

Committee Agenda



**Epping Forest
District Council**

CONSTITUTION WORKING GROUP Tuesday, 22nd March, 2016

Place: Civic Offices, High Street, Epping
Room: Committee Room 1
Time: 7.00 pm
Democratic Services Officer M. Jenkins Tel: (01992) 564607
Email: democraticservices@eppingforestdc.gov.uk

Members:

Councillors M McEwen (Chairman), M Sartin (Vice-Chairman), D Dorrell, A Mitchell, J Philip, C C Pond, C P Pond, D Stallan, G Waller, S Watson and J H Whitehouse

MEMBERS ARE REMINDED TO BRING THEIR COPIES OF THE EXISTING CONSTITUTION DOCUMENT WITH THEM TO THE MEETINGS – FURTHER COPIES CAN BE SUPPLIED ON REQUEST.

1. APOLOGIES FOR ABSENCE

2. SUBSTITUTE MEMBERS (MINUTE ITEM 39 - 23.7.02)

(Director of Governance) To report the appointment of any substitute members for the meeting.

3. NOTES OF THE LAST WORKING GROUP MEETING (Pages 3 - 6)

To approve the notes of the last meeting held on 26 January 2016 (attached).

4. TERMS OF REFERENCE AND WORK PROGRAMME (Pages 7 - 12)

(Assistant Director of Governance and Performance Management)

(a) To note the Terms of Reference (attached);

(b) To consider the Work Programme (attached); and

(c) To receive an update on progress with the re-drafting of sections of the Constitution (attached).

5. NEW PROCUREMENT RULES (Pages 13 - 46)

(Director of Communities) At its last meeting, the Working Group considered in detail draft new Procurement Rules, produced by the (Officer) Contract Standing Orders Working Party and endorsed by the Corporate Governance Group, to replace the Council's current Contract Standing Orders.

The Working Group suggested some minor changes, which have been incorporated in to the final version. The Council's Legal Team also arranged for the Draft Procurement Rules to be considered by an external procurement solicitor, following which the Legal Team suggested some further relatively minor wording changes, which have also been incorporated within the final version.

The final version of the Procurement Rules, for submission to the full Council, are attached as an Appendix to this report.

6. PROPOSED TERMS OF REFERENCE - AUDIT & STANDARDS COMMITTEE (Pages 47 - 56)

(Monitoring Officer) To consider the attached report.

7. HOUSING APPEALS AND REVIEW PANEL

(Director of Communities) Report to follow.

8. CONSTITUTION REVIEW - FINAL DRAFT PROPOSALS (Pages 57 - 82)

(Director of Governance) To consider the attached report.

The final draft of the Constitution has been published as a supplementary agenda and printed for members of the Working Group.

9. FUTURE MEETINGS

This is the last meeting of the Working Group for this Council year. The first meeting in the new year will be on Tuesday 20 September 2016 at 7.00p.m. in Committee Room 1.

**EPPING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF CONSTITUTION WORKING GROUP
HELD ON TUESDAY, 26 JANUARY 2016
IN COMMITTEE ROOM 1, CIVIC OFFICES, HIGH STREET, EPPING
AT 7.00 - 9.10 PM**

Members Present: M McEwen (Chairman), M Sartin (Vice-Chairman), D Dorrell, J Philip, C C Pond, C P Pond, D Stallan, G Waller, S Watson and J H Whitehouse

Other members present:

Apologies for Absence:

Officers Present A Hall (Director of Communities), S Tautz (Democratic Services Manager) and M Jenkins (Democratic Services Officer)

28. APOLOGIES FOR ABSENCE

It was advised that the Assistant Director (Performance Management) had tendered his apologies.

29. SUBSTITUTE MEMBERS (MINUTE ITEM 39 - 23.7.02)

There were no substitute members present at the meeting.

30. DECLARATIONS OF INTEREST

There were no declarations of interest made pursuant to the Member's Code of Conduct.

31. NOTES OF PREVIOUS MEETING

RESOLVED:

That, subject to the following amendment to Minute Item 21 (Terms of Reference and Work Programme), paragraph (iv) (Local Charter for Parish Councils) the notes of the last meeting of the Working Group held on 30 November 2015 be agreed:

That the Town Clerk of Loughton Town Council was speaking as the Epping Forest representative in regard to undertaking a draft of the Local Charter for Parish Councils and not in any other capacity.

32. TERMS OF REFERENCE AND WORK PROGRAMME

(a) Terms of Reference

The Working Group noted its Terms of Reference.

(b) Work Programme

The Working Group was advised that the agenda for the meeting contained an incorrect Work Programme, the correct version was tabled and progress noted.

33. NEW DRAFT PROCUREMENT RULES

The Working Group received a report from the Director of Communities regarding the New Draft Procurement Rules. The Corporate Governance Group (CGG) had requested that the Director of Communities chair an all officer group called the Contract Standing Orders Working Party to fundamentally review the Council's Contract Standing Orders and formulate a new set of Procurement Rules that:

- (a) Adopted a more modern and flexible approach;
- (b) Were simpler to understand and comply with;
- (c) Were more responsive to the current and future procurement needs of the Council;
- (d) Met the recently enacted Public Contracts Regulations 2015; and
- (e) Ensured appropriate controls and probity to safeguard the use of public money.

The Working Party had met on 6 occasions since June 2015. The draft procurement rules, incorporating all of the comments from the Working Party, were approved by the CGG this month and recommended to this Working Group for consideration.

Members noted that the new rules were fundamentally different from the existing CSOs. They supported the new draft and were advised that they would be checked externally by a specialist procurement lawyer to confirm that they complied with UK/EU procurement legislation.

RECOMMENDED:

- (1) That the new Draft Procurement Rules be agreed; and
- (2) That the final version of the Draft Procurement Rules, incorporating the comments of the Working Group and the specialist procurement lawyer, be considered at the next meeting of the Working Group to be held on 22 March 2016.

34. CONSTITUTION REVIEW - ARTICLE 18 (ACCESS TO INFORMATION)

The Working Group received a report from the Democratic Services Manager regarding the Constitution Review – Article 18 (Access to Information).

Members were reminded that the current Constitution review was looking critically at each part of the document and rationalising procedures against the relevant legislative background. The opportunity was being taken to incorporate these provisions within a new Article 18. In accordance with the wishes of the Working Group, officers had taken the various sections and moved them to the rules.

RESOLVED:

- (1) That the proposed revisions to Article 18 (Access to Information) be agreed subject to the amendments made at the meeting of the Working Group; and
- (2) That the Democratic Services Manager review the Council's approach to "private" meetings of the Cabinet and report further to the Working Group if required.

35. CONSTITUTION REVIEW - ARTICLE 13 (OFFICERS)

The Working Group received a report from the Democratic Services Manager regarding the Constitution Review – Article 13 (Officers).

Under the current Constitution, rules relating to the Council's officers were contained in Article 13 and a number of separate protocols and conventions. Members had already given consideration to a revised version of Article 13. Members noted the proposed final draft version of the revised Article, in particular:

- (a) The existing Statutory Officer Protocols were now incorporated within Article 13;
- (b) The Conventions on the Relationships between Political Groups/Councillors and officers had been revised and incorporated within Article 2 (Members) and the new Article 18 (Access to Information) as appropriate; and
- (c) The existing Member's Charter had been revised as necessary and incorporated within Article 2 (Members).

RESOLVED:

That subject to the amendments made at the meeting the revisions to Article 13 (Officers) of the Constitution be agreed.

36. CONSTITUTION REVIEW - ARTICLE 6 (OVERVIEW & SCRUTINY)

The Working Group received a report from the Democratic Services Manager regarding the Constitution Review – Article 6 (Overview and Scrutiny).

At its meeting in September 2015, the Working Group considered a review of Article 6 of the Constitution and the procedure rules relating to Overview and Scrutiny, the revised article and procedure rules were later agreed by the Overview and Scrutiny Committee on 20 October 2015.

Article 6 of the Constitution contained a procedure for the consideration and reporting on executive decisions that were "called in" by members setting out how the Overview and Scrutiny Committee should deal with call-in matters. This procedure also made provision for consideration to the "withdrawal or modification of a call-in" whereby a meeting was held with the Chairman of the Overview and Scrutiny Committee prior to the call-in being considered by the committee to discuss the likelihood of reaching an agreement on removing any objections to the decision subject of the call-in.

This procedure was introduced as a result of the last (2013) review of the Council's Overview and Scrutiny arrangements and had recently been exercised for the first time at the request of the lead member to a call-in and the relevant Portfolio Holder.

RESOLVED:

That subject to the revisions made at the meeting the proposed additions to Article 6 (Overview and Scrutiny) of the Constitution be agreed.

37. CONSTITUTION REVIEW - ARTICLE 2 (MEMBERS)

The Working Group received a report from the Democratic Services Manager regarding the Constitution Review – Article 2 (Members).

At its meeting on 30 November 2015, the Working Group considered a revised version of Article 13 of the Constitution relating to the Council's officer arrangements.

The initial proposals for the review of Article 13 included the incorporation of the existing Member's Charter. However, the content of the Charter was clearly more focussed on the provision of services, support and facilities for members and it was felt that it would be more appropriately located within Article 2 of the Constitution relating to members. A revised version of Article 2 had already been agreed by the Working Group as part of the on-going review. However members asked for a revised version to be re-submitted to the Working Group with amendments.

RESOLVED:

That subject to the revisions made at the meeting the proposed addition to Article 2 (Members) of the Constitution be agreed.

38. FUTURE MEETINGS

It was advised that the next meeting of the Working Group would be held on Tuesday 22 March 2016 at 7.00p.m. in Committee Room 1.

CONSTITUTION WORKING GROUP

TERMS OF REFERENCE

Title: Constitution Working Group

Status: Working Group

Terms of Reference:

(1) To complete a review of the Council's Constitution by 31 March 2016 and to recommend new arrangements accordingly;

thereafter:

(2) To review any aspect of the authority's constitutional arrangements as requested by the Council;

(3) To undertake general reviews of specific elements of the Constitution in order to ensure that the authority's constitutional arrangements complement current legislative requirements and decisions made by the Council; and

(4) To consider any proposals of the Director of Governance for necessary revision to any element of the Constitution.

Reporting:

The Working Group shall report directly to the Council in connection with its Terms of Reference and the achievement of its work programme.

Chairman: Councillor M McEwen

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Constitution Working Group (Chairman – Cllr M McEwen)

Item	Dates	Progresss
(1) Position statement and programme (S Hill)	30 June 2015	COMPLETED
(2) Officer Employment Procedure Rules(P Maginnis)	30 June 2015	COMPLETED
(3) Contract Standing Orders – Review Process (A Hall)	30 June 2015	COMPLETED
(4) Executive Procedure Rules and Revised Articles (S Hill)	30 June 2015	COMPLETED
(5) Overview and Scrutiny Article Revisions (S Tautz)	22 September 2015	COMPLETED – Completed and approved by the Overview and Scrutiny Committee
(6) How to deal with Codes and Protocols (S Hill)	22 September 2015	COMPLETED
(7) Other Procedure Rules (S Hill)	22 September 2015	COMPLETED
(8) Schedule of Delegation – Revision (S Hill)	24 November 2015	COMPLETED
(9) Proposals for External Review (S Hill)	24 November 2015	COMPLETED
(10) Proposals to be agreed for consideration to Members (S Hill)	26 January 2016	COMPLETED
(11) Constitution Review – Article 18 (Access to Information)	26 January 2016	COMPLETED

(12) Constitution Review – Article 13 (Officers)	26 January 2016	COMPLETED
(13) Constitution Review – Article 6 (Overview and Scrutiny)	26 January 2016	COMPLETED
(14) Constitution Review – Article 2 (Members)	26 January 2016	COMPLETED
(15) Agree CSO revisions (A Hall)	26 January 2016	COMPLETED
(16) New Procurement Rules	22 March 2016	Recommendation to Council
(17) Proposed Terms of Reference – Audit and Governance Committee	22 March 2016	Recommendation to Council
(18) Housing Appeals and Review Panel	22 March 2016	Recommendation to Council
(19) Recommend final articles (S Hill)	22 March 2016	Recommendation to Council

