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AYLESBURY VALE DISTRICT COUNCIL Democratic Services

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1 February 2016

CABINET

A meeting of the **Cabinet** will be held at **6.30 pm** on **Tuesday 9 February 2016** in **Walter Rose Room, Haddenham Village Hall, Banks Park, Haddenham, HP17 8EE**, when your attendance is requested.

NOTE: There will be an informal session starting at 6.15 pm to give Members the opportunity to comment on issues on the Agenda. The press and public may attend as observers.

Membership: Councillors: N Blake (Leader), S Bowles (Deputy Leader), J Blake, A Macpherson, H Mordue, C Paternoster and Sir Beville Stanier Bt

Contact Officer for meeting arrangements: Bill Ashton; bashton@aylesburyvaledc.gov.uk;

AGENDA

1. APOLOGIES

2. MINUTES (Pages 1 - 10)

To approve as a correct record the Minutes of the meeting held on 11 January 2016, attached as an Appendix.

3. DECLARATIONS OF INTEREST

Members to declare any interests.

4. CONTRACT PROCEDURE RULES (Pages 11 - 54)

Councillor Howard Mordue
Cabinet Member for Finance, Resources and Compliance

To consider the information attached.

Contact Officer: Sarah Deyes (01296) 585871



5. WOODLANDS PROJECT (Pages 55 - 56)

Councillor Steve Bowles
Cabinet Member for Economic Development Delivery and Major Projects

To consider the information attached as an Appendix

Contact Officer: Andrew Small (01296) 585507

6. EXCLUSION OF THE PUBLIC

The following matter is for consideration by Members "In Committee". It will therefore be necessary to

RESOLVE –

That under Section 100(A)(4) of the Local Government Act, 1972, the public be excluded from the meeting for consideration of the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in the Paragraph indicated in Part 1 of Schedule 12A of the Act: -

Item 7: Woodlands Project: Financial Information relating to the Woodlands Project (Paragraph 3)

The public interest in maintaining the exemption outweighs the public interest in disclosing the information because the report contains information relating to the financial or business affairs of organisations (including the Authority holding that information) and disclosure of commercially sensitive information would prejudice negotiations for contracts and land disposals or transactions.

Restricted reports

7. WOODLANDS PROJECT (Pages 57 - 64)

Councillor Steve Bowles
Cabinet Member for Economic Development Delivery and Major Projects

(Category – Paragraph 3 of Part 1)

To consider the information attached as an Appendix

Contact Officer: Andrew Small (01296) 585507

Agenda Item 2

Cabinet

11 JANUARY 2016

PRESENT: Councillor N Blake (Leader); Councillors J Blake, A Macpherson, H Mordue, C Paternoster and Sir Beville Stanier Bt

IN ATTENDANCE: Councillors M Rand

APOLOGIES: Councillors S Bowles

1. MINUTES

RESOLVED –

That the Minutes of 15 December, 2015, be approved as a correct record.

2. VAHT - ARTICLES OF ASSOCIATION

Cabinet was advised that AVDC's representation on the Vale of Aylesbury Housing Trust (VAHT) Board had been discussed several times over the past few years. On 17 January, 2012, Cabinet had considered a request to give consent under the Housing Stock Transfer Agreement to a reduction in the Council's membership of the Board from five Members to three, and a reduction in the tenants' representation from five to four. The request was to enable VAHT to comply with the National Housing Federation's Code of Governance, which recommended that housing associations should have a maximum of twelve Board members. Cabinet had decided that:-

- The request from VAHT to reduce the size of its Board from 15 to 12 should be supported.
- The relevant Director, after consultation with the (then) Cabinet Member for Community matters, should be authorised to enter into discussions with VAHT to identify how the reduction in Board membership might be achieved.
- A further report be brought back to Cabinet when the discussions referred to in (2) above had been concluded.

Having been advised subsequently of the outcome of the discussions, Cabinet had agreed to the proposed reductions in the VAHT Board membership.

It was reported that the Cabinet Member for Leisure, Community Matters and Civic Amenities and the relevant Director had continued to meet with VAHT's Chairman and Chief Executive Officer regarding this issue, hence this report.

When changes to the Board membership had been discussed previously, Members had been concerned about the effects on the Council of reductions in Board membership and this was explained as follows:-

Company membership rights were related to the general strategic direction of the Trust. AVDC had a "golden share" as defined in Article 17(3) of the Articles of Association. "Golden share" was a term used by VAHT's solicitors to refer to weighted voting which might apply when a general meeting of the Trust was called. The "golden share" was only invoked when a member attending the said general meeting requested a poll. A poll could be called by the Chairman, two members acting together or a Council Member. When a poll was called, the vote awarded to each member (Council,

Independent and Tenant Member) was 33%, therefore giving each member the same power.

The “golden share” held by AVDC only applied at member meetings, not to Board meetings and the changes proposed in the report submitted would not alter this arrangement. Once the “golden share” was invoked, the Council Member, or any other member acting alone could block a special resolution. A special resolution was required to change the Articles.

It was not proposed to change the “golden share”, but if such a change was ever proposed, not only would this require AVDC’s agreement, but additional protection was provided in the Stock Transfer Agreement at Schedule 7, Part 2. The company had agreed that the actual percentage ratios of membership of the Board of Management would not be amended without the Council’s consent, thus giving additional control over and above the “golden share” provision.

Board membership voting rights were related to the everyday operational running of the Trust (which was where the impact the change referred to in the Cabinet report would take effect). Most decisions at Board meetings were taken by a show of hands and the “golden share” or any other type of weighted voting did not apply. The Chairman had the casting vote (so essentially two votes). The exception to the simple majority used to pass a resolution was referred to in Article 34(6) which required at least three quarters of the remaining voting members to pass a resolution to remove a Board member. This referred to the removal of a particular person, not the general post. It was emphasised that any Council Member appointed to the Board must act in the interests of the company rather than in their capacity as an AVDC Member.

As a Registered Provider (RP), VAHT was bound to comply with the standards set by the Regulation Committee of the Homes and Communities Agency. One of the expectations of this Regulator was that an RP should adopt an appropriate Code of Governance and should comply with the terms of the adopted Code. VAHT, like most RPs had adopted the National Federation’s Code of Governance 2015, which recommended that:-

- It must be up to each organisation to decide on the Board composition that was best for it.
- Boards should have at least five members and no more than twelve.
- Boards must ensure on a continuing basis that those selected or to be elected to Board membership brought the skills and expertise considered relevant to its needs.

VAHT, had submitted a formal request that AVDC remove the requirement for the “appointment” of three Board members, in order to allow the Board to fully select its membership, and not be constrained by its Articles. In effect, AVDC would still be able to nominate three Members to the Board but it would be for the Board to make the formal appointments. There were precedents where local authorities that had sponsored large scale voluntary transfers, had reduced their level of influence at Board level as the organisation matured. Two local examples were Chiltern and South Bucks Councils. Nether of those two Councils had any representation at the relevant RPs.

