules) must be observed at all times and apply across all parts of the whole organisation, including all Member fora and directorate services, schools, as well as all arms length organisations, agencies and partnerships with whom the council does business and for whom the council is the relevant accounting body. They should be read alongside the Regulations for ordering and paying for works, goods and services, set out in Section D of the council's Financial Regulations, the Procurement Guidance Manual which provides supplementary guidance to these procedures and the council's overall Corporate Procurement Strategy.

1.3 It is the responsibility of Chief Officers to ensure that these Rules are complied with, for ensuring the lawfulness and probity of all contracts entered into, and that all contracts are properly documented, administered and controlled in a way that best safeguards the council's interests and meets its strategic objectives. Directors must notify the Chief Finance Officer (CFO) and Chief Internal Auditor (CIA) of all known failures to comply with these Rules.

- 1.4 All officers and members have a general responsibility to:
- comply with these Rules when procuring works, goods and services;
 - take all necessary legal, financial and other professional advice appropriate to the individual procurement exercise;
 - declare any personal interest in a contract where any failure to do so could be deemed to be either corrupt practice or maladministration;
 - thoroughly appraise the purchasing need and carry out proper risk assessments in doing so;
 - ensure a written contract or proper council order electronic or otherwise has been completed before goods are supplied, services delivered or works begin;
 - maintain proper records;
 - assess each contract after its completion to see how well it has fulfilled the original requirement and achieved VFM.

- 1.5 Failure to comply with any part of these Rules may constitute misconduct and lead to formal disciplinary action.

2 **Exceptions to the Contract Procedure Rules**

- 2.1 Subject to statutory requirements tenders and quotations need not be invited in accordance with these rules in the following cases;
- a) contracts of employment, which are covered by HR policy and procedure notes;
 - b) service agreements with voluntary organisations where this is provided through a service level agreement and is non-contractual;
 - c) partnership working arrangements with other public sector organisations where a service is being provided by the council in collaboration with another 'not for profit' body which could not otherwise be provided at all;
 - d) in the case of extreme urgency which has been brought about by circumstances outside the council's control i.e. Major Fire, Severe Weather;
 - e) the purchase of a named or proprietary product required to be compatible with an existing installation where this forms part of the contract or will otherwise infringe the guarantee;

- f) a known and sustained lack of alternative suppliers in a poor or undeveloped market place with an approved waiver.

3 **Contracting for works, goods & services**

3.1 For the purpose of these Rules, a 'contract' is taken to mean, a contractual commitment between the council and any person or third party organisation. This includes all agreements covered by legislation or relevant European Union (EU) Directives. A legal contract can arise from verbal, electronic or written orders and agreements and can be made for:

- the supply of goods and materials, the provision of services and the execution of works;
- the sale of goods or services and the disposal of assets.

3.2 Partnerships with private sector companies are subject to these Rules. The general arrangements and principles to be observed in respect of entering into and managing partnership and partnering arrangements are set out in Part E of the Financial Regulations.

3.3 Spend on goods, materials, works or services of a similar kind and/or related purpose must be aggregated across the whole organisation and regarded as a single contract proposal. This is because the council is regarded in law as a single corporate entity (the 'Contracting Authority') for contracting purposes and may otherwise be placed in breach of UK legislation and EU Public Procurement Directives (This excludes schools who have powers to enter into contracts in their own right). It may be possible, in some circumstances, to exempt a particular contract from this requirement where it would be impractical and uneconomic to do so. However, such exemptions must be agreed in advance by the CFO and his/her discretion will be limited at all times by all relevant statutory and EU requirements.

4 **Record keeping**

4.1 All contracts entered into by the council must be properly documented and recorded by the initiating Directorate. This should be done in electronic format by use of the council's electronic tendering system (SCMS). In most instances, full records of all contract documentation, quotations, estimates, tenders and any other correspondence pertinent to the award or acceptance of a contract must be kept by the initiating Directorate for the duration of the contract and a minimum of six years after the contract has been concluded in accordance with statutory requirements. All records relating to contracts executed under council seal must be

kept for the duration of the contract and a minimum of twelve years after the contract has been concluded. All records must be made available for audit and inspection purposes as necessary. It is the responsibility of Directors to ensure that all contracts are properly entered into, administered and controlled to safeguard the council's interests, secure value for money and minimise the risk of theft, fraud and corruption.

- 4.2 It is the responsibility of the CFO to maintain a central register of all contracts entered into by the council. Where a contract has not been awarded using the SCMS system, full details of that contract must be passed to the Head of Procurement for inclusion in the council's Contract Register where the aggregate value of the contract exceeds £5,000. It is the responsibility of Directors to ensure this is done in a timely and complete manner following the award of a contract.

5 **Key Decision**

- 5.1 The Executive scheme of delegation requires that all Key Decisions are reserved to the Executive unless specifically delegated to an Executive Member or an Officer or where the Leader and Chief Executive are acting in case of urgency. In the context of procurement a Key Decision is one where the aggregate contract value is £500,000 or more.
- 5.2 In order to facilitate the procurement process the Executive has specifically delegated to the CFO in consultation with the MO, the authority to approve procurements with values in excess of £500,000 where they are 'Routine' as defined by the Corporate Procurement Guidance Manual.
- 5.3 In all other cases, unless urgency provisions apply, the Executive's prior approval will be needed before commencement of the procurement process. It is recommended that the approval sought includes a specific delegation to the Commissioning Officer to award the contract at the conclusion of the procurement process.
- 5.4 This requirement may be waived in 'exceptional' circumstances as decided by the CFO and MO in consultation with the Leader.
- 5.5 This rule applies to all framework contracts as well as the use of approved lists. Where the procurement is deemed to be an exception to the procurement rules (Para 2.1) if the value is £500,000 or more this rule must be applied. Where a decision has already been made by Executive i.e. the Capital Programme further approval is not required however

a copy of the Executive report should be sent to the CPT for audit purposes.

6 Financial limits

6.1. The financial limits prescribed by these Rules are:

Table 1

<u>Value</u>	<u>Competition Requirement</u>
Up to £5,000	Value for Money (VFM)
>£5,000 & <£20,000	Verbal Quotation
>£20,000 & <£139,000 or EU threshold	Written Quotation
Over £139,000 or EU Threshold	Invitation to Tender

6.2 These limits shall apply to the estimated value for the execution of works, the supply of goods and materials and the provision of services. The 'estimated value' is the total value of the contract over the full period of the contract. If the contract is made up of different elements (eg the purchase of goods along with the supply of a service) the value for each element of the contract should be combined to give a total value. Contracts for related works, goods and services must not be artificially divided into separate contracts for the purposes of avoiding any part of these Regulations.

6.3 All purchasing must be done through corporate contract arrangements where a corporate contract exists for the relevant purchase or supply or via existing frameworks (e.g, Buying Solutions) where they exist. It is the responsibility of the purchasing officer to check whether a suitable contract exists or not. There is a presumption that all procurement activity will ensure the council achieves best value for money (VFM) and that contracts will be placed with the persons or companies who will offer best value for money in the execution of the contract.

6.4 All EU notices and awards must be placed through the CPT who are responsible for completing all Government and EU returns on behalf of the council

7 Competition requirements in the purchasing process

7.1 Table 1 above sets out the competition requirement to be observed according to the relevant financial limits and the following paragraphs set out the process to be followed.

