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| Subject: | Constitution Review | | Status: | For Publication | |
| Report to: | Council | | Date: | 15 th November 2023 | |
| Report of: | Monitoring Officer | | Portfolio Holder: | Environment and Corporate Services | |
| Key Decision: | No – reserved for full Council | Forward Plan <input type="checkbox"/> | General Exception <input type="checkbox"/> | Special Urgency <input type="checkbox"/> | |
| Equality Impact Assessment: | Required: | No | Attached: | No | |
| Biodiversity Impact Assessment: | Required: | No | Attached: | No | |
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1. RECOMMENDATION(S)

That Council approves the following amendments to the Constitution:

- 1.1 The amendments to the Finance Procedure Rules as outlined in Appendix 1.
- 1.2 The amended Contract Procedure Rules as outlined in Appendix 2
- 1.3 The amendment to the Officer Delegation Scheme at Part 3 of the Constitution in relation to the definition of “significant” when considering revenue or capital expenditure and approval to award as outlined in Appendix 3.
- 1.4 The minor amendment throughout the Constitution where reference is made to the Head of Finance, this shall now refer to the Chief Finance Officer.
- 1.5 The minor amendment throughout the Constitution where reference is made to Portfolio Holder, this shall now refer to Lead Member.

2. EXECUTIVE SUMMARY

- The Council is required by law to implement a Constitution and it is in the interests of the Council to regularly review and update the document.
- The Financial Procedure Rules provide the framework for managing the Council’s financial affairs and were refreshed in June 2022. In order to support efficient working and greater clarity it is proposed to introduce a structured means of delegation in order to deal with receipt of grant funding in addition to the current requirements relating to grants.
- The Council’s Contract Procedure Rules have been reviewed by an external procurement specialist and it is proposed to replace them in their entirety with those proposed at Appendix 2.
- It is proposed that as a result of the amended Contract Procedure Rules and considering the level of inflation that has occurred since the previous review the definition of what constitutes a significant decision in terms of value is proposed to increase from £15k to £25k. General Delegations will require amendment for consistency and clarity.
- Amendments to the title of the Council’s section 151 Officer needs to be reflected throughout the Constitution from Head of Finance to Chief Finance Officer.

- Amendments to the reference of Portfolio Holder to be changed to Lead Member throughout the Constitution to reflect the current title.

3. BACKGROUND

- 3.1 On 17th March 2021, Council approved a refreshed Constitution with the Finance Procedure Rules being completed and agreed by Full Council on 22nd June 2022.
- 3.2 The Constitution is a living document and is reviewed regularly to ensure that it is up to date, accurate, demonstrates best practice and does not stymie the decision making of officers and members necessary to deliver the Council's priorities and responsibilities.
- 3.3 The Council commissioned STAR Procurement to deliver certain works over a 12 months period to include working with officers in the completion of the Contract Register, provide general advice and guidance on higher level procurements and to review the Contract Procedure Rules for effectiveness and accuracy with modern procurement practices.

4. DETAILS

Finance Procedure Rules (FPRs)

- 4.1 The FPRs have been thoroughly updated and modernised to reflect best practice and have been simplified to aide a better understanding by officers and readers of the Constitution.
- 4.2 During the day to day management of the Council's business it is clear that there is a requirement to update the FPRs to provide for a clear route to authorising the acceptance of grants awarded to the Council. Presently the FPRs provide for External Funding at clause 19 which requires amongst other things input and approval of the s151 of all external grants prior to application and sign off of claims subsequently.
- 4.3 The Constitution, including the FPRs, is generally silent as to prior notification of grant applications by Directors and the levels of authorisation required for acceptance of a grant. It is therefore proposed that clause 19.2 be amended to include Lead Members and S151 Officer being informed of proposed grant applications and the insertion of a new clause 19.8 dealing with grant acceptance:

19.2 Prior to submission of grant funding applications and entering into agreements, Directors must inform the relevant Lead Member and the S151 Officer of the grant application and any matched funding requirements and any accountable body responsibilities. This is to ensure that funding is available, all future revenue and capital implications are determined and that appropriate financial arrangements are in place. The S151 Officer shall be provided with a copy of the final application for review prior to submission.

19.8 Acceptance of external grants:

- Acceptance of grants up to and including £50k may be authorised by the Section 151 Officer in consultation with relevant Lead Members.
- Acceptance of grants over £50k and up to and including £100k may be authorised by the Council's statutory officers in consultation with Lead Member and recorded on a Scheme of Delegation Form.
- Acceptance of grants over £100k and up to and including £250k may be authorised by Cabinet.
- Acceptance of grants over £250k must be authorised by full Council

- 4.4 The authorisation thresholds have been formulated to allow the smooth and efficient acceptance of day to day lower level grants by the s151 Officer in consultation with relevant Lead Members with greater member involvement for the more significant grant awards. Cabinet and Council presently sign off grant awards either via resolution or Scheme of Delegation however some lower level grant does not meet the current £15k threshold and are therefore not always captured which may present a risk to the Council. The amendments proposed would capture all external grant funding awarded to the Council and therefore mitigate against risk and ensure compliance with the FPRs.
- 4.5 Further, as part of the recent Delegated Decision audit, it was noted that acceptance of grants had not been delegated to officers which was unusual, particularly for the lower level grant awards. Whilst this did not impact on the audit itself, and a rating of substantial assurance was received, it clearly highlighted the need to make clear in the Constitution the provision for grant acceptance.
- 4.6 It is further proposed to mirror the thresholds in Part 3 of the Constitution at the Terms of Reference for Council and Cabinet at clauses 4 and 5 respectively and the delegation to the Chief Finance Officer as outlined at Appendix 3.
- 4.7 Matters pertaining the Disposal of Council owned land have greater synergy with the Finance Procedure Rules. There are no amends to the same so it is proposed that a direct lift from the Contract Procedure Rules in to the FPRs should be facilitated.

Contract Procedure Rules (CPRs)

- 4.8 The current CPRs were agreed over 2 years ago and rolled out to officers via group and 1-2-1 training. Over this time, it has been evident that the same are not providing for an efficient delivery of service and the requirement to obtain written quotes for all level of procurement is having a detrimental impact on Council resources.
- 4.9 As detailed above, the Council Commissioned STAR Procurement to undertake a review of the CPRs to consider the thresholds, look at the application of exemptions and introduce greater accountability to those officers procuring goods and services. This ensures continued compliance with procurement regulations and protection of the Medium Term Financial Strategy in terms of best value.
- 4.10 Whilst members will note that there has been a wholesale change to the CPRs, the main changes relate to the internal thresholds to be applied. STAR proposed the following thresholds when considering the route to market.

| Threshold | Value | Route to Market |
|------------------|--------------------|---|
| Low Value | Below £5,000 | Single Quotation (receipt of 1 quote) |
| | £5,000 - £24,999 | Request for Quotation (receipt of 3 quotes) |
| Medium Value | £25,000 – £50,000 | Request for Quotation (receipt of 3 quotes) or if applicable full tender |
| | £50,001 - £100,000 | Full Tender |

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|------------------------|--|--------------------------------------|
| High Value Procurement | Over £100,000 Determined by Regulations (Inclusive of VAT) | Full Tender In line with Regulations |
|------------------------|--|--------------------------------------|

4.11 Acceptance of quotes tenders is proposed as follows:

- I. For all Low Value Contracts up to £25,000 the decision to award a contract shall be made by the head of service.
- II. For all Medium Value contracts £25,000 - £100,000 the decision to award a contract shall be made by the head of service and approved by the Corporate Management Team and relevant Lead Member via a Scheme of Delegation.
- III. For all High Value Contracts over £100,000 the decision to award a contract shall be made by the officer the decision has been delegated to by Cabinet or Council and approved by the Corporate Management Team and relevant Lead Member, via a Scheme of Delegation.

