

Date of issue: Thursday, 18 January 2024

<b>MEETING</b>	<b>COUNCIL</b>
<b>DATE AND TIME:</b>	THURSDAY, 25TH JANUARY, 2024 AT 7.00 PM
<b>VENUE:</b>	COUNCIL CHAMBER - OBSERVATORY HOUSE, 25 WINDSOR ROAD, SL1 2EL
<b>DEMOCRATIC SERVICES OFFICER: (for all enquiries)</b>	SHABANA KAUSER 07821 811 259

### SUPPLEMENTARY PAPERS

The following Papers have been added to the agenda for the above meeting:-

\* Item 8 was not available for publication with the rest of the agenda.

#### PART 1

<u>AGENDA ITEM</u>	<u>REPORT TITLE</u>	<u>PAGE</u>	<u>WARD</u>
8.	Changes to the Council's Constitution - Member Officer Relations Protocol and Contract Procedure Rules	1 - 50	All

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**Slough Borough Council**

<b>Report To:</b>	Council
<b>Date:</b>	25 January 2024
<b>Subject:</b>	Changes to the Council's Constitution - Member Officer Relations Protocol and Contract Procedure Rules
<b>Chief Officer:</b>	Stephen Taylor, Monitoring Officer
<b>Contact Officer:</b>	Sarah Wilson, Assistant Director – Legal and Governance
<b>Ward(s):</b>	All
<b>Exempt:</b>	NO
<b>Appendices:</b>	Appendix A – Draft Member Officer Relations Protocol Appendix B - Revised contract procedure rules

**1. Summary and Recommendations**

- 1.1 This report sets out proposed amendments to Part 5.4 Member Officer Relations Code to an updated Member Officer Relations Protocol. The proposed amendments were considered by the Member Panel on the Constitution at its meeting of 6 December 2023, by Cabinet members and by members of the Standards Committee at an informal meeting in January 2024.
- 1.2 The report also sets out changes to the council's constitution related to contract procedure rules. The changes are considered to be minor housekeeping changes.

**Recommendations:**

Council is recommended to:

1. Approve the proposed new Part 5.4 - Member Officer Relations Protocol as set out in Appendix A for inclusion in the constitution to take effect from the day after this meeting.
2. Approve the amendments to Part 4.6.1 Contract Procedure Rules as set out in Appendix B to take effect from the day after this meeting.

**Reason:**

The Council is required to prepare and keep up to date a constitution under the Local Government Act 2000. This requires that individual parts of the Constitution are subject to regular review to ensure they remain in accordance with the law and best practice.

The Local Government Association (LGA) has issued guidance on member officer relations confirming that each are indispensable to one another and mutual respect between both is essential for good local government. The Protocol provides a framework setting out the distinct roles and responsibilities of members and officers and the process for managing any conflict. It also sets out the rights of elected members to access confidential information in order to fulfil their roles.

The Contract Procedure Rules are contained in the procedure rules part of the Constitution and set out the thresholds that apply for delegated decision-making.

## **Commissioner Review**

The updated protocol was presented to the Commissioner led Improvement and Recovery Board in November 2023. All three commissioners commended the updated draft and wider work to support members in their roles. The commissioners particularly supported the updated access to information guidance.

## **2. Report**

### **Member Officer Relations Protocol**

2.1 The LGA guidance on member officer relations contains the following basic principles:

- a. Members and officers are indispensable to one another and mutual respect between both is essential for good local government.
- b. Members provide a democratic mandate, whereas officers contribute the professional expertise needed.
- c. Officers have a duty to give unbiased professional advice even if it is not what members want to hear.
- d. Close personal familiarity should be avoided – “be friendly, but don’t be friends”.
- e. Members identify their priorities, assisted by officers.
- f. Officers provide clear advice and offer alternative courses of action where they exist.
- g. Members and officers communicate clearly and openly, avoiding ambiguity and the risk of misunderstanding.
- h. Officers should be impartial, professional, authoritative, respectful, sensitive, positive, communicative, discreet, reliable and friendly.

2.2 The current Member Officer Relations Code is in general fit for purpose, however there are a few parts that are out of date or not compliant with current law. It has been reviewed against the draft Best Value guidance and recent guidance from the Centre for Governance and Scrutiny (CfGS). The most significant changes have been made to the access to information guidance, which has been re-written to contain a set of principles. It is anticipated that this will promote transparency and access to information to allow members to fulfil their roles whilst also maintaining confidentiality for personal and sensitive information.

2.3 The protocol has been reviewed by the Member Panel on the Constitution, members of Cabinet and members of the Standards Committee.

2.4 The following changes have been made in the new draft protocol:

- (a) Highlighted the importance of high standards of conduct and that contact should mainly be with Senior Officers (defined as heads of service or above).

- (b) Added in explicit reference to Members' role in ensuring best value use of Council resources.
- (c) Amended the rules on relationship with Cabinet and other members and emphasised that non-executive members should not receive preferential treatment or access to information due to being a member of the political group which has formed the administration.
- (d) Added in new Equalities section to reflect the duties under the Equality Act 2010.
- (e) Updated guidance on access to information, including principles to inform whether a member has a "need to know" information. This is intended to put in place a framework to strike the right balance between the need for members to access information to support them in their roles and the need for officers to maintain confidentiality when dealing with individual case work.
- (f) Simplified guidance on a member's involvement in recruitment, appointment and other staffing matters. A member may be involved in a recruitment process, either as part of the formal selection panel or part of an informal meet and greet event. The draft protocol makes it clear that any appointment decision must be solely based on merit and that political preferences should not influence that judgement. For other staffing matters, the updated draft makes clear that outside of formal panels, members should not seek to influence staffing decisions.
- (g) Removal of paragraph on use of Council resources by political groups and individual members for the purpose of issuing Group or personal press releases or publicity relating to the business of the Council.

2.5 There was discussion and debate about certain changes and it is recommended that these are not adopted:

(a) Retention of the reference to Officers' job being to carry out work under the direction and control of the Council, the Cabinet, and relevant committees. This has been replaced by reference to acting under the overall direction of the Council and Cabinet and in accordance with approved policies and strategies and the terms of the schemes of delegation. Reference to direction and control could lead to officers not fully complying with their obligations to act in accordance with their professional duties and to be accountable for decisions made in accordance with delegated authority.

(b) Request for specific timescales for responses to enquiries. As the nature of the enquiry will differ, this better sits in internal procedures on the purpose of member casework.

(c) Use of the term "conjunction" instead of "in consultation". The protocol sets out an expectation that specific members are consulted before action is taken. The term consultation is used to confirm the delegated decision-maker is the officer and this individual is accountable for the decision, but that to decide whether and how to exercise this delegation, there should be consultation with named individuals in advance. The Local Government Act 1972 and associated legislation in relation to executive functions do not permit joint officer member decision-making. The Constitution sets out guidance to officers on when to exercise delegation, including in Article 13 and Part 3.6 Scheme of Delegation to Officers.

(d) Use of Council resources for political group publicity. With the exception of the two political assistants employed to provide political support to the two main political groups, Council resources, including staff, cannot be used for the purpose research or publication of material designed in whole or in part to affect public support for a political party. The Local Government Act 1986, Local Government and Housing Act

1989 and Local Government Officers (Political Restrictions) Regulations 1990 set out the restrictions and this is supplemented by the Code of Recommended Practice on Local Authority Publicity, which is issued under s.4 of the 1986 Act.

(e) Determination of access to information requests based on “need to know”. The current Code refers to referral to the Audit and Corporate Governance Committee, although there are no records to indicate that such a referral has ever been made. The redrafted protocol refers to the second stage being to the Monitoring Officer on the basis this is a legal test. The Monitoring Officer should only refuse the request if there is no lawful basis for it. The Standards Committee has overall responsibility for monitoring compliance with the Code and could request a report from the Monitoring Officer on any refusal decisions.

### **Revision of the constitution – contract procedure rules**

2.6 The Council’s current contract procedure rules are contained in the Financial Procedure Rules in Part 4.6.1 of the constitution. Some minor housekeeping updates have been made to the rules to ensure that they remain fit for purpose. Updates include:

- Revised public procurement thresholds that apply from 1 January 2024 (cover sheet).
- Clarification on applying UK thresholds in relevant contract bands (authorisation table).
- Clarification on the position of the council’s Information Governance board providing input where procurements have information governance implications (authorisation table)
- Clarification on the position relating to Partnership arrangements between NHS bodies and the Council under section 75 of the National Health Services Act 2006 not being subject to these Contract Procedure Rules (paragraph 1.14)

2.7 Once agreed, the revised rules will be communicated to staff and included in briefings and training sessions to staff.

2.8 Members should be aware that a major revision of the contract procedure rules is being undertaken in response to the Procurement Act 2023. The Act aims to create simpler, more flexible and effective procurement, and also improve transparency and visibility of procurement activity. The changes will be implemented by October 2024, and revised contract procedure rules will be presented to Council by July 2024.

2.9 The Council has formed a Procurement Act Working group, with the London Boroughs of Harrow, Hounslow and Barnet, to share resources, best practice and learning in relation to the Act and are also liaising more widely with colleagues in the London and Berkshire Procurement Networks to ensure there is a shared understanding of the implications of the act.

### **Options considered**

The current Code is generally fit for purpose and the Council could choose not to update it or to amend it in a different way. This is not recommended as it is good practice to regularly review parts of the Constitution and to update it to take account of changes in law, learning and best practice.

The adoption of the revisions to the Council's Constitution recommended in this report are recommended as they are designed to improve the governance of the organisation and will in particular ensure efficiency in terms of the Council's procurement processes.

### **3. Implications of the Recommendation**

#### **3.1 Financial implications**

3.1.1 There are no financial implications directly resulting from the recommendations of this report.

#### **3.2 Legal implications**

3.2.1 It is recommended best practice to have constitutional rules setting out how the relationship between members and officers should be governed to support the respective codes of conduct. The draft best value guidance refers to members and senior officers maintaining constructive relationships as a sign of well-functioning leadership and that effective procedures in place to ensure members and officers at all levels comply with the Nolan Principles and relevant codes of conduct is evidence of well-functioning governance.