New Constitution
 Master Map
 As at 10/03/2016 11:21

Part 1 Summary	Part 2 The Articles	Part 3 Scheme of Delegation	Part 4 The Rules	Part 5 Codes and Protocols	Part 6 Scheme of allowances
Summary	1. The Constitution	Delegation scheme generally	Main rules	Members Code of Conduct	Members allowances scheme
Glossary of Terms	2. Members of the Council	Scheme of Officer delegation of Executive matters	OS Rules	Planning Protocol	
Index	3. The Public and the Council	Scheme of Officer delegation of Council matters	Budget and Policy Framework	Gifts and Hospitality	
	4. The full Council		Financial Regulations		
	5. Chairing the Council		Procurement Rules		
	6. Overview and Scrutiny		Officer Employment Rules		
	7. The Executive				
	8. Regulatory and other Committees				
	9. The Standards Committee				
	10. DDMC and Area Plans Subcommittees				
	11. Audit and Governance Committee				
	12. Joint Arrangements				
	13. Officers				
	14. Decision Making				
	15. Finance/Contracts and Legal matters				
	16. Review and Revision of the Constitution				
	17. Suspension of the Constitution				
	18. Access to Information				

Key:

	Complete		In hand		Work required		Review Not required
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Procurement Rules

April 2016

Contents

1. Introduction
2. General rules
3. Exceptions for Central Purchasing Bodies
4. Contract Conditions
5. Rules for identifying and selecting Contractors/suppliers to be invited to submit Tenders
6. Nominated Sub-contractors and Suppliers
7. Checks to be undertaken on the experience, abilities and financial standing of Tenderers
8. Checks of financial standing
9. Obtaining value for money for Contracts where Tenders are not required from more than one Contractor
10. Rules for inviting Tenders where more than one Tender is required
11. Additional rules for inviting and accepting Tenders based on the Most Economically Advantageous Tender (MEAT) (i.e. price and quality) and/or a Schedule of Rates
12. Rules for the receipt, custody and opening of Tenders with Total Contract Values within Category 1 of Appendix 1 or higher
13. Late receipt of Tenders
14. Alterations
15. Post-Tender Negotiations
16. Rules for accepting Tenders
17. Procurement Process (“Regulation 84”) Report
18. Contract Documentation and Retention
19. Rules for negotiated Contracts
20. Use of Consultants
21. Rules for the Contract Extensions
22. Contract monitoring
23. Final Accounts
24. Publication of procurement information
25. Disposal and freehold/leasehold property transactions

Appendix 1 Table of Tendering Requirements for Nos. of Tenders, Returns and Openings

Appendix 2 Glossary and Definitions of Terms used in the Procurement Rules

Documents referred to in (and that support the Operation of) these Procurement Rules:

- | | |
|--|------------------------------------|
| (a) Council’s Corporate Procurement Checklist | [Available here] |
| (b) A Basic Guide to Public Sector EU Procurement Legislation | [Available Here] |
| (c) Council’s Standard Pre-Qualification Questionnaire (PQQ) | [Available here] |
| (d) Council’s Procedure Note on Financial Checks for Tender Processes | [Available here] |
| (e) Crown Commercial Service’s Guidance on Electronic Procurement & Electronic Communication | [Available here] |
| (f) Council’s EFDC Guidance of Electronic Tendering | [Available here] |
| (g) Council’s Tender Return Label | [Available here] |
| (h) Council’s Certificate of Bona Fide Tendering | [Available here] |
| (i) Council’s Formal Declaration of Tender Offer | [Available here] |
| (j) EFDC Corporate MEAT Assessment Methodology | [Available here] |
| (k) Standard Procurement Process (“Regulation 84”) Report | [Available here] |
| (l) Council’s Standard Consultants Agreement | [Available here] |

(Note: A Glossary and Definitions of Terms used in these Procurement Rules is provided at Appendix 2. Reference to such terms in these Procurement Rules are denoted with a capital letter)

1. Introduction

- 1.1 These Procurement Rules set out the procedures that must be followed by all officers for the procurement of Contracts for any Works, Supplies or Services on behalf of the Council, including Official Orders issued through the Council's Marketplace electronic ordering system. A serious/wilful failure to comply with these Procurement Rules could result in disciplinary action being taken.
- 1.2 They seek to adopt a modern and flexible approach to procurement, that is easy to follow and comply with, and are responsive to the Council's current and future procurement needs, whilst ensuring appropriate controls and probity to safeguard the use of public money. They are also set out in a logical, sequential order to help lead officers through the procurement process.
- 1.3 These Procurement Rules also relate to certain disposals of land and property, and other property transactions, which are covered in Section 25 below. Associated delegations to officers are covered by the Schedule of Officer Delegations within the Council's Constitution. However, these Procurement Rules do not relate to the acquisition of land or properties, which must be authorised through reports to the relevant Portfolio Holder or Cabinet as appropriate.
- 1.4 The transitional arrangements to apply when these Procurement Rules are first introduced is that, wherever possible, any procurement activities for procurements commenced before the adoption of these Procurement Rules must comply with these Procurement Rules. For example, if a Select List was formulated before the adoption of these Procurement Rules (under the Council's previous Contract Standing Orders), but Tenders had not been invited at the time of adoption, the Tenders should still be invited in accordance with these Procurement Rules.
- 1.5 These Procurement Rules represent the Council's Contract Standing Orders for the purposes of Section 135 of the Local Government Act 1972.

2. General rules

(a) Responsibility

- 2.1 It is the responsibility of the designated Spending Control Officer for the budget that will be used to fund the resultant Contract to ensure that these Procurement Rules are followed.
- 2.2 When the Total Contract Value of a Contract or Official Order to be issued is less than the minimum for Contract Category 1 at Appendix 1, subject to the requirements at Section 2.9 below (Total Contract Values over a 12-month period), these Procurement Rules do not have to be followed. However, it is the responsibility of all Spending Control Officers to try to obtain value for money, in terms of price and quality, through any Contract or Official Order that they issue, irrespective of its value. Spending Control Officers should therefore be aware of what constitutes appropriate price and quality for the Works, Supplies or Services sought.

(b) Approach to procurement

- 2.3 In order to help ensure compliance, and to provide a documented audit trail, Spending Control Officers must use and complete the Council's "**Corporate Procurement Checklist**" available on the Council's Intranet [\[here\]](#) throughout the procurement process for any Contracts with a Total Contract Value within Category 2 of Appendix 1 or higher. They must also keep a copy of the completed "**Corporate Procurement Checklist**" on the relevant Contract file, both throughout the procurement process and for at least 3 years after the completion of the Contract.

2.4 Reference to “Directors” throughout these Procurement Rules also includes the relevant Assistant Director responsible for providing the service to which the relevant procurement relates, except where an Assistant Director is also the Spending Control Officer responsible for undertaking the procurement. Where a Director is responsible for a procurement, the Chief Executive will take the role of the Director.

(c) Compliance with EU Regulations additional to these Procurement Rules

2.5 These Procurement Rules do **not** set out or duplicate the legal requirements that must be followed for EU Regulated Contracts with Total Contract Values above the value thresholds set out in the Public Contracts Regulations 2015. For such EU Regulated Contracts, officers **must** comply with the requirements of the Public Contracts Regulations 2015. If there is any conflict between these Procurement Rules and the Public Contracts Regulations 2015 or any other legislation, then the relevant legal requirements take precedence. Advice on the Public Contracts Regulations 2015 can be obtained from the Corporate Procurement Officer. A **“Basic Guide to Public Sector EU Procurement Legislation”** [can be downloaded here](#). However, these Procurement Rules do set out the Council’s own requirements for complying with EU Regulated Contracts specified within the Public Contracts Regulations 2015, which are shown in italic text. Particular attention is drawn to Section 17 of these Procurement Rules, which explains the Council’s requirements, in respect of EU Regulated Contracts, for Spending Control Officers to complete and maintain the required Procurement Process Report under Regulation 84 of the Public Contracts Regulations 2015 throughout the procurement process.

(d) Framework Agreements

2.6 Where appropriate, Spending Control Officers are encouraged to use central contracts and existing Framework Agreements – either through the Essex Procurement Hub or with other organisations to which the Council has access. Where such central contracts or existing Framework Agreements are used, some parts of these Procurement Rules do not have to be followed – except where competitive tendering is undertaken amongst Contractors on Framework Agreement Select Lists. Spending Control Officers should seek advice, and receive confirmation in writing, from the Council’s Corporate Procurement Officer on which parts of these Procurement Rules do not have to be followed in such circumstances.

(e) Exemption from Procurement Rules

2.7 These Procurement Rules do not have to be followed in the following circumstances:

(a) Where the relevant Director or Asst. Director obtains formal approval from the relevant Portfolio Holder or the Cabinet, confirming that he/she/it is satisfied that the work required could reasonably only be undertaken by one specialist contractor/supplier, together with the reasons.

Such approval is required from:

- (i) A Portfolio Holder for Contracts with a Total Contract Value within Contract Categories 1-3 at Appendix 1; and
- (ii) The Cabinet for Contracts with a Total Contract Value within Contract Category 4.

This provision does not apply for EU Regulated Contracts with a Total Contract Value within Contract Category 5 (i.e. above the EU Procurement Thresholds); or

(b) Where it is essential to meet an immediate need, subject to the Spending Control Officer seeking advice from the Corporate Procurement Officer where the Total Contract Value is within Contract Category 5 at Appendix 1 (i.e. above the EU Procurement Thresholds), which;

- (i) Has been created by a sudden emergency; or

- (ii) Is outside the Council's control (e.g. by order of the Courts or another body with an equivalent power), or
- (ii) Has some other over-riding urgency.

In such circumstances, the Spending Control Officer must provide a report to the next available meeting of the Corporate Governance Group explaining the reasons why the matter had to be treated as a matter of urgency and why these Procurement Rules could not be followed.

If it is necessary to incur expenditure outside of the Council's budgetary framework, Spending Control Officers must comply with the additional relevant requirements within the Council's Financial Regulations

- 2.8 In other circumstances, where a Spending Control Officer feels that there are good reasons why specific parts of these Procurement Rules should not be followed for a particular procurement, they may seek a waiver from compliance with that part of the Procurement Rules. Requests for such waivers must be made in writing by the Spending Control Officer. Approvals can only be given in writing (or through a Portfolio Holder Decision or Cabinet minute as appropriate) by the relevant person/body listed at Appendix 1 who is responsible for accepting Tenders for the Contract Category relating to the Total Contract Value of the proposed Contract.

(f) Cumulative value of Contracts

- 2.9 When seeking to procure a Contract, Spending Control Officers must:

- (a) Consider and assess the likely total value of Contracts and/or Official Orders to be provided to a potential Contractor by their Directorate over a 12 month period for similar Works, Supplies and/or Services *(or over a 4-year period where the total value would exceed the thresholds for EU Regulated Contracts set out in the Public Contracts Regulations 2015 and reproduced at Appendix 1)* that could, alternatively, be procured through one or more Contracts or Framework Agreements over that period; and
- (b) If the total value of such Contracts over any 12 month period is likely to be more than the threshold for Contract Category 1 listed at Appendix 1, seek Tenders and procure a Contract in accordance with these Procurement Rules.

- 2.10 Contracts must not be artificially separated to avoid compliance with either these Procurement Rules or the Public Contracts Regulations 2015.

(g) Breaches of Procurement Rules

- 2.11 If it comes to light that these Procurement Rules have not been followed, the relevant Assistant Director must submit a report to the next available meeting of the Corporate Governance Group (or successor officer group) explaining the reason for the breach and, if appropriate, the proposed remedy for correcting or mitigating the effects of the breach. The CGG will identify any breaches that it considers to be sufficiently serious to be reported to the Audit and Governance Committee (or successor member body).

- 2.12 The provision of in-house Council Services is excluded from the requirement of these Procurement Rules.

(h) Suspension of Contractors

- 2.13 Contractors can only be suspended from consideration for future contracts on the grounds of one of the mandatory and discretionary exclusions set out in the Public Contracts Regulations 2015 and only for the periods specified in the Public Contracts Regulations 2015.

- 2.14 If any Spending Control Officer considers that a Contractor should be suspended from consideration for future Contracts with the Council for a specified period, they must submit a report to the Corporate Governance Group;
- (a) Explaining the reasons for suspending the Contractor;
 - (b) Recommending a proposed period of suspension; and
 - (c) Seeking approval to such a decision.
- 2.15 If the Corporate Governance Group agrees that a Contractor should be suspended, the Spending Control Officer must:
- (a) Advise the Corporate Procurement Officer of the decision, who must in turn notify all Directors and Assistant Directors of the decision; and
 - (b) Advise the Contractor of the reasons for the suspension and the period of the suspension.
- (i) Conflicts of interest*
- 2.16 No person or body who has given material advice to the Council, or a Consultant acting on behalf of the Council, on a proposed Contract can then submit a Tender for that Contract, where more than one Tender is required (i.e. for Contracts with a Total Contract Value within Contract Category 1 of Appendix 1 or higher).
- (j) Absence of post-holder*
- 2.17 In the absence of the post-holder, the responsibilities of specifically named posts within these Procurement Rules, can be discharged by:
- (a) Their Director or Assistant Director; or
 - (b) An officer designated by them.
- 2.18 All designations of committees, portfolio holders, other bodies and officers referred to in these Procurement Rules also include successor bodies and posts.