4.12 The changes to the thresholds will have an impact and affect Part 3 of the Constitution relating to the delegation to officers. Presently, a significant expenditure is considered to be one which exceeds £15k and requires the completion of a Scheme of Delegation. As can be seen from the table above it is proposed that this limit is increased to £25k. This reflects the level of inflation that has occurred over the last 2 years, and indeed this amount has not been increased since circa 2006. The £25k also reflects the value of contracts that the Council is required to advertised through the Government portal, Contracts Finder. It will therefore be necessary to change reference to this value in clause 5 of the Officer Delegation Scheme in Part 3 of the Constitution as outlined in Appendix 3.

4.13 As detailed above, Disposal of Land has now been removed from the CPRs and included in the FPRs on the basis that it is better aligned with the financial affairs of the Council rather than that of procurement activity.

Minor amendments

4.14 Since the adoption of the current Constitution amendments have been made to the titles of the s151 Officer and Portfolio Holders to Chief Finance Officer and Lead Members respectively. Such minor amendments are already delegated to the Monitoring Officer to make in consultation with the Lead Member but it is timely to reflect these changes in this round of amendments.

5. RISK

All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:

- Failure to maintain and follow an up-to-date Constitution risks legal proceedings being taken against the Council, and risks members of the community being dissatisfied with the action of the Council.
- Monitoring risks and reviewing systems of controls.
- Failure of officers to keep up to date with changes to the Constitution.

6. FINANCE

It is important that the Council's FPRs and CPRs reflect best practice and are updated to recent local and national changes. There no specific financial implications over and above the amendments to the rules.

7. LEGAL

The Council's Monitoring Officer is responsible for monitoring and reviewing the operation of the Council's Constitution to ensure that its aims and principles are given full effect and that the same is kept up to date in terms of legislation and the way the Council does business.

8. POLICY AND EQUALITIES IMPLICATIONS

There are no specific policy or equalities implications arising from this report.

9. REASON FOR DECISION

The Council is required by law to implement a Constitution and it is in the interests of the Council to regularly review and update the document.

| Background Papers | |
|--|--|
| Document | Place of Inspection |
| Finance Procedure Rules and Contract Procedure Rules (Current) | https://www.rossendale.gov.uk/downloads/file/13387/constitution - _part 4 |
| Appendix 1 - Finance Procedure Rules -Extracts (Proposed) | Attached |
| Appendix 2 – Contract Procedure Rules (Proposed) | Attached |
| Part 3 of the Constitution (Current) | Constitution - part 3 Rossendale Borough Council |
| Appendix 3 – Extract Proposed amends | Attached |

Appendix 1

Finance Procedure Rules

Extract

Part 4 page 106

19 EXTERNAL FUNDING

19.1 Directors will strategically explore all opportunities for external funding, taking account of the Council's policy framework and any additional risks implied.

19.2 Prior to submission of grant funding applications and entering into agreements, Directors must inform the relevant Lead Member and the S151 Officer of the grant application and any matched funding requirements and any accountable body responsibilities. This is to ensure that funding is available, all future revenue and capital implications are determined and that appropriate financial arrangements are in place. The S151 Officer shall be provided with a copy of the final application for review prior to submission.

19.3 The S151 Officer will ensure that all funding notified by external bodies is received and properly recorded in the Council's accounts.

19.4 Directors are required to ensure that, for any project where external grant funding has been accepted, the project(s) progresses in accordance with the bid, and that there is compliance with the Council's Contract and Financial Procedure Rules and the appropriate grant conditions.

19.5 Directors must also inform the S151 Officer of any subsequent changes to agreements in order that the revenue and capital budget implications may be addressed.

19.6 Directors are responsible for ensuring claims for funds are made by the due date in accordance with instructions issued by the S151 Officer.

19.7 All claims for external grants made on the Council's behalf whether Capital or Revenue shall be approved by the S151 Officer. For each grant claim appropriate supporting documents shall be kept by the relevant service officer

19.8 Acceptance of external grants:

- a) Acceptance of grants up to and including £50k may be authorised by the Section 151 Officer in consultation with relevant Lead Members.
- b) Acceptance of grants over £50k and up to and including £100k may be authorised by the Council's statutory officers in consultation with Lead Member and recorded on a Scheme of Delegation Form.
- c) Acceptance of grants over £100k and up to and including £250k may be authorised by Cabinet.
- d) Acceptance of grants over £250k must be authorised by full Council

| <u>Approval levels</u> | <u>Director/Budget Holder</u> | <u>Scheme of Delegation</u> | <u>Cabinet Member for Resources</u> | <u>Cabinet</u> | <u>Council</u> |
|---|--|--|-------------------------------------|---|---|
| <u>Virements (full details 11.3)</u> | <u>Up to £10k</u> | | <u>£10,001 - £49,999</u> | <u>£50,000 - £99,999</u> | <u>Over £100k</u> |
| <u>Unbudgeted Expenditure (full details 10)</u> | <u>£0</u> | <u>£0</u> | <u>£0</u> | <u>Up to £50k</u> | <u>£50k and over</u> |
| <u>Budgeted Revenue Expenditure (full details 12)</u> | <u>Up to budget limit, although only up to £15k £25k on any single item</u> | <u>Any single item over £15k £25k</u> | <u>N/A</u> | <u>N/A</u> | <u>Any expenditure which:- -Varies from the Council's approved policy framework -brings unfunded future financial commitments -triggers a key decision (unless delegated)</u> |
| <u>Capital Expenditure (full details 13)</u> | <u>Up to budget limit, although only up to £15k £25k on any single item</u> | <u>New schemes already in capital programme if total scheme cost up to £100k. Any single item of expenditure over £15k £25k</u> | | <u>New schemes already in the capital programme if total scheme cost over £100k. New schemes not in capital programme if fully funded up to total scheme cost of £100k.</u> | <u>New schemes not in capital programme total scheme cost over £100k</u> |
| <u>Payback schemes (capital/revenue) – must pay back within 5 years</u> | | <u>Up to £50k</u> | | <u>£50,001 - £100k</u> | <u>Over £100k</u> |

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| unless energy efficiency schemes (full details 14) | | | | | |
| Acceptance of external funding/grants (full details 18) | Up to and including £50k – S151 officer in consultation with Lead Member | £50,001 - £100k | | £100,000.01 - £250k | Over £250k |

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NB – all reference to the £15k “significant value” threshold shall be amended to £25k throughout the FPRs.

