



AGENDA

For a Special meeting of the
CONSTITUTION AND ACCOUNTS COMMITTEE

to be held on

WEDNESDAY, 20 SEPTEMBER 2006

at

10.30 AM

in

**COMMITTEE ROOM 1 (CHAIRMAN'S ROOM), COUNCIL OFFICES,
ST PETER'S HILL, GRANTHAM**

Duncan Kerr, Chief Executive

Panel Members:	Councillor John Hurst, Councillor Reg Lovelock M.B.E. (Vice-Chairman), Councillor Peter Martin-Mayhew, Councillor Mrs. Linda Neal (Chairman) and Councillor John Wilks
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Committee Support Officer:	Lucy Bonshor 01476 406120 l.bonshor@southkesteven.gov.uk
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Members of the Committee are invited to attend the above meeting to consider the items of business listed below.

1. MEMBERSHIP

The Chief Executive to notify the Committee of any substitute members.

2. APOLOGIES

3. DECLARATIONS OF INTEREST

Members are asked to declare any interests in matters for consideration at the meeting.

4. MINUTES OF MEETING HELD ON 29TH JUNE 2006

(Enclosure)

5. AUDIT REPORT ON CLOSURE OF ACCOUNTS 2005/2006

(To follow)

6. TREASURY MANAGEMENT ACTIVITY 2005/2006

(To follow)

7. CONTRACT PROCEDURE RULES

- Report AFM020
- Response to PWC report
- Amendments to Contract Procedure Rules following comments from Resources DSP
- Contract Procedure Rules

(Enclosure)

8. AMENDMENTS TO CONSTITUTION

Part 3 – Cabinet Portfolios report DLS83 from Member Services Manager.

(Enclosure)

9. ANY OTHER BUSINESS, WHICH THE CHAIRMAN, BY REASONS OF SPECIAL CIRCUMSTANCES, DECIDES IS URGENT

NOTE: Please be advised that a special meeting of the Constitution and Accounts Committee has been arranged for Thursday 28th September at 9.00am.



MINUTES

CONSTITUTION AND ACCOUNTS COMMITTEE

THURSDAY, 29 JUNE 2006

COMMITTEE MEMBERS PRESENT

Councillor John Hurst
Councillor Reg Lovelock M.B.E. (Vice-Chairman)

Councillor Peter Martin-Mayhew
Councillor Mrs. Linda Neal (Chairman)

OFFICERS

Corporate Head of Finance and Resources
Financial Services Manager
Principal Accountant
Monitoring Officer
Member Services Manager
Committee Support Officer

1 Member of the Press

10. MEMBERSHIP

None.

11. APOLOGIES

An apology for absence was received from Councillor Wilks.

12. DECLARATIONS OF INTEREST

None

13. MINUTES OF MEETING HELD ON 16TH MAY 2006

The minutes of the meeting held on 16th May 2006 were confirmed as a correct record of the decisions taken with the following amendment to Minute 7 (2) the penultimate paragraph last sentence to read "*The proposal was moved and seconded and was agreed.*"

14. CLOSURE OF ACCOUNTS 2005/2006

Decision

- (1) *That the Statement of Accounts for 2005/2006 is approved.*
- (2) *To note the accounting policy of maintaining a General Fund working balance of between 4% - 5% of gross turnover or between 10% - 15% of net expenditure has been adopted.*
- (3) *That the movements in reserves as summarised at Appendix E to*

report CHFR10 are approved.

- (4) ***To note that the Direct Works Organisation (DWO) will be charged directly to the HRA in the future as the DWO is now fully integrated within Tenancy Services and does not undertake General Fund activities.***
- (5) ***That a provisional date of 20th September 2006 be arranged for a meeting of the Constitution and Accounts Committee to discuss any matters arising from the audit of the accounts.***

The Corporate Head of Finance and Resources began by thanking the accountancy team for all their hard work in getting the accounts finished on time especially with the difficulty in staffing resources that the team were currently experiencing. She then informed the committee that the auditors had requested that a provisional date be made for a meeting of the Constitution and Accounts Committee for the week beginning 18th September to discuss any matters arising from the accounts and this was an additional recommendation to those listed in the report.

As members were aware the new Audit Regulations had introduced a new timetable, which meant that the accounts needed to be approved by the Committee by 30th June. The Committee had delegated responsibility to approve the accounts and subject to the considerations contained within the report a draft copy would be published subject to the audit. The auditors would be auditing the Statement of Accounts the week commencing 10th July and would be in the offices for approximately three weeks.

The Corporate Head of Finance and Resources then went through the key aspects of the accounts.

The General Fund Revenue Account – This account grouped together the annual income and expenditure of all the functions of the Council and demonstrated how the net expenditure had been financed from government grants and income from the council taxpayer. There had been a minor overspend of £79,000 by the Development and Scrutiny Panels (DSP's) compared with the original budget.

The General Fund itemised the costs of all services undertaken during the year with the exception of the Housing Revenue Account (HRA) which was ringfenced. She draw Members attention to some significant variances concerning the Resources DSP and the Community DSP. She reminded members of the realignment of functions of the DSP's in the late spring of last year, which made comparisons difficult.

The Resources DSP had a net underspend of £570K reasons for this were:

- Overall savings on council tax collections and benefits administration (£396K)
 - prior year and transitional Benefit Subsidy adjustments to provide additional subsidy of £147K.

- overpaid benefits received greater than budget of £110K.
- Pension costs for backfunding and additional years were now accounted for at service level although it was now necessary to report an outturn of £122K as part of the Finance Reporting Standard (FRS) 17 reporting requirements.

The Community DSP was overspent by £552K compared to the original statement and this was largely due to:

- A supplementary estimate being approved by members in May for the Housing Improvement Programme (HIP) in response to the inspection of the Strategic Housing Services.
- A redistribution of costs to the General Fund to reflect the separation of Tenancy Services and Housing Solutions.

She then referred to the one million pounds that had been reserved for the ballot on LSVT and abortive costs. To date £198K had been charged to this account which if a yes ballot was received would be reimbursed by the capital receipts gained. If a no ballot was received these costs would be charged to the reserve.

HRA – This account had a working balance of six million pounds and the balance was broadly in line with budget levels. There was however differences with regard to the expenditure items particularly with the repairs and maintenance which was overspent by £175K compared to the original budget. Supervision and management both special and general was underspent by £618K. One of the reasons for this was the restructure of Tenancy Services and a realignment of support costs. The bottom line was that no more money had been spent. In addition the Council had benefited from a lower subsidy pooling contribution of £311K. It had been necessary to transfer £511K to the General Fund in accordance with the ODPM guidance on the lowering of Rate Rebates.

The Corporate Head of Finance and Resources then spoke about the Direct Works Organisation (DWO) and the council's practice of having a separate trading account, which was a practice, continued from the Compulsory Competitive Tendering (CCT) era. In 2005/2006 the DWO had a trading deficit of £161,000. In 2004/05 the DWO reserve was transferred to the general working balance therefore the loss had been charged to the General Fund working balance. As the restructure of Housing and associated services was now complete she was recommending that the DWO was charged directly to the HRA in future as the DWO were now fully integrated and managed within Tenancy Services and did not undertake General Fund activities. The work of the DWO would be kept under review by management services.

Capital Expenditure – A member stated that this should be changed to Capital Investment for the future and could this be arranged to which the Corporate Head of Finance and Resources said it could. She then referred to appendix d to the report which itemised the capital programme for 2005/2006. In 2005/2006 expenditure incurred for capital purposes was £6.834M of this

£4.356M related to the HRA capital. This compared with an original estimate of £7.676M and a projected outturn of £4.752M. GF capital expenditure was £2.478M and this compared with an original estimate of £3.2M and a projected outturn of £2.125M. Steps had been taken to address the underperformance of the General Fund Capital Programme by creating a dedicated Asset and Facilities Management Unit which was progressing schemes such as the Customer Service Centre, Abbey Gardens Public Conveniences and Welham Street car park. The Council would need to address the capital spend within the Housing Reserve Account as the programme had slipped and work was being done by the Director of Tenancy Services to maximise the major repairs allowance and a report would be submitted to Cabinet shortly.