8 Procurements up to £5,000 (Value for Money)

- 8.1 All purchasing must be done through corporate contract arrangements where a corporate contract exists for the relevant purchase or supply. It is the responsibility of the purchasing officer to check whether a suitable contract exists or not. Local discretion will apply where the expenditure is not covered by a corporate contract, but officers are expected to take all reasonable steps to secure VFM.
- 9 **Procurements Over £5,000 & Less than £20,000 (Verbal Quotations)**
- 9.1 All purchasing must be done through corporate contract arrangements where a corporate contract exists for the relevant purchase or supply. It is the responsibility of the purchasing officer to check whether a suitable contract exists or not. Local discretion will apply otherwise, in which case three verbal quotes must be obtained and documented in accordance with the requirements for proper record keeping set out in paragraphs 3.1 & 3.2 of these rules.
- 9.2 A contract will normally be awarded to the person or company providing the lowest cost quote. Where a quotation other than the lowest cost quote received is preferred, reasons for preferring to award the contract otherwise must be documented and a request to waive these Rules must be made in advance of the award of contract (following the procedures set out at Paragraph 37 of these regulations) a waiver may be granted on the grounds of value for money and/or any pertinent considerations e.g. quality, sustainability, local suppliers. Similarly, if it has not been possible to obtain 3 quotes, an award of contract can be made subject to a test of reasonableness being made (Paragraph 11). In such circumstances, a request to waive these Rules along with all supporting evidence must be made in advance.
- 10 **Procurements Over £20,000 & less than £1390,000 or EU Threshold (Written Quotations)**
- 10.1 All purchasing must be done through corporate contract arrangements where a corporate contract exists for the relevant purchase or supply. It is the responsibility of the local purchasing officer to check whether a suitable contract exists or not. Local discretion will apply otherwise, in which case at least three written quotes must be obtained and documented in accordance with the requirements for proper record keeping set out in paragraphs 3.1 & 3.2 of these rules.

- 10.2 A contract will normally be awarded to the person or company providing the lowest cost quote. However, contracts may also be awarded on an objective assessment of the Most Economically Advantageous Tender (MEAT). Where a quotation other than the lowest cost quote or MEAT received is preferred, reasons for preferring to award the contract otherwise must be documented and a request to waive these Rules must be made in advance of the award of contract following the procedures set out at Paragraph 37 of these regulations. Similarly, if it has not been possible to obtain 3 quotes, an award of contract can be made subject to a test of reasonableness (Paragraph 11). In such circumstances, a request to waive these Rules along with all supporting evidence must be made in advance.
- 11 **Procurements Over £139,000 or the EU threshold (Invitation to Tender)**
- 11.1 Where the estimated value of a proposed contract exceeds £139,000 or is greater than the EU tender threshold (whichever is the lesser amount at the time of tender) at least 3 formal competitive tenders must be invited and received and the tendering process conducted according to the council's detailed procedure rules (Corporate Procurement Guidance Manual) for tendering and the relevant EU Directives. Where a commissioning officer believes the procurement may fall under Part B of European Procurement Directives advice should be sought from the CPT. Wherever possible, goods and services should be procured through a corporate contract where a corporate contract exists for the relevant purchase or supply. It is the responsibility of the commissioning officer to check whether a suitable contract exists or not. Local discretion will apply otherwise.
- 11.2 All EU notices and awards must be placed through the CPT who complete all Government and EU returns on behalf of the council. All tenders and awards must also be otherwise documented in accordance with paragraphs 3.1 & 3.2 of these rules. A contract will normally be awarded to the person or company providing the best value for money tender evaluated on the basis of Most Economically Advantageous Tender (MEAT) received. Decisions to award contracts on the basis of MEAT must be made using standard evaluation criteria determined by the commissioning officer in consultation with the CPT in advance of the tendering exercise and tenders invited on that basis.
- 11.3 Aggregate weightings between quality and cost must not exceed a maximum 60:40 split respectively for the purposes

of evaluation unless a waiver has been given for alternative weightings in advance of the contract being tendered. Where a tender other than the most economically advantageous to the council is preferred, the award of the contract must be reported to the CFO for decision clearly setting out the reasons why this is required.

- 11.4 If it has not been possible to obtain 3 tenders and no framework exists, an award of contract can be made subject to a test of reasonableness being made (paragraph 11). In such circumstances, provided the award is based upon a MEAT evaluation, a request to waive these Rules along with all supporting evidence must be made in advance.

12 **Test of Reasonableness**

- 12.1 The 'tests' that will apply in determining whether an award of contract is 'reasonable' include consideration of:

- total value of the contract;
- whether a preferred bid is within a +5% variation from the lowest bid received;
- whether there is sufficient budget provision to meet the full costs of the contract;
- the preferred bid scores at least 5% higher in any system of evaluation that includes non-cost criteria
- urgency
- service dependency
- restricted market place and/or specialist supply

13 **The tender process**

- 13.1 Detailed procedure notes on tendering processes are set out in the Corporate Procurement Guidance Manual which forms supplementary guidance to these rules. It is important to note that in any tendering exercise:

- contractors are expected to comply with all reasonable request for information concerning their financial and technical ability to execute the contract;
- contractors are expected to respect the integrity of the tendering process and the principles of open competition;
- an Invitation to Tender (ITT) must include a specification that clearly describes the council's requirements as well as the purpose and objectives of the contract. The specification must be in sufficient detail to avoid any uncertainty, ambiguity or risk of misinterpretation by bidders;
- tenderers must provide the council with a satisfactory written statement of their Health & Safety policy in accordance with the provisions of Section 2(3) of the

Health & safety at Work Act 1974, together with a written undertaking to comply with the provisions of the Act;

- tenderers must provide the council with a satisfactory written statement of their Sustainable and Diversity/Equality procurement policies which must meet or exceed the Council's requirements.
- tenderers shall have regard to the council's duty to eliminate unlawful racial discrimination and to provide equality of opportunity and include an appropriate undertaking in terms agreed with the council.
- notice is given that the council will require that the contractor complies with the Construction (Design & Management) Regulations 2006 where applicable.

14 **Selective tendering and the use of approved contractor lists**

14.1 For certain categories of contract (principally construction, engineering works and significant service supplies) the council may maintain standing lists of approved persons or companies willing and able to provide quotations or more usually tenders. The council may also sanction the use of an ad-hoc list compiled from those persons or companies replying to a public notice. The use of these kinds of lists can be an effective and efficient way of managing the tendering process by targeting suitable suppliers at an early stage in the tendering process rather than going out to general advert in the first instance. The Rules pertaining to the compilation, use and management of such lists are that:

- the relevant Director in consultation with the relevant Executive Member must approve the list and having done so they must designate a 'Responsible Officer' to administer it and keep it under regular local review;
- all such lists must be registered with the CPT and shall be made available for public inspection upon reasonable notice being given in writing to the CFO or his/her nominated representative;
- in compiling select lists public notice must be given:
 - in at least one local newspaper;
 - in at least one newspaper or relevant professional journal;
 - through the SCMS system;
 - to all, or a selected number of persons named in a standing or ad hoc list;

- in accordance with the requirements of EU Directives where applicable.
- the public notice must:
 - specify details of the proposed contract;
 - invite persons interested to apply for permission to tender
 - specify a time limit for the return of expressions of interest.
- no application to be included in an approved list may be agreed until all necessary financial and technical references have been obtained and evaluated and the relevant Finance Manager has certified the financial viability of the persons or company making the application. The council may require other matters to be brought into account such as environmental or equality issues in which case the appropriate assurances and evidence must be received in advance of the application being approved;
- the Responsible Officer must maintain records of the performance of all persons and companies on the select list who are invited to tender for contracts. A supplier may be excluded from the list if they fail to submit satisfactory tenders, fail to execute contracts satisfactorily or no longer meet the criteria for entry onto the list (i.e. financial viability, technical competence, etc);
- where approved lists are used as a matter routine by any part of the council a system of rotation should be applied wherever possible to ensure fairness of opportunity and demonstrate VFM in the selection of suppliers invited to bid and the final award of contract

14.2 After the expiry of the period specified in the public notice, invitations to tender for the contact shall be sent to at least 3 suppliers who applied for permission to tender. Where fewer than 3 suppliers have applied or are considered suitable, the procedures for seeking a waiver from these Rules must be observed

15 Tendering

15.1 If approved lists are not to be used tendering must be undertaken in accordance with the detailed procedures set out in the Corporate Procurement Guidance Manual which provides supplementary guidance to these rules.