It was now approaching ten years since the large scale voluntary transfer had taken place and VAHT had performed well against the Offer Promises. The only outstanding promise was the completion of the redevelopment of Walton Court, although this was in the final stages. The proposed level of AVDC’s membership of VAHT’s Board would

enable the Trust to respond positively to the advice and guidance it had received from the Homes and Communities Agency and the National Housing Federation.

Officers had recently re-investigated the guidance provided by the relevant bodies, such as the National Housing Federation and the following were extracts taken from the National Housing Federation's Code of Governance – "Promoting Board Excellence for Housing Associations (2015 Edition)":-

- B4 – Board members who were executive staff must be in a minority. Boards should have at least five members and no more than twelve, including any co-optees and any executive Board members.
- D – Main Requirement – recruitment to Board vacancies must be open and transparent and based on the Board's considered view of the skills and attributes required to discharge its functions. The Board must select or appoint new members objectively on merit and must undertake regular appraisals of its members and of the Board as a whole.
- D7 – Where the organisation's constitution provided for one or more Board members to be nominated or directly elected, the organisation must ensure that those coming forward brought the skills and experience that met the needs of the Board, and that they were fully aware in advance of the responsibilities that they would undertake. New Board members must not be appointed without undergoing a due selection and assessment process to establish their suitability.

RESOLVED –

That approval be given to the removal of the requirement for the Council to appoint three Council Board Members to VAHT's Board, and instead nominate three representatives, thus enabling the VAHT Board to make appointments in accordance with the advice of the National Housing Federation's Code of Governance.

NOTE: As one of the Council's representatives, Councillor Mrs Macpherson declared a prejudicial interest in the above item and left the meeting whilst this matter was discussed.

3. PUBLIC SECTOR EQUALITY DUTY

Cabinet considered a report, also submitted to the Finance and Services Scrutiny Committee on 17 December, 2015, and summarised in the Minutes of that meeting, giving an assessment of the Council's performance against the Public Sector Equality Duty, and the requirements of Regulation 2 of the Equalities Act 2010 (Specific Duties) Regulations, 2011.

The Scrutiny Committee had commented that while the report included information on equality performance and objectives relating to Council staff and residents/customers, there was no mention of the duty or objectives that the Council had relating to equality duties towards Councillors.

Cabinet was however advised that the four equality objectives that had been updated for 2016 – 2020 applied to all people that the Council dealt with. Therefore it was not necessary to update it to specifically mention Councillors. The Council's Equality Strategy was due to be updated in 2016 and Members were advised that if they had any concerns, or wished to include information in the Strategy that was specific to Councillors, then the Scrutiny Committee would be consulted at that stage.

RESOLVED –

- (1) That the contents of AVDC's Equality Report for 2014-2015 be noted and that approval be given to its publication in order to meet the Council's statutory duty.
- (2) That the Equality Objectives for 2016-2020 be approved and published.

4. BUDGET PLANNING 2016/17 AND BEYOND

Cabinet had considered its initial budget proposals on 15 December, 2015, after which they had been passed for consideration by the Finance and Services Scrutiny Committee on 17 December, 2015. The purpose of the report now before Members was to enable them to review the initial proposals in the light of the Scrutiny Committee's views and the Government's provisional grant allocations following the spending review statement made on 25 November, 2015.

The previous report had highlighted that the overriding issue was the uncertainty surrounding the Government's proposed reforms to the local government finance system and the implications arising therefrom.

The expected late publication of the proposed Grant numbers had severely reduced the Council's ability to plan for any significant changes beyond that assumed within the initial projections. This had resulted in the Council relying on the use of, or a contribution to balances as the only realistic way of reacting to the numbers in the short window between their announcement and the date for publishing these final proposals. The initial proposals had recognised this, together with the uncertainties surrounding retained business rates and the potential changes to the funding received from the New Homes Bonus.

In the few weeks since the initial proposals had been considered, work had continued on refining the budget assumptions contained within the earlier report. In practice however, little had materially changed at a service level and so the significant elements of the final budget proposals were around the impact of the proposed Government Grant numbers and changes to other elements of centrally funded support. The revised and final recommended budget was submitted as Appendix 1 to the Cabinet report. A summary of the changes, savings and pressures which had been used to arrive at the summary position were submitted as Appendices A2, C and D, respectively.

Spending Review and Proposed Government Grant Allocations

The Chancellor had announced his spending review on 25 November, 2015. This had set out the Government's funding intentions for the life of the current Parliament. On the whole, the news for local government was less bad than had been feared, but the messages had been confused and the detail had largely been missing, so the true extent of the impact could only be determined once the Government had published its consultation on Grant numbers later in December. Despite this, it had been reasonable to assume that local government would still experience some of the greatest cuts of any of the Government's main spending departments.

From the perspective of a lower tier council, there had also been the announcement that the Government intended to redistribute within the tiers of local government in order to direct resources towards adult social care. This had the capacity to significantly compound the impact of cuts and was potentially of greater concern than the expected reduction in core funding.

The spending review had also contained announcements around other changes in the areas of housing, employment and planning which were likely to have implications for

the Council and its delivery of services. However, the content of these was still being considered and potentially relied on detailed legislation.

The Government had also proposed an apprenticeship levy equal to 0.5% of the wage bill of all organisations where wage bills were in excess of £3 million. This was to be offset by an allowance of £15,000 for each apprentice on the organisation's books. This would be introduced from April, 2017.

The Chancellor had also announced that he would extend Small Business Rate Relief from 31 March, 2016 for a further year, but had signalled the end to some of the additional reliefs which had been introduced during last year's budget.

Government Grant Update

The Government had announced the Grant settlement for councils on 17 December, 2015.

The headline figures indicated that the Authority's pessimism had been warranted as Grant had been reduced in line with expectations. The allocation for 2016/17 had been fractionally more (£18,700), than had been assumed within the initial budget planning proposals. The final number was therefore a reduction for 2016/17 in excess of £1.1 million, representing a loss of 17.5% of the Council's core Grant.

The size of this difference between the initial estimate and the proposed allocation belied a significant shift in the way Government intended to calculate entitlement to Grant in future. Under the consultation proposals the Government was planning to take the whole of a council's core income into account (this included Grant, Business Rates and Council Tax) when applying the cut, rather than salami slicing RSG as had happened in previous years. The Government's aim was to ensure that all councils saw an equally proportionate reduction in their resources each year as opposed to councils which had the greatest reliance on Grant being impacted to the greatest extent. This should represent good news for those councils with a greater Grant reliance.

Unexpectedly, the Government had also offered, to those councils that wanted them, settlement numbers through to 2019/20 (4 years in total). In order to qualify, the Government was indicating that it required councils to produce and publish an efficiency plan. The mechanism for accepting the offer had not been made clear within the consultation paper, but it might require a formal resolution of Council. The detail around the content of this was missing at present and would need to be carefully considered and understood.