3.2.2 The CfGS has recently issued guidance on Access to Information for elected members, emphasising two main aims: firstly to assist non Cabinet members to understand what their rights are and what the expectations should be on how those rights are satisfied and secondly, to support officers to understand how they can best support members, and work together to develop a culture of positive information use that supports and promotes the fundamental principles of local democracy. The guidance emphasises members' responsibility in relation to data protection and confidentiality when receiving information which is not publicly available. In relation to the "need to know" principle, the guidance states that members should be able to clearly articulate how their role requires that they have information and the assumption that Monitoring Officers, in making a determination on the matter, should adopt a permissive approach which recognises members' democratic role within the limits of legislation and the Council's obligations to others as regard confidentiality.

3.2.2 The Council is required to prepare and keep up to date a constitution under the Local Government Act 2000. The Contract Procedure Rules are contained in the procedure rules part of the Constitution.

#### **3.3 Risk management implications**

3.3.1 The risk of poor member officer relations could lead to poor decision-making and can be evidence of poor leadership, governance and culture.

3.3.2 There is a risk of failure to make proper decisions at appropriate levels should the contract procedure rules not be updated and be fit for purpose.

#### **3.4 Environmental implications**

3.4.1 There are no identified environmental implications.

### 3.5 Equality implications

3.5.1 Effective member officer relations will support the Council to comply with its statutory duties, including its duties under the Equality Act 2010. A new section has been added to the protocol to refer to the duties under this Act.

3.5.2 The Best Value Statutory Guidance states that authorities should avoid “gold plating” the Equality Act 2010 and should not impose contractual requirements on private and voluntary sector contractors over and above the obligations in the Act. This includes seeking to remove unnecessary paperwork and obstacles to contract compliance thereby making it easier for small and medium firms and the voluntary sector to apply and bid for contracts, and lowering costs to taxpayers.

## **4. Background Papers**

None



## **Part 5.4 Member Officer Relations Protocol**

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2. The Roles of Members and Officers
3. Expectations
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5. Contact between Members and Officers
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7. Relationship between Officers and the Executive
8. Political Groups
9. Conduct at Meetings and Social Events
10. Constructive Criticism / Complaints
11. Correspondence
12. Local Issues
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16. Public Relations and Press Releases
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  - Access to documents
  - Use of Council Information – confidentiality
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## **1. INTRODUCTION**

1.1 This Protocol aims to:

- clearly describe the respective roles of elected Members and Council staff (Officers).
- help all those concerned to understand the relationship between Members and Officers.
- offer a guidance framework on the issues which most commonly arise.
- Ensure high standards of conduct is maintained, the Council is not brought into disrepute and Council business is transacted in a transparent, effective and efficient manner.

1.2 This Protocol is to a large extent a written statement of current practice and convention and forms part of the Ethical Framework adopted by the Council as part of the Constitution. It seeks to reflect the principles underlying the respective Codes of Conduct that apply to Members and Officers and to which it is inextricably linked. The shared object of these documents is to enhance and maintain the integrity (real and perceived) of local government and thus the Codes demand very high standards of personal conduct. Accordingly this Protocol should be read in association with the Council's Constitution and, in particular, the Members' and Officers' Codes of Conduct.

1.3 The Protocol seeks to promote greater clarity and certainty as to working relationships between Members and Officers. If the Protocol is followed it should ensure that Members receive objective and impartial advice and that Officers are not subject to accusations of bias and any undue influence from Members. Monitoring compliance with this Protocol is the responsibility of the Standards Committee and the Monitoring Officer. Questions of interpretation of this Protocol will be determined by the Monitoring Officer.

## **2. THE ROLES OF MEMBERS AND OFFICERS**

2.1 The respective roles of Members and Officers can be summarised as follows:-

Members and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give professional advice to Members and to the Council as a whole, and to carry out the Council's work under the overall direction of the Council and Cabinet and in accordance with approved policies and strategies and the terms of the schemes of delegation.

Mutual respect between Members and Officers is essential to good local government.

## 2.2 **Members' Role**

Members have four main areas of responsibility:

- determining the budget and policy framework of the Council and giving it political leadership,
- monitoring and reviewing the performance of the Council in implementing that policy and delivering services, including ensuring best value use of Council resources.
- representing the Council externally, and
- acting as advocates on behalf of their constituents.

It is not the role of Members to involve themselves in the day to day management of the Authority's services.

## 2.3 **Officers' Role**

The Role of Officers is to:-

- manage the organisation
- initiate policy proposals which accord with the overall framework set by Members
- manage the implementation of policy
- give professional advice in the course of policy development
- take action under delegated powers
- ensure the Council acts lawfully and with financial propriety

## 3. **EXPECTATIONS**

### 3.1 **Members can expect from Officers:**

- (a) A commitment to the Council as a whole, and not to any political group.
- (b) A working partnership.
- (c) An understanding of and support for respective roles, workloads and pressures.
- (d) Timely response to enquiries and complaints.
- (e) Professional advice, not influenced by political views or preference, which does not compromise the political neutrality of Officers.
- (f) Regular, up to date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold.
- (g) Awareness of and sensitivity to the political environment.
- (h) Respect, dignity and courtesy.
- (i) High quality training and development in order to carry out their role effectively.
- (j) Integrity, mutual support and appropriate confidentiality.
- (k) Not to have personal issues raised with them by Officers outside the agreed procedures.
- (l) That Officers will not use their relationship with Members to advance their personal interests or to influence decisions improperly.
- (m) That officers will at all times comply with the relevant Codes of Conduct.

- (n) Support for the role of Members as the local representatives of the Authority, within any scheme of support for Members which may be approved by the Authority.

### **3.2 Officers can expect from Members.**

- (a) A working partnership.
- (b) An understanding of and support for respective roles, workloads and pressures.
- (c) Political leadership and direction.
- (d) Respect, dignity and courtesy.
- (e) Integrity, mutual support and appropriate confidentiality.
- (f) Not to be subject to bullying or to be put under undue pressure. Members should have regard to the seniority of officers in determining what are reasonable requests, having regard to the power relationship between Members and Officers, and the potential vulnerability of Officers, particularly at junior levels.
- (g) That Members will not use their position or relationship with Officers to advance their personal interests or those of others or to influence decisions improperly.
- (h) That Members will at all times comply with the relevant Code of Conduct.
- (i) Members' attendance and commitment to training and development offered by officers, including attendance at mandatory training events.

3.3 The distinct roles of Members and Officers necessarily impose limitations upon behaviour. These are referred to and explained below.

## **4. PERSONAL RELATIONSHIPS**

- 4.1 Mutual respect between Members and Officers is essential to good local government. Close personal familiarity in public between individual Members and Officers can damage this relationship and should be avoided as it can prove embarrassing to other Members and Officers.
- 4.2 However, the Council recognises that there may be close social or personal relationships between Members and Officers that have commenced before, or after, a Member is elected to the Council or before, or after, a person becomes employed by the Council. In a large organisation this may be inevitable. In order to maintain the integrity of the individuals concerned and the Council, such relationships should never be hidden. To do so can lead to suspicion and mistrust.
- 4.3 Accordingly, the Member must declare, in writing, to the Monitoring Officer and his/her Leader/Party Whip any relationship with an Officer which might be seen as influencing his/her work as a Member and the Officer must notify their Director in writing. This includes any family relationships.
- 4.4 The Group Leaders and Directors will endeavour to ensure that neither the Member nor the Officer are placed in a position where such relationship between the two will be seen to conflict with the provisions of this Protocol.

## **5. CONTACT BETWEEN MEMBERS AND OFFICERS**

- 5.1 Contact between Members and Officers should normally be at a Senior Officer level since junior officers might feel unduly pressurised to comply with requests from Members and this might disrupt work programmes already agreed with their managers. For the purposes of this Protocol 'Senior Officer' means Chief Executive, Executive Directors, Directors and Heads of Service.
- 5.2 Members have the right to contact directly a Senior Officer when they feel it necessary to do so. Equally, when it comes to routine matters, such as giving apologies for absence from meetings, it is quite in order for Members to contact more junior staff directly. Particular members may have contact with more junior staff due to their role, for instance members of Overview and Scrutiny Committee may contact the statutory scrutiny officer and other staff involved in scrutiny support and chairs of committees may have contact with subject specialists as part of their role. Any other matters should be referred to Senior Officers including any occasion when a Member feels that the action being taken is wrong or is not being pursued with sufficient vigour.
- 5.3 Members are elected to represent the interests of their constituents, but they should not seek special treatment for any individual or group. This includes seeking support or action outside of the agreed systems. Part of a Member's role is to assist constituents to use the Council's systems to report concerns and Members are given training and support to enable them to direct residents and service users to the right system. When dealing with Officers, Members must declare any family, business or other close relationships they have with the constituents concerned.
- 5.4 The role of Officers is to give advice and information to Members and to implement the policies determined by the Council. In giving such advice to Members, and in preparing and presenting reports, it is the responsibility of the Officer to express his/her own professional views and recommendations. Whilst an Officer may report the views of individual Members on an issue, if the Member wishes to express a contrary view s/he should not seek to pressure the Officer to make a recommendation contrary to the Officer's professional view.
- 5.5 Certain officers e.g. Head of Paid Service, Monitoring Officer, Chief Finance Officer (Section 151 Officer) and the Statutory Chief Officers have responsibilities in law over and above their obligations to implement decisions of the Council and Members must respect these obligations, must not obstruct Officers in the discharge of these responsibilities, and must not victimise Officers for discharging them.
- 5.6 Members should not bring or attempt to bring undue influence to bear on an Officer to take any action that is:
- against an adopted policy or procedure
  - a breach of the Code of Conduct for Officers
  - in conflict with the Council's Procedural Rules or Financial Regulations
  - capable of being interpreted as intimidation or bullying.
- 5.7 Officers have a duty to report any attempt to exert undue pressure or influence to their Director who in turn will refer the matter to the Chief Executive.