16 Standards and award criteria

16.1 The commissioning officer shall ascertain which relevant British, European or International Standards may apply to

the contract and must include reference to those standards necessary to properly describe the required quality. The commissioning officer shall define the award criteria to be used, which is most appropriate to the procurement. Award criteria must ensure VFM for the council and must as a minimum be based on consideration of:

- 'Most Economically Advantageous Tender' (MEAT) or 'lowest cost' where payment is to be made by the council, or;
- 'highest price' if payment is to be received by the council,

16.2 When a MEAT approach is used, it must be further defined by reference to sub-criteria. Sub-criteria may only include relevant considerations such as: price, nature of supply (Ethical purchasing considerations), quality of service, quality of goods, running costs (including whole life costs), technical merit, previous experience, delivery date, cost effectiveness, relevant environmental considerations, aesthetics and functional characteristics, safety, after sales services, technical support and any other relevant matters.

16.3 Award criteria may not include:

- non-commercial considerations
- matters which would result in any discrimination against suppliers from the European Economic Area or signatories to the Government Procurement Agreement.

17 **Submission of Tenders**

17.1 Tenders should, where possible, be submitted through the SCMS system. Written submissions may be accepted subject to prior agreement with the Corporate Procurement Team. In these instances ;

- the date and time by which tenders are to be received has been properly observed;
- where made in writing they have been submitted in plain sealed envelopes marked 'tender' and indicating the proposed contract and without bearing any name or mark indicating the sender;
- all council requirements regarding information relating to health & safety and race relations/equalities considerations are met;

- all council requirements that the contractor complies with the Construction (Design & Management) Regulations 1994 where applicable are met.
- 17.2 All tenders will be stored within the SCMS system until the time and date specified for their opening when the nominated openers including an elected member will release them.
- 17.3 Where there is a written submission tenders must be kept in the custody of the Monitoring Officer (MO) or his/her nominated representative until the time and date specified for their opening. No tender received after the time and date specified in the invitation to tender (ITT) shall be accepted or considered unless there is clear evidence of it having been posted by first class post at least the day before tenders were due to be returned, and/or clear evidence of it having been delivered at the address required no later than the time and date specified subsequent to its receipt. Even if 'late' tenders of this kind are acceptable on those conditions, they cannot be accepted if any other tender has already been opened.
- 18 **E-auctions**
- 18.1 Where a tender is to be carried out by way of a collaborative e-auction process the following procedures will apply;
- approval for this approach must be sought at least three months in advance of the auction from the relevant Chief Officer and Head of Procurement;
 - the auction must be provided through a recognised managed service provider approved by the Head of Procurement;
 - the process for selecting bidders must be agreed in advance with the Head of Procurement;
 - the tender evaluation process must be agreed in advance with the Head of Procurement;
 - the time limit for the auction must be set in advance, clearly notified and be appropriate to the nature of the auction;
 - a minimum of two council Officers must be in attendance at the managed service providers viewing room to ensure the process is conducted fairly and in accordance with regulations. One of the Officers must be an independent observer and have had no involvement with the exercise. They should not leave the room during the auction.
 - prior to start of the auction Officers attending must satisfy themselves that the correct quality weightings (If

applicable) have been loaded into the software and that the software is working correctly;

- the final scoring of all the bidders needs to be documented and counter signed by each officer immediately after the close of the auction;
- the e-auction summary report which is normally produced by the e-auction provider (within a week of the auction) must be cross referenced to the officers own records and both must be kept on file;
- a signed copy of both these records must be passed to Head of Procurement and copied to the Monitoring Officer;
- if the lowest price bidder is not successful approval for the award of a contract must be sought in line with these regulations.

18.2 The application of these procedures exempts the tender from the opening rules set out at 15.2 & 15.3 of these rules. It does not exclude compliance with any other financial and EU regulations as set out elsewhere in these procurement rules.

18.3 The lead partner will arrange for award notices to be sent to the successful bidder (and OJEU following the 'standstill period') and brief the losing suppliers. A copy of the award notice must be kept on file and the Alcatel 'standstill period' must be observed.

18.4 The council must ensure that a discreet contract complying with the council's standard terms and conditions is put in place with each successful bidder.

19 **Opening & receipt of tenders**

19.1 Tenders must be opened through the use of the secure electronic 'safe' within the SCMS or at one time only in the presence of the appropriate Executive Member and the MO or his/her nominated representative. All written tenders must be entered in a register maintained for that purpose immediately upon opening in the presence of the Member and Monitoring Officer, who are required to initial every entry to register. The register shall be open to inspection by any Member of the council, the Chief Executive, Directors, the CFO and the CIA. Details of all tenders received must be reported to the relevant Director or his/her nominated representative.

20 **Confidentiality of Council Information**

- 20.1 Where any activity is or may be carried out by the council in-house, officers and Members may not communicate to any existing or potential external contractor any information regarding the in-house operation that may be commercially damaging to it save as may be required by law. Equally, officers and Members are prohibited from disclosing of any information to an in-house contractor that may unduly advantage it in any competitive tendering exercise.
- 21 **Tender Evaluation**
- 21.1 Tenders must be evaluated against the criteria established in the ITT. Where tenders are evaluated on a MEAT basis, clear criteria and weighting arrangements should be recorded. The form of quality evaluation must be appropriate and proportionate to the scale, complexity and risk of the contract. Quality evaluation shall be carried out by a panel that includes officers with the relevant knowledge and experience of the type of contract. Detailed information on the tender process is set out in the Corporate Procurement Guidance Manual, which forms supplementary guidance to these rules.
- 22 **Clarification of tenders**
- 22.1 Any request for clarification of a tender must be dealt with following the procedures set out in the Corporate Procurement Guidance Manual. It may not be used to negotiate or re-negotiate contract terms once a preferred bidder has been selected. Commissioning Officers are required to take all necessary legal and/or other relevant professional advice if they are in any way unsure of what may or may not constitute 'clarification' under EU Regulations.
- 23 **Acceptance of tenders**
- 23.1 Provided the winning tender is the most economically advantageous to the council within the financial provision (Budget) made for it and it meets the contract specification it may be accepted by the Commissioning Officer. Where a tender is not the most economically advantageous if payment is to be made by the council, or the highest tender if payment is to be received by the council the award of the contract must be passed to the CFO for decision clearly setting out the reasons why this is required. Once approved, all awards of contract must be recorded in the delegated decision log for the relevant Directorate.
- 23.2 The approval of the relevant Executive Member and the CFO must be given if a tender received as part of a capital scheme results in the scheme or project exceeding the approved financial appraisal by 10% or £50,000 (whichever

is the lower) and this can not be accommodated within the original financial appraisal.

24 Post-tender negotiations

24.1 Where a formal post tender negotiation process is required (rather than the routine clarification of minor issues with tenderers) this may only be carried out, in accordance with what is permissible under UK Regulations and the EU Public Procurement Directives, in the following circumstances:

- sole supplier, or the receipt of only one tender;
- when tendered prices vary significantly from the council's estimate for the contract;
- when tenders cannot readily be evaluated and compared without discussion with the tenderers ;
- if matters such as the availability of spares or the quality of the after sales service are importance considerations, where tenderers differ significantly in their offers in those matters;

25 Rules for negotiations

25.1 Where negotiations are to be carried out with tenderers the following Rules must be observed:

- the Commissioning Officer must ensure that negotiations are conducted by staff with the relevant technical and professional expertise;
- the relevant Chief Officer and the MO or their nominated representatives should be invited to attend any negotiation;
- prices and negotiated conditions shall be regarded as strictly confidential;
- negotiations shall take place at pre-determined times and places on council premises unless there are good reasons for holding negotiations elsewhere;
- a comprehensive written record of all negotiations shall be made, signed by all Officers of the council present and retained by the Commissioning Officer;
- all documentation relating to negotiations shall be placed in sealed envelopes when transferred from one service to another in order to maintain confidentiality;
- where meetings are to be held with more than one contractor this shall be indicated to contractors and meetings shall be held separately and in confidence;
- details of the outcome of all negotiations must be submitted to the CFO and the MO for approval.