Similarly, the consequences of not accepting the offer were also unclear, but it was assumed that this left the Council open to the vagaries of the annual grant allocation process, with the potential to receive either more or less than indicated. At face value, the certainty that a four year settlement provided would be useful in financial planning terms.

The numbers for Aylesbury Vale still showed large reductions year on year, but were not as severe as had been feared and had the impact of reducing the savings required across the remainder of the Medium Term Financial Plan (MTFP). As a consequence, the savings which still needed to be identified over the life of MTFP were now just under £5 million instead of just over £7 million.

The numbers continued to show AVDC losing Revenue Support Grant at much the same rate as had been predicted until 2018/19 when the Council would effectively become Grant free. At that point it would only have Retained Business Rates, which the Government considered to be local resources.

In recent years the Council's financial planning had been constructed on the basis that the Government would not leave those councils who exited grant, alone. It further anticipated that it would continue to need those councils which no longer received Grant to contribute towards its savings agenda nationally in order to spread the impact evenly. Consistent with this prediction, the consultation had included a statement along the lines that it followed that some councils with less Revenue Support Grant in later years would need to contribute funding from other elements of their settlement core funding in order to meet the overall reductions to local government funding set in the spending review.

Simplified, this meant that even after Aylesbury Vale exited the Grant regime, it would still be required to contribute from local resources (Business Rates or Council Tax) towards the national savings target. In essence, the Government was introducing a negative Grant settlement. The numbers indicated that Aylesbury vale would start to pay a Tariff Adjustment (Negative Grant) in 2018/19, initially at a very low level, increasing progressively thereafter.

The announcement had also included the rolling in of existing, separate, Grant streams. Notably for Aylesbury Vale, this included the 2015 Council Tax Freeze grant. This was equal to £82,100 and would need to be accounted for in the final budget proposals.

Overall, as indicated previously, the Grant numbers for 2016/17 varied by much less than had been feared given the considerable uncertainty over how the Government would choose to introduce its policy initiatives. The final variation was sufficiently close to that used in the initial planning proposals as to have no significant impact on the budget planning process and the resultant variance, together with other minor adjustments to the final numbers, could be accommodated by a small use of balances (£90,900) in the 2016/17 budget plan. The use of balances would be added to the savings target in 2017/18, which had also now improved as a consequence of the Grant settlement numbers for that year being marginally higher than had been expected.

The following table was submitted which set out an analysis of the Grants settlement, comparing the proposed numbers with those from last year:-

	Actual 2015/16 £	Actual 2016/17 £	Change £	%
Core Grant (RSG + NNDR)	6,320,400	5,214,600	1,105,800	
Council Tax Freeze Grant	82,100	0	82,100	
Total Grant	6,402,500	5,214,600	-1,187,900	-18.6%

By way of comparison, the reduction in Government Grant recognised in last year's budget planning had been £1,195,712. Any straight comparison with 2010/2011 (when the reductions in Support Grant had begun) remained difficult because of changes to various grant schemes, in particular Council Tax Benefit funding. However, using the best like for like comparison, the reduction in Government Grant over this timeframe was now £7.8 million, or 60%.

New Homes Bonus

The announcement that New Homes Bonus (NHB) would be paid in 2016/17 had been made on the same day as the Grant settlement. It was intended to retain the existing basis for distribution in 2016/17, but a consultation document had been issued alongside the settlement proposing possible future changes. Although the Chancellor had signalled his intention to review the operation and distribution of NHB within his spending review, the confirmation of the award for 2016/17 had been welcome news. This would enable the Council to continue to fund its Waterside North development in the manner proposed within the Capital Programme. AVDC would receive £8,281,102, an amount which was fractionally higher than that anticipated.

The consultation proposed both a reduction in the benefit, by reducing the time it was payable, and a sharpening of the scheme's focus. Views had been sought on the following:-

- Limiting the benefit from six to four years.
- Reducing or removing the bonus on developments initially rejected by councils.
- Reducing or removing the bonus from those councils without a local plan.
- Setting an element of targeted growth.
- Transitional protection for those councils impacted by the greatest amounts.

The Government's intention was to reduce the amount of bonus payable and so, as the District receiving the greatest benefit, all of the proposals would have a proportionately greater impact on this Council. Modelling of allocations into future years showed that the awards to this Council would drop away significantly from current levels. A response to the Government's consultation was being formulated.

In its initial budget proposals, Cabinet had advocated not increasing the contribution from NHB into the revenue budget, given the uncertainty surrounding its future. Whilst the award had now been confirmed for 2016/17, Cabinet felt that the original stance should be maintained as increasing dependency on the Bonus would be imprudent at this time.

With the uncertainty hanging over future awards under the NHB scheme, Cabinet appreciated that it would need to review its NHB policy going forward. For example should the same amounts continue to be taken into the revenue budget and should the same amount be allocated to Parishes. This review could not however take place until the Government had published its final consultation response. Responses were being sought by 10 March.

This Council's award had been based upon the delivery of 6,284 new dwellings over the past six years, together with 189 long term empty properties being brought back into use.

Whilst Cabinet continued to support the allocation of a proportion of NHB resources to Parishes to help them meet the costs of infrastructure provision arising from housing growth, Members appreciated that it was highly probable that this arrangement would need to be reviewed in the light of the results of the Government's consultation on the future of NHB.

Measure of Spending power

Alongside the Grant settlement, the Government had published its Spending Power measure. This showed Aylesbury Vale's position as having increased from £22.7 million to £24.1 million (an increase of 6%). Crucially, the calculation of this number included the allocation of New Homes Bonus. As previously mentioned, £8.28 million of the £24.1 million represented the Council's New Homes Bonus award.

The Council had gained under the NHB scheme by virtue of the large amounts of housing growth that had taken place within the Vale (the largest growth of any District since NHB had begun). The increase in Bonus derived from housing growth was, therefore greater than the loss of core Grant. As a consequence, it showed Aylesbury Vale as still having a net increase in resources.

However, for the Council to be better off as indicated by the spending power measure, all of the NHB money would need to be put into the revenue budget and not just the proportion set out within the NHB policy agreed by the Council. The Council had consistently maintained that this would make it increasingly dependent on NHB for the provision of core services, which it had previously been recognised represented a high risk strategy. However, it would also mean that the Council would be unable to deliver much of the infrastructure investment associated with housing growth. The proposed changes to the scheme had vindicated the Council's caution in terms of using the Bonus in the revenue budget.

If NHB were removed from the equation, the impact for Aylesbury Vale would be reversed. This would show the Council losing 3.7% of its spending power in 2016/17 (comparatively 6.2% in 2015/16).

Business Rates Pooling

Cabinet had been advised in December, 2015 that an application had been submitted to create a business rates pool, naming Bucks County Council, South Bucks District Council, Chiltern District Council, AVDC and the Bucks Fire and rescue Authority even though the Government had not invited any applications. The pooling selection had been on the basis of those districts where it was felt the maximum gain could be generated in 2016/17.