The Corporate Head of Finance and Resources then discussed the balances and reserves on the different accounts. She was recommending that an accounting policy with regard to the General Fund be adopted that the working balance on the General Fund be maintained at between 4% - 5% of the gross turnover or between 10% - 15% of net expenditure. A member asked where the formulae had originated and the Corporate Head of Finance and Resources replied that it was best practice used by authorities elsewhere within the country.

Capital Reserves

General Fund Capital Reserves - £5.057m, a further contribution of £400,000 has been made to this reserve to help with a comprehensive capital programme beyond 2007/08.

Major Repairs Reserve – driven by the HRA currently £9.124m for financing improvements to council houses and making decent homes standard by 2010.

Specific Revenue Reserves

Insurance Fund £500,000 – The Council carried a high level of self-insurance to reduce the external premiums from our insurers. The level of reserves had been reduced by £435,000 based on a review of the likely future requirements upon this reserve.

Building Control £412,000 – This reserve was used to finance improvements to the Building Control service in accordance with The Building (Local Authority Charges) Regulations 1998. Annual surpluses were aside to this reserve and would be used to finance service improvements and offset any future deficits.

Capacity Building, Priority Setting and Service Improvements £1.810m – buoyant reserve set up to help with stepped improvements required in the new priorities and to enable organisational capacity building. Future commitments against this reserve for 2006/07 had been identified and a further £510,000 contribution had been made at the closedown of the financial year 2005/06.

Stock Option Ballot Reserve £802,000 – to date this reserve had been used to

finance £198,000 expenditure.

Pension Reserves (former employees) £307,000 – this reserve reflected matching from the reserve of added year payments in respect of former employees and would naturally reduce over time.

Pension Reserves (current employees) £2.116m – this reflected the known deficit of contributions on the SKDC share of the Lincolnshire pension fund. A sum of £500,000 was paid into the pension fund on 31 March 2006 for additional anticipated rises.

All Members of the Committee thanked the Corporate Head of Finance and Resources for all the hard work that had been carried out by both herself and her team to get the accounts out on time and they wished their thanks to be extended to those members of the team who were not at the meeting. Although Councillor Hurst supported the recommendations he wished to place on record that he disagreed with the policies underpinning the accounts.

The recommendations as outlined within the report including the provisional date for a meeting in September 2006 were moved, seconded and agreed.

A question was asked about ways of reducing the workload at this time of the year and would quarterly or half yearly reporting “closures” help. The Corporate Head of Finance and Resources said that currently a restructure of the accounting service was being undertaken and this was something that the team had been discussing and although some work could only be completed at close down, work was being undertaken to help relieve the pressure at this time of year with a number of vacancies being advertised in the near future.

15. ANY OTHER BUSINESS, WHICH THE CHAIRMAN, BY REASONS OF SPECIAL CIRCUMSTANCES, DECIDES IS URGENT

None.

16. CLOSE OF MEETING

The meeting closed at 6.15pm.

REPORT TO CONSTITUTION & ACCOUNTS COMMITTEE

REPORT OF: PAUL STOKES- ASSETS & FACILITIES MANAGER

REPORT NO.: AFM020

DATE: 8 SEPTEMBER 2006

TITLE:	CONTRACT PROCEDURE RULES
FORWARD PLAN ITEM:	NO
DATE WHEN FIRST APPEARED IN FORWARD PLAN:	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	N/A

COUNCIL AIMS/PORTFOLIO HOLDER NAME AND DESIGNATION:	COUNCILLOR TERL BRYANT- PORTFOLIO HOLDER FOR RESOURCES & ASSETS	
CORPORATE PRIORITY:	USE OF RESOURCES	
CRIME AND DISORDER IMPLICATIONS:	NONE	
FREEDOM OF INFORMATION ACT IMPLICATIONS:	YES	
INITIAL EQUALITY IMPACT ASSESSMENT	Carried out and appended to report? IN PROGRESS	Full impact assessment required?
BACKGROUND PAPERS:	Attached documents detailing responses following DSP and Internal Audit recommendations.	

1. INTRODUCTION

The Council's current Contract Procedure Rules have been reviewed to incorporate new EU legislation that came into force on 31 January 2006, South Kesteven District Councils' e procurement strategy and the management restructure.

2. RECOMMENDATIONS

It is recommended that:

- a) the action notes from the Resources DSP and recommendations from the Contract and Tendering Report conducted by Price Waterhouse Coopers (Internal Audit) be accepted.
- b) subject to a) above the attached revised Contract Procedure Rules be adopted and incorporated within the Council's Constitution.

3. DETAILS OF REPORT

The revised Contract Procedure Rules have been written to ensure that all procurement practices are carried out throughout the authority in an open, transparent manner in accordance with all current legislation.

Various sources have been consulted during this process. Following compilation of the document, it was submitted to the Centre of Excellence, an independant Supplier, the Welland Procurement Project Board , the Portfolio Holder for Resources and Assets and the Service Managers within South Kesteven District Council for comment.

The document was subsequently updated and passed to DSP for Resources. Following the recommendations of the panel, the final draft was reviewed by Price Waterhouse Coopers.

The Contract Procedure Rules have now incorporated all recommendations where necessary , please refer to the attachments for details that have been addressed.

4. COMMENTS OF SECTION 151 OFFICER

The Contract Procedure Rules form part of the Council's Constitution. The Contract Procedure Rules together with the Council's Financial Regulations govern the Council's procurement process and the awarding of contracts.

5. COMMENTS OF MONITORING OFFICER

I have been consulted on the revised contract procedure rules and am satisfied they comply with current legislation on procurement procedures relating to local authorities.

6. COMMENTS OF OTHER RELEVANT SERVICE MANAGER

None.

7. CONCLUSION/SUMMARY

The revised Contract Procedure Rules will enable authorised officers to carry out contract & tendering activities in compliance with all relevant government legislation and South Kesteven District Council's own Financial Regulations.

8. CONTACT OFFICER

Contact Officer: Julie Cant- Procurement Officer

08/09/2006

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Government and Public Sector Internal Audit Services
PwC August 2006

South Kesteven District Council Internal Audit Report 2006-07 Contracting and Tendering

Report No. SKDC_0607_05 - Draft Report

Assurance rating this review	No assurance
Assurance rating previous review	NA

Distribution List
Julie Cant
Richard Wyles

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Timetable

Action	Planned date	Actual date
Agreement of terms of reference	NA	June 06
Fieldwork start	NA	June 06
Fieldwork complete	NA	July 06
Draft report to client	NA	August 06
Response by client	8 September 06	
Final report		

Findings and recommendations

Specific Risk	Control weakness found	Risk rating	Recommendations	Management response
1. Control Design – Tender Evaluation Criteria				
If tenders are not evaluated by means of an appropriate methodology there is the increased risk that unsuccessful suppliers will view this as unfair competition.	Of the ten contracts reviewed eight stated within the specification that the lowest quote would be accepted. Of the remaining two contracts the weightings and criteria for assessment varied significantly between a price/quality weighting of 50:50 to 70:30. In addition, the evaluation summaries did not include formulas and thus could not be followed without detailed instructions. This raises the issue of transparency in relation to others reviewing how contracts have been awarded.	 Medium	The new procedures state that the weightings and criteria for assessment are the responsibility of the department awarding the contract. This is considered reasonable as the departments will be most aware of the importance and relevance of the individual criteria. However, we recommend that some standardisation is introduced by ensuring all tender assessments are signed off by Finance.	The Contract procedure Rules (CPR) have been amended to include the requirement “ all tender assessments must be signed off by the Finance manager or a nominated officer prior to notification of contract award”

Specific Risk	Control weakness found	Risk rating	Recommendations	Management response
2. Control Design – Cabinet Non Key Decision Reports				
Where Cabinet members are being asked to make decisions relating to the awarding of contracts all the information required to make this decision should be included on the Non Key Decision Report.	<p>As detailed further within recommendation 3 an instance was identified outside our testing sample where the contracting and tendering procedures of the Council were not adhered to. Approval to award this contract was given by a cabinet member by way of a Non Key Decision Report.</p> <p>This report was obtained during the audit and did not include all factors pertinent to the awarding of the contract and thus the decision required of the cabinet member.</p>	 Medium	<p>It should be ensured that all relevant information is included on Non Key Decision Reports being submitted to Cabinet.</p>	<p>The CPR has been amended to include "a tendered contract may only be awarded by an officer so authorised following submission of the contract decision, with all the information used to make that decision to Cabinet by way of a Non-Key decision Report"</p>