26 Form of Contract

26.1 Contractual commitments can only be made by individuals who are formally authorised to do so in the relevant directorate schemes of delegation. This condition applies equally to commitments created verbally as well as in writing. All contracts made for, or on behalf of the council, must be evidenced in writing in an approved format irrespective of the value or type of supply and the form of contract involved. This will normally be done at the time the contract is made but may in special circumstances be written confirmation of an earlier verbal contract. Verbal contracts should be avoided wherever possible. Every contract shall be made by;

- the issue of an official order authorised by the appropriate officer for the purchase or supply of goods, services and works up to a total value of £30,000;
- the preparation of formal written contracts for the purchase or supply of goods, services and works over a total value of £30,000 unless the MO certifies that, owing to the nature of the proposed contract, the interest of the council will be adequately protected by the issue of an official order;
- and, the form of every contract shall be approved by the MO in consultation with the relevant Director and the CPT. Where specific conditions apply (ie civil engineering) then industry standard contracts will apply such as those determined by the Institute of Civil Engineers (ICE) for example.

26.2 When entering into contracts, the Commissioning Officer must ensure that any terms and conditions to be imposed can not be held against the best interests of the council, for example by entering into agreements which binds the council into unduly long term commitments (in particular long term rental or Hire Purchase agreements). The MO must approve all contracts. The advice and guidance of the CFO should be sought if officers or Members are at all uncertain as to whether contract terms and conditions could be prejudicial to the financial interests of the council. Guarantees or advantageous terms and conditions must not be offered as part of any contract without the approval of the CFO.

26.3 If an in-house provider is successful the appropriate Director shall enter into a Service Level Agreement (SLA) with the contractor, incorporating any terms and conditions upon which the tender or quotation was based and subject to the form of Service Level Agreement being approved by the Chief Finance Officer and Monitoring Officer. When an in-house provider proposes to sub-let all or part of a contract

then the sub-letting process shall be subject to the tendering procedures as laid down in these Rules.

27 Contract Conditions

- 27.1 Every contract that amounts to £132,000 (or above the EU tender threshold, whichever is the lesser amount) or more for the supply of goods, services or works, shall;
- adhere to the Council's standard terms and conditions. (These can be obtained from the Corporate Procurement Team).
 - specify the goods, materials or services to be supplied and the work to be executed or the hardware, software, support or maintenance to be provided; the price to be paid together with a statement as to the amounts of any discount(s) or other deduction(s); the periods within which the contract is to be performed and such other conditions and terms as may be agreed between the parties, and;
 - for all significant contracts valued in excess of £150,000, be executed under the common seal of the council and be attested by the MO of any other nominated officer(s) and must be signed by at least two officers of the council;
- 27.2 In a contract for the execution of works, which is valued in excess of £132,000, the contract shall provide for the payment of liquidated damages by the contractor where they have failed to complete the contract within the time specified. The council will specify that a contract performance bond will be required if the value or amount of the contract exceeds £1320,000 in addition to the retention of a proportion of the contract sum until the work has been satisfactorily completed and maintained. Such bonds may only be released on the practical completion of the works.
- 27.3 Financial appraisals must be completed in respect of all third parties submitting bids for contracts in excess of £132,000. It is the responsibility of the commissioning officer in consultation with the relevant Finance Manager(s) to ensure this is done to a standard required by the Finance Manager.
- 27.4 In appropriate cases where a contract for the supply of goods and services or the purchase of goods or provision of information technology amounts to £132,000 (or above the EU tender threshold, whichever is the lesser amount) or more in value, a clause shall be inserted to ensure that should the contractor fail to deliver the goods or services or any portion thereof within the time or times specified in the contract, the council, without prejudice to any other remedy for breach of contract, reserve the right to either;

- determine the contract either wholly or to the extent of such default, and/or;
- to purchase other goods, or services or provision of information technology of the same or similar description to make good the default, or in the event of the contract being wholly determined, to procure any additional goods or services required from any other party without any obligation in respect of the original contract.

27.5 In a contract for the supply of goods and services, or provision of information technology which amounts to £132,000 or more in value the council will require a contractor to give sufficient security for the due performance of the contract. Such security or bond shall be released upon the completion of the contract. If the Commissioning Officer considers it to be appropriate then a bond may be required if the contract value is less than £132,000. The Commissioning Officer must seek prior consent from the Monitoring Officer if the value of the proposed contract exceeds the financial limits of the security or bond is not intended to be required.

27.6 There shall be inserted in every contract a clause empowering the council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered or given, or agreed to give, to any person any gift or consideration of any kind as an inducement or reward for doing or refraining to do, or for having done or refrained to do, any action in relation to the obtaining or execution of the contract or any other contract with the council or for showing or refraining to show favour or disfavour to any person in relation to the contract or any other contract with the council, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor) or if in relation to any contract with the council the contractor or any person being employed by him or acting on his behalf shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972. As a minimum, suppliers are expected to have ISO 14001 or be able to demonstrate they are working towards this.

27.7 Every contract must contain a clause requiring the contractor to permit authorised representatives of the council to enter upon a construction site and/or site of operation of the work at any reasonable time and have free

and unfettered access to each and every part of the area covered by the contract work of affected thereby.

- 27.8 Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institute or other recognised standard laid down by a regulatory body for the industry concerned is current at the date of the tender, every contract shall require that all goods and materials used or supplied, and all the workmanship shall be at least of the standards required by the appropriate British Standard Specification or Code of Practice or the relevant regulatory body. In case of contracts to be awarded under EU directives and UK regulations the equivalent EN or ISO standards will apply.
- 27.9 In every formal contract or Service Level Agreement there shall be inserted a clause prohibiting the contractor from :
- assigning or sub-letting the contract, or any part of it, except with the prior consent of the Head of Paid Service and the Chief Finance Officer;
 - sub-contracting, except with the written consent of the council. If the tenderer at the time of tendering states his desire to sub-let any proportions of the work not usually done by him, consent may be given provided that the sub-contractor is a person approved for the purpose by the Commissioning Officer. The principal contractor remains responsible however, for all work done by the sub-contractor and for it being carried out under the same conditions as it executed by himself.
- 27.10 There will be a clause in every contract to require compliance with these Regulations. All contractors shall keep proper time sheets showing the time worked by all persons engaged in and about the carrying out of any contract they have with the council. These time sheets must be produced whenever required for audit and inspection at the council. Contractors shall be responsible for the observances of this clause by all sub-contractors engaged in and about the carrying out of any such contract.
- 27.11 Where a sub-contractor or supplier is to be nominated to a main contractor the following provisions will have effect;
- tenders for the nomination shall be invited in accordance with the provisions of these Rules unless the appropriate Director is of the opinion in respect of any particular nomination where the estimated value does not amount to £132,000 or more that it is not reasonably practical to obtain competitive quotes;
 - the terms if the invitation shall require an undertaking by the tenderer that if they are selected, they will be willing to enter into a contract with the main contractor

on terms which indemnify the main contractor against his own obligations under the main contract in relation to the works or goods or services included in the sub-contract;

- the Commissioning Officer for the main contract, or his/her authorised representative, shall nominate to the main contractor a person whose tender is in his opinion the most suitable.
- the list of tenders and quotations received in accordance with these Rules must be retained by the Commissioning Officer concerned and shall be available for inspection by Executive Members, the Chief Executive, the Monitoring Officer, the CFO and the CIA.

27.2 All contracts shall include a clause requiring that regular contract reviews take place either quarterly, bi-annually or annually.