Given that the Government had not invited applications, the designation had come as something of a surprise and the officers of the respective councils had reviewed the position and had validated the key assumptions. Such an application would therefore be progressed.

Fees and Charges

In line with the precedent created last year, the review of fees and charges had been consolidated into a single list. These were contained in a schedule submitted with the Cabinet report. These numbers would, as last year, be taken into the overall budget calculations for 2016/17 and beyond.

There had been no substantive comments from the Finance and Services Scrutiny Committee on this particular aspect.

Implications for Council Tax Strategy

The initial budget proposals had recommended increasing Council tax by the assumed maximum amount of 1.99%. In the absence of the Government publishing its Council Tax policy for 2016/17 this had been considered to be the likely position given the

indications in the spending review. It had also been considered that it was unlikely that the Government would offer a freeze grant in 2016/17 because of the announcement of higher permissible increases for adult social care authorities and for police authorities.

The Grant consultation had confirmed these limits and had gone further by offering a higher potential increase for district councils whose current Council Tax was in the lower quartile. The additional increase equated to £5 or 2%, whichever was the higher.

The Government's measure of Council Tax included Special Expenses charges for those councils which had them. The blended Council Tax for Aylesbury Vale District Council, including the Aylesbury Special Expenses, was £148.12, whilst the lower quartile cut-off point was £144.59. As a consequence, the Council narrowly missed out on the opportunity.

The report to Cabinet in December had justified the proposed increase of 1.99% as a means to partially mitigate the reductions in Government Grant and thereby protect services valued by residents and businesses in the Vale. The value of Government Grant lost in 2016/17 was nearly £18 for a Band D property, whilst a Council Tax increase of 1.99% recouped only £2.71 of this loss.

The Government's new total locally combined resources approach to allocating Grant reductions assumed that councils would increase resources by the maximum allowable for those given the extra Council tax increase headroom. Reductions for these councils had been calculated on the increased additional resources available to them, thereby effectively penalising them if they chose not to exercise that freedom. This represented a significant shift for the Government in terms of Council Tax strategy, from discouraging to effectively encouraging maximum increases. For this Council, a Council Tax increase of 1.99% would generate £188,500 per annum and would represent an annual increase of £2.71 at Band D, equivalent to five pence per week.

Impact on Budget Proposals

The initial budget proposals presented to Cabinet in December had considered the options for balancing the budget in the event that the final budget numbers differed from those contained in the initial proposals.

The numbers announced in the Grant consultation in December, 2015, were fractionally different from those that had been assumed in the initial proposals. However, the variance was sufficiently small that it could be accommodated by the use of balances equal to £90,000 in 2016/17, in line with the proposed strategy. This figure would then be added to the savings requirement for 2017/18.

As previously referred to in this Minute, beyond 2016/17 the Grant numbers showed reductions in funding at a slower rate than had been predicted and this would impact upon the savings totals still to be found by the Council over the life of the Medium Term Financial Plan (assuming that the Council accepted and qualified for the Government's four year settlement offer).

Instead of a figure in excess of £7 million still to be found, the revised figure was now just below £5 million. The detailed budget figures were appended to the Cabinet report. This still represented a significant challenge and did not alter either the imperative or the Council's proposed response to dealing with savings in future years. To this end, the only substantive change to the draft budget proposal formulated in December, 2015, was the change in Government Grant, necessitating a small use of balances, as referred to above.

Finance and Services Scrutiny Committee

Cabinet received an extract from the Minutes of the Scrutiny Committee held on 17 December, 2015, which summarised the Committee's deliberations. The Committee Chairman attended the meeting and elaborated upon those deliberations where appropriate. Overall, the Committee had been supportive of Cabinet's initial budget proposals and did not suggest any changes.

Special Expenses

No changes were recommended to the earlier proposals for Special Expenses, the budget details of which were also circulated as part of the Cabinet report.

RESOLVED –

- (1) That the comments of the Finance and Services Scrutiny Committee be noted and the Committee thanked for its input to the budget planning process.
- (2) That in relation to Council Tax, Council be recommended to approve an increase of 1.99% (the maximum allowable for lower tier councils).
- (3) That Council be recommended to approve the budget for 2016/17 and the Medium Term Financial Plan as set out in summary form in Appendix A to the Cabinet report.
- (4) That Council be recommended to approve Aylesbury Special Expenditure totalling £846,600, supported by a precept of £45, represented a Council Tax freeze for Special Expenses (as detailed in Appendix F to the Cabinet report).
- (5) That the fees and charges (taken into the final calculations) be approved as submitted.
- (6) That Council be recommended to ring fence the sum of £600,000 from General Working Balances to fund the AVDC change programme, and to give delegated authority to the Director with responsibility for finance, after consultation with the Cabinet Member for Finance, Resources and Compliance to approve the budgetary framework and allocations from within this sum.

UPDATING OF CONTRACT PROCEDURE RULES

Director

Councillor Mordue

Cabinet Member for Finance, Resources and Compliance

1 Purpose

- 1.1 To seek Cabinet approval to a proposed revision of the existing Contract Procedure Rules in order to bring them up to date with current procurement legislation and operational practice, and to make them more concise and easier to use.

2 Recommendations/for decision

- | | |
|-----|--|
| 2.1 | That the Council be recommended to approve the proposed revised Contract Procedure Rules as outlined in the report submitted, and that they be adopted with effect from 1 st June 2016. |
| 2.2 | That authority be given to the Director with responsibility for Finance, after consultation with the Cabinet Member for Finance, Resources and Compliance, to make any necessary changes to the rules from time to time, to reflect changes in officer operational arrangements. |

3 Supporting information

- 3.1 The Council's Contract Procedure Rules form part of the Constitution. The Rules regulate how contracts for the provision of supplies, services or execution of works are procured on the Council's behalf.
- 3.2 The aims of the Rules are to ensure:
- Commitment to the principles of transparency, fairness, proportionality and equal treatment within the procurement process;
 - Value for Money and propriety in the spending of public money;
 - That supplies, services and works are delivered effectively and efficiently without compromising the Council's ability to take strategic decisions;
 - That the Council is not exposed to unnecessary risk or challenge arising from non-compliant procurement activity;
 - Compliance with legislation, and relevant guidance including Procurement Policy Notes issued by the Cabinet; and
 - The delivery of economic, environmental and social value through procurement.
- 3.3 The existing Rules are very detailed and officers using them find them hard to navigate and locate the information that they need.