5.8 A note will be taken of all meetings dealing with matters of significance between Members and Officers, setting out where appropriate, (1) advice given by officers, (2) decisions taken by officers, and (3) actions arising from the meeting. If a decision is required at a Member level, this must be dealt with in accordance with constitutional procedures. This note will be kept by the Officer on the appropriate case system as a record of the discussion and will be shared within 10 working days or longer period as agreed.

## **6. LEAD MEMBERS/CHAIRS AND SENIOR OFFICERS**

- 6.1 It is clearly important that there should be a close working relationship between a Lead Member or Chair of a Committee/Sub-Committee and the Director and other senior officers of any Department which falls within the Lead Member's portfolio or report to that Committee/Sub-Committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officers' ability to deal impartially with other Members. Officers must ensure their political neutrality is not compromised.
- 6.2 While a Lead Member, Chair of a Committee/Sub-Committee will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a Director will be under a duty to submit a report on a particular matter. Similarly, the named author will always be fully responsible for the contents of any report submitted by their Department.
- 6.3 This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report or other officer providing advice on the report. Any issues arising between a Lead Member/Chair and a Director in this area should be referred to the Chief Executive for resolution in consultation with the Leader of the Council.
- 6.4 In addition to the Chair's briefing before any Council/Committee/ Sub-Committee meeting, minority group representatives will also be afforded the opportunity of a briefing through their appropriate spokespersons.
- 6.5 In relation to action between meetings, it is important to remember that, under the executive arrangements adopted by the Council, decisions (relating to the discharge of any of the Council's functions) are taken by the Cabinet, Full Council, a Committee, a Sub-Committee or an Officer under delegated authority. There is no provision for such decisions to be taken by a Chair, a Lead Member or indeed by any other single Member with the exception of decisions being taken by the Leader under urgency procedures.
- 6.6 At Cabinet/Committee/Sub-Committee meetings, a resolution may be passed, which authorises named Officers to take action between meetings in consultation with the Chair or a named Lead Member. It must be recognised that it is the Officer, rather than the Chair/Lead Member, who takes the action and it is the Officer who is accountable for it.
- 6.7 Finally, it must be remembered that Officers within a Department are accountable to their Director and that whilst Officers should always seek to assist a Chair (or

indeed any Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Director. Members should not put staff in a position where there would be conflict between themselves and their line manager, or other Senior Officer.

## **7. RELATIONSHIP BETWEEN OFFICERS AND THE EXECUTIVE**

- 7.1 As individual Members, all Councillors have the same rights and obligations in their relationship with Officers and should be treated equally. This principle is particularly important in the context of overview and scrutiny and non-executive functions. However, where a political group forms an administration, either alone or in partnership with another group or groups, it is recognised that the relationship between Officers, particularly those at a senior level in the organisation, and the administration will differ from that of other elected members.
- 7.2 Non-executive members should not be treated more favourably or have more access to information due to being a member of the political party which has formed an administration.

## **8. POLITICAL GROUPS**

- 8.1 It must be recognised by all Officers and Members that in discharging their duties and responsibilities Officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual Member of the Council. Special rules apply to Political Group Assistants and those postholders have been made aware of them through separate guidance.
- 8.2 There is statutory recognition for party political groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by political groups but must at all times maintain political neutrality. All Officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner.
- 8.3 The support provided by Officers can take many forms, ranging from a briefing meeting with the Leader of the Council, a Lead Member/Chair/ Spokesperson prior to a Council, Cabinet, Committee or Sub-Committee meeting to a presentation to a political group meeting. Whilst in practice such Officer support is likely to be in most demand from whichever political group is in control of the Council at the time, such assistance is available to all political groups.
- 8.4 Certain points, however, must be clearly understood by all those participating in this type of process. In particular:
- (a) Requests for Officers to attend any political group meeting must be made through the appropriate Director. The Director will advise the Chief Executive of any requests made.
  - (b) Unless otherwise agreed in advance with the Chief Executive, Officers will not attend political group meetings that include persons who are not Members of the Council. However, where the Chief Executive has authorised such

attendance special care needs to be exercised by Officers involved in providing information and advice to such political group meetings. Persons who are not elected Members will not be bound by the Code of Conduct and for this reason Officers may not be able to provide the same level of information and advice as they would to a Member only meeting.

- (c) Officer support (whether in the form of a written report or otherwise) must not extend beyond providing information and advice in relation to matters of Council business. Officer support will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the Council. Reports or other support will not deal with any political implications of the matter or any option, and Officers will not make any recommendations to a political group. Officers (with the exception of Political Group Officers) are not expected to be present at meetings or part of meetings when matters of party business are to be discussed.
- (d) Political group meetings, whilst they form part of the preliminaries to Council decision making are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such.
- (e) It must not be assumed by any political group or Member that any Officer is supportive of any policy or strategy developed because of that Officer's assistance in the formulation of that policy or strategy.
- (f) Any request for advice, together with the advice given to a political group or Member will be treated with strict confidentiality by the Officers concerned and will not be accessible to any other political group. It is acknowledged, however, that factual information upon which any advice is based will, if requested, be available to all political groups.
- (g) Officers must respect the confidentiality of any political group discussions at which they are present in the sense that they should not relay the content of any such discussion to another political group or Member thereof. However, Members should be aware that this would not prevent Officers from disclosing such information to other Officers of the Council so far as is necessary to perform their duties or otherwise to comply with the law.
- (h) Where Officers provide information and advice to a political group meeting in relation to a matter of Council business, it should be understood that the Officers have a duty to provide all necessary information and advice to the Cabinet or relevant Committee/Sub-Committee when the matter in question is considered.

8.5 Any particular cases of difficulty or uncertainty in this area of Officer advice to political groups must be raised with the Chief Executive who will discuss them with the relevant Group Leader(s).

## **9. CONDUCT AT MEETINGS AND SOCIAL EVENTS**

9.1 Officers and Members should address each other formally at meetings of the Council, Cabinet, Committees, Sub-Committees and other formal meetings which



both attend. On such formal occasions Officers should refer to Members by the office they hold:

- Leader, or
- Chair, or
- Vice-Chair, or
- Councillor

and, where they are aware of it, respect an individual Member's preference for a particular type of formal address.

- 9.3 Members should avoid excessive informality at formal meetings and other official civic events and refer to Officers either by their job title or by their surname and the title Mr, Mrs, Miss or Ms, as appropriate. This is particularly important in public meetings, including webcast meetings, to ensure that the public understand the distinct roles and responsibilities of Members and Officers.
- 9.4 At formal meetings and official civic events Members and Officers should dress and behave in a manner in keeping with the occasion and their position. This requires them to listen to proceedings and show respect and courtesy to all those present (including members of the public).
- 9.5 The same degree of formality is not necessary at any informal meetings or social events that Members and Officers may attend. Nonetheless, by virtue of their role with the Council if Members and Officers are attending an event they should avoid close personal familiarity or any action which would embarrass others or damage their relationship with other Officers or Members.

## **10. CONSTRUCTIVE CRITICISM/COMPLAINTS**

- 10.1 It is important that in any dealings between Members and Officers they should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.
- 10.2 Members and Officers should not criticise or undermine respect for the other at meetings of the Council or in any public forum. This would damage effective working relationships and the public image of the Council.
- 10.3 Members should not raise matters relating to the conduct or capability of an individual Council Officer or of Officers collectively at meetings held in public. Members should not criticise individual officers in correspondence with the public. This is a long-standing tradition in public service as Officers have no means of responding to criticisms like this in public.
- 10.4 If Members feel that they have not been treated with proper respect, courtesy or have any concern about the conduct or capability of an Officer or group of Officers they should raise the matter with the Director of the Department in question.
- 10.5 If the Member is not satisfied that action has been taken within a reasonable period by the Director they should raise the matter with the Chief Executive who will look into the matter afresh.

- 10.6 Where an Officer feels that they have not been properly treated with respect and courtesy or is concerned about any action or statement relating to her/himself or a colleague by a Member they should raise the matter with their line manager, or other Senior Officer as appropriate.

## **11. CORRESPONDENCE BETWEEN MEMBERS AND OFFICERS**

- 11.1 Correspondence between an individual Member and an Officer on a matter relating to a single constituent should not normally be copied (by the Officer) to any other Member. Where, exceptionally, it is necessary to copy the correspondence to another Member, this should be made clear to the original Member. In other words, a system of “silent or blind copies” should not be employed. Where the Member/Officer has legitimately copied in others it is in order for the Member/Officer replying to copy in those individuals with the response.
- 11.3 In some cases issues are raised by, or with, individual Members relating to a matter of general interest in a Council Ward or individual Parish. Recognising that it is in the best interests of the Council to ensure that all Members are properly informed of general issues in their Ward or Parish, copies of correspondence will normally be sent to all Members for the particular area unless the Member specifically requests that correspondence is not copied to other Members or, there is another reason, why this is not appropriate. Where correspondence is copied to other Members this will be made clear to the original Member.
- 11.4 Officer letters on behalf of the Council should normally be sent out in the name of the appropriate Officer, rather than in the name of a Member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to be signed by a Member, but this should be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.

## **12. LOCAL ISSUES**

- 12.1 Whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be informed or involved, as appropriate, not later than at the outset of the exercise. Similarly whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected should, as a matter of course, be invited to attend the meeting.

## **13. CEREMONIAL EVENTS**

- 13.1 The Mayor, or in his/her absence the Deputy Mayor, will be the appropriate person to lead Council ceremonial events which are of particular significance and to represent the Council at ceremonial events of other organisations.
- 13.2 Subject to the above paragraph, Lead Members, Chairs of Committees or Vice-Chairs in that order of preference are the appropriate representatives for ceremonial events within the scope of their portfolios/Committee’s terms of reference. Where neither the Lead Member/Chair nor Vice-Chair of a Committee are available then any other Member may be nominated by the appropriate Lead Member/Chair.

- 13.3 Local Members should always be informed of, and, where possible, invited to ceremonial events taking place within their own Wards, as should the Chair of the relevant Parish Council as appropriate.
- 13.4 Any Member taking part in a ceremonial event must not seek disproportionate personal publicity nor use the occasion for party political advantage bearing in mind that the Member is representing the Council as a whole.