Specific Risk	Control weakness found	Risk rating	Recommendations	Management response
3. Operating Effectiveness – Formal Tender Process				
<p>If the formal tender process and contract procedure rules are not followed the risk of not achieving value for money is increased. In addition, for contracts above EU thresholds the Council could find themselves in non compliance of EU procurement rules.</p>	<p>Under the current control procedures if the contract exceeds £10,000 the formal tendering process should be followed. Out of a sample of 10 contracts there was 1 occasion where the contract was managed by an external architect. The architect initially did not follow the council's tendering procedures, the contract received a cabinet non key decision report prior to it being noted that the contract had not followed the tender procedures. The contract was then tendered following the correct procedures.</p> <p>In addition, a further issue was noted with a contract that was not part of our testing sample. Under the proposed control procedures all contracts exceeding £50,000 should go through a formal tendering process. If these contracts exceed the EU threshold £144,371 further consultation is required before the contract is awarded.</p> <p>The Council procedures had not been followed for this contract. Approval to award the contract had been given by way of a cabinet non key decision report.</p>	 High	<p>When applicable the formal tender process and contract procedure rules should always be followed.</p> <p>The Council should ensure all relevant staff, including those external to the authority, have been trained in the contracting and tendering procedures.</p> <p>Where the Council become aware that a contract has been awarded outside of their procedural guidance this should be appropriately followed up to ensure any risk of legal challenge is mitigated.</p>	<p>A list will be compiled of all officers, internal and external, authorised to award contracts. All designated officers will receive training & support in the procurement process. The procurement code of practice will provide best practice processes for the officers to utilise during the contract and tendering process. Legal services will be consulted should any contracts be awarded out of the scope of the CPR.</p>

Specific Risk	Control weakness found	Risk rating	Recommendations	Management response
4. Operating Effectiveness – Supplier Standing List				
<p>If suppliers are invited to tender for contracts over their allocated banding the risk of not achieving value for money is increased. There is also increased risk of the process not appearing transparent to external bodies.</p>	<p>When contractors are added to the approved list they are assigned a minimum and maximum value banding which limits the value of contracts they can tender for. To change the banding the contractor would have to be reassessed. Out of a sample 10 tenders 7 were via the standing list. There were 2 occasions where contractors were invited to tender for contracts over their maximum banding.</p>	 Medium	<p>If suppliers are to be assigned a minimum and maximum value banding to limit the value of contracts they can tender for this should always be observed and followed.</p>	<p>The CPR have been amended to include "All potential tenderers must be selected from the standing list within the scope of their minimum & maximum banding limits"</p>

Specific Risk	Control weakness found	Risk rating	Recommendations	Management response
5. Operating Effectiveness – Terms and Conditions				
If the standard terms and conditions are not stipulated those party to the contract may not be aware of the terms and conditions that apply.	Out of a sample of 10 tenders 2 of the tender documents/specifications did not stipulate the standard terms and conditions that applied to the contract.	 Medium	The standard terms and conditions which apply to the contract should be stipulated in the tender specification.	Section 3.3.7 of the CPR requires that the terms & Conditions must be stipulated in the tender documents

Specific Risk	Control weakness found	Risk rating	Recommendations	Management response
6. Operating Effectiveness – Number of suppliers invited to tender				
If 5 suppliers are not invited to tender the risk that the council may be accused of acting unfairly in connection with the tendering process is increased and the revised contract procedure rules will not be followed.	Out of a sample of 10 tenders there were 5 occasions where less than 5 contractors had been invited to tender. The revised procedure rules detail that at least 5 contractors should be invited to tender.	 Medium	At least 5 suppliers should be invited to tender in order to ensure value for money is achieved.	It is a requirement of the revised CPR to invite at least 5 suppliers to tender and to keep a record of all information on the tender file

Specific Risk	Control weakness found	Risk rating	Recommendations	Management response
7. Operating Effectiveness – Pre-Determined Selection Criteria				
If the tender documents do not detail the selection criteria and weightings the risk that the council may be accused of acting unfairly in connection with the tendering process is increased.	There was 1 instance from 10 where the tender documents did not state the criteria for selection or the weightings of the criteria. There was 1 further instance where the criteria had been included but the weightings had not.	 Medium	Consideration should be given to ensuring that all tender documents include selection criteria and the weighting of the criteria if applicable.	Section 3.3.4 states that the tenders must be assessed using pre determined non discriminatory evaluation criteria and weightings.

8. Operating Effectiveness – Awarding of Contracts

<p>if contracts are not awarded in line with the criteria detailed within the tender specification there is an increased risk that the unsuccessful suppliers will view this as unfair competition.</p> <p>This could impact negatively on the Council's reputation or even result in legal action.</p>	<p>For 1 contract from 10 tested the tender criteria was set in line with the "Code of Procedure for Single Stage Selective Tendering, 1989" which is published by the NJCC. This states that the lowest tender should be awarded the contract. However, the lowest tender was not awarded the contract. Instead negotiations were held with the supplier with the second lowest tender. As a result of these negotiations a partnership arrangement was forged to perform the required work.</p> <p>It is of note that the standard terms and conditions included within the tender specification do state that the Council do not bind themselves to accept the lowest tender.</p>	 Medium	<p>Contracts should be awarded in line with the criteria detailed within the tender specification. Where partnership arrangements are a potential option this should be included in the tender specification.</p>	<p>Refer to response and section 7. Section 3.9.1 states that tenders must be assessed with pre determined evaluation criteria and weightings. This is supported by the code of practice guidance documents on tender evaluation.</p>
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Specific Risk	Control weakness found	Risk rating	Recommendations	Management response
9. Operating Effectiveness – Tender Selection Reasoning				
If the process and reasoning of selecting tenderers is not documented the risk that the council may be accused of acting unfairly in connection with the tendering process is increased.	The process of selecting which contractors to invite to tender from the approved listing has not been documented on file. There is no evidence of the process and the reasoning behind the selection even if it was simply random.	 Low	When selecting contractors from the approved listing the process and reasoning for selection should be documented and retained on file.	Refer to section 3.1.5 of the CPR." The selection of potential tenderers from the standing list must be made using pre determined objective selection criteria that must be documented"
10. Operating Effectiveness – Tender File Documentation				
If a tender file is not maintained to record all matters associated with the tender the risk of not appearing transparent is increased and an audit trail is not produced.	The revised contracting procedure rules detail that a tender file must be maintained to record all matters associated with the tender. Out of the sample of 10 tenders 2 did not have copies of the tender specification retained on file and so did not have a full audit trail.	 Low	In order to comply with the revised contract procedure rules a complete tender file must be maintained to record all matters associated with the tender, this would include retaining a copy of the specification.	Refer to 3.3.6 of the CPR. " a tender file must be maintained to record all matters associated with the tender". The implementation of the electronic tendering solution will also provide a database of all information related to each tender.

Contract Procedure Rules

It is recommended that the Contract Procedure Rules enclosed replace the Council's Standing Orders within the Constitution, subject to the consideration by the Constitution and Accounts Committee of the actions following the points raised by the DSP for Resources.

The comments have been noted below and the actions are detailed for reference.

- Any references to the ODPM needed updating in light of the government's recent cabinet reshuffle.

This has been checked and there are no references that conflict with the most recent cabinet reshuffle

- Section 1.6.1. second bullet - what about members that are appointed to management committees?

This would include any members that have been appointed to a management committee in relation to Council activities as stated in the Procedure Rules.

- Section 1.6.2. - there is nothing about portfolio holder consultation.

This has been amended to include: 'the Corporate Head will liaise with the relevant Officer or his/her representative to ensure that an appropriate Steering group is convened, which may include the relevant Portfolio Holder.'

- Section 2.6.6. - the word "may" should be "will". This might be better to be referred to the Portfolio Holder who at his discretion refers to Cabinet.

This has been amended to include: 'will refer to the Portfolio Holder who at his discretion, may refer to full Cabinet.'

- Section 3.1.3. - who does the scrutiny on this?

This has been amended to the text below.

'The list must be maintained continually and reviewed at intervals of no longer than 6 months by the service manager and a copy of the updated list be sent to the PO'

- Section 3.2.3. (f) - This is not tight enough. There should be some safeguards here. (e) - who decides what "extreme urgency" means?