New insertion from Contract Procedure Rules

35 Disposal of Land by the Council

35.1 Land transactions and related negotiations shall only take place at the explicit consent of the Chief Finance Officer and Monitoring Officer, having consulted the head of service and ward councillors. Such transactions and related negotiations may include disposals, acquisitions, exchanges of land, leases and other means of transaction.

35.2 Where the Chief Finance Officer and the Monitoring Officer decides that land shall be disposed of by way of a formal open market competitive tender then:

- i) The procedure for the receipt, custody and opening of tenders and for dealing with late tenders shall be in accordance with the Contract Procedure Rules, except that:
 - a) a defined range of uses which may be acceptable to the Council shall be provided in the tender documentation;
 - b) any late tenders received shall be opened in the same way and a decision made by the Chief Finance Officer whether or not the tender should be considered;
 - c) any letters sent out to successful tenderers shall contain a statement that in the event of any late tenders or further offers being received prior to the exchange of contract then these will be considered by the Chief Finance Officer.
- ii) All persons by whom or on whose behalf a tender is submitted shall declare on the form of tender whether they are councillors or officers of the Council or whether they are related to such a councillor or officer. Failure to make such a declaration or the making of a false declaration shall invalidate the tender and render voidable at the option of the Council any contract entered into as a result of the tender
- iii) A tender may be accepted in accordance with these Finance Procedure Rules provided that in the event of there being a proposal to accept a tender from a councillor or officer of the Council or a relative of such a person this shall be referred to the Cabinet for consideration.

35.3 Where the Directors and heads of services decides that land shall be disposed of at auction, then the Directors and heads of services shall have the necessary authority to appoint and instruct independent auctioneers. Reserve prices shall be agreed between the Monitoring Officer and the auctioneers instructed in conjunction with the Chief Finance Officer. For each piece of land disposed of, a Scheme of Delegation shall be completed to confirm the land disposed of, auctioneers used, reserve prices and achieved receipts in order to record the decision in line with this Constitution.

35.4 Where there is a proposal to dispose of land to a councillor or officer of the Council other than by a competitive tender and the disposal is in the opinion of the Chief Executive not a routine disposal, the proposal shall be referred to the Cabinet for consideration and a full report shall be made by the Directors and heads of services on the proposal.

35.5 For the purpose of this Finance Procedure Rule persons shall be deemed to be related if they would be so deemed for the purposes of the Officer Employment Procedure Rules Rule 1.

35.6 For the purpose of this Finance Procedure Rule 'officers' includes any person who receives remuneration directly from the Council.

35.7 In the case of minor disposals of land (i.e. less than £10,000) the Council's Head of Housing and Regeneration shall have the authority to decide whether or not to treat with an individual on a transaction and shall be empowered to advise any interested parties that a particular property shall not be considered for disposal for any period up to one year unless exceptional circumstances cause a dramatic increase in value.

35.8 The Directors and heads of services shall have regard at the outset to matters of Value Added Tax on the acquisition and disposal of land; guidance can be sought from the Chief Finance Officer.

Appendix 2

Rossendale Borough Council Contract Procedure Rules

1. Introduction and Basic Principles

- 1.1 Rossendale Borough Council ("the Council") has a devolved procurement service. Finance controls the key documentation such as the Procurement Strategy and provides advice and guidance on process with responsibility for operational procurement sitting with Procuring Officers across each of the Council service areas.
- 1.2 These Rules are standing orders pursuant to s.135 of the Local Government Act 1972. These Rules must be read in conjunction with the Council's wider Constitution, and any guidance documents issued by Finance.
- 1.3 Compliance with the documents referenced at 1.2 is mandatory for all Members and Officers of the Council, who will ensure that all procurement activity is legally compliant, transparent, fair, and competitive. Members and Officers of the Council must act in a manner which is accountable, consistent, efficient, and responsive. If any Officer does not follow these Rules, this may result in disciplinary action being brought against such an employee by a senior officer responsible for ensuring compliance.
- 1.4 All procurement activity shall adhere to the principles of non-discrimination, transparency, equal treatment, and proportionality, and shall comply with UK law, the Council's Constitution including these Rules, Financial Procedure Rules, Codes of Conduct, and any guidance provided by Finance.
- 1.5 Through the application of these Rules, Members and Officers of the Council will ensure that the Council obtains best value and addresses, in its procurement activity, the local requirements and aspirations for the Borough, which are agreed by Members from time to time and referred to as 'priorities'.
- 1.6 These rules apply to all expenditure for the awarding of Contracts, Framework Agreements, DPS', or PDPS' for Supplies, Services, Works, or Concessions where the Council is the contracting authority or commissioner, regardless of the origin of funding for that expenditure. This includes any agent, consultant, or contractual partner acting on behalf of the Council for any procurement expenditure.
- 1.7 Finance shall be responsible for the periodic review of these Rules and may present recommendations for amendment of these Rules for consideration by the Council and subject to the Council's ratification processes.

2. Interpretation & Definitions

- 2.1 Interpretation of these Rules and determination of any procedures to be followed as described in these Rules are the responsibility of the Procuring Officer who, in cases of doubt, must seek advice from Monitoring Officer, Section 151 Officer and/or Internal Audit.
- 2.2 Any sums of money stated in these rules are exclusive of Value Added Tax, unless otherwise stated.
- 2.3 In these Rules, the words or phrases below have the following meanings:

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| Agreement | Means a legally binding agreement between the Council and the Contractor for the provision of all Supplies, Services, the execution of Works, or Concessions and which incorporates the terms and conditions under which the Supplies, Services, execution of Works and Concessions |
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| | will be provided. This includes Contracts, Framework Agreements, Dynamic Purchasing Systems, and Flexible/Pseudo-Dynamic Purchasing Systems |
| Agreement Extension Form | Means the form supplied by Finance for the purpose of recording the extension of an Agreement |
| Best Value | Has the same meaning as that defined in the Local Government Act 1999 as amended from time to time |
| Bidders | Means an economic operator that submits a quote or tender |
| Call-off | Means an order made/call off Contract entered into under a Framework Agreement or DPS |
| Concessions | Means the granting of a right (Exclusive or otherwise) to an economic operator to exploit works or services provided for their own gain with or without payment |
| Contract | Means a legally binding agreement between the Council and the Contractor for the procurement by the Council of all Supplies, Services, the execution of Works and which incorporates the terms and conditions under which the Supplies, Services, execution of Works and Concessions will be provided |
| Contracts Finder | Means the web-based portal provided for the purposes of the Regulations or on behalf of the Cabinet Office |
| Dynamic Purchasing System (DPS) | Means an electronic system procured using the restricted procedure for the purchase of commonly used Supplies, Services, or Works which are generally available on the market and objectively defined to which all bidders who meet the requirements of the selection criteria must be admitted during the entire period of the validity of the system |
| Economic Operator | Means any natural or legal person or public entity or group of such person sand/or entities, including any temporary association of undertaking, which offers the execution of Works and/or work, the supply of Supplies or the provision of Services on the market |
| Exemption/Waiver | Means the release of the obligation to comply with these Rules |
| Exemption Form | Means the form supplied by Finance for the purpose of recording the Exemption |
| Financial Procedure Rules | Means the written code of procedures forming part of the Council's constitution which provide |