3. Exceptions for Central Purchasing Bodies

- 3.1 These Procurement Rules do not apply for the procurement of Contracts by a Central Purchasing Body, of which the Council is a member, or under which the Council is entitled to benefit by virtue of its status as a public authority. In such circumstances, the rules for procurement that relate to the member of the Central Purchasing Body undertaking the procurement on behalf of the Central Purchasing Body will apply.
- 3.2 However, where Tenders are invited by an officer of the Council on behalf of a Central Purchasing Body, these Procurement Rules must be followed.
- 3.3 In any event, if the value of the Works, Supplies or Services that the Council will be required to fund itself through a Central Purchasing Body or collaborative arrangement is:
- (a) Within Contract Categories 1 or 2 at Appendix 1 - The relevant Director or Asst. Director must be satisfied that the terms and conditions of the proposed Contract are appropriate under all the circumstances, taking any legal advice from the Asst. Director (Legal Services) that the Spending Control Officer, Director and/or Asst. Director considers necessary.
 - (b) Within Contract Category 3 at Appendix 1 or higher - The Spending Control Officer must report to the relevant Portfolio Holder on the proposed arrangements for the procurement of

the Contract and obtain a formal Portfolio Holder Decision agreeing to the proposed arrangements;

- 3.4 Where the Council is considering sharing services with other public bodies or arranging for services to be provided to the Council by a company in which the Council has an interest, legal advice should be obtained.

4. Contract Conditions

(a) Compliance with Procurement Rules by Consultants

- 4.1 Where one or more Consultants are appointed to advise or act on behalf of a Spending Control Officer in respect of the procurement or administration of a Contract, the Contract for their appointment(s) must include a condition that the Consultant must comply with these Procurement Rules and the Consultant must be provided with a hard or electronic copy of these Procurement Rules.
- 4.2 It is the responsibility of the Spending Control Officer to ensure that Consultants appointed by them are aware of the requirements of these Procurement Rules, and that they comply with them.

(b) Standard Contract terms

- 4.3 If the Council's Standard Form of Contract or Official Order is used, no amendments can be made without consulting the Asst. Director (Legal Services). If the Council's Standard Form of Contract is not used, the Contract must include standard contract terms, which are available on the Council's Intranet, unless the Asst. Director (Legal Services), in consultation with the Spending Control Officer, determines that individual standard terms are not required for a particular Contract.

(c) Liquidated and Ascertained Damages

- 4.4 For Contracts with Total Contract Values within Contract Category 3 of Appendix 1 or higher, and where late completion or non-completion of the Contract would result in a quantifiable financial loss to the Council, the Contract must include a condition that Liquidated and Ascertained Damages will be payable in such circumstances.
- 4.5 In such circumstances, the Contract must set out the level of Liquidated and Ascertained Damages that will be payable, which must be the Spending Control Officer's best estimate of the loss to the Council for each week of late or non-completion. Advice regarding the calculation can be obtained from the Council's Asst. Director (Accountancy) or his/her designated officer.

(d) Performance Bonds and Parent Company Guarantees

- 4.6 A condition must be included within all Contracts (only) for:
- (i) **Services** - with Total Contract Values within Contract Category 4 of Appendix 1 or higher; and
 - (ii) **Works** - with Total Contract Values within Contract Category 5 of Appendix 1 or higher;
- that requires the Contractor to provide, at its own cost, either:
- (iii) A Performance Bond for the Contract's due performance; or
 - (iv) With the agreement of the Asst. Director (Accountancy), either a Parent Company Guarantee or a deposit with the Council, as security, in a form agreed with the Assistant Director (Accountancy).

(e) *Retentions*

4.7 Where a Contract includes provision for a Defects Liability Period, a condition must be included within the Contract allowing the Council to hold a Retention for:

- (a) At least 5% of the Contract Sum during the course of the Contract Period; and
- (b) At least 2.5% of the Contract Sum on Practical Completion;

which must not be finally released until the end of the Retention Period.

(f) *Insurances*

4.8 Subject to Section 4.9 below, conditions must be included within:

- (i) All Contracts that require Contractors to have in effect, at the time of signing the Contract, minimum third party insurance cover of £5 million and minimum employer liability cover of £10 million; and
- (ii) All appointments of Consultants that require them to have in effect, at the time of signing the Contract, Professional Indemnity Insurance with a minimum cover of £2million for any one claim or such other sum as may be determined.

4.9 Subject to obtaining written advice from the Council's Insurance Officer, Spending Control Officers may include conditions within Contracts specifying lower levels of insurance than set-out at Section 4.8 above, dependent on the risk assessed by the Spending Control Officer, based on the advice of the Council's Insurance Officer.

4.10 The Contractor shall also be required:

- (i) To show to the Spending Control Officer evidence of all relevant insurance policies, both in place at the time of signing the Contract and any new policies obtained on the expiry of insurance policies, who must check that all required insurances are in effect throughout the duration of the Contract for the required levels of cover; and
- (ii) For construction contracts only, with Total Contract Values within Contract Category 4 of Appendix 1, to have the interest of the Council noted on the insurance policies.

(g) *Assignment*

4.11 A condition must be included within every Contract which prohibits the Contractor from transferring or assigning (directly or indirectly) any part of the Contract to another person or body without the written permission of the Council. *It should be noted that EU Regulated Contracts may only be assigned in limited circumstances.*

4.12 On receipt of a request from a Contractor to assign all or part of a Contract, the Spending Control Officer must undertake the checks of the proposed assignee required by Sections 7 and 8 below, before approving the assignment.

(h) *Cancellation*

4.13 All Contracts must include conditions relating to the cancellation of the Contract, in terms specified by the Assistant Director (Legal), either generally or for specific contracts.

4.14 *All EU Regulated Contracts must include a condition providing an express right for the Council to terminate the contract in specified circumstances, in the form prescribed in Regulation 73 of the Public Contracts Regulations 2015.*

(i) Appointment of Sub-Contractors and alternative suppliers

- 4.15 A condition must be included within every Contract which prohibits the Contractor from appointing a sub-contractor or alternative supplier to perform any part of the Contract without the prior written consent of the Council.

(j) Access to sites and documentation for audit purposes

- 4.16 All Contracts must contain a provision allowing an officer designated by the relevant Director, Asst. Director and/or Chief Internal Auditor access, for audit purposes, to:

- (i) A site where a Contract is being performed; and/or
- (ii) Relevant documentation relating to a Contract.

(k) Payments to Contractors

- 4.17 In order to comply with Regulation 113 of the Public Contracts Regulations 2015, a condition must be included within every Contract requiring that all payments made by the Council to Contractors, and by Contractors to any sub-contractors, must be made no later than 30 days from the date a valid and undisputed invoice is received. Spending Control Officers must then ensure that this Contract condition is complied with.

5. Rules for identifying and selecting Contractors/suppliers

- 5.1 Subject to 2.9 above, where a Total Contract Value is below Contract Category 1 at Appendix 1, there is no requirement for Spending Control Officers to obtain competitive Tenders for procurements. In such circumstances, Spending Control Officers can decide the most appropriate Contractor to select to perform the Contract. However, for the avoidance of doubt, Spending Control Officers can seek competitive Tenders if they consider it appropriate.

- 5.2 *Except for EU Regulated Contracts, where the procedure for inviting Tenders must comply with Public Contracts Regulations 2015, Spending Control Officers may use any of the following methods that they consider most appropriate, under all the circumstances, to determine which Contractors should form a Select List to be invited to submit Tenders, subject to a written explanation of the criteria adopted for selecting Contractors being held on the relevant Contract file and a copy being provided to the Corporate Procurement Officer at the time of formulating the Select List:*

- (a) Use of Constructionline – Spending Control Officers may reduce a Long List produced by Constructionline for the type and value of Contract required to an appropriate Short List (comprising the required number of Tenderers set out in Appendix 1) using a method previously considered appropriate, and approved in writing, by their Director or Asst. Director;
- (b) Use of an existing or new Framework Agreement – including a Framework procured by the Essex Procurement Hub;
- (c) Use of Contractors known to be able to meet the Council's requirements to a good quality and to provide good value for money;
- (d) Use of Contractors who have previously been successful in Tendering for similar work for the Council in the past; and
- (e) Through the formulation of a Select List by:
 - (i) The inclusion of Contractors considered to be able to perform the Contract; and/or

(ii) Advertising for potential Contractors as appropriate (but note 5.3 below).

- 5.3 Where Contractors are invited to express an interest in being considered for specific procurements for Contracts with a Total Contract Value in excess of £25,000, through the placement of an advertisement in any media, the Corporate Procurement Officer must be notified and provided with the details of the procurement. The Corporate Procurement Officer must then publish the required information on the Government's Contracts Finder website, in accordance with the Public Contracts Regulations 2015.
- 5.4 Unless there are good reasons, if an in-house Council service can meet the requirements of the Specification to the required quality, they must be used in preference to an external Contractor. This includes the Council's Reprographics and Building Control Services.
- 5.5 When Spending Control Officers are deciding which Contractors should be invited to provide Tenders, they must take account of the following:
- (a) *If the Contract is for a Total Contract Value in excess of the thresholds for EU Regulated Contracts set out in the Public Contracts Regulations 2015, the selection of Contractors to Invite to Tender must be in accordance with these Regulations;*
 - (b) *With the exception of EU Regulated Contracts, where appropriate and possible, at least one business with its headquarters located in the Epping Forest District should be invited to Tender;*
 - (c) Contractors who have previously provided good quality Works, Supplies or Services with good value for money should be invited to Tender in preference to Contractors with whom the Council has not had any previous experience; and
 - (d) It may be appropriate to seek references for Contractors from other local authorities or public bodies for whom they have previously undertaken Works or provided Supplies or Services.
- 5.6 In accordance with the Public Contracts Regulations 2015, Pre-Qualification Questionnaires (PQQs) must not be used for any procurement exercises that are not EU Regulated Contracts. It is still possible to ask questions relating to Contractors' suitability, provided that they are relevant to the subject matter of the procurement, are proportionate and are only used to establish whether Contractors meet minimum requirements of suitability, capability, legal status and financial standing. All candidates meeting the minimum criteria must be invited to tender.
- 5.7 *For EU Regulated Contracts, if Pre-Qualification Questionnaires (PQQs) are used, unless there are good reasons, the "Council's Standard Pre-Qualification Questionnaire (PQQ)" should be used, which is available from the Council's Intranet [\[here \]](#). If a different form of PQQ is required, or the questions in the Council's Standard PQQ are not considered to be reasonable or proportionate, the amendments must be agreed with the Council's Corporate Procurement Officer.*

6. Nominated Sub-Contractors and Suppliers

- 6.1 Nominations made by the Council to a main Contractor for a sub-contractor or a supplier must be made following Tenders being sought in accordance with these Procurement Rules to select the Nominated Sub-Contractor or Supplier, except where a supplier has previously been used by the Council and the likely overall cost to the Council of changing supplier is considered by the relevant Director or Assistant Director to be greater than any reduced costs that could reasonably be obtained through a further Tendering process.

7. Checks to be undertaken on the experience, abilities and financial standing of Tenderers

- 7.1 If Tenders are to be invited from Contractors listed on Constructionline or an existing Framework Agreement no further checks are required, subject to the required checks of financial standing referred to in Section 8 below.
- 7.2 If Tenders are to be invited for Contracts with Total Contract Values covered by Contract Categories 1 or 2 in Appendix 1 no checks of Contractors are required, subject to:
- (a) The required checks of financial standing referred to in Section 8 below; and
 - (b) If the Contract has any material health and safety implications, evidence of a good track record of health and safety and the adoption and use of satisfactory health and safety policies being obtained, to the satisfaction of the Spending Control Officer.
- 7.3 However, if the Spending Control Officer considers it appropriate, any (further) checks (including those listed at Section 7.3 and 7.4 below), can be undertaken for any Contracts with Total Contract Values covered by Contract Categories 1 or 2 in Appendix 1 (provided that they are in line with Section 5.6 above).
- 7.4 For all Contracts with Total Contract Values covered by Contract Category 3 in Appendix 1 or higher, the following checks must be undertaken of all Tenderers intended to be invited to submit Tenders, prior to issuing Invitations to Tender, in a form considered appropriate by the Spending Control Officer. *For EU Regulated Contracts, the wording provided by the Crown Commercial Service's Standard Pre-Qualifying Questionnaire (PQQ) must be used:*
- (a) Details of each potential Tenderer's previous experience and ability to undertake the work - to ensure that they are able to perform the Contract to the required standard;
 - (b) If the Contract has any material health and safety implications, evidence of a good track record of health and safety and adoption and use of satisfactory health and safety policies;
 - (c) The financial standing of proposed tenderers, if/as required by the Council's "**Procedures for Financial Checks of Contractors**" referred to in Section 8 below (available on the Council's intranet [\[here \]](#));
 - (d) Details of each Contractor's approach to equality and diversity, to ensure that both the Contractor and the Council comply with the requirements of the Equality Act 2010; and
 - (e) If the Contractor or their staff are likely to identify any Safeguarding issues relating to the wellbeing of either adults with care and support needs or children in the performance of the Contract, details of each Contractor's approach to Safeguarding, to ensure that the Contractor and its employees are able to assist the Council to comply with its legal requirements under the Care Act 2014 and the Children Act 2004.