28 **De-briefing unsuccessful bidders**

28.1 The Commissioning Officer shall as part of good practice offer to debrief all those tenderers who submitted a bid about the characteristics and relative advantages of the successful bid. This might normally include ;

- how the award criteria were applied;
- the prices or range of prices submitted, but not in either case correlated to the tenderers; and
- the names of their competitors and where there were three or more competitors taking part in the tendering exercise.

28.2 The Commissioning Officer may inform an unsuccessful tenderer of the name of the successful tenderer, but only after the successful tenderer has been notified in writing of their success and has accepted the award of contract in writing.

29 **Officers & Members interest in contracts**

29.1 In accordance with the Local Government Act 1972 Section 117, Members or Officers who have direct or indirect pecuniary interest in any contract or proposed contract shall declare their interest, and have that recorded in a book kept for that purpose brief particulars of that interest. The MO is responsible for maintaining the Register of Members Interests. It is the responsibility of all Directors to ensure

proper registers of officer interests are maintained within their own Directorates.

30 **Ordering and paying**

30.1 The general arrangements relating to ordering and paying for goods, services and the execution of works are detailed in Part D of the Financial Regulations. In addition to the procedures set out there the following Rules must be observed:

- payments to contractors in respect of all works must be authorised by a certificate signed by a duly authorised officer. The certificate must show the total amount of the contract, the value of the work executed to the certificate date, the amounts already paid and the amount now certified;;
- officers authorising payments must supply the Chief Finance Officer with a certificate of all necessary information for the maintenance of the corporate contract register;
- VAT authenticated receipts must be obtained by the authorising officer in support of the payment of VAT on the certificate. Receipts should be retained with the officer copy of the payment certificate and retained for a period of six years and must be made available for inspection by HM Customs and Revenues on request.

30.2 If it becomes necessary to vary the value of a contract by more than 2% and this is a variation of more than £50,000 on the original value of the contract this must be reported to the Chief Finance Officer.

31 **Framework Agreements & Call - Off Contracts**

31.1 Call-off contracts and framework arrangements provide an efficient and effective means of procuring supplies and services that are required on a regular basis over a period of time. The benefits of using frameworks are;

- they reduce timescales;
- the suppliers are pre-approved (of a suitable quality and are financially stable);
- the contract complies with the relevant EU regulations;
- some of the frameworks have pre-negotiated rates with the suppliers;

31.2 Framework are formal agreements that set out the terms, prices and specifications agreed with the supplier. A framework arrangement is not in itself a contract, however, each order raised under it, once accepted by the supplier becomes an individual contract bound by the agreed terms.

All contracts entered into under terms & conditions of a general framework agreement must comply with the contract conditions set out in these regulations

- 31.3 Detailed guidance on how to establish a framework arrangement or 'call off' contract can be obtained from the Corporate Procurement Team

32 **Competition & Frameworks**

- 32.1 When a framework is used a 'mini-competition' must be undertaken between all the Suppliers on the Framework who are capable of fulfilling the requirement to ensure compliance with EU Legislation. A 'mini-competition' process ensures that VFM is achieved and that the supplier is appointed through a fair and transparent process unless the framework has been procured on a Call-Off basis. Where the contract is below the EU threshold a mini-competition should still be undertaken unless a waiver to this rule has been agreed.

33 **Additional rules for construction & property related procurement**

- 33.1 The use of the 2-stage tendering process as set out in 'Constructing Excellence' can be used in relation to major construction projects. Procurement of the construction team members must comply fully with the procedures set out in these rules. Full details of this scheme are set out in the Corporate Procurement Guidance Manual.
- 33.2 All other construction projects will be carried out in accordance with the best practice principles set out in the OGC 'Achieving Excellence in Construction' initiative unless there are demonstrable whole life costing benefits to not doing so. Because recognised standard forms of contract are available from the professional organisations, all contracts for building or engineering work must be arranged in the form of one of the following standard agreements:
- The ICE Conditions of Contract where still relevant;
 - The Standard Forms of Building Contract issued by the Joint Contracts Tribunal;
 - The IEE General Conditions of Contract
 - NEC3 Engineering and Construction Contracts;
 - PPC2000 Project Partnering Contract.

- 33.3 Contracts for building or engineering works which exceed £50,000 must:
- be evidenced by a formal document signed/sealed by or on behalf of both parties;
 - provide for liquidated damages, if the contract provides for the completion of works by a particular date.
- 33.4 Where the Commissioning Officer and/or the CFO considers that the council requires security for the due completion of a contract for building or engineering works, the nature and amount of security to be given by the successful tenderer must be specified in the conditions of tender.
- 33.5 Where ICE conditions apply, the tender and associated documents constitute sufficient evidence of a contract until a formal document is prepared, provided that the Contractor signs the standard form of tender containing the following words, or words of similar effect:
- 'Unless and until a formal agreement is prepared and executed this tender, together with your written acceptance thereof, shall constitute a binding contract between us'.*
- 33.6 A contract not falling within the above rules must be evidenced by a written quotation or tender from, and signed by, or on behalf of, the contractor, together with an official order signed by an officer who is authorised to do so. In such a case no letter or acceptance of a tender or quotation may be sent to the contractor unless it is accompanied by an official order. All contracts must specify that, where an appropriate British, European or International standard is current at the date of tender, goods and materials used in the execution of the contract conform to that standard.
- 33.7 Contracts involving building or engineering works must include a clause or clauses prohibiting the contractor from:
- transferring or assigning directly or indirectly to any person all or any part of the contract without written permission of the council.
 - sub-letting any part of the work except to the extent permitted in the contract or in writing by the Commissioning Officer.
- 34 **Additional rules for IT&T related procurement**
- 34.1 All ITT related procurement must be made in consultation with ITT. This is to ensure all hardware and software procurements comply with the council's corporate IT strategy and can be supported by the ITT environment and technology infrastructure;

35 Special contract arrangements

35.1 Proper consideration must be given by officers engaged in procuring goods and services at the council with the requirements of the 'Special Contracts Arrangement' (SCA) introduced by the Secretary of State for Employment in November 1994. The SCA was developed to assist eligible employers of severely disabled people compete for government contracts. The scheme applies to all government departments and their agencies including local authorities and NHS Trusts, but applies only to contracts below the threshold of the EC rules. It does not apply to prison workshops. Full details of the scheme can be found at www.ogc.gov.uk.

35.2 There is a general presumption that the council will comply with the SCA at all times and will positively discriminate in favour of placing contracts with eligible suppliers where it would not be anti-competitive to do so and there would be no financial dis-benefit to the council.

36 Supplier Eligibility

36.1 All suppliers registered under SCA, such as Yorkcraft, must be non-profit distributing companies that have at least 50% of the workforce registered as severely disabled. Each company's disabled employees must make a genuine contribution to the business and are not there simply for therapeutic activities. In addition all disabled staff are paid an equivalent wage to those who are non-disabled.

36.2 The supplier list is maintained by Jobcentreplus (Disability & Rehabilitation Division) and is usually circulated twice a year to all government departments.

36.3 When submitting tenders to Government departments/agencies SCA registered suppliers are advised to quote their SCA registration number on all correspondence. The SCA registration number takes the format UK[XXXX], where X represents 4 digits. Yorkcraft's registration number for example is UK0011.

37 Guidance to Government buyers

37.1 The scheme sets out to encourage public sector buyers such as the council to increase business with SCA registered suppliers whilst ensuring that commercial firms are treated fairly. When awarding contracts covered by the SCA scheme, the council is required:

- to award contracts for the supply of good or services to the supplier who offers the most economically advantageous tender;

- to award contracts to an SCA registered supplier if its tender is no more economically advantageous than the most economically advantageous trade tender;
- if an SCA registered supplier's tender is unacceptable on price alone (eg quality, volume and delivery are acceptable), the supplier should be given an opportunity to submit a revised offer (an 'offer back') for all or part of the contract;
- if on 'offer back' the registered supplier is able to match the best offer its revised tender should be accepted;
- not to use 'offer back' as a means of subsequent negotiation with trade suppliers in order to reduce tender prices further;
- to maintain records of the use and outcome of the SCA scheme, the value of contracts awarded to SCA suppliers and the value of contracts awarded through 'offer back'.