- 3.4 The current Rules have been in use since 1st January 2014, but were largely based upon the Rules used since 2007. The Public Contracts Regulations 2015 came into force on 26th February 2015 in order to implement in the UK the new EU Directive on Public Procurement. Therefore the current rules have now become out of date.
- 3.5 It is therefore appropriate to bring the existing Rules in line with the new legislation and at the same time revise the content and layout of them in order to make using them more straight forward.
- 3.6 It is now proposed to replace the current Rules with an updated set which are significantly different. The new Rules (set out in Appendix One) no longer take the form of a procurement manual, but rather provide the governance structure within which the Council may procure Supplies, Services and Works.
- 3.7 A Procurement Code of Practice will be the process document behind the Rules and will provide a more detailed explanation of Procurement best practice, procedures, processes, associated Council policies and required Contract terms. This code, set out in draft form in Appendix 2, will be a background document to the rules and as such will not form a part of the Constitution.
- 3.8 The principal changes to the current rules are as follows:
- a) Revision of the EU Thresholds effective from 1st January 2016 to:
 - Supplies Contracts £ 164,176 (previously £172,514)
 - Services Contracts £ 164,176 (previously £172,514)
 - Works Contracts £4,104,394 (previously £4,322,012)
 - b) Reduced from 128 pages to just 18 pages.
 - c) The sections on Preparing a Contract have been removed.
 - d) The sections on general principles and the procurement procedure have been significantly reduced.
 - e) The section detailing the four broad procurement categories, by reference to the value or estimated value of the procurement has been removed and the key details inserted into a quick reference authorisations table at the end of the Rules.
- 3.9 The Rules will be subject to an annual refresh to ensure the appropriateness of the financial thresholds, any changes required as a result of a change in law and all non-material changes. Authority is sought however, for approval to a speedy mechanism to make minor changes to reflect from time to time, the Council's Officer Structure.

- 3.10 Therefore, due to the forthcoming restructure, there may be changes to the Authorisations Table in the Rules. This may include changes to the authorisation under the scheme of delegation. This could include changes to the financial values that specific levels of authority can authorise, as well additional levels of authority being added.

4 Options considered

- 4.1 It would be possible to take no action to update the existing Rules, and update them on a piecemeal basis. However, this is not considered sufficient to meet the Council's legal obligations and would result in the Council's Rules falling further behind current procurement practices.

5 Reasons for Recommendation

- 5.1 The present recommendation is made as the most effective way of meeting the Council's legal obligations and ensuring its Contract Procedure Rules reflect current procurement issues and practices.

6 Resource implications

- 6.1 There are no immediate resource implications. However, officers who undertake procurement will require training as regards the content and application of the proposed updated Rules.

Contact Officer	Sarah Deyes, 01296 585871
Background Documents	Contract Procedure Rules 2016, Procurement Code of Practice v1.

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AYLESBURY VALE DISTRICT COUNCIL

CONTRACTS PROCEDURE RULES

As approved by Council on **[Insert new Date]**

Operative with effect from **[Insert new Date]**

EU Thresholds	
From 1 January 2016	
Works contracts	£4,104,394
Light Touch Regime Services	£ 589,148
Supplies contracts	£ 164,176
Services contracts	£ 164,176

AYLESBURY VALE DISTRICT COUNCIL

CONTRACTS PROCEDURE RULES

EFFECTIVE: with effect from [insert new date]

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SECTION 1: GENERAL PRINCIPLES

1. SCOPE

- 1.1 The Contract Procedure Rules apply to all Procurement activities, including the receipt of income or where funding is received by the Council from external sources.
- 1.2 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 we are collaborating. Where the Council is acting as principal the Contract Procedure Rules will take precedence.
- 1.3 Framework Agreements that have been established by other Public Sector Bodies that are lawfully accessible to the Council should be used in accordance with the terms and conditions of the relevant Framework Agreement.
- 1.4 The following are out of scope of the Contract Procedure Rules:
 - 1.4.1 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 and, specifically, the Management of Asset, Property and Land Rules.
 - 1.4.2 Procurement of Services from other public bodies where it can be evidenced that the body is the only supplier of the good or service.
 - 1.4.3 The awarding of grants. However council officers should always ensure the principles of openness, fairness, non discrimination and Value for Money applies.

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 That supplies, services and works are delivered effectively and efficiently without compromising the Council's ability to take strategic decisions;
 - 2.1.4 That 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 Cabinet Office; and
 - 2.1.6 The delivery of economic, environmental and social value through Procurement
- 2.2 Changes to the financial thresholds set out in these Contract Procedure Rules may, from time to time, be recommended by the Monitoring Officer to Cabinet and will then need to be approved by full Council.
- 2.3 These Contract Procedure Rules should be subject to an annual refresh to ensure the appropriateness of the financial thresholds, any changes required as a result of a change in law and all non material changes. Minor changes to these Contract Procedure Rules can be considered and approved by the Director responsible for Finance after consultation with the relevant Cabinet Member. Should the annual refresh result in material changes being required, then such material changes shall be presented to Cabinet by the Monitoring Officer.
- 2.4 A Director and the Monitoring Officer shall maintain and issue the Contract Procedure Rules and the Procurement Code of Practice. The Contract Procedure Rules take precedence over Procurement Code of Practice.
- 2.5 All Procurement activity needs to adhere to the Constitution.
- 2.6 The Procurement Code of Practice provides a more detailed explanation of Procurement best practice, procedures, processes, associated Council policies and required Contract terms.
- 2.7 All officers must take appropriate measures to 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 and must follow the appropriate procedure for declaring interests as set out in the Officers Code of Conduct.

Should an Officer identify any actual or potential breach of the requirements of the Officers Code of Conduct in connection with the formulation, letting or administration of a contract (whether in relation to his own role or that of any other Officer) he shall immediately notify his Head of Service or Director in writing. The Head of Service or Director shall consult with the Monitoring Officer as to what action should be taken in consequence in connection with the contract concerned.

- 2.8 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 procedure, the Council must

take appropriate measures to ensure that competition is not distorted by the participation of that Supplier in the Procurement.

- 2.9 Unrestricted and full direct on line access free of charge to the procurement documents must be available from the date of the publication in the Official Journal of a Contract Notice or the date on which an invitation to confirm interest is sent.
- 2.10 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. **ROLES AND RESPONSIBILITIES**

Each Director is accountable for all Procurement activity in their respective departments. Their duties are to:

- 3.1 Ensure compliance with the Public Procurement Regulations, Financial Procedure Rules, Contract Procedure Rules and the Procurement Code of Practice;
- 3.2 Ensure compliance with the Local Government Transparency Code October 2015 issued by the Department for Communities and Local Government;
- 3.3 Ensure the use of compliant best practice Procurement for their department's procurement activity;
- 3.4 Ensure that no commitment to enter into a Contract with a Supplier over the specified threshold (See Table 1) is made without the specified "Authorisation under Scheme of Delegation" as set out in Table 1 to these Contract Procedure Rules;
- 3.5 Ensure that Procurement carried out for Supplies, Services and Works delivered or provided by Suppliers for the Council are approved and covered by suitable Council terms and conditions of Contract so that the responsibilities of each party are clear. If it is deemed necessary to sign up to third party terms and conditions of contract the prior approval of the Monitoring Officer must be received in writing. Input from procurement must be sought for contracts over £30,000 to determine if legal advice is required.
- 3.6 Ensure that the ten (10) days Standstill Period between the Contract award decision and Contract signature is observed where required to do so. Seek procurement and legal advice on this matter;
- 3.7 Ensure that AVDC standard terms and conditions have been used in the Procurement, or where the standard terms and conditions are not applicable, that the applicable terms

and conditions have been approved by the Monitoring Officer;