The authority of the 151 officer must be gained. The text has been amended as follows: 'This proviso is subject to the additional work not exceeding 50% of the original contract and the authority of S151 officer being sought '

- Section 3.5.5. - "Council Member" should be "Cabinet member".

The text has been amended accordingly.

- Section 3.6.1. - who controls and who accepts? Procurement officer/S.151 officer?

Text has been added as follows 'Authority to accept bids from electronic auction will be the S151 Officer or an officer so authorised by the S151 Officer.'

- Section 3.8.1. - "before the award or evaluation" to be added .

This text has been added

- Section 3.9.3 - who does the risk assessment?

The following has been added: 'The risk assessment will be carried out in accordance with the Council's adopted template and consultation with The S151 and Monitoring Officers.'

- Section 3.11.4 - "subject to call-in" should be made clear in any notification to a successful tenderer.

The text has been modified to include at the end of the statement : ' It is most important therefore that the notification of award decision is neither a contract award nor a conditional award which may need to be discarded in the event of a challenge within the standstill period and the successful tenderer will be notified of this.'

- Section 3.11.5. - reference to "Scrutiny Committee" should be "Resources DSP".

The text has been modified accordingly.

- Section 4.6.1. - How is a member to know this? What if it does not come to your knowledge?

Comments:

The section begins with 'If', so therefore it is the responsibility of a member to report any interest that they are aware of as soon as this is known. If a member is unaware of an interest that they may have, they will not be able to report it.

South Kesteven District Council

CONTRACT PROCEDURE RULES

Issue Date: 20 September 2006

Glossary of Defined Terms

“Approved Contract”	A Contract that has been created in accordance with the Contract Procedure Rules for call off or use by the Council.
“Call off contract”	Contract that covers a list of defined products or services where the price structure is defined.
“Central Purchasing Body”	<p>a contracting authority which—</p> <ul style="list-style-type: none"> (a) acquires goods or services intended for one or more contracting authorities; (b) awards public contracts intended for one or more contracting authorities; or (c) concludes framework agreements for work, goods or services intended for one or more contracting authorities;
“Officer”	The officers defined as such in the Constitution.
“Code of Conduct”	The code regulating conduct of Officers and Members contained within the Council’s Constitution.
“Councils Procurement Strategy”	Defines the overall approach to procurement related activity for the Council
“Buyer Profile”	An internet accessible database of proposed, current and concluded contracts with a value of over £50,000.
“Engagement of Consultants”	Any use of professional help in supporting deliverables.
“EU Notice”	Notice posted in the Official Journal of the European Union (OJEU). Includes a Prior Information Notice, a Tender Notice or an Award Notice.
“EU Threshold”	The threshold at which the current EU public procurement directives must be applied if expected to be exceeded by the <i>Total Value</i> .
“Financial Health Check”	A financial risk assessment of the finances of company, parent or group of organisations in order to establish their liquidity, profitability, stability and capability to support a contract of the value required.
“Financial Regulations”	The Financial Regulations as approved by the full Council.
“Framework Agreement”	A contract where the overall terms and conditions are agreed but the cost of each call off varies dependent upon the requirement.
“Goods, Services or Works”	Goods, services or <i>works</i> which are covered by EU Procurement Regulations if they meet the relevant value threshold
“Industry Standard Terms”	Specific terms or conditions which are relevant only to the goods or service being purchased, or the industry sector or market within which the contract will operate.

"Invitation to Tender" (ITT)	Invitation to tender documents in the form required by Contract Procedure rules.
"Parent Company Guarantee"	A contract which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, they can require the parent company to do so instead.
"Performance Bond"	An insurance policy: if the contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the Bond (often 10% of the contract value). A Bond is intended to protect the Council against a level of cost arising from the contractor's failure.
"Pre-determined objective selection criteria"	The factors that will be assessed as part of the selection for tender short listing or final evaluation. These are normally backed up by a scoring mechanism and guidelines to enable an objective assessment.
"Purchasing Cards"	A Purchasing Card is designed for the purchase of low value goods and services.
"Tenderers"	Organisations who have been invited to submit a tender to the authority.
"Total Value"	<p>The whole of the value or estimated value (in money or equivalent value) for a group of similar commodities or services :</p> <ul style="list-style-type: none"> • whether or not it comprises several lots or stages across the Council as a whole • whether or not it is to be paid or received by the Council . <p>The <i>Total Value</i> shall be calculated as follows:</p> <ol style="list-style-type: none"> (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period; (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months; (c) where the contract is for an uncertain duration by multiplying the monthly payment by 48; (d) for feasibility studies: the value of the scheme or contracts which may be awarded as a result; (e) for nominated suppliers and sub-contractors: the <i>Total Value</i> shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor. (f) where an in house service provider is involved, by taking into account redundancy and similar/associated costs. (g) To include all full overheads.
"Works Contracts"	Contracts let by public authorities for civil engineering and building works and works concession contracts.
"Written Quotation"	Must be in letter, fax or email and must be addressed personally, contain pricing information and delivery details Printouts of catalogues are not acceptable as written quotations

Contract Procedure Rules

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RULE 1 – INTRODUCTION AND PURPOSE

1.1 Primary Objectives

The Contract Procedure Rules set out the regulations which must be followed by the Council when it procures *goods, services and works*.

The rules have 4 primary objectives:

- (a) To ensure that the Council obtains value for money and fulfils the duty of achieving best value as defined in Section 3 of the Local Government Act 2003.
- (b) To ensure that the Council complies with English law and European law in force in England that governs the procurement of goods, services and works.
- (c) To establish tendering procedures which when followed should protect members and officers of the Council from any allegation of acting unfairly or unlawfully which may be made in connection with any procurement by the Council of goods, services, or works.
- (d) To ensure that any risks associated with entering into the contract are assessed as part of the procurement process.

1.2 Scope of Contract Procedure Rules

1.2.1. These rules apply to all procurement by the Council unless any such procurement is expressly excepted under these Rules, or subject to an exemption.

3.9.2. The rules apply to all procurement activity including:

- (a) *Spot/Defined Contracts* that are for a defined requirement for a firm price.
- (b) *Call off contracts* that cover a list of defined services where the price structure is defined.
- (c) *Framework Agreements* where just the overall terms are agreed but the cost of each call off will vary dependent upon the requirement.
- (d) *Works Contracts* where contracts are let by public authorities for civil engineering and building works and works concession contracts
- (e) *The engagement of Consultants* to support The Council in its deliverables

- (f) *Electronic procurement methods* that are used for the acquisition of goods and services.

3.9.3. If there is any change to English law or European law in force in England which affects these rules then that change must be observed until these rules can be revised. If these rules conflict in any way with English law or European law in force in England then that legislation takes precedence.

3.9.4. The officers authorised to award contracts on behalf of the Council will have delegated powers issued by their *Chief Executive*.

1.2.5. A list of those officers authorised to award contracts over specified values in accordance with rule 3.11. and The Constitution will be set up and maintained in conjunction with the Chief Finance Officer and the Procurement Officer (PO).

1.3 Exemptions and Exceptions

- 1.3.1. Unless a Contract falls within the list of general exceptions set out in Appendix A it can only be exempted from these Rules ('an Exemption') in accordance with these Rules.
- 1.3.2. An 'Exemption Request Form' can be found at Appendix B and when an Exemption is sought this must be submitted to Legal Services.
- 1.3.3. Legal Services will ensure that a decision on a request for an Exemption is made within 5 working days of receipt of the relevant Form.
- 1.3.4. Requests for Exemptions will either be approved or rejected by the authorised legal officer or referred to the appropriate Cabinet Member for determination.
- 1.3.5. If the Exemption is approved, the application form will be endorsed and returned to the relevant department with a copy retained by Legal Services.

1.4 Officer Responsibilities

- 1.4.1. The officer responsible for purchasing ("the Officer") must comply with these Rules, the *Financial Regulations* and all UK and European Legislation in force in England.
- 1.4.2. The Officer responsible for the contract must comply with the Council *Code of Conduct* and must not invite or accept any gift or reward in respect of the award or performance of any contract.