8. Checks of financial standing

- 8.1 Checks of Contractors' financial standing should be undertaken as shown below, for the types of Contracts set out below:

- | | | |
|-----|-----------------|---|
| (a) | Supplies | Not required. |
| (b) | Works | For all Contracts with a Total Contract Value within Contract Category of Appendix 1 or higher. |
| | 2 | |
| (c) | Services | For all Contracts with a Total Contract Value within Contract Category of Appendix 1. |
| | 5 | |

8.2 If checks of Contractor's financial standing are required in accordance with Section 8.1 above, the checks must be undertaken in accordance with the Council's **"Procedures for Financial Checks of Contractors"** (available on the Council's intranet [\[here \]](#)), which sets out:

- (a) At what point in the procurement process financial checks should be undertaken;
- (b) Who has responsibility for undertaking the checks;
- (c) What checks should be undertaken and the methodology to be followed; and
- (d) What action should be taken based on the outcome of the checks.

9. Obtaining value for money for Contracts where Tenders are not required from more than one Contractor

9.1 Tenders are not required from more than one Contractor for Contracts with a Total Contract Value below the Total Contract Values of Category 1 at Appendix 1. However, Tenders can still be sought in such circumstances - with the manner in which such Tenders are sought being determined by the Spending Control Officer and which does not have to comply with these Procurement Rules.

9.2 If Spending Control Officers do not seek Tenders from more than one Contractor, they must still take reasonable and appropriate steps to ensure that the Council obtains good value for money from Contractors, in terms of price and quality.

10. Rules for inviting Tenders where more than one Tender is required

10.1 For Contracts with a Total Contract Value within Category 1 of Appendix 1 or higher (including the value of any potential Contract Extensions), Spending Control Officers must invite Tenders from at least the number of Contractors shown in Appendix 1 for the relevant Contract Category.

10.2 Where Spending Control Officers consider that increased value for money may be obtained by inviting more Contractors to Tender for a Contract than the number required for the relevant Contract Category at Appendix 1, they should invite more Contractors to Tender as appropriate.

10.3 Where the Total Contract Value (including the value of any potential Contract Extensions) is close to the upper threshold for a Contract Category in Appendix 1, Tenders should be sought based on the Contract Category with the higher Total Contract Values.

10.4 Spending Control Officers must give Tenderers sufficient time to properly complete and return Tenders before the Tender Return Date.

10.5 *For EU Regulated Contracts with a Total Contract Value above the thresholds within the Public Contracts Regulations 2015 (i.e. within Category 5 of Appendix 1), Spending Control Officers must comply with the e-communication requirements of Regulations 22(8-21) and 53 of the Public Contracts Regulations 2015. With effect from 18th October 2018, Spending Control Officers must comply with the full e-communication requirements of Regulation 22 and any other provisions of the Public Contracts Regulations 2015 relating to e-communications. A copy of the Crown Commercial*

Service's "**Guidance on Electronic Procurement & Electronic Communication**", to comply with the Public Contracts Regulations 2015, is available [\[here \]](#).

- 10.6 Any electronic procurements undertaken by Spending Control Officers on behalf of the Council must comply with the "**Council's Guidance on Electronic Tendering**" available [\[here \]](#).
- 10.7 For procurements within Categories 1-4 of Appendix 1, Invitations to Tender can be issued either by post or electronically. However issued, Invitations to Tender provided in accordance with this Section must:
- (a) Include a copy of the Council's standard "**Tender Return Label**" (obtainable from the Council's Intranet [\[here \]](#)) within the Tender Documents, giving:
 - (i) A brief description of the Tender;
 - (ii) The designation of the person listed in Appendix 1 to whom the Tender must be returned;
 - (iii) The time (which must be Noon) and date by which the Tender must be received by the person designated within Appendix 1; and
 - (iv) Notification in large letters that the return document is a "TENDER".
 - (b) Include, in the form prescribed by the Asst. Director (Governance and Performance Management):
 - (i) A "**Certificate of Bona Fide Tendering**" (obtainable from the Council's Intranet [\[here \]](#)); and
 - (ii) A "**Formal Declaration of Tender Offer**" (obtainable from the Council's Intranet [\[here \]](#))
 - (c) Advise Tenderers that Tenders must be returned:
 - (i) In a plain envelope;
 - (ii) Which must be securely sealed; and
 - (iii) Which must not bear any distinguishing matter or mark to indicate the identity of the sender.
 - (d) Advise Tenderers that details of their Tender may be published:
 - (i) In the public agenda or minutes of the Council or become available as a background paper; or
 - (ii) By means of a request under the Freedom of Information (FOI) Act 2000 or the Environmental Information (EI) Regulations 2004, in response to which the Council would provide any information which is not covered by any of the statutory exemptions of the FOI Act or EI Regulations.
- 10.8 At the same time as sending the Invitations to Tender, Spending Control Officers must:
- (a) Advise the person listed in Appendix 1, to whom the Tender must be returned, of the return details of the Tenders; and
 - (b) Request the person to whom Tenders must be returned to arrange a time, date and venue for a Tender Opening.
- (a) Invitations to Tender by post*
- 10.9 Invitations to Tender must be sent to all Tenderers on the same date.
- 10.10 On the same day as sending the Invitations to Tender by post, Spending Control Officers must also send an email to all the Tenderers, but not revealing the names of other tenderers, to:

- (a) Advise them that Invitations to Tender have been despatched; and
 - (b) Request Tenderers to confirm safe receipt of the Tender Documents when received.
- 10.11 If safe receipt is not confirmed by a Tenderer within 3 working days of an Invitation to Tender being sent, Spending Control Officers must contact the Tenderer(s) concerned again to check receipt, and must continue to make appropriate periodic checks until all Tenders have been safely received.
- 10.12 Where it is apparent that Tender Documents have not been received by a Tenderer within a reasonable period, the Spending Control Officer must make appropriate arrangements to send duplicate Tender Documents as soon as reasonably possible (e.g. by hand or by courier).
- (b) Invitations to Tender by email*
- 10.13 Where Invitations to Tender are emailed to Tenderers, they must all be sent on the same date.
- 10.14 The email Invitation to Tender must require Tenderers to notify the Spending Control Officer of the safe receipt of the Tender Documents when received.
- 10.15 If safe receipt of Tender Documents is not confirmed within 24 hours of an Invitation to Tender being sent, Spending Control Officers must contact the Tenderer(s) concerned by telephone (not email) to check receipt.
- 10.16 Where it is apparent that Tender Documents have not been received by a Tenderer, the Spending Control Officer must make appropriate arrangements to immediately re-send the Tender Documents, either by email again or by post as appropriate, and then check receipt in accordance with Section 10.14 above.

11. Additional rules for inviting and accepting tenders based on the Most Economically Advantageous Tender (MEAT) (i.e. price and quality) and/or a Schedule of Rates

(a) Most Economically Advantageous Tenders (MEATs)

- 11.1 If the assessment of Tenders is to be based on an evaluation to assess the Most Economically Advantageous Tender (MEAT), i.e. taking account of both price and quality, Spending Control Officers must follow the Council's "**Corporate MEAT Assessment Methodology**" available on the Council's Intranet [\[here \]](#).
- 11.2 Prior to Invitation of Tenders being issued, a MEAT Evaluation Assessment must be formulated by the Spending Control Officer and:
- (i) (A copy) must be provided to the Corporate Procurement Officer, prior to the Invitation of Tenders being issued, for audit purposes;
 - (ii) Must not be changed after Invitations to Tender have been issued; and
 - (iii) Must be held on the relevant Contract file for at least 1 year after the Contract has been let.
- 11.3 A copy of the MEAT Evaluation Assessment must be provided to Tenderers as part of the Tender Documents.

(b) Schedule of Rates

- 11.4 Where Tenders are based on a Schedule of Rates, a reasonable Pre-estimate of Quantities for each of the rates contained in the Tender must:

- (i) Be produced prior to Invitations to Tender being issued;
- (ii) Be lodged with the Corporate Procurement Officer for audit purposes;
- (iii) Not be changed after Invitations to Tender have been issued;
- (iv) Be held on the relevant Contract file for at least 6 years after the Contract has been let;
- (v) Be used to multiply the rates provided by Tenderers to reach an Estimated Tender Sum, which shall be the Tender Sum reported for consideration of acceptance by the relevant person/body specified in Appendix 1.

12. Rules for the receipt, custody and opening of Tenders with Total Contract Values within Category 1 of Appendix 1 or higher

- 12.1 All Tenders received through electronic procurements must be received, held and opened in accordance with the Council's "**Guidance of Electronic Tendering**" available [\[here\]](#).
- 12.2 For Tenders with Total Contract Values within Category 1 of Appendix 1 or higher, the Assistant Director (Governance) must:
- (a) Make appropriate arrangements to hold returned Tenders in a secure location; and
 - (b) Maintain a Record of Tenders received by the Council, together with their time and date of receipt.
- 12.3 Unless it is known that all expected Tenders have been received, Tenders must not be opened on the same day as the Tender Return Date. This is to ensure that any Tenders that may have been delivered to the Civic Offices in time still reach the Asst. Director (Governance & Performance Management) before the Tender Opening.
- 12.4 Tenders must be opened, all at the same time, by the person(s) listed in Appendix 1 for the Contract Category related to the expected Total Contract Value and, if possible, the Spending Control Officer or their representative.
- 12.5 Tenders must not be accepted if they:
- (a) Are not in a plain envelope;
 - (b) Are not securely sealed;
 - (c) Do not have a "**Tender Return Label**";
 - (d) Bear any distinguishing matter or mark to indicate the identity of the sender;
 - (e) Do not include a "**Certificate of Bona Fide Tendering**"; or
 - (f) Do not include a "**Formal Declaration of Tender Offer**".
- 12.6 The Asst. Director (Governance & Performance Management) must ensure that a Democratic Services Officer maintains a record of all Tenders opened, which must be signed by all those in attendance at the Tender Opening.

13. Late receipt of Tenders

- 13.1 Any Tenders received after the Tender Return Date must be examined, unopened, by the person designated within Appendix 1 to open the Tenders and shall be dealt with in accordance with this section.
- 13.2 Where Tenders have been received after the Tender Return Date, but the other Tenders have not yet been opened, and the person responsible for opening the Tenders is satisfied that there is evidence that the Tender was sent in time for delivery by the Tender Return Date, a Late Tender can be opened at the same time as the other Tenders, provided that:
- (a) The details relating to the Late Tender are noted in the Record of Tenders kept by the Democratic Services Officer at the time the Tenders are opened; and
 - (b) The circumstances are reported to the body or individual responsible for accepting the successful Tender.
- 13.3 Where other Tenders have already been opened or, in the opinion of the person responsible for opening the Tenders, there is no evidence that the Tender was sent in time to reach the Council by the Closing Date:
- (a) The Tender must be opened by the Asst. Director (Governance & Performance Management), in the presence of a Democratic Service Officer and, if possible, the Spending Control Officer or their representative;
 - (b) The Record of Tenders received must be annotated with details that a Late Tender was received, but was disqualified;
 - (c) The relevant Spending Control Officer must advise the Tenderer, as soon as reasonably possible, of the disqualification and the reason; and
 - (d) The circumstances must be reported to the body or individual responsible for approval of the successful Tender.

14. Alterations

- 14.1 Tenders must not be altered after they have been opened. However, *except in the case of EU Regulated Contracts*, the Spending Control Officer can recommend to the person or body responsible for accepting the Tender that it is appropriate to accept the correction of Arithmetical Errors, if the Spending Control Officer is satisfied that such errors were made inadvertently. *For EU Regulated Contracts, any proposed alterations to Tenders after they have been opened must be discussed with the Council's Legal Services.*
- 14.2 If an error is identified within the Tender Documents before the Tender Return Date, all the Tenderers must be informed of the error and invited to adjust their Tenders prior to submission.
- 14.3 If an error in the Tender Documents is identified after the Tender Return Date, all Tenderers must be given details of the error and afforded the opportunity of withdrawing their Tender or submitting an amended Tender.