- 3.8 Use their best endeavours to ensure that no Contract commences prior to the Terms and Conditions of Contract being signed and, where necessary, sealed;
- 3.9 Ensure that all master copies of Contracts are delivered to Procurement for safekeeping;
- 3.10 Ensure that all Key Decisions as defined in the Constitution are minuted and published on the Council's website;
- 3.11 Ensure compliance with the Financial Procedure Rules;
- 3.12 Ensure 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. That 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.;
- 3.13 Identify, evaluate, record and appropriately mitigate risk (e.g. provision of performance bond, parent company guarantee and appropriate payment provisions and termination clauses within Contracts);
- 3.14 Ensure 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.
- 3.15 Ensure that Evaluation Criteria require the bidder 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).
- 3.16 Ensure immediate corrective action is taken in the event of a breach of the Contract Procedure Rules;
- 3.17 Ensure 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.
- 3.18 Require Suppliers to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the Works, Supplies or Service

4. AUTHORISATION

- 4.1 Please refer to the Authorisations Table set out at the end of this document in Table 1.
- 4.2 All Procurement activities over £30,000 (thirty thousand pounds) require the engagement of Procurement.
- 4.3 Any Procurement must be authorised in accordance with the Scheme of Delegation as published within the Constitution.
- 4.4 The Relevant Officer must complete a Preliminary Equality Assessment at the start of a procurement. If it is then deemed appropriate, a full Equalities Impact Assessment must be completed. The Equalities Impact Assessment should be completed within 14 working days.
- 4.5 The Council is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activities provided under Contracts which may be procured pursuant to these Contract Procedure Rules and 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.
- 4.6 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.

5. PROCUREMENT METHOD

- 5.1 Approved Officers must treat suppliers equally and without discrimination and must act in a transparent and proportionate manner.
- 5.2 Before commencing a Procurement procedure Approved 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.
- 5.3 The default position in acquiring Supplies, Services and Works should always be open competition through competitive tendering. Please refer to Table 1 of these Contract Procedure Rules to determine the Procurement process that should be used.
- 5.4 Procurement should be involved and engaged on the Procurement strategy/approach to be adopted for all purchases over £30,000 (thirty thousand pounds). Similarly the Economic Development Team must be consulted on promoting opportunities to local companies through Business Newsletters and Supplier Events.

- 5.5 All tender opportunities for Supplies, Services and Works over £25,000 (twenty-five thousand pounds) must be advertised on Contracts Finder and openly and in accordance with Table 1.
- 5.6 The use of Pre Qualification Questionnaires is only required for contract values above the EU Threshold. Suitability Assessment Questions may be asked as appropriate for contract values below the EU Threshold.
- 5.7 Procurement 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.
- 5.8 Approved Officers may decide to award a Contract in the form of separate lots and may determine the size and subject-matter of such lots. They must document the main reasons for their decision not to subdivide into lots

6. INFORMATION GOVERNANCE

- 6.1 When procuring, the responsible Council 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 Principle 7 of the Data Protection Act.
- 6.2 Evidence of these checks, copies of policies and guarantees provided by the Supplier must be retained by the Council officer responsible for management of the Contract and be regularly reviewed throughout the life of the Contract.
- 6.3 Refer to the Procurement Code of Practice for more detailed guidance or contact the Information Assurance Group.
- 6.4 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.

7. ACCEPTANCE

- 7.1 Awarding and entering into contractual arrangements for values above £30,000 is subject to:
- 7.1.1 Re confirmation of budgetary provision as initially identified and allocated prior to any Procurement activity;
- 7.1.2 Confirmation of acceptable financial status of the Supplier; and

- 7.1.3 The Council's Terms and Conditions of Contract must be signed for values below £30,000 (thirty thousand pounds) and sealed for all Contracts over £30,000 (thirty thousand pounds) prior to the commencement of Contract. Input from Procurement should be sought on Contracts to determine if legal advice is required from HB Public Law.
 - 7.1.4 Awarding and entering into contractual arrangements for values above £60,000 is subject to:
 - 7.1.5 Re confirmation of budgetary provision as initially identified and allocated prior to any Procurement activity;
 - 7.1.6 Confirmation of acceptable financial status of the Supplier; and
 - 7.1.7 The Council's Terms and Conditions of Contract must sealed for all Contracts over £30,000 (thirty thousand pounds) prior to the commencement of Contract. Input from Procurement should be sought on Contracts to determine if legal advice is required from HB Public Law.
- 7.2 Acceptance thresholds for Contract extensions and variations of all values are subject to further conditions as set out in Section 12 (Extensions and Variations) of these Contract Procedure Rules.

8. CONTRACT SIGNING and SEALING

- 8.1 Every Contract or Contract novation must be in a form approved by the Monitoring Officer or delegated officer, if its value exceeds £30,000 (thirty thousand pounds) or where it is appropriate to seek such approval due to the nature of the Contract.
- 8.2 Contracts with an Estimated Procurement Value greater than £30,000 (thirty thousand pounds) must be sealed on behalf of the Council, unless the Monitoring Officer or delegated officer directs otherwise. Legal input should be sought on such Contracts.
- 8.3 Where the 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.
- 8.4 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.
- 8.5 Framework Agreements entered into with respect to the provision of social care to individual service users do not require sealing and need only to be signed by the respective Director of Social Care or their nominated representative.

- 8.6 Where the Monitoring Officer or delegated officer considers it desirable that a Contract should be sealed other than as specified above, then such a Contract must be sealed.
- 8.7 All Contracts should have a clear start and end date and detail any extension options permissible.

9. **CONTRACT MANAGEMENT**

- 9.1 During the life of the Contract, Directors and managers must ensure that the Council's approved processes for contract management, as set out in the Contract Management Procedures¹ are followed.

10. **EXTENSIONS and VARIATIONS**

- 10.1 Contracts may only be extended without having to seek further approval from the Monitoring Officer if the provisions of 10.1.1 to 10.1.4 are met:
- 10.1.1 The original Contract was awarded on a Contract Procedure Rules compliant competitive tender or quotation process and includes an option to extend without seeking further approval.
 - 10.1.2 The extension or variation is in accordance with the terms and conditions of the existing Contract. Input from Procurement should be sought to confirm this is the case and to support the drafting of the extension and/or variation documents.
 - 10.1.3 If the initial Contract was subject to the EU tender procedure, that the extension option was declared within the OJEU Contract Notice.
 - 10.1.4 The Contract has not been extended beyond the approved extension period.
- 10.2 In the event that the provisions of 10.1.1 to 10.1.4 are not met then an Exemption must be sought in accordance with section 11 (Exemptions) or alternatively a new Procurement must commence.
- 10.3 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:
- a) 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;

¹ The Contract Management Procedures are currently being developed and should be published in Quarter 2, 2016.