- 1.4.3. The Officer must have regard to current guidance provided by the Procurement Officer and the principles of the *Council's Procurement Strategy*.
- 1.4.4. The Officer must establish if an existing *Approved Contract* exists before seeking to let another contract. This contract must be used unless there is an overriding reason why not, that must be approved by the Procurement Officer.
- 1.4.5. The Officer must consult with the Procurement Officer prior to commencing any tendering activity where the contract value is anticipated to be greater than the *EU Threshold*.
- 1.4.6. The Officer must also ensure that agents acting on their behalf also comply.
- 1.4.7. The Officer must ensure that when any employee may be affected by any transfer arrangement, the issues are considered including Transfer of Undertaking Protection of Employment (TUPE) and that advice is obtained from Human Resources and Legal Services before proceeding with inviting tenders or quotations.

1.5 Consultants

- 1.5.1. An authorised officer may only appoint external consultants or advisors 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. Where such services are available in-house, the authorised officer must consult with the Service Manager or Corporate Head before taking any decision to make an external appointment.
- 1.5.2. The appointment of external consultants and advisors shall be undertaken in accordance with the relevant sections of the Procurement Code of Practice.
- 1.5.3. External consultants and technical officers engaged to supervise contracts must follow these Rules as applicable and their contracts for services must state this requirement.
- 1.5.4. All contracts for external consultants and advisors shall explicitly require that the consultants or advisors provide without delay any or all documents and records maintained by them relating to the services provided on request of the authorised officer, and lodge all such documents and records with the appropriate officer at the end of the contract.

- 1.5.5. The authorised officer shall ensure that any consultant working for the Council has appropriate indemnity insurance.
- 1.5.6. In order to monitor the Council's use of consultants, all officers who engage consultants should produce a summary of the consultant's brief, costs and an evaluation of outcomes following project completion.

1.6 Partnership arrangements

- 1.6.1 These Rules apply to any proposal for the Council to become involved in a joint venture or partnership, including the monitoring of any such arrangement.
 - In relation to the Rules, a joint venture or partnership includes any arrangement involving one or more organisations in addition to the Council through which either a specific project or services within any of the functions of the Council are to be provided, and
 - Provides a role for the Council or any of its members or officers in whatever structure is used to deliver the project or services involved (such structures may include, but are not limited to, companies, trusts and management committees).
- 1.6.2 Before any consideration is given to the Council entering into a joint venture with the private sector or a strategic service delivery partnership with any external organisation, the Officer concerned must submit information detailing the proposed joint venture or partnership to the Corporate Head. The Corporate Head will give consideration to the proposed joint venture in accordance with these Rules. On receipt of the detailed information above, the Corporate Head will liaise with relevant Officer or his/her representative to ensure that an appropriate Steering group is convened.
- 1.6.3 Procurement processes for strategic partnerships must include, where relevant:
 - The issue of an information memorandum to prospective bidders setting out the background to the project, the Council's objectives and an outline of the procurement process and timetable including stating any fixed terms, with roles and responsibilities made clear.
 - An invitation to bidders to demonstrate their track record in achieving value for money through effective use of their supply chain, including the use of small firms; this should continue to be examined as part of contract management.
 - The inclusion in invitations to tender (or negotiate) for partnerships a requirement on bidders to submit optional, priced proposals for the delivery of specified community benefits which are relevant to the contract and add value to the community strategy.
- 1.6.4. Where The Council is procuring through a nominated delegated authority, there is no requirement to seek alternative quotes and tenders. The procurement process will be carried out in accordance with the Contract Procedure Rules for that lead authority

RULE 2 – PROCEDURE BY VALUE OF REQUIREMENT

2.1 General Principles

- 2.1.1. Obtaining value for money is an underlying principle, although the complexity of the procurement procedures that must be followed will vary according to the value and risk.
- 2.1.2. The value of the procurement is defined as the total anticipated contract/purchase value and this will be determined by either:
 - (a) The total value of the goods, services or works if a one-off purchase;
 - (b) The total contract value over the full duration of the contract (not just the annual value) when the contract duration is indeterminate, the value will be the monthly estimated cost x 48;
 - (c) For framework agreements and call off contracts with no guaranteed commitment the contract value will be the estimated value of call off's over the full duration of the contract.
- 2.1.3. A summary of the process and responsibilities can be found at Appendix C.

2.2 Low Value Transactions

- 2.2.1. Defined as transactions valued at or below £10,000 for works, goods or services, that cannot be obtained via an existing Approved Contract.
- 2.2.2. Obtaining value for money remains the primary objective and multiple quotations should be obtained to demonstrate compliance with this objective.
- 2.2.3. A *written quotation* must be obtained for requirements under £10,000 before any order is processed and this must specify:
 - (a) The goods, services or works to be supplied;
 - (b) Where and when they are to be supplied;
 - (c) The value of the transaction;
 - (d) The Terms and Conditions including Payment Terms;
- 2.2.4. In the case of works the use of pre agreed hourly/day rates is acceptable.

2.3 Intermediate Value Transactions below Formal Tender Threshold

- 2.3.1. Defined as transactions for goods or services valued at over £10,000 but below £50,000 where the transactions cannot be carried out using an existing Approved Contract.
- 2.3.2. The criteria for selecting the most advantageous quotation must be established before the written quotations are invited .
- 2.3.3. At least 5 comparable written quotations must be sought.
- 2.3.4. If less than 5 potential suppliers can be identified, the Officer must keep a record of the reasons for this.
- 2.3.5. The Officer concerned shall maintain suitable records indicating the quotations received and the action taken relating to the selection and invitation of suppliers, the receiving and valuation of quotations and the award of the works to the successful contractor.

2.4 Call Off from existing Approved Contracts

- 2.4.1. Where the requirement can be satisfied from an existing approved Contract then the order will be considered an exception to these rules as long as the call off arrangements defined within the individual contract are followed.

2.5 High Value Transactions

- 2.5.1. Defined as transactions for goods, services or works valued at or over the formal tender threshold of £50,000 but below the relevant current EU Threshold.
- 2.5.2. The formal tender process applies as set out in Rule 3

2.6 Requirements over EU Threshold

- 2.6.1. Defined as intended purchases for goods, services and works valued at over the EU Threshold.
- 2.6.2. Where the anticipated value of the contract exceeds the current EU Threshold then the formal advice of the PO should be sought prior to any tendering activity commencing.

- 2.6.3. In the case of Works Contracts the Officer must notify The Corporate Head of planned contracts with a value of over the EU Threshold to allow inclusion in the forward plan.
- 2.6.4. All *EU Notices* will be published centrally by the PO on the Buyer Profile provided the EU has been informed (in prescribed format) of the publication before or at the same time either by the PO or the Officer. The Council will refer to the date of that despatch on the Buyer Profile.
- 2.6.5. Any tender activity following the EU Procurement Procedures must adhere to the award process defined in the notice.
- 2.6.6. All planned contracts with a value over the current EU Threshold will be reported to the Corporate Head who may refer to full Cabinet.

RULE 3 – COMMON TENDERING PRINCIPLES

3.1 Standing Lists

- 3.1.1. The use of and process for establishing and maintaining standing (approved) lists must be approved by the Corporate Head prior to the creation of the list.
- 3.1.2. The potential suppliers business credentials must be assessed using a select list questionnaire and the completion of a health and safety audit.
- 3.1.3. The list must be maintained continually and reviewed at intervals of no longer than 6 months

Tendering via a Standing List

- 3.1.4. At least 5 *invitations to tender* must be invited from suppliers on the standing list. In the event that less than 5 potential *tenderers* are on the standing list then either a public advertisement must be placed (see rule 3.3) or if the value of the tender is in excess of £20,000 approval via the Exemption Process must be sought.
- 3.1.5. All potential tenderers that are invited to tender from the standing list must be selected within the scope of their minimum and maximum banding limits.
- 3.1.6. The selection of potential tenderers from the standing list must be made using *pre determined objective selection criteria* that must be documented.

3.2 Type of Tender:

3.2.1. Open

- (a) The Council publishes an OJEU contract notice allowing a minimum of 52 days for return of tender from date of dispatch or 36 days where a Prior Information Notice (PIN) has been published.
- (b) All suppliers expressing an interest are invited to tender.
- (c) If publication of a notice in OJEU is not required, then the notice shall be published in one or more of the local newspapers circulating in the district, the Council's website and any appropriate national press and/or trade journal in order to target the appropriate market for the particular contract.
- (d) The advertisement shall contain details of the proposed contract and specify a time limit within which interested parties may express an interest in tendering for the contract.
- (e) After the expiry of the deadline date for expressions of interest, the Council shall send any party expressing an interest an Invitation to Tender (ITT). The ITT shall specify the date and time for tenders to be received.