15. Post-Tender Negotiations

- 15.1 No Post-Tender Negotiations are permitted, unless the Contract has been advertised and Tendered under the Competitive Dialogue Procedure and the relevant Director or Asst. Director is satisfied, and determines, that Post-Tender Negotiations are appropriate to the procurement process.

- 15.2 Seeking clarification from Tenderers on queries related to their Tenders does not constitute Post-Tender Negotiations. However, the Spending Control Officer must first consult with the Corporate Procurement Officer for advice and, if necessary, seek further legal advice.
- 15.3 If the Specification for a Contract needs to be amended, due to the lowest Tender exceeding the available budget, or if the Council's requirements have changed since the Tenders were invited, all Tenderers must be given the opportunity to submit revised Tenders based on the revised Specification.

16. Rules for accepting Tenders

- 16.1 Tenders must only be accepted by the person/body listed in Appendix 1 for the relevant Contract Category relating to the Total Contract Value.
- 16.2 Where the actual Total Contract Value of the Tender to be recommended for acceptance exceeds the expected Total Contract Value for the relevant Contract Category at Appendix 1, and results in Tenders not having been invited and/or opened in accordance with the higher Contract Category, the Tenders must be reported to, and approved by, the person/body authorised to accept Contracts for the higher Contract Category, together with an explanation of why the actual Total Contract Value is above the expected Contract Value.

- 16.3 For Contracts that are not EU Regulated Contracts, if a Tender, other than either:

- (a) The lowest Tender (for Tenders based only on price); or
- (b) The Tender with the highest weighted Tender Evaluation Score (for procurements undertaken to assess the Most Economically Advantageous Tender (MEAT))

is recommended by the Spending Control Officer, it may only be approved by:

- (c) A Director or the relevant Asst. Director - where the Tender would normally be accepted by the Spending Control Officer;
 - (d) The relevant Portfolio Holder - where the Tender would normally be accepted by a Director, Asst. Director or the Portfolio Holder; or
 - (e) The Cabinet - where the Tender would normally be accepted by the Cabinet.
- 16.4 *For EU Regulated Contracts, there are only limited circumstances when a Tender, other than either the lowest-priced Tender or having the highest weighted Tender Evaluation Score, can be accepted. If acceptance of a different Tender is proposed, Spending Control Officers are required to seek the advice of the Corporate Procurement Officer and follow the requirements of the Public Contracts Regulations, and/or undertake a further Tender exercise.*

- 16.5 For audit purposes, where the circumstances in Sections 16.3 and 16.4 above apply, the Spending Control Officer must provide an explanation in writing to the person/body accepting the Tender of why the lowest Tender or highest weighted Tender Evaluation Score should not be accepted, and must retain a copy of the written explanation on the Contract file.
- 16.6 Prior to a Tender being accepted, evidence of valid satisfactory insurances required under Section 4.8 above to the amount, and on the terms, determined by the Council's Insurance Officer must be received from the Preferred Tenderer by the Spending Control Officer.
- 16.7 Spending Control Officers are authorised to enter into Contracts or issue Official Orders that have been Tendered and approved in accordance with these Procurement Rules.

- 16.8 For all procurement exercises with Total Contract Values in excess of £25,000, Spending Control Officers must provide details of all Tenders received, and the name of the successful Tenderer, to the Council's Corporate Procurement Officer within 5 working days of a Contract being entered into, in order to:
- (a) Maintain a central record of all procurement exercises; and
 - (b) Enable the Corporate Procurement Officer to provide the required information to the Contracts Finder website, in order to comply with the requirements of the Public Contracts Regulations 2015.
- 16.9 On receipt of the information provided by the Spending Control Officer, the Corporate Procurement Officer must upload the required information to the Crown Commercial Service's Contracts Finder website as soon as reasonably possible.
- 17. Procurement Process ("Regulation 84") Report**
- 17.1 *For EU Regulated Contracts undertaken with a Total Contract Value within Category 5 of Appendix 1, throughout the procurement process, Spending Control Officers must complete and maintain the required Procurement Process Report under Regulation 84 of the Public Contracts Regulations 2015. At the same time as informing Tenderers that their Tenders have been either successful or unsuccessful, Spending Control Officers must provide a copy of the completed Report to the Corporate Procurement Officer, in order to maintain a central record. A template for the "Procurement Process ("Regulation 84") Report" can be obtained from the Council's Intranet [\[here \]](#).*
- 18. Contract Documentation and retention**
- 18.1 Contracts with a Total Contract Value within Contract Category 1 of Appendix 1 can be dealt with by the use of an Official Order, provided that the relevant Director or Asst. Director is satisfied that there is no need for more extensive terms and conditions to be specified in order to protect the interests of the Council. An Official Order (or formal Contract) is required for all Council Contracts.
- 18.2 All Contracts with a Total Contract Value within Contract Category 2 of Appendix 1 or higher must:
- (a) Be in a standard form of an appropriate formal legal agreement approved by the Council's Asst. Director (Legal Services); and
 - (b) Be under seal, unless the Council's Asst. Director (Legal Services), in consultation with the Spending Control Officer, determines otherwise. This would be on the basis that the period of liability for breach of contract does not need to be extended from six to twelve years.
- 18.3 Spending Control Officers (and their successors) must ensure that:
- (a) All appropriate Contract Documentation is retained in a secure location for a minimum period, following the date of final payment, of at least:
 - (i) Six years if the Contract is not executed as a deed under seal;
 - (ii) Twelve years if the Contract is executed as a deed under seal; and
 - (b) Documentation relating to unsuccessful Tenders is retained in a secure location for a period of at least two years.
- 18.4 Original signed Contracts with Total Contract Values within Contract Category 2 of Appendix 1 or higher must be forwarded to the Asst. Director (Legal Services) for secure storage within 28 days of

signing/sealing. Original signed Contracts with Total Contract Values within Contract Category 1 of Appendix 1 can also be forwarded to the Asst. Director (Legal Services) for secure storage if the Spending Control Officer wishes.

- 18.5 The Asst. Director (Governance & Performance Management) must ensure that Records of Tenders are retained indefinitely in a secure location.

19. Rules for negotiated contracts

- 19.1 Contracts with Total Contract Values within Contract Category 1 at Appendix 1 or higher may only be negotiated where the relevant Portfolio Holder (or, for Contracts within Contract Category 4, the Cabinet) has resolved that competitive Tenders need not be invited and that a Contract may be negotiated with just one Contractor.
- 19.2 In such circumstances, the reason for not inviting competitive Tenders must be set out in the report to the Portfolio Holder or Cabinet, which can be for any reason considered appropriate by the relevant Director or Asst. Director, including the following reasons:
- (a) The Contract is urgent and there is insufficient time to invite Tenders;
 - (b) The requirements of the Contract are of a specialist nature, where no other Contractor is known to provide them;
 - (c) No demonstrable material benefit would be obtained from inviting competitive Tenders; or
 - (d) Tenders have previously been sought for a similar Contract within the previous 6 months and no Tenders were received.
- 19.3 *For EU Regulated Contracts, procurements must be undertaken in accordance with the Public Contracts Regulations 2015 in all circumstances.*

20. Use of Consultants

- 20.1 The definition of a "Consultant" is provided at Appendix 2.
- 20.2 The procurement of all Consultants must be undertaken in accordance with these Procurement Rules *and, where appropriate, the EU Regulations.*
- 20.3. Spending Control Officers are responsible for ensuring that any Consultants acting on behalf of the Council comply with these Procurement Rules in full.
- 20.4 Except where a recognised national Form of Contract or other accepted and standard type of agreement is used for the appointment of a Consultant, or where the Asst. Director (Legal Services) determines otherwise, the Council's "**Standard Consultants Agreement**" must be used for the appointment of any Consultant. A template for the "**Standard Consultants Agreement**" can be found on the Council's Intranet, and is available [\[here \]](#).
- 20.5 Where a national Form of Contract or other accepted and standard type of agreement is to be used for the appointment of a Consultant, Spending Control Officers must take the advice of the Asst. Director (Legal Services (or staff designated by him/her) on any specific provisions to be included or excluded within the Contract / agreement.

21. Rules for Contract Extensions

21.1 Spending Control Officers are authorised to extend existing Contracts where the Contract allows an extension, up to the maximum period allowed by the Contract.

22. Contract monitoring

22.1 For all Contracts with a Total Contract Value within Category 4 of Appendix 1, the Spending Control Officer must provide a written progress report to the relevant Portfolio Holder(s) at least every three months, between the Tender Return Date and the date of Practical Completion. The Progress Report must report on the progress with the required Works or Services and the current financial position, in relation to:

- (a) Contract and fee expenditure to date;
- (b) The latest anticipated Total Contract Cost and the anticipated total cost of all fees;
- (c) Any variations between the budget approved at the time of the acceptance of the Tender and the latest anticipated Total Contract Cost and anticipated total cost of all fees; and
- (d) The use of any contingency sums to date and the amount of any contingency sums remaining.

22.2 For Contracts with Total Contract Values within Contract Category 3 of Appendix 1 or higher, where the latest anticipated Total Contract Cost is in excess of 20% of the Tender Sum, the Spending Control Officer must submit a written report to the next available meeting of the Council's Corporate Governance Group after the date the excess has been identified, explaining the reasons for the increase and, if appropriate, any remedial action to be taken to reduce the excess.

23. Final Accounts

23.1 The Spending Control Officer responsible for any Contract with a Total Contract Value within Contract Category 4 of Appendix 1 or higher must produce a written Final Account, and provide a copy to the Asst. Director (Accountancy), within 3 months of all financial transactions relating to the Contract being completed. The Final Account must include details of the Tender Sum, Contract variations, Final Account sum, any deducted Liquidated and Ascertained Damages, any extensions of time awarded and any claims agreed with the Contractor.

23.2 If considered necessary, the Chief Internal Auditor may examine and audit the Final Account and associated Contract Documentation to satisfy that the Final Account is correct and represents an accurate and appropriate summary of Contract payments and deductions.

24. Publication of procurement information

24.1 In order to comply with the Local Government Transparency Code 2015, the Corporate Procurement Officer must obtain from Spending Control Officers every 3 months (who must respond within 10 working days) the information required by Part 2.1 of the Local Government Transparency Code and ensure that the information is published every 3 months in accordance with the Code.

25. Disposal and freehold/leasehold property transaction

25.1 For the purposes of these Procurement Rules:

- (a) All disposals and freehold/leasehold property transactions, including interests in land (such as acquisitions, disposals, new lettings, lease renewals, lease surrenders, rent reviews, sub-lettings, assignments, licences, deeds of variations, easements, wayleaves and land covenants on land) must be dealt with in accordance with the Schedule of Delegation set out in Part 3 of the Council's Constitution and any procedures required by law; and
 - (b) References to Total Contract Value within these Procurement Rules (including in Appendix 1) mean:
 - (i) The anticipated purchase price or premium for the disposal or freehold/leasehold property transaction; or
 - (ii) The annual rent.
- 25.2 Disposals or freehold/leasehold property transactions involving Council land and property may be through:
- (a) Formal tendering (providing for an initial deposit and binding contract if the Tender is successful);
 - (b) Formal tendering (providing for no initial deposit and no binding contract if the Tender is successful);
 - (c) Private treaty; or
 - (d) Public auction.
- 25.3 These Procurement Rules must be followed in full for all disposals or freehold/leasehold property transactions where Tenders from potential purchasers are sought in accordance with Section 25.2 (a) or (b) above.
- 25.4 If the method of disposal or property transaction set-out in Section 25.2(a) or (b) above is followed, the person/body that will be asked to accept the Tender may pre-determine that the relevant sale particulars should make provision for a two-stage offer process, that provides the Council with the option of inviting best and final offers after receipt of initial offers, where this is demonstrated to them to be appropriate:
- (a) By the relevant Spending Control Officer making such a recommendation in a written report to the person/body that will be asked to accept the Tender; and
 - (b) Having considered the case for adopting this method of disposal based on an assessment of the risks involved and concluding that this procedure is the most appropriate for achieving best value.
- 25.5 Disposals or other freehold/leasehold property transactions involving Council land or property sought through the methods set-out in Section 25.2 (c) or (d) above can only be approved:
- (a) In exceptional circumstances and if the person/body that will be asked to accept the Tender has considered a report prepared by the relevant Spending Control Officer which justifies the proposed procedure as the most suitable method of achieving best consideration; and
 - (b) If the transaction is for less than the open market value, the report referred to in Section 25.5(a) above contains an estimate of what the value of the transaction would be if advertised on the open market.
- 25.6 Where disposals or other freehold/leasehold property transactions involving Council land or property are sought through the methods set-out in Section 25.2 (c) or (d) above:

- (a) The relevant Director or Asst. Director may determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 2 of Appendix 1 or lower;
- (b) The relevant Portfolio Holder must determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 3 of Appendix 1; and
- (c) The Cabinet must determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 4 of Appendix 1 or higher.