#### **14. RECRUITMENT, APPOINTMENT AND OTHER STAFFING MATTERS**

- 14.1 A Member will not seek support for any prospective employee of the Council nor provide references in support of applications for employment by the Council.
- 14.2 Anyone who may be involved in the selection or appointment process for a post with the Council shall immediately declare any relationship to a candidate as soon as it becomes known to him/her to the Director responsible for Human Resources who shall record the declaration and determine whether or not the Member may take any further part in the selection/appointment process for that post.
- 14.3 If a Member is called upon to take part in selecting and appointing an Officer, with the exception of the appointment of assistants to political groups, any appointment decision must be solely basis on merit and which candidate would best serve the whole Council. A Member should not let his/her political preferences influence their judgement.
- 14.4. With the exception of those Members formally involved in appointment and dismissal decisions for specific Senior Officers, Members should not seek to influence decisions relating to redundancy, disciplinary, redeployment or promotion of individual Officers.
- 14.5 If, in the course of performing their duties, Members are concerned about or receive allegations of misconduct or capability by an Officer these should be referred with any supporting information to the appropriate Head of Service. If the complaint relates to a Senior Officer then it should be referred to the relevant Director or the Chief Executive.
- 14.7 Officers are entitled to reasonable privacy and respect for their private lives and Members should not seek or request personal information about individual Officers. Such a request could be seen as threatening particularly by junior Officers. Similarly Members should not seek to contact Officers outside of working hours or at home unless by prior agreement with the relevant Officer or under an existing provision or arrangement related to the Officer's employment with the Council. If a Member has reasonable grounds for believing matters related to an Officer's personal life have a bearing on their employment with the Council then the Member should report these concerns to the relevant Director. Similarly Officers must show similar respect for the private lives of Members.

#### **15. EQUALITY**

- 15.1 The Council has legal obligations in relation to compliance with the Equality Act 2010 as an employer, service provider and public body. Members and officers are required to comply with these legal obligations and to adhere to Council policies and procedures. If members or officers believe they have been subjected to unlawful

discrimination or treated in a manner that contravenes the Council's policies and procedures, this should be reported to the Monitoring Officer.

## **16. PUBLIC RELATIONS AND PRESS RELEASES**

- 16.1 The Council's Corporate Communications Officers serve the Council as a whole and must operate within the limits of the Local Government Act 1986 which prohibits the Council from publishing material which appears to be designed to affect public support for a political party.
- 16.2 Council press releases are drafted by Officers and will often contain quotations from the Leader and/or Deputy Leader of the Council, a Lead Member, the Chair and Vice-Chair of the Committee or Sub-Committee whose service is involved and from the Mayor or Deputy Mayor about ceremonial events. Such press releases are issued on behalf of the Council and it would not, therefore, be appropriate when repeating quotations from Members to indicate their party political affiliation.
- 16.3 Further guidance on the legal constraints placed on the Council is contained in the Code of Recommended Practice on Local Authority Publicity 2011. Whilst the Code applies at all times, there is specific guidance during periods of heightened sensitivity before elections and referendums.

## **17. MEMBERS' ACCESS TO INFORMATION AND COUNCIL DOCUMENTS**

- 17.1 The following paragraphs identify the rights of Members and the procedures that they must comply with when applying for access to Cabinet/Committee/ Sub-Committee reports and other documents/information.
- 17.2 It is important to note that access rights apply to enable Members to carry out their role as elected representatives. Where a Member has a pecuniary or other personal interest in a matter the Member will only be entitled to the same access as would be the case for a private individual. In these circumstances, the Member must make it clear that s/he is acting in his/her private capacity and not as a Member of the Council.

### **Confidential/Exempt Information**

- 17.3 Members of the Council have additional rights over and above those of the public in order for the Member to fulfil their role. This includes access to internal and confidential/exempt information in specific situations.

Confidential information is:-

- (i) Information furnished to the Council by a Government Department on terms which forbid the disclosure of the information to the public, and
- (ii) Information which may not be disclosed by or under any enactment or by a Court Order.

Exempt information is information to which the public may be excluded but do not have to be. The categories of exempt information are set out in Schedule 12A to

the Local Government Act 1972 and are set out in Part 4.2 of the Constitution (Access to Information Procedure Rules).

### **Requests by Members – Procedures**

- 17.4 The following procedure should be used when requesting documentation/information which is not available in the public domain and is required in order to for a Member to fulfil their responsibility as a Member of the Council.
- (i) the Director or Head of Service of the Department concerned should be approached.
  - (ii) If access is denied or the Director/Head of Service is in doubt, the matter must be referred to the Monitoring Officer.
- 17.5 Any requests for information made by Political Group Officers on behalf of Members of their Group should be treated in exactly the same way as if those Members had made the request themselves. The Political Group Officers, when making such requests should clearly indicate on which Member's behalf they are acting.
- 17.6 Requests for information not readily accessible will not be acceded to where the cost is unreasonably high or would unreasonably disrupt the work of the Council. If required to establish a legal right to information, the Member may be asked to complete a request for information form setting out why the information is required. This form is available from Democratic Services.

### **Access to Cabinet/Committee/Sub-Committee Papers (including Background Papers) – Forthcoming Meetings**

- 17.7 The rights of Members can be summarised as follows:-
- (i) Same access rights as members of the public in respect of Part I reports. These rights are set out in Part 4.2 – Access to Information Procedure Rules.
  - (ii) All Members have a statutory right of access to exempt information if its falls under Paragraph 3, except to the extent that the information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract, and Paragraph 6 of Schedule 12A of the Local Government Act 1972.
  - (iii) Members of the Overview & Scrutiny Committee have a statutory right of access to documents in certain circumstances. This right is set out in Part 4.2 Access to Information Procedure Rules.
  - (iv) All Members have a right to access information if they can demonstrate a “Need to Know” as set out below.

## **Access to Other Documents/Information – “The Need to Know”**

17.8 Under common law, Members are entitled to see such documents as are reasonably necessary to enable them to carry out their duties. This is in addition to the statutory rights to information set out above. In order to exercise this right, the Member must demonstrate a need to know, a mere curiosity or wish to see information is not sufficient. Access to information will be denied where the Member is considered to be “fishing” for information or seeks access for an ulterior/improper purpose (e.g. for a private purpose).

17.9 Case law has determined the following principles:

- The common law right arises from a councillor’s common law duty to keep themselves informed of all matters necessary to enable him properly to discharge their duty as a councillor. This is limited to access to such documents as might reasonably be necessary to enable them to properly perform their duties.
- There must be a link to the Member’s role on the Council as opposed to an indirect motive or purposes, such as a desire to assist a member of the public wishing to challenge a Council decision.
- Being strongly opposed to a decision to defend an action does not establish a need to see information submitted for the purpose of legal advice.
- The need to know may permit access to historic confidential documents related to the past affairs of a committee if this is relevant to the current functions and potential future decisions of the committee.
- Information may be redacted to remove irrelevant information, including information that may amount of gossip or rumour and which may, if disclosed, lead to legal action being taken against the Council, including defamation action. This can include redaction of personal data when this information is not necessary in order to comply with the need to know request.
- Members have no automatic right to access documents of a committee to which he / she is not a member, but could establish that information was needed to enable proper discharge of duties on another committee.
- A need to know does not extend to a need to attend an internal or operational meetings. Members should, in general, not involve themselves in operational matters, including staffing matters.
- A duty of confidentiality applies to information provided under the need to know and a Member would be in serious breach of the Code of Conduct if they were responsible for inappropriate disclosure of information in breach of this duty. This duty is of paramount importance when the information contains personal data about individuals, including staff, residents and service users.
- A need to know cannot be allowed or refused for party political reasons.

## **Use of Council Information – Confidentiality**

17.10 Members and Officers have duties to maintain confidentiality in certain circumstances. Officers are bound by their contracts of employment and Code of Conduct. Members are bound by their Code of Conduct and disclosure of confidential information could lead to action being taken in accordance with that Code. Disclosure of confidential information can lead to serious action being taken against the Council and in the case of personal information, can negatively impact on the individual whose information has been disclosed.

## **18. WHEN THINGS GO WRONG**

### **18.1 Procedure for Officers**

From time to time the relationship between Members and Officers may break down or become strained. Whilst it will always be preferable to resolve matters informally, through conciliation by an appropriate senior Officer (including the Monitoring Officer) the Member or his or her group leader, Officers have the same rights as the public to raise complaints under the Code of Conduct for Members. If it preferable if this is utilised after seeking to resolve matters via the informal process.

### **18.2 Procedure for Members**

In the event that a Member is dissatisfied with the conduct, behaviour or performance of an Officer, the matter should be raised with the appropriate manager. Where the Officer concerned is a Senior Officer, the matter should be raised with the appropriate Director or with the Chief Executive. Where the employee concerned is the Chief Executive, the matter should be raised with the Monitoring Officer. A Member can utilise the procedures in the Whistleblowing Code set out at Part 5.5. of the Constitution in certain prescribed circumstances.

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# **SLOUGH BOROUGH COUNCIL**

## **CONTRACT PROCEDURE RULES<sup>1</sup>**

To be approved by the Council on 22 November 2022

Operative with effect from 23 November 2022

Updated draft with clarificatory amendments – 2 November 2023

<b>UK Procurement Thresholds from January 2023<sup>2</sup></b>	
Works Contracts	£5,336,937
Light Touch Regime Services	£663,540
Supplies Contracts	£213,477
Services Contracts	£213,477

<sup>1</sup> Legal Status of these Contract Procedure Rules

Slough Borough Council is required by section 135 of the Local Government Act 1972 to maintain Contract Procedure Rules.

The Head of Commercial Services is the custodian of these Contract Procedure Rules and is responsible for keeping them under review. If the UK Directives or any other Law is changed in a way that affects these Contract Procedure Rules then the Head of Commercial Services will issue a notice and the change must be observed until the Contract Procedure Rules can be revised.