3.2.2. Restricted

- (a) The Council publishes an OJEU contract notice allowing a minimum of 37 days to register an interest from date of dispatch, and 40 days for return of tender from date of dispatch of ITT or 26 days where a PIN has been published.
- (b) Only those suppliers selected by the Council are invited to tender. Suppliers shall be selected on the basis of published pre-qualification criteria.
- (c) If publication of a notice in the OJEU is not required, the advertising requirements are the same as in the open procedure, except that the notice shall state that a restricted procedure is being used. If the Regulations apply a minimum of five suppliers shall be invited to tender.
- (d) The timescales for restricted procedures shall be accelerated in cases of genuine urgency, under the accelerated procedure, to 15 days for the register of interest from date of dispatch of contract notice and 10 days for the return of tenders from date of dispatch of ITT.

3.2.3. The Negotiated Procedure.

The Negotiated Procedure may only be used in limited circumstances. These are:

- (a) Where the Open or Restricted Procedure has been discontinued because of irregular tenders.
- (b) Where the work or works to be carried out are purely for the purposes of research, experimentation or development.
- (c) Where the work or works to be carried out are such or the risks attaching to it are such as not to permit prior overall pricing.
- (d) The absence of tenderers or appropriate tenderers responding to an invitation to tender using the Open or Restricted Procedures.
- (e) Where the works are for technical or artistic reasons or for reasons connected with the protection of exclusive rights which can only be carried out by a particular person or where for reasons of extreme urgency brought about by unforeseen events and the contracting authority cannot comply with the time limits for the Open or Restricted Procedures.
- (f) In addition, a public authority can use a Negotiated Procedure where it is already in contract with a person or company and due to unforeseen circumstances additional works were not included in the project initially, and for technical or economic reasons cannot be carried out separately from the original contract. This proviso is subject to the additional work not exceeding 50% of the original contract value.

3.2.4. Competitive Dialogue

- (a) This is a procedure which can be adopted where the contract is complex and the end result which the Council wishes to achieve is known, but it is not known how this might be achieved in terms of financial or legal structure or technical requirements.
- (b) In these circumstances the Council must issue a contract notice specifying that the competitive dialogue procedure will be used and stating the criteria upon which the contract will be awarded. The contract must be awarded on the basis of the Most Economically Advantageous Tender (MEAT).
- (c) The Council then conducts a dialogue with selected suppliers to identify acceptable solutions to meet the authority's requirements.

Once acceptable solutions are identified and the authority has declared the dialogue is concluded, suppliers are invited to submit tenders.

- (d) The award criteria must be used to evaluate the tender returns.

3.3 Tender Preparation

- 3.3.1. At least 5 suppliers must be invited to tender, unless there is overriding business justification that this is not required and in these circumstances an Exemption must be sought.
- 3.3.2. The specification and evaluation criteria must take into account Equality and Diversity, The Community Strategy and Sustainable Procurement.
- 3.3.3. The specification for the requirement must be adequate and fair to allow tenders to be sought.
- 3.3.4. There must be an assessment of the quality of both tenderers and tenders by pre determined non discriminatory evaluation criteria and weightings, including whole life cycle cost where appropriate.
- 3.3.5. The risks associated with the contract must be assessed.
- 3.3.6. A tender file must be maintained to record all matters associated with the tender.
- 3.3.7. The standard terms and conditions which apply must be stipulated. Where it is proposed that a form of contract be used, which does not adopt the Council's *approved standard terms (including industry standard terms)*; the use of such form must be approved by The Corporate Team.
- 3.3.8. The tender must explain how information provided in the tender will be treated with regard to statutory requirements.
- 3.3.9. Non EU Threshold Tenderers must be given adequate time to respond, consistent with the level of complexity of the requirement and, except where the industry norm is otherwise, this should be a minimum of 15 working days.
- 3.3.10. The Invitation to Tender must request that the tender is submitted in a plain envelope or package bearing a tender label giving only the tender title and opening date. The tender label and franking must not identify the name of the tenderer.
- 3.3.11. Tenderers must be required to hold their tenders open for acceptance for a minimum of 90 days from the date of opening.
- 3.3.12. Tenders must include a statement that the Council does not bind itself to accept the lowest tender or any other tender.

3.3.13. Details of expected tenders must be notified to the Solicitor to the Council or their nominee at least 5 days prior to the tender opening date using the Tender Control Form.

3.4 Receipt of Tenders

- 3.4.1. Every reply to an Invitation to Tender must be addressed to the Chief Executive .
- 3.4.2. Tenders submitted by e-mail will be held in a secure folder under the control of the Tender Support Officer, which will not be opened until the deadline has passed for the receipt of tenders. Evidence that the transmission was successfully completed should be obtained and recorded.
- 3.4.3. Tenders submitted by fax will not be considered.
- 3.4.4. Tender packets or envelopes received must be date stamped and locked away until the specified time for their opening.

3.5 Tender Opening

- 3.5.1. The Officer responsible or their nominee, a Council Member and one other officer must be present during the opening of the tender and at least one such officer must not be from the Service responsible for the purchase.
- 3.5.2. The Tender Support Officer must ensure that all Tenders are opened at the same time when the period for their submission has ended.
- 3.5.3. A record of the tenders must be logged on the Tender Control Book .
- 3.5.4. The opened tenders must be date stamped and signed by the two officers at the time of opening on the page containing the overall contract value, alternatively on the pages containing the price information, where no overall value is quoted.
- 3.5.5. Tenders that are received after the closing date or tenders that are not submitted in accordance with these Rules are to be disqualified unless it is agreed otherwise by the Monitoring Officer and a Council Member.
- 3.5.6. After tender opening a copy of the Tender Control Form and opened tender should be sent to the Officer responsible for the procurement.
- 3.5.7. An original version of the tender must be retained for a period of six years.

3.6 Electronic auctions

3.6.1. Electronic auctions are online auctions where selected bidders submit offers electronically against the purchaser's specification. All communication following and including the invitation to pre-qualified bidders to submit new prices and/or values must be instantaneous (electronic).
An electronic auction may be used in these circumstances:

- (a) open or restricted procedures stating use of an auction
- (b) open, restricted or competitive dialogue procedures have been implemented but cannot be brought to a satisfactory conclusion and the negotiated route with a contract notice is adopted
- (c) mini competition within a framework if e-auctions were mentioned in the contract notice
- (d) competition for contracts to be awarded through a dynamic purchasing system if stated in the contract notice; and
- (e) expressions of interest invited in accordance with the selected procedure. Contract notice states that an electronic auction will be used.

3.7 Dynamic purchasing systems

3.7.1. Dynamic purchasing systems are intended to address commonly used purchases. These systems are a type of electronic framework that allows bidders to apply to join at any time during their lifetime.

3.7.2. The open procedure must be used and the system must be advertised in the Official Journal through a contract notice providing the website at which the tender documents may be consulted.

3.7.3. Suppliers may at any time during the system's operation submit "indicative bids" for the product or service required and may be admitted to the system or not on the basis of the submission.

3.7.4. Bids must usually be assessed within 15 days.

3.7.5. When a specific requirement arises for the products covered by the system, the purchaser must conduct the following process:

- (a) publish a further simplified notice advertising the requirement
- (b) give 15 days for responses to be submitted

- (c) interview final tenders from all admitted suppliers once the new suppliers responding to the simplified notice have also been evaluated; and
- (d) the award must be based on the criteria stated in the contract notice, which may be refined for the specific bid (call off).

3.8 Errors in Tenders

- 3.8.1. The appropriate Corporate Head, with the prior approval of the Solicitor to the Council, may permit a tenderer to correct an error or omission that, in the opinion of the Corporate Head, is an obvious one. Any such corrections will be recorded on the tender file.

3.9 Tender Evaluation

- 3.9.1. Tenders must be assessed in accordance with the pre-determined evaluation criteria and weightings.
- 3.9.2. All tender assessments must be signed off by the Finance Manager or a nominated authorised officer prior to notification of contract award.
- 3.9.3. The results of the tender evaluation must be retained on the tender file
- 3.9.4. A *financial health check* must be requested from Financial Services for all contracts where the risk assessment indicates that one is required .