25.7 The arrangements referred to in Section 25.6 above may include:

- (a) Determining the most appropriate method of disposal to achieve the Council's statutory duty of obtaining best consideration; or
- (b) Deciding to sell for less than the open market value, provided that all statutory procedures are complied with, including (where necessary) obtaining the consent of a Secretary of State.

25.8 The Chief Estates Officer or Director of Neighbourhoods may agree, on behalf of the Council, to all estates acquisitions, disposals and licences set out within the Schedule of Officer Delegations in Part 3 of the Council's Constitution, where it would be in accordance with good estate management and would not adversely affect the premises concerned.

25.9 The relevant Portfolio Holder may take decisions under delegated authority for all estates management matters that, individually, have a cumulative value of between £500,001 and £999,999, subject to all other matters within these Procurement Rules being satisfied and undertaken in accordance with Article 14 (Decision Making) of the Council's Constitution.

AMH/March 2016

Table of Tendering Requirements for Nos. of Tenders, Returns and Openings

Contract Category	Total Contract Value ^(*)	Minimum no. of tenders to be invited ^{(+)(@)}	Designation of person to whom tenders must be addressed	Designation of person required to open tenders	Designation of person/body required to accept tender
1	£25,000 - £50,000	Three	Assist. Director (Governance & Performance Mgt)	Spending Control Officer ^(#) + Democratic Services Officer	Spending Control Officer ^(#)
2	£50,001 - £250,000	Three	Assist. Director (Governance & Performance Mgt)	Director or Asst. Director + Democratic Services Officer	Director or Asst. Director
3	£250,001 - £1million	Three	Assist. Director (Governance & Performance Mgt)	Portfolio Holder + Director/Asst. Director + Democratic Services Officer	Portfolio Holder
4	Over £1million	Three	Assist. Director (Governance & Performance Mgt)	Portfolio Holder + Director/Asst. Director + Democratic Services Officer	Cabinet
5	Above the relevant EU Threshold for Works, Supplies or Services	Five	As 1-4 above (dependent on contract value)	As 1-5 above (dependent on contract value)	As 1-5 above (dependent on contract value)

Notes:

(*) Total Contract Value means the total value of the Works, Services and Supplies over the total period of the Contract, including all potential Contract Extensions to the initial Contract Period.

Where the Total Contract Value is within Contract Category 5, the arrangements for Contract Category 5 should be followed, and not the arrangements for any of the other Contract Categories that may also apply to the Total Contract Value.

(+) If the estimated Total Contract Value is in excess of the value thresholds for Works, Supplies or Services, above which the Public Contracts Regulations 2015 apply, the required number of Tenders determined by the Regulations must be applied.

(@) Includes any in-house Tenders submitted.

(#) Spending Control Officer means the person who is the named person responsible for the budget heading under which payments for the contract will be made, and is responsible for all aspects of the procurement process for a Contract and for complying with these Procurement Rules.

Current EU Procurement Thresholds (1st January 2016 – 31st December 2017)

Contract Type	EU Threshold
Services / Supplies	£164,176
Works	£4,104,394
Light Touch Regime Services	£589,148

The EU Thresholds are updated at regular intervals. The latest Thresholds are [[Available Here](#)]

Glossary and Definitions of Terms used in the Procurement Rules

Term	Definition or Explanation
Arithmetical Error	An error in addition, subtraction, multiplication or division within a submitted Tender.
Cabinet	The Leader of the Council and other councillors appointed by the Leader to form a group of councillors authorised by the Council's Constitution to make decisions on certain issues.
Central Purchasing Body	A contracting authority which either: <ul style="list-style-type: none"> • Acquires supplies and/or services intended for contracting authorities; or • Awards public contracts (concludes framework agreements) for works, supplies or services intended for contracting authorities
“Certificate of Bona Fide Tendering”	A form that Tenderers must complete, sign and return with their Tender to confirm that the Tender they are putting forward is the true offer that will be available to the Council if the Tender is won by the Tenderer (i.e. to confirm that the offer is genuine and is not just a competitive offer to push them forward through the Tender process). The Council's Standard “Certificate of Bona Fide Tendering” can be obtained from the Council's Intranet, and is available here .
Competitive Dialogue Procedure	A formal and complex process, allowed by the Public Contracts Regulation 2015, for procuring a Contract through discussions with Contractors in a structured way.
Constructionline	The UK's leading procurement and supply chain management web-based service that collects, assesses and monitors standard company information through a question set that is aligned to the standardised pre-qualification questionnaire developed by the British Standards Institute, to reduce duplication within the construction industry.
Consultant	A person or organisation who is not employed by the Council, included on the Council's payroll or covering an establishment post, who is procured directly - through a company (or similar commercial undertaking) or an agency and is engaged to perform a specific task over a predetermined period.
Contract Award	The decision to enter into a Contract with a Contractor
Contract Documentation	All documents related to the administration of a Contract, not just the Tender Documents
Contract Extension	The continuation of a Contract for a further period of time allowed by the Contract. There can be more than one Contract Extension for a Contract.
Contracts Finder	A service provided by the Crown Commercial Service, and referred to in the Public Contracts Regulations 2015, that enables Contractors to search

	for information about Contracts worth over £25,000 with the Government, Government agencies and local government.
Contract Period	The period commencing with the date a Contract specifies that the provisions of the Contract are to start to the date the Contract comes to an end.
Contract Sum	The amount to be paid to a Contractor to perform a Contract, prior to any Contract Extensions, and referred to in the formal Contract between the Council and the Contractor.
Contracts	Contracts, agreements or orders for Works, Supplies or Services.
Contractors	Works contractors, Suppliers, Service providers and Consultants.
Corporate Governance Group	A group of officers, chaired by the Chief Executive, comprising members of Management Board, the Chief Internal Auditor and the Deputy Monitoring Officer.
Corporate Procurement Officer	The officer designated by the Director responsible for procurement arrangements within the Council, who co-ordinates procurement matters on the Director's behalf.
Crown Commercial Service	A Government Agency that brings together policy, advice and direct buying information in a single organisation and provides commercial Services to the public sector and saving money for the taxpayer. Much of the CCS's advice gives formal detailed guidance on the operation of the Public Contracts Regulations 2015.
Defects Liability Period	A set period of time after a Works Contract has been completed, during which a Contractor has the right to return to the site to remedy any defects at the Contractor's own cost.
Director	A Director, Assistant Director or the Chief Executive.
e-Communications	The method of using electronic communications, including email and web-based applications, to provide and receive documents and communications to and from Contractors, in accordance with the Public Contracts Regulations 2015 – detailed in the “Guidance on Electronic Procurement & Electronic Communication” produced by the Crown Commercial Service [Which can be found here]
Essex Procurement Hub	A Central Purchasing Body of six local authorities in Essex, including Epping Forest DC, that provides strategic and operational procurement support, advice and guidance in order to add demonstrable value to the procurement process to its members. The Hub lets and manages a number of national Framework Agreements that are accessible to any UK Public Authority.
Estimated Tender Sum	A Tender Sum formulated by applying rates submitted by a Tenderer to Pre-Estimated Quantities that are estimated to apply over the Contract Period and used to compare the Tenders received from different Contractors. This is nearly always different from the Total Contract Cost.
EU Regulated Contracts	Procurements by public bodies in the UK that are above the financial thresholds for Works, Supplies and Services Contracts referred to in

	the Public Contracts Regulations 2015, which stipulate the way in which any procurements above the financial thresholds must be undertaken. A <i>“Basic Guide to Public Sector EU Procurement Legislation”</i> can be downloaded here
Final Account	A written statement that includes details of the Tender Sum, Contract variations, Final Account sum, any deducted Liquidated and Ascertained Damages, any extension of time awarded and any claims agreed with the Contractor.
“Formal Declaration of Tender Offer”	The form that Tenderers must complete, sign and return with their Tender to state and confirm their Tender Sum. The form includes a number of statements that Tenderers sign to confirm their compliance. The Council’s Standard “Formal Declaration of Tender Offer” is available on the Council’s Intranet, and is also available [here] .
Framework Agreement	An agreement with Contractors to establish terms governing Contracts that may be awarded during the life of the Framework Agreement, or a general term for agreements that set out terms and conditions for making specific purchases (referred to as “call-offs”).
Insurance Officer	The officer designated by the Director responsible for insurance arrangements within the Council, who co-ordinates insurance matters on behalf of the Director.
Invitations to Tender	A letter, email or other communication sent to Tenderers – either by post or electronically – together with Contract Documents, that invites Tenderers to submit a Tender by the Tender Return Date.
Late Tender	A Tender that has not been received by the Asst. Director (Governance & Performance Management) by the Tender Return Date.
Light Touch Regime (LTR) / Procurement	A specific set of rules introduced by the Public Contracts Regulations 2015 for certain Services contracts that tend to be of lower interest to cross-border competition, that replace the previous distinction between “Part A” and “Part B”. These include certain social, health and education services, defined by the Regulations. A relatively high financial threshold is applied to the LTR, below which contracts do not need to be advertised in the OJEU. For LTR contracts above the threshold, contracting authorities have to follow a new light-touch set of procurement rules, set out in the Regulations.
Liquidated and Ascertained Damages	Fixed damages stated in a Contract, and usually set as an amount per week (or part of a week), which the Contractor must pay the Council (or which the Council may deduct from payments to the Contractor) if completion of the Contract is delayed beyond the Contract completion date, as adjusted by any extensions of time. Note that they are void as a penalty if they are not a "genuine pre-estimate" of the Council’s potential loss, in which case the Council can usually recover normal, unliquidated damages for breach of Contract.
Long List	A list of all Contractors expressing an interest in receiving an

	Invitation to Tender, before any selection process has been undertaken by the Council to produce a Short List.
Most Economically Advantageous Tender (MEAT)	A Tender for a Contract that has been evaluated not only on the basis of the price submitted by a Tenderer, but also on the basis of the assessed quality of both the submitted Tender and the Tenderer. This is in accordance with a pre-determined MEAT Assessment Methodology, with Tenders evaluated using a pre-determined MEAT Evaluation Assessment, which usually provides for pre-determined weightings to be applied to the price and the quality of various aspects of the Tender.
“MEAT Assessment Methodology”	The pre-determined approach agreed by the Council, and available on the Council’s Intranet, to assess the Most Economically Advantageous Tender (MEAT). The Council’s current Methodology [is available here]
MEAT Evaluation Assessment	The document that sets out the pre-determined weightings to be applied to the price and the quality of various aspects of the Tender, and used to calculate the relative scores of all the Tenders received.
Nominated Sub-Contractors and Suppliers	Sub-contractors and suppliers that the Council requires a Works Contractor, Service provider or other Supplier to use to perform the Contract.
Official Order	A standard form of Contract placed with a Works Contractor, supplier, service provider or Consultant, that is usually issued through the Council’s Marketplace System or the Northgate Open Housing Management System (OHMS)
Parent Company Guarantee	A guarantee by the parent company of a Contractor in respect of the Contractor’s performance under its Contract with the Council, where the Contractor is a subsidiary of the parent company
Partnering Contract	A broad term used to describe a collaborative management approach that encourages openness and trust between the parties to a Contract. The parties become dependent on one another for success, which often requires a change in culture, attitude and procedures throughout the supply chain. Most commonly used on large, long-term or high-risk contracts, Partnering Contracts can be adopted for a one-off project, or can be a long-term relationship over a number of projects (such as a Framework Agreement).
Performance Bond	A means of insuring a Contractor against the risk of the Contractor failing to fulfil its contractual obligations to the Council. The Performance Bond provides compensation, guaranteed by a third party, up to the amount of the Performance Bond (which is typically set at 10% of the Total Contract Value), to enable the Council to overcome difficulties that have been caused by non-performance of the Contractor, such as, for example, finding a new Contractor to complete Works.
Portfolio Holder	A Councillor appointed by the Leader of the Council as a member of the Cabinet with responsibility for a particular portfolio of services, as set out in the Council’s Constitution.
Post-Tender Negotiations	Discussions that take place with one or more Tenderers on price and/or other terms of the Contract or Specification after Tenders