- b) 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;
- c) 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;
- d) 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;
- e) The value of the modification is both below the EU Threshold 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 do not exceed the EU Threshold.
- f) 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 d) above.

10.4 Officers must consult with Procurement to confirm if any of the circumstances set out in section 10.3 above apply, permitting a Contract amendment, extension or renewal and must also comply with the Authorisation and Acceptance Thresholds in Table 1

10.5 A Contract Variation Notice needs to be sent to OJEU in the case of Contract variations permitted and made in accordance with paragraphs b) and c) of section 10.3 above.

10.6 In the event that the provisions of 10.3 are not met then an exemption must be sought in accordance with section 11 (Exemptions) or alternatively a new Procurement must commence.

11. EXEMPTIONS

11.1 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. The Council can only waive the rules established by the Council – the Council cannot waive UK law or EU Procurement Regulations.

11.2 Exemptions (in whole or in part) from the requirements set out in these Contract Procedure Rules may only be obtained by completing an Exemption Report which is available from Procurement after having taken advice from the Monitoring Officer.

11.3 The Exemption Report must be submitted to the Director responsible for Finance and the Monitoring Officer for their consideration. The Director responsible for Finance and the Monitoring Officer must be satisfied that special circumstances exist which warrant such a step. If an Exemption is permitted, the Exemption report must be signed by the Director responsible for Finance and the Monitoring Officer and submitted to Procurement. Such Exemption Report must set out in detail the terms of any exemption from the requirements set out in these Contract Procedure Rules

11.4 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.

11.5 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.

11.6 Normally the circumstances under which an Exemption can be agreed are:

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.)

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.

- 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.
- d) **Service Imperative:** Demonstrable circumstance that is exceptional.
- 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.

Table 1 – Authorisations Table

Total Spend/Aggregate Contract Value	Procurement Process	Documentation Required	Authorisation under Scheme of Delegation
<p>REQUEST FOR QUOTATION</p> <p>Up to £30,000</p>	<p>Requirement must be advertised via Contracts Finder if over £25,000 (refer to procurement)</p> <p>1 quote is required, however 3 quotations is recommended to ensure value for money.</p> <p>Payment for low value-non recurring spend up to £1,000500 should, where appropriate be paid by credit card.</p>	<p>Quotations must be attached to the Tech One purchase requisition or contract.</p> <p>No PQQ - Suitability Assessment Questions only.</p> <p>As a minimum the Council’s Terms and Conditions of Contract must be signed and issued with the Purchase Order.</p>	<p>Relevant Officer if acting within their delegated authority.</p>
<p>QUOTATION PROCESS</p> <p>£30,001 – £60,000</p>	<p>Procurement must be consulted.</p> <p>Requirement must be advertised and tendered via Contracts Finder (refer to procurement):</p> <p>Minimum 3 quotes required from capable Suppliers.</p> <p>When required, standstill period must be observed prior to award of contract.</p>	<p>A written contract must be sealed by the Council and the Supplier. A copy of the contract must be sent to Procurement.</p> <p>No PQQ - Suitability Assessment Questions only</p> <p>Invitation to Tender Documents which will include (where appropriate): Terms and Conditions of Contract; Service Specification; Method Statement Questions; Pricing Document; Information to Tenderers including clear evaluation criteria and sub criteria.</p> <p>Contracts Finder Contract Notice and Contract Award Notice (if applicable).</p>	<p>Relevant Officer, in consultation with his Head of Service or Director</p>

Total Spend/Aggregate Contract Value	Procurement Process	Documentation Required	Authorisation under Scheme of Delegation
<p>TENDER PROCESS</p> <p>PROCUREMENT INVOLVEMENT IS MANDATORY</p> <p>£60,001 to EU Threshold</p>	<p>Procurement must be consulted at the start of the procurement.</p> <p>A budget must be approved prior to any tender activity commencing.</p> <p>Requirement must be advertised and tendered via Contracts Finder (refer to procurement).</p> <p>A minimum of 3 written tenders from capable suppliers.</p> <p>Procurement of supplies, services and works over the current OJEU value thresholds require OJEU advertising. See link below for current thresholds. http://www.ojec.com/threshholds.aspx</p> <p>When required, standstill period must be observed prior to award of contract.</p>	<p>OJEU and Contracts Finder advert (if applicable)</p> <p>Pre qualification Questionnaires only required for procurement above OJEU financial thresholds (currently £164,176 for supplies and services, and £4,104,394 for Works).</p> <p>Invitation to Tender Documents which will include: Terms and Conditions of Contract; Service Specification; Method Statement Questions; Pricing Document; Information to Tenderers including clear evaluation criteria and sub criteria.</p> <p>OJEU and Contracts Finder Contract Notice and Contract Award Notice (if applicable)</p> <p>The Council’s Terms and Conditions of Contract must be sealed by the Monitoring Officer.</p> <p>The master signed and sealed copies must be handed to Procurement. One master copy will then be sent to the Supplier and one retained by the Council’s Procurement Team.</p>	<p>The Head of Service responsible for the procurement or by the relevant Director.</p>

Total Spend/Aggregate Contract Value	Procurement Process	Documentation Required	Authorisation under Scheme of Delegation
<p>TENDER PROCESS</p> <p>PROCUREMENT INVOLVEMENT IS MANDATORY</p> <p>EU Threshold Upwards</p>	<p>Procurement must be consulted at the start of the procurement.</p> <p>A budget must be approved prior to any tender activity commencing.</p> <p>Requirement must be advertised and tendered via Contracts Finder and OJEU (refer to procurement).</p> <p>Procurement of supplies, services and works over the current OJEU value thresholds require OJEU advertising. See link below for current thresholds. http://www.ojec.com/threshholds.aspx</p> <p>When required, Standstill Period must be observed prior to award of contract.</p>	<p>OJEU and Contract Finder advert (if applicable)</p> <p>Pre qualification Questionnaire required.</p> <p>Invitation to Tender Documents which will include: Terms and Conditions of Contract; Service Specification; Method Statement Questions; Pricing Document; Information to Tenderers including clear evaluation criteria and sub criteria.</p> <p>OJEU and Contracts Finder Contract Notice and Contract Award Notice (if applicable)</p> <p>The Council's Terms and Conditions of Contract must be sealed by the Monitoring Officer</p> <p>The master signed and sealed copies must be handed to procurement. One master copy will then be sent to the Supplier and one retained by the Council's Procurement Team.</p>	<p>EU Threshold - £500,000 – The Director responsible for the procurement</p> <p>£500,001-£1,000,000 – The Director responsible for the procurement, in consultation with the Director responsible for finance.</p> <p>£1,000,001 - £5,000,000 The Director responsible for the procurement, in consultation with the Director responsible for finance and the appropriate Cabinet Member, or if it so determines, the Cabinet.</p> <p>In excess of £5,000,000 – The Cabinet.</p>