<sup>2</sup> The UK Thresholds will need to be updated in line with relevant Crown Commercial Service Procurement Policy Notes. Please note as of 1<sup>st</sup> January 2022 thresholds are inclusive of VAT.

UK Procurement Thresholds from 1 <sup>st</sup> January 2024 <sup>3</sup>	
Works Contracts	£5,372,609
Light Touch Regime Services	£663,540
Supplies Contracts	£214,904
Services Contracts	£214,904

## Document Control

Version	Date	Lead Author	Main Changes
1.0	28 October 2021	HB Public Law Commercial Team	Final draft following review and approval at Strategic Finance board
1.1	03 November 2021	Commercial Team	Updated draft following Member Panel on the Constitution
1.2	17 January 2022	Commercial Team	Updated UK procurement thresholds (PPN 10/21)
1.3	5 October 2022	HB Public Law Commercial Team	Updated draft to reflect procedural changes and minor clarifications
1.4	11 November 2023	HB Public Law SBC Procurement	Updated draft with minor clarificatory amendments and new thresholds

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<sup>3</sup> The procurement thresholds for 2024 have been released via the Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2023 which were laid before Parliament on 26 October 2023. The new procurement thresholds will apply from 1 January 2024 to all procurements commenced on or after that date. Please note as of 1<sup>st</sup> January 2022 thresholds are inclusive of VAT.

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**Slough Borough Council Procurement Application and Authorisation Table<sup>4</sup>  
(Services)**

Total Aggregate Contract Value <sup>5</sup>	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation <sup>6</sup>
Less than £25,000	3 quotations where possible signed off by the Authorised Officer in accordance with the Scheme of Delegation.	3 quotations where possible.  Authorised Officer to complete quotation proforma.	Authorised Officer in the Service Area	No	Purchase Order Standard Terms and Conditions	Quotation proforma must be signed off by the Authorised Officer (Scheme of Delegation)  Quotation proforma must be sent to procurement for recording on contract register as per government transparency requirements.	<b>Authorised Officer in accordance with the Scheme of Delegation (Section 3.6 of the Constitution)</b>

<sup>4</sup> All procurements and transactions must fall within the powers delegated to the relevant officer and must have been approved by a decision (in accordance with the Council's Constitution) of the Executive, the Council or one of its committees or sub-committees. No contract, agreement or other document shall be signed or sealed unless it gives effect to a decision or resolution (in accordance with the Council's Constitution) of the Cabinet, or one of its committees or sub-committees or in accordance with the Scheme of Delegation.

<sup>5</sup> Contracts should not be artificially underestimated or disaggregated into two or more separate Contracts where the intent is to avoid the application of the Contract Procedure Rules or Public Procurement Regulations.

<sup>6</sup> Scheme of Delegation, Part 3.6 of the Slough Borough Council Constitution.

Total Aggregate Contract Value <sup>5</sup>	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation <sup>6</sup>
£25,000 – £180,000	Minimum of 3 quotations.  <b>OR</b> Consider accessing local/national framework agreements where permitted and running mini competitions or call offs.	Obtain and retain a minimum of three quotes.  <b>These quotes must be obtained through the SE Shared Services E-portal.</b>  Please seek advice from the Procurement Team for advertising.	Authorised Officer in accordance with the Scheme of Delegation.	<b>All Contract Values over £25,000 must be published on the SE Shared Services E-portal and contracts finder as per government requirements.</b>  <b>All contract values over the UK Procurement Thresholds will also need to be advertised on the UK Find a Tender Service.</b>	Please seek advice from the Procurement Team. The contract used will depend upon the value and complexity of the procurement.  Contracts over £100,000 must be sealed and HB Law advice sought from outset.	Mini business case to be approved by Strategic Procurement Review Board  Following Strategic Procurement Review Board approval, full business case and quotation paperwork to be submitted to Procurement Review Board (Procurement, Legal and Finance) before submission to the Authorised Officer (Scheme of Delegation)  Information Governance board Approval required for IT projects with a contract value in this value band <b>and</b> where the full business case has specified that there are	<b>Authorised Officer in accordance with the Scheme of Delegation (Section 3.6 of the Constitution)</b>

Total Aggregate Contract Value <sup>5</sup>	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation <sup>6</sup>
						information governance implications.  Capital Monitoring Board Approval required for all capital projects that fall within this value band.	
£180,000 to £500,000 – Goods/Services	Formal tender process using: (1) SE Shared Services E-portal; (2) contracts finder; and (3) the UK Find a Tender Service where the contract value exceeds the relevant UK Procurement Thresholds.  <b>OR</b>  Consider accessing local/national framework agreements where permitted and running mini competitions or call offs.	Most economically advantageous tender must be selected, achieving Best Value and Value for Money for Council.  The Procurement Team must be contacted for guidance and support.  <b>Use of SE Shared Services E-portal, Contracts Finder and the UK Find a Tender Service</b>	Authorised Officer in accordance with the Scheme of Delegation.	<b>Yes</b>  <b>Use of SE Shared Services E-portal procurement system is mandatory.</b>  Procurement Must be advertised on Contracts Finder and the UK Find a Tender Service.	<b>Services:</b>  Please seek advice from the HB Public Law and the Procurement Team.  All contracts to be sealed by HB Law.	Project must be on the forward procurement plan to Cabinet each April.  <b>and</b>  Mini business case to be approved by Strategic Procurement Review Board  <b>and</b>  Following Strategic Procurement Review Board sign off, full business case and quotation paperwork to be	<b>Executive Director in accordance with the Scheme of Delegation (Section 3.6 of the Constitution)</b>  Note: Cabinet may request any project on the forward plan to be presented to Cabinet before award.

Total Aggregate Contract Value <sup>5</sup>	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation <sup>6</sup>
		<p><b>system is mandatory.</b></p> <p>Principles of fair access to public contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.</p>				<p>submitted to Procurement Review Board (Procurement, Legal and Finance) before submission to an Executive Director.</p> <p>Information Governance Board Approval required for IT projects with a contract value in this value band <b>and</b> where the full business case has specified that there are information governance implications.</p> <p>Capital Monitoring Board Approval required for all capital projects that fall within this value band.</p>	
Over £500,000	Formal tender process using: (1) SE Shared Services E-portal; (2) contracts finder;	Most economically advantageous tender must be selected,	Authorised Officer in accordance with the Scheme of Delegation with	<b>Yes</b> <b>Use of SE Shared Services E-</b>	Please seek advice from the HB Public Law and the	Project must be on the forward procurement plan to Cabinet or separate Cabinet	<b>Cabinet approval is required.</b>  Any contract over £500k is a significant

Total Aggregate Contract Value <sup>5</sup>	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation <sup>6</sup>
	<p>and (3) the UK Find a Tender Service where the contract value exceeds the relevant UK Procurement Thresholds.</p> <p><b>OR</b></p> <p>Consider accessing national framework agreements where permitted and running mini competitions or call offs.</p> <p>Principles of fair access to public contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.</p>	<p>achieving Best Value and value for money for Council.</p> <p>The Procurement Team must be contacted for guidance and support.</p> <p><b>Use of SE Shared Services E-portal, Contracts Finder and the UK Find a Tender Service system is mandatory.</b></p> <p>Principles of fair access to public contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.</p>	<p>support from the Procurement Team.</p>	<p><b>portal system is mandatory.</b></p> <p>Procurement must also be advertised on Contracts Finder and the UK Find a Tender Service.</p>	<p>Procurement Team.</p> <p>All contracts to be sealed by HB Law.</p> <p>All Contracts to be sealed.</p>	<p>authority <b>and/or</b> may require a Cabinet Report to be submitted for Cabinet approval. (Please seek advice from the Procurement Team or HB Public Law.)</p> <p><b>and</b></p> <p>Mini business case to be approved by Strategic Procurement Review Board</p> <p><b>and</b></p> <p>Following Strategic Procurement Review Board approval, full business case and quotation paperwork to be submitted to Procurement Review Board (Procurement, Legal and Finance) before</p>	<p>decision and must be approved prior to procurement and prior to any contract award.</p>



Total Aggregate Contract Value <sup>5</sup>	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation <sup>6</sup>
						<p>submission to Executive Director.</p> <p>Information Governance Board Approval required for IT projects with a contract value in this value band <b>and</b> where the full business case has specified that there are information governance implications.</p> <p>Capital Monitoring Board Approval required for all capital projects that fall within this value band.</p>	

**Slough Borough Council Procurement Application and Authorisation Table<sup>7</sup>  
(Works)**

Total Aggregate Contract Value <sup>8</sup>	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation <sup>9</sup>
Less than £25,000	3 quotations where possible signed off by the Authorised Officer in accordance with the Scheme of Delegation.	3 quotations where possible.  Authorised Officer to complete quotation proforma.	Authorised Officer in accordance with the scheme of Delegation.	No	Purchase Order Standard Terms and Conditions	Quotation proforma must be signed off by the Authorised Officer (Scheme of Delegation) and the Strategic Procurement Review Board (where appropriate) before accepting quotation and raising purchase order.  Quotation proforma must be sent to procurement for recording on contract register as	<b>Authorised officer in accordance with the Scheme of Delegation (Section 3.6 of the Constitution)</b>

<sup>7</sup> All procurements and transactions must fall within the powers delegated to the relevant officer and must have been approved by a decision (in accordance with the Council's Constitution) of the Executive, the Council or one of its committees or sub-committees. No contract, agreement or other document shall be signed or sealed unless it gives effect to a decision or resolution (in accordance with the Council's Constitution) of the Cabinet, or one of its committees or sub-committees or in accordance with the Scheme of Delegation.

<sup>8</sup> Contracts should not be artificially underestimated or disaggregated into two or more separate Contracts where the intent is to avoid the application of the Contract Procedure Rules or Public Procurement Regulations.

<sup>9</sup> Scheme of Delegation, Part 3.6.2 of the Slough Borough Council Constitution.