	have been received and opened.
Practical Completion	The completion of all the Works required to fulfil a Contract.
Pre-estimate of Quantities	A Spending Control Officer's best estimate of the quantities of items relating to the Contract that will arise over the Contract Period, that are applied to rates submitted by Tenderers to produce an Estimated Tender Sum, which is used to compare the Tenders received from different Contractors.
Preferred Tenderer	A Tenderer that is being recommended to be awarded a Contract.
"Procurement Process ("Regulation 84") Report"	A requirement of Regulation 84 of the Public Contracts Regulations 2015, relating to procurements where the Total Contract Value is above the EU thresholds for EU Regulated Contracts, which is completed throughout the procurement process and is a written statement, in a defined format, that provides information on different aspects of the procurement and must be made available to Tenderers on request. A template for the "Procurement Process ("Regulation 84") Report" can be obtained from the Council's Intranet, and is available [here] .
Professional Indemnity (PI) Insurance	A liability insurance that helps protect individuals and companies (usually Consultants) from bearing the full cost of defending a negligence claim in respect of professional advice provided to the Council by the Consultant.
Public Contracts Regulations 2015	Regulations made by the UK Government to exercise the powers given by the European Communities Act 1972, relating to procurements by public bodies in the UK and, in particular, for EU Regulated Contracts that are above the financial thresholds for Works, Supplies and Services Contracts referred to in the Regulations.
Record of Tenders	A record of Tenders received for every procurement, where the Total Contract Value is within Contract Category 1 of Appendix 1 or higher, listing the Tender Sums submitted by each Tenderer, together with the Tenderer's names, completed by a Democratic Services Officer and held by the Asst. Director (Governance & Performance Management).
Retention	A percentage of the amount certified as due to a Contractor following their completion of a Contract, which is deducted from the amount due and retained by the Council. The purpose of holding a Retention is to ensure that the Contractor properly completes the activities required of them under the Contract.
Retention Period	The period during which a Retention is held by the Council.
Safeguarding	Ensuring the wellbeing of either adults with care and support needs or children in accordance with the requirements of the Care Act 2014 and the Children Act 2004 respectively.
Schedule of Rates	A list of prices provided by a Tenderer against items within a list produced by the Council for Tenderers to complete. The prices are multiplied by the

	Pre-Estimate of Quantities to produce an Estimated Tender Sum.
Select List	A list of selected Contractors to which Invitations to Tender are issued.
Services	<i>(According to Volume 1 of the EU Public Procurement: Law and Practice)</i> In relation to public Contracts, means matters which have as their object the provision of services other than those defined as Works.
Short List	A list of Contractors that has been reduced, following a selection process, from a Long List of Contractors expressing an interest in receiving an Invitation to Tender. The Short List often then forms a Select List.
Specification	A document that sets out the detailed requirements of the Council for the undertaking or provision of Works, Supplies or Services, and forms an important part of the Tender Documents and the subsequent Contract issued to a Contractor.
Spending Control Officer	The officer designated by a Director as being responsible for a specified Council budget, from which payments for a Contract will be made, who is responsible for all aspects of the procurement process for a Contract and for complying with these Procurement Rules.
Supplies	<i>(According to Volume 1 of the EU Public Procurement: Law and Practice)</i> In relation to public contracts, means a matter that has as its object the purchase, lease, rental or hire-purchase (with or without an option to buy) of a product or products.
Tender	A written tender, quotation or fee submission submitted by a Tenderer in accordance with these Procurement Rules, that sets out the Tenderer's proposed price for performing a Contract, together with any other information required by the Council and these Procurement Rules.
Tender Documents	A set of documents sent to Contractors with an Invitation to Tender, which explains the Council's requirements for a proposed Contract and includes documents to be returned to the Council for consideration
Tenderer	A person or organisation that is invited to submit a Tender to the Council.
Tender Evaluation Score	The score that results from a MEAT Evaluation Assessment of a Tender, which is used to rank Tenders in order of the Most Economically Advantageous Tender in terms of best price and quality. A Contractor with the highest Tender Evaluation Score is usually offered the Contract.
Tender Sum	The total price set out in a Tender that a Contractor would charge to perform the required Contract, before any Contract Extensions are applied. An Estimated Tender Sum is calculated where a Contractor prices a Schedule of Rates.
Tender Opening	A meeting between those designated within Appendix 1 to be present when Tenders received for a Contract are opened, and which must be held no earlier than the day after the Tender Return

	Date.
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Tender Return Date	<p>The time and date specified within an Invitation to Tender by which Tenders must be returned and received by the Council. The time must always be specified as Noon, in order to minimise the potential for</p> <p>Tenders not being received by the Asst. Director (Governance & Performance Management) or his/her staff on the day of the Tender Return Date and to provide time for Tenders received at the Civic Offices before Noon to be passed to the Asst. Director (Governance & Performance Management) before the Tender Opening</p>
“Tender Return Label”	<p>A label provided by the Council to Tenderers to affix to the envelope in which they return their Tender - which gives details of the Contract, the Tender Return Date and the name of the officer to whom the Tender must be returned. A copy of the Council’s “Tender Return Label” can be obtained from the Council’s Intranet, and is available [here].</p>
Total Contract Cost	<p>The actual total cost of the Contract at the end of the Contract Period, after any Contract Extensions have been applied.</p>
Total Contract Value	<p>The total value of the Works, Services, and/or Supplies over the Contract Period, including all potential Contract Extensions to the initial Contract Period.</p>
Works	<p><i>(According to Volume 1 of the EU Public Procurement: Law and Practice)</i> means the outcome of building or civil engineering works taken as a whole, which is sufficient in itself to fulfil an economic or technical function.</p> <p>In relation to public contracts, means matters which have as their object any one of the following:</p> <ul style="list-style-type: none"> (a) The execution, or both the design and execution, of works related to one of the activities listed in Schedule 2 to the Public Contracts Regulations 2015; (b) The execution, or both the design and execution, of a work; and/or (c) The realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority “exercising a decisive influence on the type or design of the work”.

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Report to Constitution Working Group

Date of meeting: 22 March 2016



**Epping Forest
District Council**

Subject: Proposed Terms of Reference – Audit & Standards Committee

Responsible Officer: Simon Hill, Governance

Democratic Services Officer: Mark Jenkins (01992 56 4607)

Recommendations:

To consider the proposed terms of reference for the combined committee and report to the Council on 26 April 2016 on:

- (a) whether adjustments could be made to the suggested terms of reference (attached) of the proposed Audit and Standards Committee to achieve greater flexibility of membership to allow standards complaints matters to be dealt with more effectively; and**
- (b) whether in light of any suggested wording adjustments any further constitutional matters require change.**

Merging the Audit & Governance and Standards Committees

1. (Monitoring Officer) Members will recall that at the meeting of the full Council on xx February 2016, the Council was asked to consider a difference of view between the Audit and Governance Committee and the Standards Committee about a proposed merger of the two committees from May 2016.
2. The Council decided that this Working Group be asked to consider the concerns expressed by the Standards Committee and report back to the next meeting of the Council in April, alongside the rest of the new Constitution.
3. The main role of the Standards Committee is to promote and maintain high standards of conduct by Members. Matters around Member conduct at committee level are relatively light and three of the six scheduled meetings have been cancelled in the last 18 months (9 October 2014, 8 January 2015 & 7 April 2015).
4. The Council's Audit and Governance Committee is responsible for providing independent assurance of the adequacy of the Council's risk management framework and provides independent scrutiny of the authority's financial and non-financial performance. The Committee approves the financial statements and Annual Governance Statement and enhances public trust and confidence in the governance of the authority.
5. A number of other councils have combined Audit and Standards Committees successfully, including Broxbourne and Harlow Councils, the main drivers for this being:
 - low complaint activity especially as the Monitoring Officer has delegated authority to

seek to resolve a complaint informally where a formal investigation is not merited; and

- similarities and synergies – both Committees deal with governance, probity and transparency of processes.

6. There is by law an independent person appointed by the Council who advises on standards issues but is not permitted to be a member of the Committee. This requirement has been incorporated into the proposed Terms of Reference which states '*...the Council is required to appoint at least one Independent Person to advise on Standards relating to complaints who shall be invited to meetings in a non-voting capacity*'.

7. There is no requirement to have independent members although the Council can appoint independent members to committees and the current Audit and Governance Committee has two co-opted independent members, and this arrangement should continue as it is in line with good practice.

8. It is important the new Committee considers Standards issues at each meeting so it is proposed to have Standards as a standing item on its agenda

Proposed Terms of Reference

9. The newly merged Audit and Standards Committee would have the objective of making a positive contribution to the Council's governance and control environment. The proposed Terms of Reference articulate the Committee's wide remit including advising and reviewing the Council's arrangements for internal audit, internal control, risk management, financial management, standards and corporate governance. The Committee also has an important role in ensuring public money is spent wisely and providing assurance to the public that the Council is complying with the law, has an effective control framework in place and provides quality services in line with corporate priorities.

10. The proposed Terms of Reference for the Audit and Standards Committee, attached at Appendix 1, draws on the experience of merging the Audit and Standards Committee at Broxbourne and Harlow Councils and is based on model Terms of Reference for local authorities as detailed in the Chartered Institute of Public Finance and Accountancy publication: *Audit Committees - Practical Guidance for Local Authorities and Police 2013 Edition*.

The View of the Audit & Governance Committee

11. The Audit & Governance Committee considered these proposals at its meeting held on 30 November 2015. The Committee welcomed the proposals and were in general agreement that the two Committees should merge as it would be more efficient and lead to a (albeit small) reduction in the number of Member meetings each year. It was also felt that oversight of the Council's Treasury Management function should remain with the new Committee, rather than transferring to the Resource Select Committee.

12. The Committee resolved to approve the merger of the two Committees in principle, along with the proposed Terms of Reference, and requested that the views of the Standards Committee be sought on the matter.

The View of the Standards Committee

13. The Standards Committee considered these proposals at its meeting held on 25 January 2016. The Committee accepted that the implementation of the new arrangements for dealing with allegations of Member misconduct under the Localism Act 2011 had

dramatically reduced its workload. However, after a full and frank discussion, the Committee was not minded to support the proposals and expressed a number of concerns regarding the proposed merger:

- (i) there were currently 9 Members available to consider Standards issues, which would reduce to 3 under the proposals and it was felt by the Committee that this was not enough;

The Working Group could:

- Recommend a higher number of members for the new Committee
- Ask Council to create a specific group to deal with Standards Investigation Hearings either on an ad hoc or standing basis.

- (ii) there was a perceived lack of involvement of Parish Councils under the proposals as currently there were three representatives from the Local Councils affiliated to the District Council's Standards Committee formally invited to each meeting; and

The Working Group could:

- Ask that all agendas are notified to Parish and Town clerks that are aligned to the Districts Standards Committee
- Ask that existing parish representatives be invited to attend meetings of the new committee as they consider necessary
- Change the Terms of reference to include that any hearing into a Parish/Town Councillor includes an appropriate representative.

- (iii) there was a perceived risk that a smaller Committee would be less objective when considering Standards issues.

The Working Group could:

- Seek a review of any new arrangements after two years or after the first Standards Investigation Hearing (whichever is sooner)

14. Members of the Committee acknowledged there was a certain synergy between the two Committees, but highlighted that the two Committees actually considered two separate types of issues. It was also pointed out that a number of other Committees also have meetings cancelled due to a lack of business, or only met on an ad hoc basis, but that was not a sufficient reason to consider disbanding the Committee and amalgamating it with another.

15. As the two Committees failed to reach agreement on the proposed merger, it will be for the Council to finally decide whether this should proceed for 2016/17. The Working group are being asked to consider:

- (a) whether adjustments could be made to the suggested terms of reference (attached) of the proposed Audit and Standards Committee to achieve greater flexibility of membership to allow standards complaints matters to be dealt with more effectively; and

- (b) whether in light of any suggested wording adjustments any further constitutional matters require change.

16. Under the terms of the Council reference the Constitution Working Group is required to report to the Council on 26 April 2016.

Proposed Terms of Reference for Epping Forest District Council Audit and Standards Committee

Statement of Purpose

1. The role of the Audit and Standards Committee is a key component of the council's corporate governance. It provides an independent and high-level focus on the audit, assurance and reporting arrangements that underpin good governance and financial statements and provides a forum for considering ethical issues and ensuring high standards of conduct. The role of the committee is two-fold:
 - Audit - the purpose of the Committee is to provide independent assurance to the members of the adequacy of the risk management framework and internal control environment. It provides independent review of the council's governance, risk management and control frameworks and oversees the financial reporting and annual governance processes. It oversees internal and external audit arrangements, helping to ensure efficient and effective assurance arrangements are in place.
 - Standards – The Committee deals with a range of matters including issues concerning Councillor's conduct, provides advice and guidance to the Council, the Cabinet and individual Councillors and advises on the application and review of the Members' Code of Conduct.