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| | a framework for proper financial management and which set out the rules on accounting, audit, administrative procedures and budgeting systems |
| Flexible Purchasing System (FPS) | See Pseudo-Dynamic Purchasing System |
| FOI | Freedom of Information Act 2000 |
| Framework Agreement | Means an agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing Call-Off Contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged |
| GDPR | General Data Protection Regulations |
| Internal Audit | The internal audit function of the Council. |
| IR35 | Means Off-payroll working rules. |
| Key Decision | Has the same meaning as set out in the Council's constitution. |
| Modification | Means any variation to a Contract, DPS or Framework Agreement, excluding a pre-agreed extension. |
| Modification Form | Means the form supplied by Finance for the purpose of recording the authorisation of a Modification. |
| Monitoring Officer | Means the Officer appointed under section 5 of the Local Government and Housing Act 1989, or their substitute as set out under the Constitution. |
| Officer | Means any employee of the Council which shall include any person engaged by the Council to act as an agent or consultant on its behalf. |
| Officer Delegation Scheme | Means the scheme identified within the Council's constitution which delegates powers and duties of the Council to officers under Section 101 of the Local Government Act 1972 and other powers enabling such delegation necessary for the discharge of the Council's functions as set out in Part 3 of the Constitution. |
| Pseudo-Dynamic Purchasing System (PDPS) | Means an altered version of an electronic system that works similarly to a DPS, usually created for Services that fall under the Light Touch regime set out in Regulations. |
| Procurement Checklist | Means a document which provides details of the procurement activity, authority to commence, and summary of the outcomes. |

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| Procurement Strategy | Means the document which the Council may issue from time to time to set out its procurement objectives. |
| Procuring Officer | Any Officer who has delegated Authority to undertake procurement actions, e.g. the cost centre budget manager. |
| Quote | Means a formal offer submitted by a Bidder to supply Supplies, Services, execute Works or operate a Concession Contract at a defined price. |
| Regulations | Means the Public Contracts Regulations 2015 or Concession Contracts Regulations 2016 as appropriate, and as may be amended from time to time. |
| Rules | Means these Contract Procedure Rules. |
| Section 151 Officer | Means the Chief Finance Officer appointed by the Council pursuant to s151 of the Local Government Act 1972, or their substitute as set out under Officer Delegation Scheme. |
| Services | Means the time, effort and expertise required, by the Council, from time to time, and supplied by a Contractor. |
| Social Value | Means to have regard to economic, social and environmental well-being in connection with public services contracts; and for connected purposes. |
| Specification | Means the outputs, outcomes, and the scope and nature of the Supplies, Services, and execution of Works or Concession Contract required by the Council from a procurement activity. |
| Supplies | Means an inherently useful tangible item required by the Council, from time to time. |
| Threshold | Means the relevant threshold as stipulated by the Regulations – when calculating whether a contract is over the Threshold the contract value must include VAT. |
| Tender | Means a formal offer submitted by a Bidder to the Council at a stated price in response to a Specification to supply Supplies, Services, execute Works or operate a Concession Contract. |
| TUPE | Means the Transfer of Undertakings (Protection of Employment) Regulations 2016 as amended from time to time. |
| Value for Money | Means the optimum combination of whole-life costs, price quality and benefits to meet the Council's requirement. Such a term equates to |

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| | the duty of Best Value as defined by the Local Government Act 1999 as amended from time to time. |
| Works | Means the provision of physical activity which is directed towards the production of accomplishment of something by the Contractor, from time to time. |

3. Contracts to which these Rules do not apply

3.1 These Rules do not apply to:

- 3.1.1 Employment contracts;
- 3.1.2 Contracts relating solely to the disposal or acquisition of securities;
- 3.1.3 Contracts for the acquisition of an interest in land or property;
- 3.1.4 Contracts for the appointment of Counsel or experts for the purpose of potential legal proceedings;
- 3.1.5 Qualifying contracts between public sector entities;

4. Authority to Carry Out Procurement Activity

- 4.1 All procurement activity carried out on behalf of the Council must be carried out by a Procuring Officer with appropriate delegated authority as set out in the Council's Officer Delegation Scheme. The Procuring Officer must ensure that all necessary and correct authorisations to procure has been properly obtained, including member decisions where relevant, prior to the initiation of any procurement activity.
- 4.2 The Procuring Officer may be required to provide evidence of any decision made and any authorisation granted in respect of any procurement activity.

5. Engagement with Finance

- 5.1 The Procuring Officer must complete a Procurement Checklist for all procurement activity equal to, or in excess of £50,000 prior to commencing the relevant procurement activity. By completing the Procurement Checklist, the Procuring Officer is confirming that they have the delegated authority to carry out that procurement activity.
- 5.2 The Procuring Officer must ensure that any agreement entered into by the Council with a value in excess of £5,000 that is caught by these Rules, is entered on to the Council's Contracts Register in accordance with Rule 17.
- 5.3 For all agreements between £5000 and £25,000, prior to the commencement of the agreement, the Procuring Officer must submit to Finance the completed Award Report.
- 5.4 For agreements over £50,000 the Procuring Officer must supply to Finance a copy of the signed contract between the Council and the Supplier. In the absence of a formal signed contract, where this has been agreed with the Monitoring Officer, a copy of the Purchase Order must be provided.

6. Pre-Procurement Considerations

6.1 The Procuring Officer must give consideration to the following:

- 6.1.1 The need for the expenditure, its priority, and whether the purchase is a Key Decision;

- 6.1.2 The objectives of the requirement, and any risks associated with it and how to manage them;
- 6.1.3 Which procurement method is most likely to achieve the purchasing objectives including use of existing Contracts, Framework Agreements, DPS' etc., or other arrangements;
- 6.1.4 The supply market and whether there are any potential local providers;
- 6.1.5 Social Value;
- 6.1.6 TUPE and consultation with HR and / or Legal Services;
- 6.1.7 IR35 and other tax issues;

Specification

- 6.2 The Procuring Officer must ensure that an appropriate Specification commensurate to the scope of the Supplies, Services, execution of Works, or Concession required is written prior to the commencement of any procurement activity. The Procuring Officer shall ensure that it is drafted in accordance with the standards relevant to the proposed nature of the Supplies, Services, Works, or Concessions required.
- 6.3 The Procuring Officer must ascertain any relevant British or international standards which may apply to the requirement and must include those standards or other equivalents in the Specification where they are necessary to describe the required quality.

Market Research and Consultation

- 6.4 Consultation with the supply market, in general terms about the nature, level and standard of the supply, contract packaging, and other relevant matters, prior to issuing competition documents is acceptable provided this does not prejudice or create a conflict of interest regarding any potential Bidders. The Procuring Officer shall follow advice provided by Finance from time to time on how best to undertake this activity and mitigate these risks.