Total Aggregate Contract Value <sup>8</sup>	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation <sup>9</sup>
						per government transparency requirements.	
£25,000 to £1,000,000	3 quotations where possible signed off by the Authorised officer in accordance with the Scheme of Delegation.	3 quotations where possible.	Authorised Officer in accordance with the Scheme of Delegation.	<b>Yes</b> <b>Use of SE Shared Services E-portal system is mandatory.</b>	For Construction / Works Contracts, please seek advice from the HB Public Law and the Procurement Team. An appropriate model form contract such as JCT or NEC should be used.	Mini business case to be approved by Strategic Procurement Review Board  <b>and</b> Following Strategic Procurement Review Board approval, full business case and quotation paperwork to be submitted to Procurement Review Board (Procurement, Legal and Finance) before submission to the Executive Director  Capital Monitoring Board Approval required for all capital projects that fall within this value band.	<b>Authorised Officer in accordance with the Scheme of Delegation (Section 3.6 of the Constitution).</b>

Total Aggregate Contract Value <sup>8</sup>	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation <sup>9</sup>
Over £1,000,000p	<p>Formal tender process using: (1) SE Shared Services E-portal; (2) contracts finder; and (3) the UK Find a Tender Service where the contract value exceeds the relevant UK Procurement Threshold.</p> <p><b>OR</b></p> <p>Consider accessing national framework agreements where permitted and running mini competitions or call offs.</p> <p>Principles of fair access to public contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.</p>	<p>Most economically advantageous tender must be selected, achieving Best Value and value for money for Council.</p> <p>The Procurement Team must be contacted for guidance and support.</p> <p><b>Use of SE Shared Services E-portal, Contracts Finder and the UK Find a Tender Service system is mandatory.</b></p> <p>Principles of fair access to public contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.</p>	<p>Authorised Officer in accordance with the Scheme of Delegation with support from the Procurement Team.</p>	<p><b>Yes</b></p> <p><b>Use of SE Shared Services E-portal system is mandatory.</b></p> <p>Procurement must also be advertised on Contracts Finder and the UK Find a Tender Service.</p>	<p>For Construction / Works Contracts, please seek advice from the HB Public Law and the Procurement Team. An appropriate model form contract such as JCT or NEC should be used.</p>	<p>Project must be on the forward plan to Cabinet or separate Cabinet authority <b>and/or</b> may require a Cabinet Report to be submitted for Cabinet approval. (Please seek advice from the Procurement Team or HB Public Law)</p> <p><b>and</b></p> <p>Mini business case to be approved by Strategic Procurement Review Board</p> <p><b>and</b></p> <p>Following Strategic Procurement Review Board approval, full business case and quotation paperwork to be submitted to Procurement Review Board (Procurement,</p>	<p><b>Cabinet approval is required.</b></p> <p>Any contract over £1,000,000 is a significant decision and must be approved prior to procurement and prior to any contract award.</p>

Total Aggregate Contract Value <sup>8</sup>	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation <sup>9</sup>
						<p>Legal and Finance) before submission to the Executive Director</p> <p>Capital Monitoring Board Approval required for all capital projects that fall within this value band.</p>	

## 1. SCOPE

- 1.1 These Contract Procedure Rules provide the governance structure for the Council to procure works, goods and services.
- 1.2 The Contract Procedure Rules are designed to ensure that Authorised Officers obtain Best Value Services and Value for Money from purchasing arrangements. The Council has a responsibility to do this in a transparent way that offers best value for residents.
- 1.3 These **mandatory** Contract Procedure Rules apply to everyone who commissions or procures contracts on behalf of the Council, including external consultants and third party providers.
- 1.4 These Contract Procedure Rules should be read in conjunction with the Council's Financial Procedure Rules which set out mandatory financial procedures to be followed. These can be found by following the link. [Constitution \(slough.gov.uk\)](http://www.slough.gov.uk/constitution)
- 1.5 All procurement activity must be undertaken with regard to high standards of probity and in accordance with the relevant provisions of the ethical framework contained in Part 5 of the Council's Constitution.
- 1.6 All Officers must ensure that the Council's approved processes and standards for Procurement, as set out in these Contract Procedure Rules and the accompanying Procurement and contract management guidance are adhered to. Failure to comply with the requirements in these Contract Procedure Rules may result in disciplinary action in accordance with the Local Code of Conduct for Employees.
- 1.7 All information governance, insurance, safeguarding, social value, conflict of interest and business continuity requirements must also be adhered to in line with the Procurement and contract management guidance and the Council's Information Governance Policies.
- 1.8 These Contract Procedure Rules are designed to ensure compliance with the Council's Constitution, the Council's Financial Procedure Rules, Council policies, the Public Procurement Regulations 2015 (PCR15) and English law.
- 1.9 The Procurement Application and Authorisation Table set out within these Contract Procedure Rules provides a summary of the key requirements that must be adhered to for all procurements. However, all Council Officers are strongly advised to read the rest of these Contract Procedure Rules for further guidance and to seek the advice and support of the Procurement Team and HB Public Law as appropriate.
- 1.10 Where the Council is entering into a Contract as an agent and/or in collaboration with another public body or organisation, these Contract Procedure Rules apply only in so far as they are consistent with the requirements of the organisation with whom the Council is collaborating. Where the Council is acting as principal in such collaboration, then these Contract Procedure Rules will take precedence.
- 1.11 Framework Agreements that have been established by other Public Sector Bodies that are lawfully accessible to the Council should be used strictly in accordance with the terms and conditions of the relevant Framework Agreement. Please consult with the Procurement Team when procuring from a Framework Agreement.
- 1.12 The following are out of scope of the Contract Procedure Rules:

- 1.12.1 Any purchase or sale of a property, interest in land, transaction in land and or lease transaction is excluded from the Contract Procedure Rules but must be authorised in accordance with the requirements set out in the Constitution;
  - 1.12.2 Inter-authority arrangements and Inter-agency payments;
  - 1.12.3 Subscriptions/memberships;
  - 1.12.4 Emergency temporary accommodation for vulnerable people;
  - 1.12.5 Procurement of Services from other public bodies where it can be evidenced that the body is the only supplier of the goods or service;
  - 1.12.6 The receipt by the Council of grant funding e.g. from central government; and
  - 1.12.7 The award of grants by the Council to third parties.
- 1.13 However, in relation to grants:
- 1.13.1 When procuring goods, works or services using grant funding received, officers must comply with the terms of any related grant agreement and, where relevant, with public procurement rules and these Contract Procedure Rules; and
  - 1.13.2 When awarding Council grants, officers should ensure that principles of openness, fairness, equal treatment and value for money apply.
  - 1.13.3 Please contact the Procurement Team and/or HB Public Law for advice if required.
- 1.14 **Section 75 Agreements** - Partnership arrangements between NHS bodies and the Council under section 75 of the National Health Services Act 2006 are not subject to these Contract Procedure Rules, however, please note that procurement activities undertaken under any such arrangements will be subject to these Contract Procedure Rules unless such procurement activities are with an NHS body or another contracting authority.

## 2. APPLICATION

- 2.1 The Contract Procedure Rules provide the governance structure within which the Council may procure Supplies, Services and Works. The aims of these Contract Procedure Rules are to ensure:
- 2.1.1 Commitment to the principles of transparency, fairness, proportionality and equal treatment within the procurement process;
  - 2.1.2 Value for Money and propriety in the spending of public money;
  - 2.1.3 Supplies, services and works are delivered effectively and efficiently without compromising the Council's ability to take strategic decisions;

- 2.1.4 The Council is not exposed to unnecessary risk or challenge arising from non-compliant procurement activity;
  - 2.1.5 Compliance with legislation, and relevant guidance including Procurement Policy Notes issued by the Crown Commercial Service; and
  - 2.1.6 The delivery of economic, environmental and social value through Procurement.
  - 2.2 Changes to the Council's financial thresholds set out in these Contract Procedure Rules which are below the UK Thresholds may, from time to time, be recommended by the Head of Commercial Services and Monitoring Officer.
  - 2.3 The Head of Commercial Services and the Monitoring Officer shall maintain and issue the Contract Procedure Rules and the Procurement and contract management guidance. The Contract Procedure Rules take precedence over the Procurement and contract management guidance. Please report any inconsistencies in writing to the Head of Commercial Services.
  - 2.4 The Procurement and contract management guidance provides a more detailed explanation of Procurement best practice, procedures, processes, associated Council policies and required Contract terms.
  - 2.5 Unrestricted and full direct online access free of charge to the procurement documents must be available from the date of the publication in the Find a Tender Service of a Contract Notice or the date on which an invitation to confirm interest is sent.
  - 2.6 Where there is inconsistency between these Contract Procedure Rules and the Financial Procedure Rules, the latter take precedence. Please report any inconsistencies in writing to the Monitoring Officer.
- 3. COMPLIANCE WITH CONFIDENTIALITY AND CONFLICTS OF INTEREST REQUIREMENTS**
- 3.1 All officers must take appropriate measures to protect confidentiality and effectively prevent, identify and remedy conflicts of interest arising in the conduct of Procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all suppliers. They should also comply with the Local Code of Conduct for Employees. If a conflict of interest is suspected or identified, such conflict should be immediately notified to the Monitoring Officer.
  - 3.2 Should an Officer identify any actual or potential breach of the requirements of the Local Code of Conduct for Employees in connection with the formulation, procurement or administration of a contract (whether in relation to that of their own role or that of any other Officer) the Officer shall immediately notify the Monitoring Officer in writing. The Monitoring Officer will investigate the matter and recommend what action should be taken in consequence in connection with the contract concerned.
  - 3.3 Where a Supplier or an undertaking related to a Supplier, has advised the Council, or has otherwise been involved in the preparation of the procurement process, the Council must take appropriate measures to ensure that competition is not distorted by the participation of that Supplier in the Procurement.