Governance, risk and control

2. To review the council's corporate governance arrangements against the good governance framework and consider annual governance reports and assurances
3. To review the Annual Governance Statement prior to approval and consider whether it properly reflects the risk environment and supporting assurances, taking into account the internal audit opinion on the overall adequacy and effectiveness of the council's framework of governance, risk management and control.
4. To note the council's overall approach to value for money in ensuring the council is making best use of its resources.
5. To consider the council's framework of assurance and ensure it is adequately addresses the risk and priorities of the council.
6. To monitor the effective development and operation of risk management in the council.
7. To monitor progress in addressing risk-related issues reported to the committee
8. To consider reports on the effectiveness of internal controls and monitor the implementation of agreed actions
9. To review the assessment of fraud risks and potential harm to the council from fraud and corruption.
10. To monitor the anti-fraud strategy, actions and resources.

Internal Audit

11. To approve the Internal Audit Charter
12. To approve the internal audit strategy and plan, including internal audit resource requirements, the approach to using other sources of assurances and any work required to place reliance upon these other sources. To approve any significant interim changes to the plan and resource requirements and make appropriate enquires of both management and the Chief Internal Auditor to determine if there any inappropriate scope or resource limitations.
13. To consider regular reports from the Chief Internal Auditor which:
 - Updates on the work of internal audit including key findings, issues of concern and action in hand as a result of internal audit work
 - Highlighting where there are concerns about progress with the implementation of agreed actions or where management has accepted a level of risk that the Chief internal Audit considers is unacceptable to the council.
 - Reports on instances where the internal audit function does not conform to the Public Sector Internal Audit Standards, considering whether the non-conformance is significant enough that it must be included in the Annual Governance Statement
14. To consider the Chief Internal Auditor's annual report:
 - The statement of the level of conformance with the Public Sector Internal Audit Standards and results of the Quality Assurance and Improvement Programme that supports the statement – these will indicate the reliability of the conclusions of internal audit
 - The opinion on the overall adequacy and effectiveness of the council's framework of governance, risk management and control together with the summary of the work supporting the opinion – these will assist the committee in reviewing the Annual Governance Statement.
15. To support the development of effective communication with the Chief Internal Auditor.

External Audit and Financial Reporting

16. To consider the external auditor's annual letter, relevant reports and the report to those charged with governance.
17. To review the annual statement of accounts. Specifically to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the council.
18. To consider the external auditor's report to those charged with governance on issues arising from the audit of the accounts.

19. To be responsible for the appointment of the Council's external auditors and ensure it is in line with the requirements of the Local Audit and Accountability Act 2014.

Treasury Management

20. To be responsible for the scrutiny of the Council's Treasury Management Strategy, including receiving regular reports on activities, issues and trends to support the committee's understanding of treasury management activities, risks and associated assurances.

Accountability arrangements

21. To report to those charged with governance on the committee's findings, conclusions and recommendations concerning the adequacy and effectiveness of their governance, risk management and internal control frameworks, financial reporting arrangements and internal and external audit functions.
22. To report to the full Council on a regular basis on the committee's performance in relation to the terms of reference and the effectiveness of the committee in meeting its purpose.

Membership

23. The committee shall comprise 5 members, including 3 Councillors and 2 co-opted members. Additionally the Council is required to appoint at least 1 Independent Person to advise on Standards relating to complaints who shall be invited to meetings in a non-voting capacity.
24. Councillors serving as members of the Committee shall be appointed at the Annual Council meeting of Epping Forest District Council for a term of office of one year and shall be eligible for re-appointment for further terms of office.
25. That the seats should be allocated so they are not all drawn from one political group and are also open to councillors who are not affiliated to any political group.
26. Co-opted members shall serve for a period of 3 years from appointment. Such three year appointments shall be overlapping in terms of their expiry dates. A co-opted member may serve for a total of two such terms as of right but may be considered for two further three year terms, provided he or she is successful after open competition following public advertisement. Re-appointment for further terms shall be subject to satisfactory attendance.
27. Casual vacancies for members of the Committee who are Councillors which occur shall be filled at the next ordinary Council meeting (but not an extraordinary meeting) with a term of office expiring on the date of the next Annual Council meeting.

Standards Committee

28. Promoting and maintaining high standards of conduct by Councillors and Co-Opted Members.
29. Assisting Councillors and Co-Opted Members to observe the Members' Code of Conduct.
30. Advising the Council on the adoption or revision of the Members' Code of Conduct

31. Monitoring the operation of the Members' Code of Conduct.
32. Advising, and/or censuring and/or imposing a sanction on a Councillor or Co-Opted person of a Committee (or former Councillor or Co-Opted person) of the Council.
33. To advise the Council to ensure that all members of the Council have access to training in all aspects of the Member Code of Conduct.
34. Considering dispensations to Councillors and Co-Opted Members (including Parish and Town Councillors) from requirements relating to interests set out in the Members' Code of Conduct.
35. Dealing with reports referred from or on behalf of the Monitoring Officer on any matter, including investigations relating to Councillor conduct.
36. The exercise of (29) to (35) above shall apply to parish councils and their members either directly or through a joint standards arrangement
37. Adjudication on complaints regarding the operation of District Council protocols annexed to the Constitution.
38. The Committee may appoint a Complaints Sub Committee to conduct any hearing into an allegation that a Member or Co-opted Member has breached the Council's Code of Conduct. The Audit and Standards Committee shall decide the membership of the subcommittee, ensuring where possible there is a minimum of three members of the Audit and Standards Committee.
39. The Complaints Sub Committee will undertake the following functions:
 - To conduct any Hearing into an allegation that a Member or Co-opted Member has breached the Council's Code of Conduct.
 - Following a hearing, make one of the following findings:
 - That the Member has not failed to comply with the Code of Conduct and no further action needs to be taken in respect of the matters considered at the hearing: or
 - That the Member has failed to comply with the Code of Conduct but that no further action needs to be taken in respect of the matters considered at the hearing: or
 - That the Member has failed to comply with the Code of Conduct and that a sanction and/or informal resolution should be imposed. The subcommittee may impose any action or combination of actions available to it, or impose any informal resolution or combination of informal resolutions as are available to it by law or policy.
 - After making a finding, providing written notice of its findings and the reasons for its decision to the Member and complainant.

Eligibility for membership

Councillor members

40. Councillors appointed to the Audit and Standards Committee may not also be members of the Cabinet or any select committee appointed by the Overview and Scrutiny Committee with responsibility for reviewing the Council's finances or financial procedures.
41. A Portfolio Holder Assistant (other than any Assistant involved in any portfolio dealing primarily with the Council's finances) appointed by the Leader of the Council shall be eligible for appointment to the Committee.
42. Appointment of Councillors shall be made on the basis of evidence of the aptitude, experience or interest and for this purpose the normal rules for pro rata appointments shall not apply.
43. Formal attendance standards be operated in respect of the three councillor members when reappointment is under consideration by the Council's Appointments Panel and the Chairman and co-opted members of the Audit and Standards Committee be consulted informally about the appointment or reappointment of councillors at the appropriate time.

Co-opted members

44. Co-opted members, independent of the Council, shall be appointed by the Council on the basis of their professional expertise, experience and background as relevant to the role and responsibilities of the Audit and Standards Committee. Initial appointments of co-opted members and the filling of casual vacancies shall be made following public advertisement and interviews, the latter conducted in accordance with arrangements agreed by the Council. If the number of suitable applicants exceeds the number of co-opted places on the Committee, the Council shall keep a waiting list of suitable applicants should casual vacancies occur.

Chairman and Vice Chairman

45. The Chairman and Vice Chairman of the Audit and Standards Committee shall be appointed at the first meeting of the Committee in each Council year for a term of one year expiring on the date of the first meeting of the Committee of the next Council year.
46. Casual vacancies in the position of Chairman and Vice Chairman shall be filled in the same way as required in respect of members of the Committee (see paragraph 28 above).
47. Both Councillors and co-opted members serving on the Committee shall be eligible for appointment to the office of Chairman and Vice Chairman.
48. Where the Chairman of the Committee is a Councillor, the Vice Chairman will be appointed from among the Co-opted members. Where the Chairman is one of the Co-opted members, the Vice Chairman shall be a Councillor.
49. The Chairman and Vice Chairman shall be eligible for re-appointment.

Parish/Town Councils

50. Parish/Town Councils affiliated to the Standards Committee will be sent meeting agendas and invited to attend where appropriate.

Meetings of the Committee

51. The Committee shall meet at least three times each financial year.
52. The Committee shall be entitled to require any Member, Director, their representatives or any other officer to attend their meetings in order to discuss any matters under discussion including the annual audit programme.

Decision Making

53. Only the Councillors and co-opted members serving on the Committee shall be entitled to vote.
54. All members of the Committee shall be entitled to all documents advice and facilities relevant to their membership of the Committee, regardless of their status as either a Councillor or Co-opted member.

Other Requirements

55. All members of the Committee shall respect the confidentiality of Council information and proceedings where appropriate, particularly where exempt or confidential business is involved.
56. All co-opted members of the Committee shall be required to make a statutory registration of interests in the same form as those required of serving councillors and to be aware at all times of the requirement to clear any interest relating to their work on the Committee.
57. Members of the Committee should seek to attend all meetings of the Committee unless there are exceptional circumstances which prevent this.
58. All members of the Committee should ensure that they participate fully in any training designed to assist them in their responsibilities as members of the Committee. Similarly all members should act on appropriate advice and other information supplied by the Council to improve their effectiveness.

Report to Constitution Working Group

Date of meeting: 22 March 2016



**Epping Forest
District Council**

Subject: Constitution Review – Final Draft Recommendations

Officer contact for further information: S Hill (01992 564249)

Democratic Services Officer: M. Jenkins (01992 564607)

Recommendations/Decisions Required:

(1) That the Working Group consider:

(i) the Counsels Opinion obtained on the totality of the new proposed Constitution;

(ii) responses of officers to the suggested amendments; and

(iii) views taken on the preceding reports;

(2) Subject to (1) above, recommend the Constitution for adoption by the Council at its meeting on 26 April 2016

Report:

1. (Assistant Director Governance and Performance Management) As members will know, Counsel has been engaged by the Council to advise officers and members on:

(i) The appropriateness of its proposed constitution;

(ii) Whether any matters that have been included in the Constitution should not have been and conversely are there matters that must be contained in the document that have been omitted;

(iii) On any material deficiencies on the summation of the new constitution and what amendments need to be made to correct these deficiencies;

(iv) Whether the proposed constitution contained any errors that needed to be corrected; and

(vi) Whether the proposed provisions meet the ongoing requirements of the Local Government Act 2000 and subsequent regulations.

2. Opinion was received on 9 March 2016 and runs to some 23 pages. This is attached for members consideration.

3. In summary (and from the Opinion) Counsel has addressed these issues and his answers are repeated below:

“Appropriateness

24. Having regard to the requirements of section 9P of the 2000 Act and the statutory purposes of a local authority constitution, in general term I consider the proposed constitution to be appropriate and a significant improvement on the Council's existing adopted Constitution.
25. The structure of the proposed constitution has been rationalised by removing the 'Responsibility for Functions' (formerly within Part 3) into the Articles (within the revised Part 2), which include within the Appendices to various Articles the specific terms of reference, procedural rules, protocols and other detailed provisions relevant to that Article.
26. In my view, this is a substantial improvement on the structure of the existing Constitution, which successfully rationalises and simplifies the existing document, avoids duplication and fragmentation of relevant provisions, substantially shortens the document and improves its overall navigability and accessibility.....

Relevancy

29. In my view, the matters included within the proposed constitution should be included and, subject to my specific observations (see below) there are no matters which ought to have been included which have been omitted.

Adequacy

30. Subject to the matters addressed in my specific observations in respect of each Part of the proposed constitution, in general terms, the draft provided is adequate, there are no material deficiencies and, subject to those qualifications, it is not necessary to make any substantial amendments to the draft.”
4. It is suggested that members may wish to consider the remaining issues raised within the opinion, many of which have been accepted by officers and included in the final draft printed for members of the Panel.
5. Two pieces of work remain to be completed. These are:
 - (1) The Planning Protocol – Counsel is to provide some examples for members further consideration; and
 - (2) Advice on gifts and Hospitality

It is suggested that these two elements are put onto the Working Groups work programme for 2016/17.
6. The draft that was sent to Counsel was subject to wider member consultation during February, no comments were received.
7. Having considered the foregoing items and the final draft, it is hoped that members are able to recommend the Constitution to the Council for adoption on 26 April 2016.

By virtue of paragraph(s) 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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