Estimating Value

- 6.5 The total value of the proposed procurement activity shall be estimated in accordance with the formula:
 - 6.5.1 Supplies, Services, and Work: Annual estimated value to be awarded under the arrangement multiplied by the proposed agreement period, inclusive of any options to extend and any optional extras / future phases.
 - 6.5.2 Concessions: Annual revenue to concessionaire (including any potential gifts, payments, or income to Concessionaire from Council, customers, fines, grants, other third parties etc. and including Assets they are provided with) multiplied by the proposed agreement period, inclusive of any options to extend.
- 6.6 The procurement activity shall not be split or sub-divided in such a manner as to avoid being caught by these Rules or any part of these Rules, nor shall the total value be calculated in a manner which deliberately avoids exceeding any value threshold identified in these Rules.
- 6.7 Circumstances may arise where a number of low value contracts are given to one Contractor within a 12 month period. When the value of those contracts is aggregated the effect may be to move the total purchase from one value band to another. This may

mean a different procurement method has to be followed to comply with those rules. It may be necessary to seek an exception/waiver of these rules in such circumstances.

- 6.8 From 1 January 2022 when calculating the estimated value of the contract to determine whether the Public Contract regulations apply, the contract value estimation should be inclusive of VAT (where applicable). The following link sets out the Public Contract values - [Microsoft Word - Procurement Policy Note 10:21 - New Thresholds Values and Inclusion of VAT in Contract Estimates.docx \(publishing.service.gov.uk\)](#)

Social Value

- 6.9 The Procuring Officer shall have regard to the Public Services (Social Value) Act 2012 in all appropriate procurement activity. In such appropriate procurement activity the Procuring Officer shall determine how the procurement activity under consideration can improve the social, economic and environmental wellbeing of the Borough and the local area in conjunction with the delivery of the subject matter of the procurement activity itself.
- 6.10 The Procuring Officer shall follow advice as provided by Finance from time to time on how best to consider, manage, monitor, and measure Social Value.

Award Criteria

- 6.11 The Procuring Officer must define an award criteria that is appropriate to the procurement activity and designed to secure an outcome ensuring Value for Money for the Council. The award of contract shall be based on the Most Advantageous Tender (MAT) assessed from the Council's view of the requirement in accordance with one of the following:
- 6.11.1 Best price-quality ratio;
 - 6.11.2 Price / cost / income;
- 6.12 Price / cost criteria may consist of: price, cost, and/or lifecycle costing;
- 6.13 Quality criteria may consist of: qualitative, environmental and/or social aspects, technical merit, aesthetic and functional characteristics, accessibility, design, innovative characteristics, and trading conditions, how staff will be utilised to deliver requirements, after sales service, technical assistance, delivery conditions, delivery processes, and delivery period / period of completion.
- 6.14 The Procuring Officer must include a Social Value weighting of at least 10% in all procurement activity of £50,000 or over. Exceptions to this shall only be made following consultation with and as authorised by Monitoring Officer and Section 151 Officer.

7 Pre-Arranged Routes to Market

- 7.1 Where, following the considerations conducted in accordance with Rule 6, it is determined that the route to market shall be by direct award or mini-competition under a suitable established Framework Agreement, DPS, or FPS/PDPS, the Procuring Officer must ensure that the rules of the Framework Agreement, DPS, or FPS/PDPS are followed. This will supersede the requirements of Rule 8 and 9.
- 7.2 A Framework Agreement, DPS, or FPS/PDPS must be approved by Finance prior to being used and will be considered suitable where:
- 7.2.1 It has been established by the Council in accordance with these Rules; or

7.2.2 It has been established by another contracting authority in accordance with UK legislation and the Council has been identified as an eligible contracting authority.

7.3 If an appropriate Framework Agreement is available, it must be considered regardless of value.

8 Thresholds

| Threshold | Value | Route to Market |
|------------------------|--|---|
| Low Value | Below £5,000 | Single Quotation (receipt of 1 quote) |
| | £5,000 - £24,999 | Request for Quotation (receipt of 3 quotes) |
| Medium Value | £25,000 – £50,000 | Request for Quotation (receipt of 3 quotes) or if applicable full tender |
| | £50,001 - £100,000 | Full Tender |
| High Value Procurement | Over £100,000 | Full Tender |
| | Determined by Regulations (Inclusive of VAT) | In line with Regulations |

9 Low Value Procurement (Below £25,000)

9.1 Low Value procurement is defined as any procurement activity where the total value estimated in accordance with Rule 6.5 is below £25,000.

9.2 Where the total value is estimated to be below £5,000, the Procuring Officer shall obtain at least a single quotation and shall record the process followed and make evidence available to Internal Audit if/when requested. Acceptance of a quotation may be made by the issue of a Purchase Order by the Council. The Procuring Officer shall ensure that when the contract is entered into its value should offer good value for money and be of a standard/quality expected by the Council.

9.3 Where the total value is estimated to be between £5,000 and £24,999.99, the Procuring Officer shall seek undertake a Request for Quotation in accordance with Rule 12. At least three written quotations shall be invited before a formal purchase order is issued by the Council, specifying the supplies, services or works to be provided.

10 Medium Value Procurement (£25,000-£100,000)

- 10.1 Medium Value procurement is defined as any procurement activity where the total value estimated in accordance with Rule 6.5 is between £25,000 and £100,000.
- 10.2 For Contracts between £25,000 - £50,000 the Procuring Officer shall take consideration of the matters under Rule 6 and determine whether a Request for Quotation or Invitation to Tender is most appropriate for their needs. They shall then undertake either a formal Request for Quotation or a formal Invitation to Tender process in accordance with Rule 12 or 13 as appropriate.
- 10.3 For Contracts between £50,001 - £100,000 the Procuring Officer shall take consideration of the matters under Rule 6 and undertake a formal Invitation to Tender process in accordance with Rule 13.
- 10.4 The Procuring Officer shall, in accordance with Rule 5.1 complete a Procurement Checklist prior to issuing the request for quotation or invitation tender.

11 High Value Procurement

- 11.1 High Value procurement is defined as any contract over £100,000.
- 11.2 For procurements of over £100,000 prior approval to seek tenders shall be obtained from the Corporate Management Team and Cabinet via a report. The report shall include details of the purchasing process, the proposed contract award procedure including the pre-qualification and/or evaluation criteria to be applied and the necessary delegations to accept the successful bid.
- 11.3 The Procuring Officer shall undertake the procurement activity in accordance with the most appropriate procedure permitted by the Regulations whilst also ensuring compliance with the principles of Rule 13.

12 Request for Quotation (RfQ)

- 12.1 A full audit trail, including all documentation and correspondence, is required for all RfQs
- 12.2 Advertising is not necessary for an RfQ. However, where advertising is considered appropriate, the RfQ shall be advertised to the open market on the Council's website and/or suitable e-procurement portal. Where, an advert is considered appropriate, and the value of the procurement is £25,000 or more, the procurement must also be advertised on Contracts Finder and the Council's website as a minimum. There is no minimum number of quotes to be received where an RfQ has been openly advertised.
- 12.3 All RfQs that are not being openly advertised, must have a minimum of 3 organisations invited to bid, ideally more, and 3 quotations must be received. Where 3 quotations have not been received, then advice must be sought from the Monitoring Officer and s151 Officer.
- 12.4 An RfQ must include as a minimum:
 - 12.4.1 An appropriate description of the Supplies, Services, execution of Works, or Concession, setting out the Council's requirements and length of contract;
 - 12.4.2 The terms and conditions that will apply, in accordance with Rule 18;
 - 12.4.3 A description of the award procedure and the applicable evaluation criteria;
 - 12.4.4 Details of the time and date by which the quotation is to be submitted; and
 - 12.4.5 Confirmation that the quotation is prepared at the Bidder's expense and that the Council is not bound to accept any quotation submitted;
- 12.5 All RfQs must be issued simultaneously to Bidders. Any supplementary information should be provided on the same basis.