37.2 In doing so however, the council is not required to:

- transfer existing customer contracts from satisfactory trade suppliers where the maintenance of suitable commercial manufacturing capacity is necessary for strategic reasons, even if the registered supplier is able to match the trade supplier's tender;
- split contracts where to do so would result in an increase in the overall cost of meeting their requirement.

38 Breaches and waivers

38.1 **Breaches** - of financial regulations are extremely serious matters and will be fully investigated and reported on following referral or discovery. All Directors are responsible for reporting all known or discovered breaches of these Regulations to the CFO as soon as they become aware of it in practice.

38.2 **Waivers** - If it is known that any given circumstance will make it difficult or problematic to comply with these Rules then request to waive the regulations may be made. The process to be followed is:

- Completed waiver document sent to relevant Chief Officer (and copy to CPT) for approval. If approved;
- Completed waiver form sent to CFO or nominated officer to ensure compliance with Financial Regulations. If approved;

- Completed waiver form sent to MO or nominated officer to ensure legal compliance;
- Outcome of process logged in Waiver Register maintained by CPT;
- Once all three stages have been completed if the waiver has been approved the commissioning officer can then proceed with the variation to these rule.

38.3 Commissioning Officers are required to seek waivers in advance of entering in to any contract except in the case of an emergency where there is danger to the safety of persons or serious risk of loss or damage to the council's assets or interests, or the interests of another party, the Commissioning Officer may place such contracts as necessary by means that are reasonable under the circumstances.

38.4 All requests for waivers from these Rules must be advised in writing using the standard pro-forma request form and risk assessment available from the CPT or through the council's Intranet site.

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Annex B

ROUTINE PROCUREMENT OVER £500,000

Routine Procurements account for the majority of the council's procurement transactions.

Such procurement generally describes the acquisition of those goods, works or services that represent a low commercial risk to the authority, meaning they are easy to specify and there is very little financial or legal risk in actually procuring.

The purpose of this Annex is to focus upon the procurement and re-procurement of goods, works and services above the council key decision limit (£500k), which retain a clearly defined specification and have been procured in a similar and compliant manner previously (e.g. utilities). In terms of the revised Contract Procedure Rules these would be classed as Routine Procurements.

All Procurements enacted under this exemption will require the authorisation of the Chief Financial Officer (Director of Resources) and must comply with the Financial Regulations, Contract Procedure Rules and EU Procurement Legislation.

Any procurement, which has already received prior Executive approval such as those included within the Capital Programme, will not be subject to this process.

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Audit & Governance Committee

4 November 2009

Report of the Assistant Director of Resources (Customer Service & Governance)

Corporate Debt Policy

Summary

- 1 The purpose of this paper is to present to Audit & Governance Committee (A&G) for discussion and comment the council's draft Corporate Debt Policy. The policy (Annex A) sets out the council's framework for providing a consistent 'fair but firm' approach to collecting debt ensuring that the council continues to maximise collection performance in line with its Income Policy.

Background

- 2 The council does not currently have a Corporate Debt Policy to provide the guiding principles required to be embedded across the organisation in its approach to debt collection. The policy is needed to develop an effective policy framework for income recovery in conjunction with the Income Policy approved by the Executive in September 2008. The key objectives of the Income Policy are to:
 - a) ensure that charges reflect council and service objectives and priorities, the community strategy and local area agreement;
 - b) maximise income for the council;
 - c) offer choice and minimise exclusion;
 - d) protect tax payers interests by minimising debt and late payment;
 - e) ensure equality and consistency when dealing with customers;
 - f) ensure compliance with legal and statutory requirements;
 - g) implement appropriate recovery action.

Corporate Debt Policy

- 3 The policy sets out the principles of recovering debt in the context of York and will support officers and Members in understanding the purpose and role of debt collection. The council is required to collect income from private individuals and business for a variety of reasons some statutory while others may be discretionary or essential for well being. In undertaking this process it is inevitable that the council will be required to pursue the recovery of arrears from individuals or businesses that may experience difficulty in paying such accounts. An agreed policy of how the council manages and collects debts is key in ensuring consistency and best practice.

- 4 The policy will apply to all council departments and will not prejudice any legal action the council may wish to take in recovery of the debt. It seeks to be 'fair but firm' and the full range of collection and recovery methods will be exercised if debts are not paid. The policy objectives are to:
 - a) maximise income to the council;
 - b) be fair but firm;
 - c) promote the Income Policy encouraging prepayment where appropriate to prevent debt;
 - d) promote the use of support and advice agencies, and work in partnership with those agencies;
 - e) encourage self help;
 - f) ensure consistency for customers in support of the Customer Strategy;
 - g) apply best practice in relation to debt collection;
 - h) achieve efficiency savings by identifying solutions for customers on debt issues at the first point of contact;
 - i) define priority debts;
 - j) develop a single customer debt profile of all council debt within the Data Protection Act rules.

- 5 The detailed strategy required to deliver and embed the policy into the council is provided through the detailed Income blueprint and supporting project plans that form part of the 'MoreforYork' efficiency programme.

- 6 The policy has had an Equalities Impact Assessment (EIA) undertaken to ensure it complies with equality issues and supports the council's corporate strategy with regard to 'fairness and inclusion'.

Consultation

- 7 The policy has been circulated to key officers involved in debt collection activity across the council, the council's efficiency partners (Northgate Kendrick Ash) and finance managers in all directorates. The Social Inclusion Working Group (SIWG) has also been consulted at their meeting on 12 October 2009 and changes made to the policy in response. The policy has been sent to the Citizens Advice Bureau and Christians Against Poverty for comment but to date no response has been received.

Options

- 8 No further options are provided in this report.

Analysis

- 9 Not applicable.

Corporate Priorities

- 10 The Corporate Debt Policy directly supports the corporate strategy objective of delivering an Effective Organisation. It also supports the strategy objective of being an Inclusive City. The maximisation of income also helps to underpin the financial support needed to deliver all the objectives of the corporate strategy.

Implications

- 11
- (a) **Financial** - There are no implications additional to those highlighted in the MoreforYork income blueprint.
 - (b) **Human Resources (HR)** - There are no implications
 - (c) **Equalities** - There are no implications
 - (d) **Legal** - There are no implications
 - (e) **Crime and Disorder** - There are no implications
 - (f) **Information Technology (IT)** - There are no implications
 - (g) **Property** - There are no implications.

Risk Management

- 12 This report has been produced in compliance with the council's Risk Management strategy. There are no risks directly associated with this report as it is for consultation only at this point. The risks to the council of not implementing a consistent approach to managing debt and maximising income are high. The current economic conditions and council savings targets cannot be addressed unless an efficient and effective approach to income collection and recovery is embedded across the organisation. Failure to meet these targets may result in the loss of services, and an increased and unsustainable debt position for some customers.

Recommendations

- 13 Audit & Governance members are asked to:
- a) review and comment on the content and format of the Corporate Debt Policy and approve its onward progress to Executive and Full Council for approval (Annex A).

Reason

To seek the Committee's views as to whether the policy meets their expectations and approval to progress to Executive and Full Council.