3.10 Post Tender Clarification

- 3.10.1. Post-tender negotiations impacting price may only be entered if the tender documents provide advance notice of this intention and the appropriate authorised officer has provided written approval for negotiations to be entered into.
- 3.10.2. Negotiations shall be conducted by a team of at least two officers, at least one of whom shall be from Legal Services unless agreed otherwise in advance by Legal Services such as in instances where this is not industry practice.
- 3.10.3. Negotiations shall be conducted with all tenderers, unless there are clear reasons for excluding one or more tenderers.
- 3.10.4. Full, written records must be made and retained.

3.11 Award of Contracts

- 3.11.1. A contract may only be awarded by an Officer so authorised following submission of the contract decision, with all the information used to make that decision, to Cabinet by way of a Non Key Decision report.
- 3.11.2 All contracts awarded, must be recorded on the *PO Contract Database* by the awarding Officer.
- 3.11.3 In addition, all intended contract awards over £500,000 will require prior consultation with the Cabinet Member for Resources and Assets and the appropriate Service Cabinet Member and that both signatures will be required to sign off the award.
- 3.11.4 For EU Threshold contracts, Officers must allow a mandatory minimum standstill period of 10 calendar days between notification of award decision and entering a contractually binding agreement. It is most important therefore that the notification of award decision is neither a contract award nor a conditional award which may need to be discarded in the event of a challenge within the standstill period.
- 3.11.5 A summary of contracts awarded with a value of over £100,000 will be provided quarterly by the PO to Scrutiny Committee.

3.12 Notification to Unsuccessful Tenderers

- 3.12.1. Following contract award, unsuccessful tenderers must be notified in writing.
- 3.12.2. Unsuccessful tenderers must be supplied with feedback regarding their tender upon request.
- 3.12.3. Unsuccessful tenderers must be notified of the appeals procedure.

RULE 4 – CONTRACT AND OTHER FORMALITIES

4.1 Contract Documents

- 4.1.1. All Contracts must be in writing. Where the contract is of a non complex nature and is for values of up to £30,000, the use of a Purchase Order is an acceptable form of contract, which must make reference to the quotation and terms agreed.
- 4.1.2. Every Contract over £30,000 must be in writing and, as a minimum, state clearly:
 - (a) that the Contractor may not assign or sub-contract without prior written consent

- (b) any insurance requirements
- (c) ombudsman requirements
- (d) requirements relating to legislative requirements
- (e) that charter standards are to be met if relevant
- (f) race relations, disability, anti-discrimination and equalities requirements
- (g) any sustainability requirements
- (h) a right of access to relevant documentation and records of the contractor for monitoring and audit purposes, if relevant
- (i) pricing mechanism and arrangements for payment
- (j) rights of termination
- (k) all approved sub-contractors must be paid within 30 days

4.1.3. The formal advice of the Solicitor to the Council must be sought prior to award for the following contracts:

- (a) where the total value exceeds £500,000.
- (b) those involving leasing arrangements.
- (c) those which are complex or involve a recognisable risk
- (d) where it is an extension or variation to an existing contract that will bring the overall value over £500,000.
- (e) where invoice payments are made to finance or factoring companies

4.1.4. Contract documents must be retained for a period of six years from the contract end date and, if under seal, for a period of twelve years.

4.2 Statistical Returns

4.2.1. Each year the Council is required to make a statistical return to the Office of the Deputy Prime Minister for onward transmission to the European Commission concerning the contracts awarded during the year under the EU Rules.

4.2.2. The Solicitor to the Council shall be responsible for this statistical return and will make the necessary arrangements for information to be

collected annually. Officers shall comply with these arrangements and expeditiously provide any information required.

4.3 Contract formalities

4.3.1. Agreements must be completed as follows:

TOTAL VALUE	METHOD OF COMPLETION	BY
Up to £30,000 (See 4.1.1.)	Signature Use of Purchase Order or Written Contract for complex requirements	Officer with appropriate authority to enter into a contract (paragraph 4.3.5.).
Over £30,000 but under £500,000 where sealing is not appropriate (See 4.1.2.)	Signature on Written Contract	Service Manager or Officer with appropriate authority to enter into a contract (paragraph 4.3.5.).
Over £500,000 (see 4.1.3.)	Signature on Written Contract	Service Manager with appropriate authority, once the appropriate Cabinet Members have been consulted.
Contracts for sealing	Sealing	see paragraph 4.3.6.

4.3.2. All contracts for the supply of goods and services must be concluded before the supply begins, except in exceptional circumstances, and then only with the written consent of a Corporate Head.

4.3.3. In exceptional circumstances and with the prior approval of Legal Services, a letter of intended acceptance can be issued to allow work to commence in advance of contract completion

4.3.4. In the case of Works Contracts a tender acceptance letter is acceptable to allow work to commence, although the issue of a formal contract must follow without delay.

4.3.5. Signature

(a) The Officer responsible for signing the contract must have been granted the appropriate authority and ensure that the person signing for the other contracting party has authority to bind it.

- (b) In the case of contracts for commissioning of care services, where the total value of the contract is not known, the officer responsible must have been granted authority to enter into commissioning contracts

4.3.6. **Sealing**

A contract must be sealed where:

- (a) the Council wishes to enforce the contract for more than six years after its end (e.g. for land or construction works); or
- (b) the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; or
- (c) where there is any doubt about the authority of the person signing for the other contracting party; or
- (d) where a *bond* is established on behalf of the contractor(s) or their guarantors; or
- (e) where required by parties to the agreement.

Where contracts are completed by each side adding their common seal, the affixing must be attested by or on behalf of the Solicitor to the Council. The Solicitor to the Council is responsible for the process of sealing contracts.

4.4 Bonds and Parent Company Guarantees

- 4.4.1. The officer responsible for the contract must consult the Corporate Head about whether a *Parent Company Guarantee* or *Performance Bond* is necessary when a potential supplier is a subsidiary of a parent company and
 - (a) the award is based on an evaluation of the parent company, and the total value exceeds £250,000; or
 - (b) there is concern about the stability of the subsidiary supplier.

- 4.4.2. The Council must never give a bond.

4.5 Prevention of Corruption

- 4.5.1 The Officer responsible for the contract must comply with the Council Code of Conduct and must not invite or accept any gift or reward in

respect of the award or performance of any contract.

- 4.5.2. All contracts must contain an appropriate clause that provides protection and the right to terminate the contract in the event of a supplier offering any inducement, committing fraud or committing an offence under the prevention of Corruption Acts.

4.6 Declaration of Interests

- 4.6.1. If it comes to the knowledge of a member or an officer of the Council that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Solicitor to the Council.

RULE 5 – CONTRACT MANAGEMENT

5.1 Managing Contracts

- 5.1.1. All contracts over the value of £50,000 and those of a complex nature below this value must have a designated Contract Manager whose name should be notified to the Supplier.

APPENDIX A

General Exceptions from Contract Procedure Rules

These Contract Rules apply to all Goods, Services and Works purchased by the Council, with the following exceptions:

- (a) Procurements of goods, services, or works where the procurement procedure to be followed by the Council is the subject of express legislation.
- (b) Low value purchases made by a *Purchasing Card* that are subject to guidelines issued on the use of Purchasing Cards.
- (c) Works or services procured in an emergency because of a need to respond to events that were beyond the control of the Council (e.g. natural disasters such as flooding or fires) as long as any expenditure in excess of **£10,000** is reported to the PO within 3 working days using Appendix B. Any contract entered into by the Council under this Exemption must not be for a term of more than 6 months.
- (d) Contracts for the acquisition and disposal of land or property that are covered by a separate regulation.
- (e) Contracts for employment for staff.
- (f) Works orders with utility infrastructure providers, e.g. Gas Mains.
- (g) Call off or orders placed against approved contracts or framework agreements where the procedures defined in the contract for call off are followed.
- (h) Any contract which has had an exemption agreed in accordance with rule 1.3.
- (i) Grants, but only where subject to the requirements of the Council's contract with the voluntary sector as approved by Cabinet.
- (j) The disposal of Council Assets that are covered by a separate regulation

Name of Officer seeking Exemption:**Service Area:****Contract Title:****Description of Contract** (attach supporting documentation if applicable)**Estimated Total Value of Contract:****Target Contract Start Date:**

Date	Justification for Exemption Request	Authorised by Head of Service or Director
		Signed: Name:

This Form should be kept on file as evidence of compliance with Contract Procedure Rules.