12.6 All quotations obtained must be in writing and shall be stored electronically.

Pre- and Post-Quotation Clarifications

12.7 All pre- and post-quotation clarifications must be conducted in writing, or in a meeting recorded by the Procuring Officer or their substitute). All clarifications and the written record of any meetings must be stored. Where a meeting is required, there should be a minimum of two Officers of the Council in attendance, one of whom shall be the Procuring Officer.

12.8 Post-quotation clarifications may be undertaken with a Bidder only where it is essential to clarify any fundamental aspect of the quotation submission before the completion of the evaluation process.

13 Invitation to Tender (ITT)

13.1 A full audit trail, including all documentation and correspondence, is required for all ITTs

13.2 All ITTs shall be advertised on the Council's website and/or suitable e-procurement portal and on Contracts Finder as a minimum.

13.3 An ITT must include as a minimum:

13.3.1 An appropriate description of the Supplies, Services, execution of Works, or Concession, setting out the Council's requirements and length of contract;

13.3.2 The terms and conditions that will apply, in accordance with Rule 16;

13.3.3 A description of the award procedure and the applicable evaluation criteria;

13.3.4 A form upon which the Bidder can provide details of its tender ("Form of Tender");

13.3.5 A form upon which the Bidder can confirm that any particulars of its tender have not been disclosed to a third party other than for the necessary purpose of preparation of its tender, including a declaration of canvassing and non-collusion;

13.3.6 A description of the method by which any errors discovered in a submitted tender will be dealt with by the Council; and

13.3.7 Confirmation that the tender is prepared at the Bidder's expense, that the Council is not bound to accept any tender submitted and that the Council is able to award in whole, in part, or not at all; and

13.3.8 Details of the time and date by which the quotation is to be submitted;

13.4 All ITTs must be issued simultaneously to Bidders. Any supplementary information should be provided on the same basis.

13.5 All communications with Bidders in respect of an ITT, its subsequent evaluation, and award must be in writing and shall be stored electronically.

Pre- and Post-Tender Clarifications

13.6 All pre- and post-tender clarifications must be conducted in writing, or in a meeting recorded by the Procuring Officer. All clarifications and the written record of any

meetings must be stored electronically. Where a meeting is required, there should be a minimum of two Officers of the Council in attendance, one of whom shall be the Procuring Officer.

- 13.7 Post-tender clarifications may be undertaken with a Bidder only where it is essential to clarify any fundamental aspect of the tender submission before the completion of the tender evaluation process.

Verifying and Opening Tenders

- 13.8 All Medium Value and High Value procurements undertaken under Rule 13 shall be opened and/or verified by Legal Services or their nominated representative together with the Procuring Officer or their nominated representative. All procurements undertaken under Rules 9 and 12 may be opened by the Procuring Officer.
- 13.9 No paper tenders will be accepted. Only in exceptional circumstances and where there is agreement from the Monitoring Officer and the Section 151 Officer prior to the tender being issued will paper tenders be allowed. If, in exceptional circumstances, paper tenders are permitted the submission shall be in a plain, securely sealed envelope, or in any special envelope provided by the Council for the purpose. Such envelopes shall in no way indicate the identity of the sender.

14 Submission and Receipt of Quotations and Tenders

- 14.1 Bidders must be given a reasonable period, consistent with the complexity of the requirement, in which to prepare and submit a proper quotation or tender.
- 14.2 All electronic tenders shall be considered only if they are delivered to tenders@rossendalebc.gov.uk prior to the closing deadline.
- 14.3 All tenders received shall remain unopened and secure until the appointed time for opening.
- 14.4 Opening of tenders must be contemporaneously recorded in terms of date opened, details of individual tenderer and submitted price and those present during the opening.
- 14.5 If a quotation or tender is considered to be abnormally low, the Procuring Officer must take advice from Finance on how to proceed. Any decision taken must be recorded and stored electronically.
- 14.6 Any quotation or tender submitted after the date and time specified for submission in the RfQ or ITT shall only be accepted for consideration by the Council following agreement by the Monitoring Officer and the Section 151 Officer.
- 14.7 If fewer than the required minimum number of quotations are received in accordance with Rule 12.3, the Procuring Officer must take advice from Finance. Any decision taken must be recorded and stored electronically.

15 Amendment of Quotations and Tenders

- 15.1 The Council may accept amendments to quotations and tenders, providing such amendments are made before the date and time specified for submission in the RfQ or ITT. Bidders submitting amendments in accordance with this Rule should resubmit a new quotation or tender and clearly identify which quotation or tender is correct and shall be considered by the Council.

- 15.2 An amendment to a quotation or tender after the date and time specified for submission in the RfQ or ITT shall be limited to correction of arithmetical error. Approval for any such amendment shall be obtained from the Monitoring Officer and Section 151 Officer, recorded and stored electronically.

16 Evaluation of Quotations and Tenders

- 16.1 All compliant quotations and tenders, including quotations obtained by mini-competition under Framework Agreements, DPS', or FPS'/PDPS', must be checked by the Procuring Officer to ensure that they are arithmetically correct. Arithmetical errors shall be notified to the relevant Bidders. Arithmetical errors shall be dealt with as follows:
- 16.1.1 Lump sum price. The Bidder shall confirm or withdraw the quotation or tender; or
 - 16.1.2 Quantities and rates. The Bidder shall resubmit the quotation or tender, correcting the arithmetical errors; the revised total will be used for the purpose of evaluation and, where applicable, acceptance.
- 16.2 All evaluations including an explanation of the scoring shall be recorded and stored electronically.
- 16.3 For Low Value and Medium Value Procurements, following evaluation, the Procuring Officer may obtain a best and final offer from all Bidders, a range of Bidders, or only the Bidder whose submitted quotation or tender is the most economically advantageous, whichever is deemed most appropriate. This process must follow the agreed process.

17 Contracting Formalities

Award

- 17.1 Subject to the Council's ability to proceed to award, that award shall be made on the basis of the winning quotation or tender in accordance with the evaluation criteria used.
- 17.2 Where the quotation or tender is not within the approved budget, but where additional budgetary provision is available, the Procuring Officer may proceed to award subject to receipt of approval from the Section 151 Officer and in accordance with the Council's Financial Procedure Rules.
- 17.3 Approval to award must be given in accordance with the Council's Officer Delegation Scheme:-
- I. For all Low Value Contracts up to £25,000 the decision to award a contract shall be made by the head of service.
 - II. For all Medium Value contracts £25,000 - £100,000 the decision to award a contract shall be made by the head of service and approved by the Corporate Management Team and relevant Lead Member via a Scheme of Delegation.
 - III. For all High Value Contracts over £100,000 the decision to award a contract shall be made by the officer the decision has been delegated to by Cabinet or Council and approved by the Corporate Management Team and relevant Lead Member, via a Scheme of Delegation.
- 17.4 Only Full Council can accept a tender that would require an increase in the Council's total revenue or capital budget.
- 17.5 The Procurement Checklist must be updated with the award decision.