Contact Details

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Service & Governance)

Report Approved

Date 20.10.09

Specialist Implications Officer(s) Not applicable

Wards Affected Not applicable

All

Background Papers

Income Policy

Annexes

Annex A Corporate Debt Policy

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**CITY OF YORK
COUNCIL
CORPORATE DEBT
POLICY**

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INTRODUCTION

1. City of York Council aims to be an exemplary organisation with regards to the collection of debt. This policy has been developed to provide clarity and consistency in our approach to the collection of outstanding debts. The policy affirms the use of best practice methods providing high standards of customer service dealing with all customers in a fair and inclusive manner, whilst giving careful consideration to the needs of vulnerable customers.
2. The policy demonstrates commitment to the Council's Corporate Strategy priorities, and also supports the Government's agenda to provide solutions that have prevention and intervention as key drivers for public service delivery to local people.
3. The policy has been developed in consultation with the following external agencies:
 - a) Her Majesty's Court Service (HMCS)
 - b) York Citizens Advice Bureau (CAB)
 - c) Christians Against Poverty (CAP).

The policy objective

- 4 The objective of the policy is to provide clarity and consistency in the way that income collection to the Council can be maximised in support of the Council's Income Policy and through embedding best practice methods of recovery.
- 5 The policy supports prompt, effective and efficient billing and recovery action, through making best use of available resources. It also reinforces the council's commitment to ensuring that any recovery action must take account of all relevant legislation whilst ensuring high standards of customer service.

The purpose of the policy

- 6 The policy provides a consistent framework in which the council can deliver its income collection function. It is inevitable that some customers will experience difficulty in paying their debts and it is important that these situations are managed in a consistent and fair way whilst ensuring the council can recover its debt through deployment of best practice.
- 7 The policy defines the key responsibilities, and support mechanisms available along with providing practical advice in the management of multiple debts.

- 8 The policy covers **all** debts owed to the council including:
- a) Council Tax
 - b) Non-Domestic Rates
 - c) Commercial rent arrears
 - d) Housing rent
 - e) Benefit overpayments
 - f) General debtors, e.g. unpaid fees and charges
 - g) Legal costs
 - h) Penalty Charge Notices (parking contraventions),
- 9 The policy is to be used by all income and recovery streams across the council. The full range of collection and recovery methods will be used as appropriate where debts are not paid. The policy works within and takes account of all relevant legislation e.g. Data Protection, Human Rights and seeks to treat all customers fairly.

Governance

- 10 The processes and controls associated with the Debt Policy along with the council's Income Policy are administered by the Head of Financial Procedures in Resources. All changes related to the procedures, systems and documentation contained within the policy must be approved by the Chief Financial Officer in consultation with the council's Directors and Audit team (Veritau) as set out at page 27 Paragraph 10 of the council's Financial Regulations.

Delivering The Service To The Customer

- 11 In determining how customers can best be supported and encouraged to address debt issues, it is important that service provision at the first point of contact is delivered in a sensitive way.
- 12 Key to this is the delivery of the council's Customer Strategy and Standards. The main purposes of the Strategy are to:
- a) establish the overall aims of the council in placing the customer at the heart of all we do;
 - b) set out a specific direction for the development of customer access channels whilst considering departments and service;
 - c) provide a framework for customer service improvement, based upon clear and agreed principles;
 - d) to increase the number of customer enquiries we resolve at the first point of contact.
- 13 Once a customer has made contact it is imperative that they are given the most appropriate source of debt management support at the first point of contact wherever possible e.g. Customers with a single debt

will be able to make a payment or where the debt cannot be cleared, a realistic agreement to pay via the relevant council department should be negotiated. Customers will be informed of all the options available to them.

Communicating with the Customer

14. We will use plain English and language that is clear and easy to understand in all correspondence. We will explain any complex terminology that we are required to use by law and avoid the use of jargon.

We will include where relevant:

- a) Details of the amount payable
 - b) How the charge has been calculated
 - c) A description of the charge (if this is not shown in the calculation of the charge)
 - d) The payment methods available
 - e) A contact number for enquiries or disputes (Wherever possible the contact numbers will be the same)
 - f) A contact number for discussing payment arrangements and difficulties
 - g) E-mail address where appropriate.
15. In meeting individual needs the council will, where practical and possible, ensure that individual preferences are documented so that ongoing and future communication can be provided in an accessible, preferred format using non-threatening language. We will review customer feedback to help identify service improvements.
 16. All information can be made available or presented in a format that the customer can understand, for example other languages, large print, audiotape and Braille.
 17. We can arrange where practical and possible to use accredited translators or interpreters if the customer uses British sign language or if English is not their first language.
 18. Correspondence with customers will refer to and deal with all / or similar accounts outstanding wherever possible.

Sharing of Information

19. The council will ensure that statutory requirements are followed in the use of all computer systems used to bill and recover outstanding debts.

Training and re-training will be given where required to ensure that all staff involved in the collection and recovery of debts are experienced in the various computer systems and are fully aware of the statutory requirements governing the information maintained within the systems.

- 20 Subject to any limitations imposed by the 1998 Data Protection Act and Human Rights legislation, access to debtors' information contained in different systems will be made available, and shared across the teams responsible for debt recovery. This not only ensures that debtors can be located, but also provides a customer debt profile allowing a coordinated approach to debt collection, and a proactive way of identifying and dealing with customers priority debts. Clarification of the sharing of information will be provided to customers in appropriate correspondence and on the council's web-site.
- 21 To support the successful delivery of a coordinated debt recovery service at the council, it is vital that good working relationships and practices are established and maintained across council departments, statutory and voluntary agencies including regular meetings with the Citizens Advice Bureau, Christians Against Poverty and all service providers when dealing with debts.
- 22 All teams should have up to date written procedures in place to ensure compliance with data protection principals and appropriate customer service standards.

Providing Advice, Support and Access

- 23 Standard documentation will be provided to customers when appropriate providing help and advice about benefits and managing debt problems. This will normally include information about other support agencies including the Citizens Advice Bureau, Christians Against Poverty and York Credit Union.
- 24 The council will also make every effort to advise people of their right to apply for benefits assistance, including pro-active take up campaigns as appropriate. The council recognises the importance of bringing such matters to the attention of individuals at the earliest opportunity and where possible at the first point of contact. This can be further supported through open days and the advice points in the council's reception areas.
- 25 The council will also advise individuals and businesses of the range of other discounts, relief's and reductions available at the time an account is issued and also in subsequent communications.
- 26 During both face-to-face contact and telephone communications, staff will signpost customers as to where they can obtain further specialist advice on benefits and debt matters appropriate to their needs.

- 27 Wherever possible the customer's full debt profile will be provided to them in written form when recovery correspondence is issued.

The objectives of the recovery teams

- 28 The key objectives of the recovery teams are to:
- a) maximise income to the council
 - b) ensure that all customers interests are protected through the application of the debt policy
 - c) achieve an equitable share of income available to pay across all council debts
 - d) take proportional recovery action including timely issue of correspondence and court action when necessary
 - e) achieve efficiency savings by identifying solutions for customers on debt issues at the first point of contact
 - f) be fair but firm
 - g) be "preventative" for example offering payment options and other advice
 - h) help where possible to maximise customers income and reduce expenditure
 - i) advise customers of advice and support agencies
 - j) encourage self help
 - k) ensure consistency in dealing with customers
 - l) share knowledge, information and expertise across the council, including other agencies within the legislative framework with regard to sharing personal information
 - m) apply best practice in relation to debt collection.

Contact With Customers

- 29 We will continually improve contact with customers by :
- a) issuing timely correspondence
 - b) taking a pro-active approach including visiting debtors where possible, in order to avoid further recovery action being taken
 - c) encouraging customers to make early contact regarding their outstanding debt(s) owed to the council
 - d) raising awareness of the consequences of non-payment
 - e) advising customers of their total debts where possible.

Assessment of Ability to Pay

- 30 During the process of recovery, the council will act in accordance with statutory regulations and advice issued by professional bodies, external auditors etc.
- 31 The council will endeavor to make payment arrangements with customers who are unable to settle their debt(s) in full, however this may involve legal action being taken against the customer where appropriate.
- 32 Payment arrangements will be made with individuals and companies giving consideration to their financial circumstances, in particular their disposable income. In doing so other factors will also be considered including the nature and level of debt and past payment history.
- 33 In considering a customer's ability to pay the minimum requirement will be to ensure that the customer's indebtedness to the council does not worsen. As priority debts rank of equal importance, the council will give due consideration to the level of the arrangements made in respect of these in order to protect the customers position.
- 34 A financial statement showing income and expenditure may be required to support a payment arrangement. The customer may be required to provide key documents and information in support of their request for a payment arrangement before this approach can be agreed.