Legal Services (LS) ACTION	
LS Authorised:	Yes/No
Refer to Cabinet :	Yes/No
Reason for rejection (if applicable):	
Signature:	Print Name:
Date:	

CONTRACT PROCEDURE RULES SUMMARY

APPENDIX C

Value of Contract	Quotation/Tender Process	Who	Contract documentation	Approval
Goods and services up to £10,000 see 2.2	Obtain quotation prior to issue of Purchase Order	Service Area	Issue by Purchase Order or use of Purchasing Card	By authorised officer
Works orders up to £10,000 see 2.2	Obtain quotation prior to issue of Purchase Order/Contract	Service Area	Issue by Purchase Order/Contract	By authorised officer
Goods, services and works below £50,000 see 2.3	Obtain at least 5 quotations	Service Area	Can use Purchase Order for non-complex requirements up to £30k. Written contract for requirements over £30k.	By authorised officer
Goods, services and works that can be satisfied from an existing approved contract see 2.4	Follow call off procedure within contract	Service Area	Follow call off procedure within contract	By authorised officer
Goods and services between £50,000 and EU Threshold see 2.5	Obtain at least 5 tenders	Service Area	Written contract, complete under seal as appropriate see 4.3.5.	By authorised officer
Goods and services over EU threshold (£144,371) see 2.6	Formal review of requirement prior to proceeding. All EU notices to be published centrally by PO/Chief Officer. Details of all planned contracts with an anticipated value of over £144,371 will be reported to the Strategic Director of Resources by the Chief Officer.	Service Area to review with Legal Services /PO	Written contract, complete under seal as appropriate see 4.3.5.	By authorised officer. All contracts over £500,000 will require prior consultation with the appropriate Cabinet Members
Works contracts anticipated to be over £144,371 in value see 2.6	Formal review of requirement prior to proceeding. All EU notices to be published centrally by PO/Chief Officer. Details of all planned contracts with an anticipated value of over £144,371 will be reported to the Strategic Director of Resources by the Chief Officer.	Service Area to review with Legal Services /PO	Written contract, complete under seal as appropriate see 4.3.5.	- ditto -

Appendix D

Procedure	Article	Text	Days
Open	38(2)	Minimum time for receipt of tenders from date of contract notice	52
	38(4)	Reduced when PIN published (subject to restrictions) to generally – And no less than -	36 22
	38(5)	Electronic transmission reduces all the above by 7 days so that 52 days becomes – And 36/22 become -	45 29/22
	38(6)	Full electronic access to contract documents reduces 52 by 5 days so it becomes – The reduction of 7 days for electronic transmission can be added so that 47 days becomes -	47 40
Restricted	38(3)(a)	Minimum time for receipt of requests to participate from the date contract notice is sent	37
	38(5)	Electronic transmission reduces the 37 days by 7 days so 37 days becomes -	30
	38(3)(b)	Minimum time for receipt of tenders from date invitation is sent	40
	38(4)	Reduced when PIN published (subject to restrictions) to generally, - And not less than-	36 22
	38(6)	Full electronic access to contract documents reduces 40 days by 5 days so it becomes	35

REPORT TO CONSTITUTION AND ACCOUNTS COMMITTEE

REPORT OF: MEMBER SERVICES MANAGER
(DEPUTY MONITORING OFFICER)

REPORT NO. DLS83

DATE: 20th September 2006

TITLE:	PROPOSED AMENDMENT TO THE CONSTITUTION: PART 3 – CABINET PORTFOLIOS
FORWARD PLAN ITEM:	N/A
DATE WHEN FIRST APPEARED IN FORWARD PLAN:	N/A
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	N/A

COUNCIL AIMS/PORTFOLIO HOLDER NAME AND DESIGNATION:	COUNCILLOR PAUL CARPENTER	
CORPORATE PRIORITY:	CORPORATE GOVERNANCE	
CRIME AND DISORDER IMPLICATIONS:	N/A	
FREEDOM OF INFORMATION ACT IMPLICATIONS:	This report is publicly available on via the Local Democracy link on the Council's website: www.southkesteven.gov.uk	
INITIAL EQUALITY IMPACT ASSESSMENT	Carried out and appended to report? Not applicable	Full impact assessment required? No
BACKGROUND PAPERS:	THE COUNCIL'S CONSTITUTION	

1. PROPOSED AMENDMENT TO PART 3: CABINET PORTFOLIOS
PAGE 52

1.1 **RECOMMENDATION:**

That the Constitution and Accounts Committee be recommended to consider deleting the requirement for all non key decisions taken by individual portfolio holders under delegated powers to be reported to the next available Cabinet meeting.

THE NON KEY DECISION MAKING PROCESS

- 1.2 Under Part 3 of the Constitution, portfolio holders have delegated authority to make key and non key decisions on matters within their individual service remits. Since the modernised arrangements were introduced in October 2001 unless urgent circumstances prevail, non key decisions have been determined at the beginning of the working week and published the following working day. It is not necessary for the Cabinet to meet either in public, private or for a briefing meeting to take place in order that a portfolio holder can make non key decisions.
- 1.3 The Access to Information Procedure rule 22 in part 4 of the Constitution provides that a portfolio holder cannot make his/her decision until at least 5 clear days have elapsed following receipt of a report which he/she intends to take into account in making that decision. To ensure compliance with this rule and for administrative ease in tracking the decision making process, pending non key decisions are scheduled for decision at the start of each working week.
- 1.4 Unless they are specified as urgent, non key decisions are subject to the call-in process.
- 1.5 The requirement for non key decisions to be reported to the next available Cabinet meeting arose from a report the Chief Executive presented to the committee on 28th July 2004. In that report he stated that some concern had been expressed at the Members' Forum on Scrutiny about provision of information to back bench members to enable them to consider calling-in decisions made by portfolio holders acting under delegated powers. The committee agreed to add this requirement. However, as open Cabinet meetings are held usually once per month, it was often the case that the reporting of non key decisions was purely historical with deadlines for call-in already having expired.

PUBLICATION OF NON KEY DECISIONS

- 2.1 It is a legal and constitutional requirement that as soon as reasonably practicable after a decision has been taken by an individual portfolio holder, a record of that decision, together with a statement of the reasons for it and any alternative options considered and rejected, is prepared and made publicly available. Past practice has been to prepare and publish the non key decision notice by the end of the following working day, usually a Tuesday

(Wednesday if there is a Bank Holiday). The day after publication is counted as the first day for the call-in period.

- 2.2 Unless they contain exempt information, reports on which non key decisions are based and the resultant decision notice are publicly available documents.
- 2.3 All DSP chairmen receive copies of decision notices on the day of publication. Other members who have so requested have been e-mailed copies.

AVAILABILITY OF NON KEY DECISION DETAILS ON THE WEBSITE

- 3.1 The recently acquired upgraded version of modern.gov now enables the democratic services team to electronically publish non key decision reports and the resultant decision notices both on the intranet and the council's website. Pending non key decisions can be found via the Local Democracy link under the "What's New" section. Published decisions are then listed under the "Decisions" section. Members who have requested notification receive an e-mail with a hyperlink in the same way that the system sends notification of newly published agendas and minutes.

CONCLUSION

- 4.0 The Constitution & Accounts Committee are asked to consider deleting the requirement for all individual portfolio holder non key decisions to be reported to open Cabinet on the grounds that this is now superfluous because:
 - (a) often decisions have been made the previous week or earlier, and therefore the information is historical. In these circumstances the call-in period has expired and the information has already been included on the weekly decision list;
 - (b) full details about all non key decisions are now available both at pre-decision stage and on the day decisions are published via the website. DSP chairmen receive electronic or hard copy notification of publication as can any other member who wishes to receive this information;
 - (c) to record the decisions in the Cabinet minutes is a duplication of the information already on the website and in the weekly decision lists.

COMMENTS OF THE SECTION 151 OFFICER

No comments.

COMMENTS OF THE MONITORING OFFICER

Contained within the body of the report.

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