- 17.6 Award of a High Value procurement agreement shall comply with the process defined for the selected procedure in the Regulations, including adherence to any standstill procedure and the publication of award procedure.
- 17.7 The award of any openly advertised RfQ or ITT in excess of £25,000 shall be published on Contracts Finder by the Procuring Officer in a reasonable timescale.
- 17.8 Once the decision to award a quotation or tender is made, each Bidder must be notified in writing of the outcome. All Bidders must be notified simultaneously and as soon as possible of the intention to award the Contract to the successful Bidder(s).
- 17.9 All Bidders should be informed of the relative advantages of the winning quotation(s) or tender(s) in comparison to their own whilst retaining confidentiality.
- 17.10 The Procuring Officer is responsible for providing the required notifications to Bidders

Enquiries Concerning the Award Process

- 17.11 The identity of Bidders and confidentiality of process shall be preserved at all times insofar as this is compatible with the Council's obligations under the FOIA and GDPR.
- 17.12 If the Council receives a request for information to the relevant Officer of the Council who deals with such requests, the Procuring Officer will be responsible for responding to the request.
- 17.13 Any challenges, complaints or requests for feedback, clarification, or further information must be referred to the Monitoring Officer who will advise on how to respond.

Agreement Provisions

- 17.14 All Contracts below £50,000 may be awarded by a Council issued Purchase Order. All Agreements equal to and exceeding £50,000 must be in writing and set out the parties' rights, obligations and risk allocations. All Agreements shall be on the Council's standard terms and conditions and/or industry standard contract appropriate to the procurement activity undertaken, unless otherwise agreed with the Monitoring Officer.

Agreement Formalities

- 17.15 Once a decision to award has been made in accordance with Rule 16.3, the Agreement must be either:
- 17.15.1 A Purchase Order (where appropriate and the value is below £50,000)
 - 17.15.2 Signed by Officer(s) of the Council authorised to award the Agreement in accordance with the Council's Officer Delegation Scheme, or
 - 17.15.3 Sealed in accordance with Rules 16.21
- 17.16 Every contract having an estimated total value of £50,000 and above, and any other case where the Monitoring Officer so decides shall be in writing.
- 17.17 Every such contract entered into by the Council shall be in a form approved by the Monitoring Officer and shall be signed by a duly authorised officer(s) of the Council or made under the common seal of the Council in accordance with the Council's Constitution. The Monitoring Officer will specify when electronic signatures are appropriate.
- 17.18 Two copies of the Agreement, including all schedules and appendices must each be signed by all parties. The Procuring Officer should provide appropriate instructions to Legal Services to enable them to transmit either two printed and bound copies or an electronic copy of the entire Agreement to the successful Bidder for signature. If the transmission is electronic, the Bidder shall be asked to print and bind two copies prior to signature.

- 17.19 Legal Services must ensure that the person signing on behalf of the Bidder has requisite legal authority to bind the Bidder.
- 17.20 Before arranging for the returned copies of the Agreement to be signed or sealed on behalf of the Council, officers must check that the returned signed Agreement copies have not been amended or altered by the Bidder without prior written agreement by the Council.
- 17.21 All Agreements must be signed prior to commencement. In exceptional circumstances, the Monitoring Officer may approve commencement of an Agreement prior to finalisation of these agreement formalities.
- 17.22 Once executed, the Council shall retain one original of the complete Agreement documents and Legal Services shall ensure that one copy of the complete Agreement documents is provided to the Bidder. An electronic copy of the Agreement must be stored in the agreed central location.
- 17.23 A Purchase Order must be raised by the Procuring Officer for all Agreements incurring expenditure. That Purchase Order must reference the terms and conditions of agreement signed.

Agreement under Seal

- 17.24 A contract must be sealed in one of the following circumstances:
- 17.24.1 The total value is in excess of £100,000
 - 17.24.2 The Council wishes to extend the liability period under the Agreement and enforce its terms for up to 12 years; or
 - 17.24.3 The price to be paid or received under the Agreement is a nominal price and does not reflect the value of the Supplies or Services.
- 17.25 The seal must be affixed in accordance with the provisions of the Council's Constitution.

Transfer / Novation of Agreement

- 17.26 An Agreement shall only be transferred / novated if such transfer is approved by the Monitoring Officer and Section 151 Officer, or their nominees in accordance with the Council's Officer Delegation Scheme.

18 Contracts Register

- 18.1 All Contracts in excess of £5,000 awarded by the Council must be published on the Council's Contracts Register in accordance with the Local Government Transparency Code 2015.
- 18.2 The Council's Contracts Register shall be maintained by Finance.
- 18.3 It is the responsibility of the Procuring Officer to ensure that they have informed Finance of the Agreements they are responsible for and updated the Council's Contracts Register accordingly.

19 Extending Agreements

- 19.1 Where an Agreement entered into by the Council in accordance with these Rules includes a provision for extension beyond its initial term, such extension shall only be made following consultation with and as authorised by the Monitoring Officer and Section 151 Officer prior to the end of the initial term.

- 19.2 Any extension shall only be in accordance with the provisions set out for such extension in the original Agreement.
- 19.3 No activity connected with the proposed extension should be commenced, nor should any commitment be made to the supplier, prior to authorisation.
- 19.4 Where an Agreement entered into by the Council does not include a provision for extension, or all extension provisions have been used, then this will be considered a Modification.

Extension Procedure

- 19.5 The Procuring Officer must complete and submit an Agreement Extension Form providing full details of the extension request and any supporting/supplementary documentation.
- 19.6 An extension request will not be approved until the extension form has been signed by the Monitoring Officer and Section 151 Officer, or their nominees in accordance with the Council's Officer Delegation Scheme.
- 19.7 The completed and signed Extension Form, approving the extension and stating the reasons for that approval, shall be stored electronically.

20 Modification of Agreements

- 20.1 An existing Agreement shall only be modified during its term following consultation and approval by the Monitoring Officer and Section 151 Officer.
- 20.2 Any modifications should be necessary and reasonable in the circumstances, and the Procuring Officer should be satisfied that it offers value for money and they have explored the delivery of additional Social Value from the supplier where appropriate.
- 20.3 Modification to any Agreement to which the Regulations apply, must also comply with appropriate requirements as set out in the Regulations, and relevant Modification Notices published in Find a Tender Service as necessary.
- 20.4 A Modification to an Agreement cannot be authorised where it would contravene the Regulations.
- 20.5 No activity connected with the proposed modification should be commenced, nor should any commitment be made to the supplier, prior to authorisation.
- 20.6 The Modification Process is set out from Rule 21.6