#### 4. ROLES AND RESPONSIBILITIES

Each Director and Group Manager is accountable for all Procurement activity in their respective departments. **Their role is to ensure:**

- 4.1 Compliance with the Constitution, Financial Procedure Rules, Contract Procedure Rules and the Procurement and contract management guidance;
- 4.2 Compliance with the Public Contract Regulations 2015 (the “PCR”);
- 4.3 Compliance with the Local Government Transparency Code October 2015 issued by the Department for Communities and Local Government;
- 4.4 That no commitment to enter into a Contract with a Supplier is made without the required Authorisation as set out in the Procurement Application and Authorisation Table in these Contract Procedure Rules;
- 4.5 That the 10 day Standstill Period between the Contract award decision and Contract signature/sealing is observed where required to do so. Please seek advice from the Procurement Team;
- 4.6 That the appropriate Council template contract has been used in the Procurement, or where such template contract is not applicable, that the alternative terms and conditions have been approved by HB Public Law. Input from Procurement must be sought for contracts over £25,000 to determine if legal advice is required from HB Public Law. (For the avoidance of doubt, the proper use of Framework Agreements is permitted under the Contract Procedure Rules in accordance with the Procurement Application and Authorisation Table.)
- 4.7 That no contract commences prior to the terms and conditions of contract being signed and, where necessary, sealed;
- 4.8 That all Contracts are awarded on the basis of the *Most Economically Advantageous Tender (MEAT)*. The MEAT shall be assessed from the Council’s point of view, namely that a tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as Life-Cycle Costing, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, such as qualitative, environmental and/or social aspects, linked to the subject-matter of the Contract;
- 4.9 All risks have been identified, evaluated, recorded and appropriately mitigated (e.g. provision of performance bond, parent company guarantee and appropriate payment provisions and termination clauses within Contracts);
- 4.10 That all Invitation to Tender documents clearly describe the Evaluation Criteria, sub criteria and weighting and that the tender evaluation is based strictly on the published criteria and weighting;
- 4.11 That Evaluation Criteria require the bidders to state how they will meet social value considerations which are clearly linked to the subject matter of the contract (i.e. employment, training, apprenticeships, use of SME’s and local Suppliers);
- 4.12 Immediate corrective action is taken in the event of a breach of the Contract Procedure Rules and that any such breach is reported immediately to the Procurement Team; and

- 4.13 That Contracts are not artificially underestimated or disaggregated into two or more separate Contracts where the intent is to avoid the application of the Contract Procedure Rules or Public Procurement Regulations.

## **5. AUTHORISATION**

- 5.1 Please refer to the Procurement Application and Authorisation Table contained within these Contract Procedure Rules.
- 5.2 For procurements with an anticipated value above £25,000, a detailed business case should be prepared and submitted for review to the board consisting of Procurement, Legal and Finance, before submission for approval in accordance with the Application and Authorisation table contains within these Contract Procedure Rules.
- 5.3 All transactions must fall within the powers delegated to the relevant officer and must have been approved by a decision (in accordance with the Council's Constitution) of the Executive, the Council or one of its committees or sub- committees.
- 5.4 No contract, agreement or other document shall be signed or sealed unless it gives effect to a decision or resolution (in accordance with the Council's Constitution) of the Cabinet, or one of its committees or sub committees or in accordance with the Scheme of Delegation.
- 5.5 Any Procurement must be authorised in accordance with the Application and Authorisation table within these Contract Procedure Rules and Scheme of Delegation as published within Part 3.6 of the Constitution.
- 5.6 A Member shall not, either orally or in writing, enter into any contract on behalf of the Council.
- 5.7 A member shall not negotiate personally on behalf of the Council for the purchase of goods or services or the sale of any land, property, plant rights, or commodities or for any lease or tenancy.
- 5.8 Where appropriate, an Equalities Impact Assessment should be completed. Please refer to the Procurement Team for guidance.
- 5.9 The Council is a Regulated Activity Provider. The Council has ultimate responsibility for the management and control of Regulated Activities provided under Contracts procured pursuant to these Contract Procedure Rules for the purposes of the Safeguarding Vulnerable Groups Act 2006. The Relevant Officer must consider whether there are any Safeguarding aspects to their procurement and, if so, consult with the Safeguarding Lead for input.
- 5.10 The Council is committed to the need to identify and prevent all forms of modern slavery in Slough. Modern slavery is the illegal exploitation of people for personal or commercial gain. Appendix 1 sets out the Council's commitment to supply chain management regarding modern slavery. Officers must give due regard to this statement when conducting procurement.
- 5.11 A partnership arrangement must not be used as a means of avoiding the Contract Procedure Rules or Public Procurement Regulations. All new partnership arrangements are required to be reported as required by the Financial Procedure Rules. This clause is not applicable to the award of grant payments.

## 6. PROCUREMENT METHOD

- 6.1 Authorised Officers must treat Suppliers equally and without discrimination and must act in a transparent and proportionate manner.
- 6.2 Before commencing a Procurement procedure Authorised Officers may conduct market consultations with a view to preparing the Procurement and informing Suppliers of their Procurement plans and requirements provided that it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency. Officers may, for example, seek or accept advice from independent experts or authorities or from market participants. Please consult with the Procurement Team before commencing market consultation.
- 6.3 The default position in acquiring Supplies, Services and Works should always be open competition through competitive tendering. Please refer to the Procurement Application and Authorisation Table set out within these Contract Procedure Rules to determine the Procurement process that should be used.
- 6.4 The Procurement Team must be consulted on promoting opportunities to local companies through Business Newsletters and Supplier Events.
- 6.5 All tender opportunities for Supplies, Services and Works over £25,000 will be advertised on the SE Shared Services E-portal system in accordance with the Procurement Application and Authorisation Table. In addition, all tender opportunities for Supplies, Services and Works over £25,000 must be advertised on Contracts Finder. Procurement over the UK financial threshold must be advertised in the Find a Tender Service (FTS) and on Contracts Finder. A Contract Award Notice must also be published on Contracts Finder. Please consult with the Procurement Team.
- 6.6 The use of Selection Questionnaires (“**SQs**”) can only be used for contract values above the UK financial Threshold. Suitability Assessment Questions may be asked as appropriate for contract values below the UK financial Threshold. Please contact the Procurement Team for the appropriate procurement document template.
- 6.7 The Procurement Team must approve accessing externally established Framework Agreements. Approval for subsequent call-offs from the approved Framework Agreements will be subject to the requirements of these Contract Procedure Rules and compliance with the rules for call-off set out in the Framework Agreement.
- 6.8 Procurement activity for Contracts for certain health, social, community, educational and cultural related services, “Light-Touch Regime Services”, whose value is equal to or over the threshold of £663,540 must be tendered and awarded in compliance with the PCR. Please seek input from the Procurement Team in connection with the procurement and award of Light-Touch Regime Services Contracts. For the avoidance of doubt, procurements for such Light-Touch Regime Services below the threshold of £663,540 must still be conducted in accordance with the principles of these Contract Procedure Rules. The Procurement Team must be contacted for guidance and support on such procurements.
- 6.9 Authorised Officers may decide to award a Contract in the form of separate lots and may determine the size and subject-matter of such lots. The Authorised Officer must document the main reasons for their decision not to subdivide into lots.

## **7. ENGAGEMENT OF CONSULTANTS**

- 7.1 An Authorised Officer may only appoint an external consultancy or advisory firm providing professional or consulting services if such services are not available within the Council or if Council officers providing them do not have the resources to meet the needs of the service.
- 7.2 Appointment of individual consultants and individual advisors must be procured through the Council's corporate contract for temporary agency resources where appropriate.
- 7.3 Subject to the corporate contract not meeting the service needs, and the resources not being available across the Council, the Authorised Officer shall seek to procure an external consultancy or advisory firm providing professional or consulting services. Such procurement shall comply with the appropriate threshold/process as set out in the Procurement Application and Authorisation Table contained within these Contract Procedure Rules.

## **8. SINGLE TENDER ACTION**

- 8.1 A Single Tender Action is the awarding of a Contract to a Supplier without undertaking a competitive tendering exercise. This is permitted only in exceptional circumstances. Procurement advice should be sought in all cases from the Procurement Team. Exceptional circumstances may include where the works, supplies or services can only be supplied by a particular Supplier.
- 8.2 Where a competition has been undertaken and only a single bid has been received, the award of a Contract subject to an appropriate review being undertaken and an audit trail being available for inspection, can be approved by an Authorised Officer and or Cabinet.

## **9. CONCESSION CONTRACTS**

- 9.1 Concession Contracts are contracts under which the Council outsources works or services to a Supplier, who then has the right to commercially exploit those works or services in order to recoup its investment and make a return. The key feature is that the Supplier bears the operating risk of the arrangement and so has no guarantee of recouping its investment or operating costs.
- 9.2 Concession Contracts must meet certain requirements and advice should be sought from the Procurement Team and HB Public Law.

## **10. INFORMATION GOVERNANCE**

- 10.1 When procuring, the responsible Officer must ensure Due Diligence checks are carried out to provide sufficient guarantees that the Supplier's technical and organisational security measures for handling and protecting information and data are appropriate, suitable and lawful. This is a requirement under Data Protection Legislation<sup>10</sup>.

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<sup>10</sup> Data Protection Legislation means (i) the Data Protection Act 2018; (ii) the GDPR, the Law Enforcement Directive and any applicable national implementing Laws as amended from time to time; and (iii) all applicable Law about the processing of Personal Data and privacy.

- 10.2 Evidence of these checks, copies of policies and guarantees provided by the Supplier must be retained by the Officer responsible for management of the Contract and be regularly reviewed throughout the life of the Contract. Please refer to the Procurement and contract management guidance for more detail or contact the Information Governance Officer.
- 10.3 Contract managers must ensure appropriate security measures are applied to prevent the unauthorised or unlawful processing of personal data or accidental loss or destruction of, or damage to, personal data.
- 10.4 Officers must ensure that contracts with providers that involve the processing of personal data contain clauses as required by the Data Protection Legislation. The Council's Standard Contracts contain these clauses.

## **11. ACCEPTANCE**

- 11.1 Acceptance of Contracts must be in accordance with the Constitution, and in all cases is subject to:
  - 11.1.1 Confirmation of budgetary provision as initially identified and allocated prior to any Procurement activity;
  - 11.1.2 A compliant Procurement process having been carried out; and
  - 11.1.3 Confirmation of the acceptable financial status of the contractor.
- 11.2 All contracts entered into by the Council must be in writing in a form approved by HB Public Law. Where a Council template contract is used, or such template contract is to be amended, this shall be prepared and/or ratified by HB Public Law.
- 11.3 Acceptance thresholds for Contract extensions and variations of all values are subject to further conditions as set out in Section 13 (Extensions and Variations) of these Contract Procedure Rules.