Priority Debts

- 35 The definition of a priority debt is one that could either involve the loss of the debtor's home, or those owed to creditors who can take the strongest legal action against the debtor. It is not the size of a debt that denotes it as a priority, but the result of action that creditors can take to recover their money. Customers usually pay the creditors who shout the loudest, and are often not aware of the consequences of failure to pay priority debts. Table 1 below sets out main priority debts including the consequences of failure to pay

Table 1

<u>Type of Debt</u>	<u>Consequence</u>
Rent arrears	- loss of home
Mortgage arrears	- loss of home
Utility bills	- loss of water/gas/electricity
Council Tax	- bailiff action, attachment of earnings or benefits, bankruptcy or imprisonment
Business Rates	- bailiff action and imprisonment
Maintenance/child support	- bailiff action/deductions from earnings / imprisonment
Housing Benefit overpayment	- bailiff action or deductions from benefits
Income Tax	- bankruptcy or imprisonment
Other secured loans	- loss of home
Television License	- custodial sentence
Other debts identified to be a priority	

Customers With Multiple Debts

- 36 Customers with multiple debts need additional support to find a solution to their debt problems, and should be actively encouraged to share with staff, information on all monies owed, in order that the most appropriate action can be taken to address their debts.
- 37 The policy promotes a flexible approach to working with customers to agree the steps that need to be taken to help address multiple debts. In taking this approach debt management will vary from debt to debt as different solutions will be required.
- 38 Whilst focusing clearly on the debt(s) owed to the council, this policy promotes the assistance of customers by ensuring they receive help and debt advice that they need to reach realistic solutions in respect of debts owing to other organisations.
- 39 The policy promotes clarification to the customer regarding the order of priority in which customers must pay their debts, depending on the nature of the debt.
- 40 Support will be offered including access to interpreters for customers whose first language is not English or for those who are deaf or visually impaired, and staff will attend appointments when required to ensure

that such customers receive the assistance they need. The provision of individual responses will also take into account diversity and exclusion issues. Where practicable, we will also require external agencies to ensure the same level of service is provided, mirroring our approach to diversity and inclusion issues.

Supporting Vulnerable Customers

- 41 We will deliver a service, which aims to meet the needs of each individual, and sign post them to other support agencies identifying vulnerable customers at the earliest possible stage.
- 42 Whilst the council will ensure that arrears are pursued in a timely manner and in a firm but fair way, it does recognise that certain individuals will require more sympathetic and sensitive treatment. The council's Welfare Rights Visiting Officers will be used to help build relationships with vulnerable customers at an early stage. Where a customer is deemed as vulnerable or where the customer requires special assistance in handling their financial affairs, steps will be taken to deal with these customers in a more sensitive way.

Customers who can pay

- 43 The council's Income Policy sets out the various payment methods available to customers and promotes the council's commitment to maximise income.
- 44 Appropriate payment arrangements are offered where debts cannot be settled in full. The Income Manager monitors these arrangements, and further recovery action is taken following default.

Customers who can't pay

- 45 Where a customer is unable to pay the following support and debt advice will be provided where possible:
 - a) Advice will be given of what happens if debts remain outstanding
 - b) When appropriate council debt recovery officers will attend the customer's home and especially where a customer is deemed to be vulnerable. Benefit officers may also visit to endeavor to resolve the situation and avert further recovery action if possible
 - c) Information will be provided stating who can give help and advice
 - d) Encouragement will be given to customers to get help from a range of sources
 - e) Referrals will be made to appropriate agencies and benefit teams
 - f) Further proportional recovery action may be taken

Enforcement of collection

- 46 The council is empowered to enforce payment through a number of statutory remedies following successful court action being taken, including powers which impact on a person's possessions or liberty. This can include the right to seize goods, to evict a tenant, or to request imprisonment.
- 47 The right to Levy Distress is one of the remedies used, which is undertaken through the use of external Bailiff Agencies in line with the Lord Chancellor's "National Standards for Enforcement Agents". To ensure effective, consistent and appropriate application of Distress, the City of York council's contract with its Bailiffs includes a detailed Code of Conduct, which the bailiffs must follow and which is regularly monitored.
- 48 The council will ensure that these more 'severe' powers for example removal of goods, will only be used when all other reasonable methods have failed and where all appropriate internal and statutory processes have been properly followed.

Further Recovery Action

- 49 In situations where all attempts to contact customers to clear their debts have failed, including the use of external Bailiff action, further appropriate recovery action will be taken whilst considering individual circumstances. This may include bankruptcy proceedings or committal action.

Debt Write Off

- 50 Each individual case needs to be considered on its own merits but inevitably there will be debts that become unrecoverable. All forms of enquiry including the use of tracing agencies will be exhausted before a debt is considered for write off. If a debtor is subsequently traced after the debt has been written off the debt will be written back onto the council's accounts providing the six-year rule does not apply. This rule states that creditors are no longer able to pursue a debtor if they have not issued correspondence regarding the debt within the last six years. The standard criteria for writing off debt are:
- a) Deceased
 - b) Bankrupt
 - c) In Administration/ Liquidation (Non Domestic Rates)
 - d) Individual Voluntary Arrangement (if arrangement is adhered to)
 - e) Gone away no trace
 - f) Uneconomical to recover
 - g) Debtor in prison (if sentence longer than 6 years due to 6 year rule- although exempt while in prison)
 - h) After custodial sentence for non-payment of Council Tax if instructed by the court.

- 51 The delegated powers for writing off debt is set out in detail within the council's Financial Regulations. The information is contained within Part D of the regulations 'Systems & Procedures' with the delegated powers detailed in the Table at page 27.

Complaints

- 52 All complaints will be dealt with promptly through the council's 3 stage complaint procedure by the relevant service managers.

Credits and Transfers

- 53 A corporate approach to refunding credits will be established so that where ever possible, checks will be made to identify other outstanding debts owed by the customer, prior to a refund being made. Where other debts are identified, it may be necessary to obtain the customer's permission, prior to a credit transfer.

Irrecoverable Debts

- 54 The council recognises that not all debts are collectable and therefore it may be appropriate in certain circumstances to classify debts as irrecoverable, where pre determined criteria are met. The council will ensure that procedures are in place, which detail the action to be taken prior to an account being written-off. It is also recognised that accounts below a certain value may be uneconomic to collect.

Additional recovery costs

- 55 In order to protect the local taxpayer's resources, Bailiff fees and court costs will be passed on to the debtor when appropriate, and where legislation allows.

Procedure Notes

- 56 The City of York Council will develop comprehensive procedural documents for the pursuance of debt. These are subject to continual review respecting not only best practice methods, but the changing financial world and evolving technology.

Monitoring performance

- 57 The performance of the income teams will be constantly monitored to ensure they are providing an effective debt recovery service to the council. The teams will be set targets in terms of the level of recovery with performance management embedded at the core of their management.

Policy Review

- 58 The Corporate Debt Policy will be monitored and regularly reviewed on at least an annual basis. This will enable it to be updated where necessary and take account of changes in legislation.

Equalities

- 59 In order to plan and deliver the service and in developing this policy in a fair and inclusive way, the council have undertaken consultation with its Social Inclusion Working group and assessed the impacts on people from the equality strands to ensure that we do not unintentionally discriminate against some of them by carrying out an Equalities Impact Assessment (EIA) including an action plan for going forward. This has taken account of the issues that the people in York have told us have a negative effect on people from all six equality strands, which included difficulty in accessing information and services. This is an ongoing consultation process that will help shape future service provision.

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