21 Exemptions from the Contract Procedure Rules

- 21.1 An Exemption from these Rules will only be permitted in the following circumstances:
 - 21.1.1 The arrangement is a permitted exemption from the requirement for competition contained in legislation; or
 - 21.1.2 To comply with legal requirements; or
 - 21.1.3 The arrangement is required to fulfil Returning Officer duties; or
 - 21.1.4 The Agreement is for Supplies, Services or the execution of Works which are required in circumstances of extreme urgency or unforeseeable emergency involving risks to persons, property or serious disruption to Council services; or
 - 21.1.5 Repairs or parts; if the only option is to repair or buy new parts for existing equipment or buildings, and there is only one supplier; or

- 21.1.6 Where a service review includes the intention to co-terminate relevant Agreements to support future collaboration; or
- 21.1.7 Proprietary or patented Supplies or Services are proposed to be purchased which are only obtainable from one person, and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented Supplies is available; or
- 21.1.8 The Procuring Officer can demonstrate that no genuine competition can be obtained in respect of the purchase of particular Supplies, Services or execution of Works; or
- 21.1.9 The Procuring Officer can demonstrate that the Services or execution of Works are of such a specialist nature that they can only be carried out by one person (e.g. statutory undertakers); or
- 21.1.10 Supplies are proposed to be purchased by or on behalf of the Council at a public auction; or
- 21.1.11 Supplies or Services are proposed to be purchased which are of a specialist or unique nature (such as antiquities for museums or a particular performance artist); or
- 21.2 Where the Agreement is of a value where the Regulations apply, in addition to the above circumstances at 21.1, the appropriate requirements of the Regulations must also be met. There is no legal route to seek an Exemption for a Concession.
- 21.3 An Exemption from these Rules cannot be authorised where it would contravene the Regulations.
- 21.4 No commitment shall be made by the Council to the proposed Supplier prior to authorisation of a requested Exemption.
- 21.5 The Exemption Process is set out from Rule 21.6

Exemption and Modification Procedure

- 21.6 The Procuring Officer must complete and submit to the Monitoring Officer and Section 151 Officer for consideration and review, an Exemption Form / Modification Form providing full details of the request and any supporting/supplementary documentation.
- 21.7 A request will not be approved until the form has been signed by the Monitoring Officer and Section 151 Officer, or their nominees in accordance with the Council's Officer Delegation Scheme.
- 21.8 In circumstances of extreme urgency, the Monitoring Officer and Section 151 Officer may authorise an Exemption / Modification in writing without the need to complete a form before the award is made. The Exemption/Modification form must be submitted be completed as per 20.6 as soon as is reasonably practicable, and including reasoning for the extreme urgency.
- 21.9 The completed and signed form, approving the request and stating the reasons for that approval, shall be stored electronically.
- 21.10 The Procuring Officer shall ensure that the agreement awarded / modified following agreement to a request complies with Rules 17.

22 Declarations of Interest, Anti-Bribery and Corruption

- 22.1 Members and Officers of the Council must declare any interest which could influence their judgement in relation to procurement activity in accordance with the Council's Codes of Conduct.
- 22.2 No gifts or hospitality should be accepted from any Bidders involved in procurement activity except in accordance with the Council's Codes of Conduct.

23 Contract Management

- 23.1 All Agreements must have a Council Contract Manager ("Contract Manager") for the entirety of the Contract. If a named Contract Manager is not identified, the Procuring Officer will fulfil the role of Contract Manager.
- 23.2 The Contract Manager will be responsible for reviewing, monitoring and evaluating the Agreement to ensure that its provisions are being followed and performed in accordance with the Council's requirements with respect to:
 - 23.2.1 Performance (against agreed KPIs, where relevant, including Social Value commitments);
 - 23.2.2 Compliance with specification and contract;
 - 23.2.3 Cost;
 - 23.2.4 Any Best Value duties;
 - 23.2.5 Continuous Improvement;
 - 23.2.6 User satisfaction; and
 - 23.2.7 Risk management

24 Document Retention

- 24.1 All records in relation to the award of Agreements with a value of £5,000 or over, their associated procurement process, and their supporting documentation shall be stored centrally in an electronic filing system to be available for inspection by the Council's internal and external auditors, or an Officer of the Council, immediately upon request.
- 24.2 Such records will be retained in accordance with relevant regulations applicable to electronic record retention and in accordance with a procurement document retention schedule.

Appendix 3

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TERMS OF REFERENCE

4. COUNCIL

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4.24 To approve and accept grant funding over the value of £250k

4.25 All other matters which, by law, must be reserved to Council.

Part 3 Page 35

5. CABINET

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The Cabinet has, for example the power to deal with:

- a) Assets valued at over £100,000.01 by the Council's independent valuer;
- b) All acquisitions and disposals of land, buildings or other property where the Council's independent valuer values the land, buildings or other property at more than £250,000 but less than £1 million and it is proposed to accept the highest bid and the highest bid matches or exceeds the valuation of the Council's independent valuer;
- c) All cases whatever the value where the buyer is either a councillor or an officer;
- d) All disposals where the Council's independent valuer values the property at over £100,000.01 and it is proposed to accept either a bid other than the highest or where the highest bid neither matches nor exceeds that of the Council's independent valuer.
- e) Reports on all village green applications.

f) The approval and acceptance of grant funding between £100,000.01 and £250,000

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5.0 Decision Making – Recording the Decision

5.1 Officers should first consider if a decision should more appropriately be taken via a member committee as a transparent method of recording a decision. The Chief Executive or relevant Director, head of service and service managers will need to exercise judgement in determining whether any delegated day to day decisions are

significant enough to require formally recording. These decisions will be known as significant day to day decisions. Decisions are significant if they propose to incur revenue or capital expenditure in excess of £245,000.

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5.8 There is no requirement to maintain a record of decision involving expenditure less than £245,000 for the purpose of councillor or public access save for the acquisition of an interest in land as set out in 5.1 above. However, officers are responsible for ensuring that sufficient evidence is kept about the decision and the reasons for it. Evidence may be required for a Judicial Review, Employment Tribunal, Ombudsman or other proceedings or investigation, and for ensuring that all those who need to know are informed promptly of the decision.

Part 3, page 55

2.0 Finance Matters

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2.3 Acceptance of Grant Funding

The Chief Executive, Monitoring Officer and Chief Finance Officer in consultation with the relevant Lead Member may accept grant funding between £50,000.01 and £100k.

Part 3, page 66

7. Head of Finance

7.1 The Head of Finance is authorised to discharge all the functions of the Chief Financial Officer (including Sections 114, 115 and 151 of the Local Government Act 1972).

7.2 The Head of Finance is responsible for the control of the Council's functions in relation to:

- a) financial services
- b) development and agreement of the Medium Term Financial Strategy
- c) development and agreement of the Capital Strategy
- d) in consultation with the appropriate Director and head of service, authority to determine

requests for grants, financial assistance including hardship and discretionary charitable relief,

discretionary rate relief and support up to £5000

- e) the treasury management function
- f) accountancy
- g) insurance arrangements and risk management
- h) the writing off of debts up to £5000
- i) pensions
- j) creditor payments
- k) collection of sundry debtors
- l) banking arrangements
- m) setting the Council Tax base
- n) contract management of the audit function
- o) procurement

p) the approval and acceptance of grant funding up to £50k in consultation with Lead Member

All reference to Head of Finance shall be amended to Chief Finance Officer.

All reference to Portfolio Holder shall be amended to Lead Member.