## **12. CONTRACT SIGNING AND SEALING**

- 12.1 Every Contract must be in the contract form specified in the Procurement Application and Authorisation Table set out within these Contract Procedure Rules.
- 12.2 Every contract novation, contract extension or contract variation must use the appropriate SBC template. Please refer to the Procurement Team for such templates and seek advice from HB Public Law.
- 12.3 Contracts with an Estimated Procurement Value greater than £100,000 must be sealed on behalf of the Council unless the Monitoring Officer or delegated officer directs otherwise. Legal input from HB Public Law should be sought on such Contracts.
- 12.4 In exceptional circumstances, where an IT Contract term is not fixed, the Estimated Procurement Value is calculated by multiplying the monthly spend value by 48 in accordance with Regulation 6 of the Public Contracts Regulations 2015. Please refer to the Procurement Team for advice on any such IT Contracts.

- 12.5 In the case of Framework Agreements or Dynamic Purchasing Systems the Estimated Procurement Value is calculated to include the total estimated value, net of VAT, of all the individual contracts envisaged for the total term of the Framework Agreement or the Dynamic Purchasing System.
- 12.6 Where the Monitoring Officer or delegated officer considers it desirable that a Contract should be sealed other than as specified above, then such Contract must be sealed.
- 12.7 All Contracts should have a clear start and end date and detail any extension options permissible.

### **13. EXTENSIONS AND VARIATIONS**

- 13.1 Contracts may only be extended if the following provisions are met:
  - 13.1.1 The original Contract was awarded on a Contract Procedure Rules compliant competitive tender or quotation process and includes an option to extend;
  - 13.1.2 The extension or variation is in accordance with the terms and conditions of the existing Contract. Input from the Procurement Team should be sought to confirm this is the case and to support the drafting of the extension and/or variation documents;
  - 13.1.3 If the initial Contract was subject to UK Threshold procurement procedures (or EU procedures prior to January 2020), that the extension option was declared within the Find a Tender Service Notice or OJEU Contract Notice if prior to January 2020;
  - 13.1.4 The Contract has not been extended beyond the approved extension period; and
  - 13.1.5 Approval has been sought and obtained as per the Application and Authorisation Table within these Contract Procedure Rules following submission of a Business Case detailing the Contract Extension requirements.
- 13.2 In the event that the provisions of 13.1.1 to 13.1.5 are not met then an Exemption must be sought in accordance with section 14 (Exemptions) or alternatively a new Procurement must commence.
- 13.3 Regulation 72 of the Public Contracts Regulations 2015 permits an amendment, extension or renewal of an existing Contract without triggering a new Procurement exercise in the following cases:
  - 13.3.1 The original Contract includes a “clear, precise and unequivocal review clause”. The overall nature of the Contract must not be altered as a result of the change;
  - 13.3.2 New Services, Supplies and Works need to be purchased from the Supplier and a change of Supplier cannot be realistically made for economic or technical reasons and would cause significant inconvenience or substantial duplication of the Council’s costs. This is subject to the provision that each change does not increase the Contract’s value by more than 50 per cent as a result;
  - 13.3.3 Circumstances have arisen that the Council could not reasonably have foreseen and that require an amendment to the existing Contract. The Contract’s overall nature must not be altered and the Contract’s value must not increase by more than 50 per cent as a result of any change;

- 13.3.4 A new Supplier is required to replace the Supplier originally party to the Contract, either because this is the result of corporate restructuring, including takeover, merger, acquisition or insolvency leading to a universal or partial succession of the original Supplier, or because this change was envisaged in a review clause in the original Contract. This provision cannot be relied on if the Supplier is being replaced for a different reason;
- 13.3.5 The value of the modification is both below the UK Procurement Thresholds and is less than 10 per cent of the initial Contract value (where the contract is for Supplies or Services) or less than 15 per cent of the initial Contract value, in the case of a Works Contract. More than one change can be made under this provision provided the cumulative value of the modifications does not exceed UK Procurement Thresholds.
- 13.3.6 The proposed modifications are insubstantial. This does not include any modifications that result in any of the following:
- i. The Contract would become materially different;
  - ii. The scope of the Contract would extend considerably;
  - iii. The outcome of the initial Procurement procedure would have been different had the modification been implemented at that time. For example, other tenders would have been accepted or other candidates would have been admitted;
  - iv. The economic balance would shift in favour of the Supplier; or
  - v. A new Supplier would replace the original Supplier in a circumstance not provided for in paragraph 13.3.4 above.
- 13.4 Officers must consult with the Procurement Team to confirm if any of the circumstances set out in section 13.3 above apply, permitting a Contract amendment, extension or renewal and must also comply with the Procurement Application and Authorisation Table.
- 13.5 A Contract Variation Notice needs to be sent to Find a Tender Service in the case of Contract variations permitted and made in accordance with paragraphs 13.3.2 and 13.3.3 above.
- 13.6 In the event that the provisions of paragraph 13.3 are not met then an exemption must be sought in accordance with section 14 (Exemptions) or alternatively a new Procurement must commence.

## **14. EXEMPTIONS**

- 14.1 Circumstances may arise where permission is required to waive one or more of the Contract Procedure Rules. Exemptions are reserved for exceptional circumstances and will only be approved where good and sufficient reason has been demonstrated. An Exemption will not be granted simply on the grounds of convenience or because of

inadequate forward planning.

- 14.2 The Council can only waive the rules established by the Council. The Council cannot waive UK law or UK Procurement Regulations.
- 14.3 Exemptions (in whole or in part) from the requirements set out in these Contract Procedure Rules may only be obtained by completing a Procurement Business Case.
- 14.4 The Business Case must be submitted to the Review Board for Procurement, Legal and Finance for initial consideration. If the Review Board is satisfied that the Exemption request meets the requirements of this section of the Contract Procedure Rules, the Business Case shall be submitted as per the Application and Authorisation table in these Contract Procedure Rules.
- 14.5 Exemption requests being sought due to an emergency (definition 14.10 c) below) may be approved outside of the Review Board. In such circumstances, a business case or report detailing the situation and proposed rectification must be submitted to the Executive Director Finance and Commercial for approval in consultation with the monitoring officer.
- 14.6 The Review Board must be satisfied that special circumstances exist which warrant an exemption being permitted. Such Exemption requests must set out in detail the terms of any exemption from the requirements set out in these Contract Procedure Rules.
- 14.7 Exemptions to any of the Council's rules must be sought in advance of any contractual agreement, order placement, use of Works, Services or purchase of Supplies.
- 14.8 Any Exemption can only be granted for a maximum period of 12 (twelve) months unless it can be demonstrated that any longer period is in the best interest of the Council.
- 14.9 Any Exemption can only be granted where the value of the exemption is below the relevant UK Threshold.
- 14.10 The circumstances under which an Exemption can be agreed are limited to the following circumstances:
  - a) **Sole Supplier:** It can be proven that there is only one Supplier who can deliver the Supplies or Services. (It is considered better practice to issue a tender to evidence that there is only one Supplier capable of delivering such Supplies or Services);
  - b) **Demonstrable Best Interest:** It can be demonstrated that it is in the Council's best interest and this is clearly demonstrated in the Exemption report. (For example, the Council is seeking to redesign service provision or exploring internal / external collaboration opportunities and therefore direct award to the incumbent provider is required for intervening period only);
  - c) **Emergency:** There is a clear need to provide a service or a product immediately in the instance of a sudden unforeseen crisis; the immediate risk is to health,



life, property or environment (for example, Natural Disaster; Civil Unrest; Provider going into administration);

- d) **Service Imperative: Demonstrable circumstance that is exceptional:** For example, an unanticipated delay during the tender process or Strategy and / or Spec and service design not completed when tender needed to begin for unforeseen reasons. For the avoidance of doubt, an Exemption will not be granted simply on the grounds of convenience or because of inadequate forward planning; and/or
  
- e) **Extension as an Exemption:** Where an extension to a Contract is being sought but it is not possible under the current terms and conditions of the Contract.

**For any queries not covered within these Contract Procedure Rules, please contact the Head of Commercial Services.**

## **Appendix 1 – Modern Slavery Statement Supply Chain Management**

This Statement sets the Council actions to understand all potential modern slavery risks related to its activities and to put in place steps to eliminate acts of modern slavery and human trafficking within its business and in its supply chains, sub-contractors and partners. As part of local government, the Council recognises its responsibilities to take a robust approach to slavery and human trafficking.

The Council's Commercial services team employ best practice to ensure that effective contract management is applied to suppliers and their supply chains to deliver the Council's requirements in the most cost-effective manner. This includes the identification and management of risks in relation to modern slavery and human trafficking and is done by:

- Increasing openness, transparency and efficiency in the management of supply chains
- Improving ability to identify strengths, weaknesses, opportunities and threats in supply chains
- Improving communications with suppliers
- Enhancing relationships with suppliers

Contract managers are responsible for ensuring that suppliers comply with the terms of each contract.

The Commercial services team is continuing to review how modern slavery can be better incorporated into the contract management process by:

- Facilitating refresher training for the Council Procurement team on implementing supply chain due diligence, followed by a wider programme of staff awareness raising to support Modern Slavery Act implementation;
- Continue to review standard tender questions that require bidders to evidence their compliance with the Modern Slavery Act, and support bidders who fail to evidence their compliance and are potentially excluded from participating further in the tender process;
- Continue to strengthen clauses within the Council's standard contract terms that specify the supplier's contractual obligations concerning Modern Slavery;
- Continue to work with suppliers to improve the transparency of end-to-end supply chains and to better understand higher risk spend categories; and

- Continue to work in partnership with a wide range of agencies to reduce the risk of human rights abuse, to detect and report occurrences and to support victims.
- To review relevant organisational policies and strategies to ensure that they underpin the objectives of the Council in supporting the victims of modern slavery and human trafficking.

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