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AYLESBURY VALE DISTRICT COUNCIL

PROCUREMENT CODE OF PRACTICE

As approved by Council on **[Insert new Date]**

Operative with effect from **[Insert new Date]**

EU Thresholds From 1 January 2016	
Works contracts	£4,104,394
Light Touch Regime Services	£ 589,148
Supplies contracts	£ 164,176
Services contracts	£ 164,176

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1. INTRODUCTION

- 1.1 The Procurement Code of Practice (the “**Code**”) provides guidelines for Council Officers to carry out effective and efficient procurement activities which are compliant with the Council’s Constitution and policies.
- 1.2 The Code provides supplementary information to the Contract Procedure Rules which take precedence over the Code.
- 1.3 Any Council Procurement activity must comply with the Contract Procedure Rules. It is a disciplinary offence to fail to comply with Contract Procedure Rules when undertaking Procurement on behalf of the Council. Council employees, either permanent or temporary, have a duty to report breaches of Contract Procedure Rules to an appropriate senior manager and the Monitoring Officer.
- 1.4 All Procurement must be undertaken with regard to high standards of probity and in accordance with the relevant sections of the Council’s Constitution. The Council has a commitment to transparency and it is important that the procurement process is as transparent and open as possible.

2. APPLICATION

- 2.1 All Council officers who commission and or procure contracts for supplies, services and works should adhere to the principles and practices set out in the Code and where necessary seek further advice and guidance from Procurement. This applies to all persons who commission and or procure contracts on behalf of the Council, such as external consultants or third party service providers.
- 2.2 Council Officers with responsibility for procurement must ensure that they are able to demonstrate achievement of best value by having regard to a combination of economy, efficiency and effectiveness

3. SCOPE

- 3.1 The Code should be followed for all Procurement activities made on behalf of the Council as defined in Section 23 (Definitions) of this Code.
- 3.2 Where the Council is entering into a contract as an agent and or in collaboration with another public body or government department this Code applies only in so far as it is consistent with the requirements of the body concerned. Where the Council is acting as principal this Code will take precedence and other participating authorities should be made aware of the content.

4. COMMERCIAL POLICIES AND PROTOCOLS

There are 10 essentials that **MUST** be followed when carrying out Procurement:

- 4.1 DO plan your projects ahead to allow enough time for the procurement process, including the drafting and negotiation of contracts.
- 4.2 DO observe any spend freezes in place by Her Majesty's Treasury and the Department for Communities and Local Government (DCLG.)
- 4.3 DON'T negotiate on contract terms without guidance and advice from Procurement and, where Procurement directs, legal advisers at HB Public Law.
- 4.4 ALWAYS use AVDC standard terms and conditions of contract unless otherwise approved by Procurement.
- 4.5 ONLY Procurement are authorised to draft and issue contracts, extensions and variations taking legal advice where appropriate from HB Public Law.
- 4.6 DON'T give verbal or written instructions to start work, or pay suppliers until a Purchase Order has been raised, or a contract signed by all, relevant, parties is in place.
- 4.7 Retrospective purchase orders (raised after receipt of invoice) are NOT ALLOWED.
- 4.8 ALL original documentation must be filed and stored in accordance with the council's Records Retention Policy and in line with the guidance provided by Procurement for each procurement activity.
- 4.9 DON'T enter into any agreement or order any goods or services with a new vendor without speaking to Procurement in the first instance. DON'T set up new suppliers without approval from Procurement.

Note that written documentation should be created, recorded and stored for every contractual arrangement, although the documentation may be a Purchase Order. Every contractual arrangement must be recorded in writing. Where the value is £30,000 (thirty thousand pounds) or more the written record must be a formal contract, appropriately executed (signed/sealed) by all relevant, parties.

5. PROCUREMENT ETHICS

- 5.1 The Council is committed to demonstrably ethical procurement to make sure standards of conduct by individuals and the organisation generates trust and respect.
- 5.2 Staff conduct must not foster suspicion of any conflict between official duties and private interests. Staff must not accept gifts from existing or prospective suppliers, or show favour or disfavour to any person or organisation. Dealings with suppliers must be honest, fair, transparent and even-handed at all times

6. TRANSPARENCY AGENDA

- 6.1 The Government requires greater transparency across all public bodies so that the public can hold organisations and politicians to account.
- 6.2 All procurement activity should be compliant with the Local Government Transparency Code October 2015 issued by the Department for Communities and Local Government.
- 6.3 The Council's Transparency Contracts Register is updated on a quarterly basis. Details of all new contracts over £5,000 (five thousand pounds) must be sent to Procurement, within 1 (one) week of awarding the contract.
- 6.4 If you have any questions on transparency in relation to your procurement then discuss this with Procurement.

7. AUDIT TRAIL

- 7.1 It is important that staff follow and adhere to the Contract Procurement Rules to ensure probity and value for money for the Council. Under the Contract Procurement Rules, a significant amount of responsibility has been delegated to Council officers.
- 7.2 There must be a clear audit trail in place in all departments. Any decisions on tendering and contract letting must be clearly documented and able to support audit review.

8. ROLES AND RESPONSIBILITIES

- 8.1 Procurement will consult and liaise with departments on the tendering of contracts and will manage the procurement process where required.
- 8.2 Where there are two or more departments involved in the letting of a contract, there must always be a 'Lead' department. The 'Lead' department will have responsibility for the effective, letting and monitoring of the contract with the support of Procurement for the tendering process. Procurement should be consulted for guidance to determine the Lead department.

9. CONFIDENTIALITY

- 9.1 Whilst the council has a commitment to transparency it is also responsible for ensuring the appropriate confidentiality and viability of its procurement. Unless directed or required under legislation, officers should consider the procurement process and information supplied by bidders to be confidential.

10. CONTRACT FUNDING

10.1 FINANCIAL APPROVAL

10.1.1 Before proceeding with any procurement exercise the Relevant Officer shall ensure that:

- appropriate funding for the Contract has been approved by the Council, Cabinet or relevant Cabinet Member, (or where the subject matter of the Contract falls within a delegated budget, has been duly identified within that budget), as appropriate; and
- appropriate authorisation for the expenditure concerned has also been obtained from the Council, Cabinet or relevant Cabinet Member, (or where the subject matter of the Contract falls within a delegated budget, the appropriate Director or Head of Service).

10.1.2 The procedure for obtaining funding for all contracts is set out in the Financial Procedure Rules. If in doubt Officers should consult the Director responsible for finance.

10.1.3 The Contract Procedure Rules shall apply to a procurement even if it is being conducted using external funding (e.g. by a funding body such as the Big Lottery or using Section 106 developer contributions).

11. CATEGORY & PROCUREMENT STRATEGY

11.1 MARKET TESTING

11.1.1 Market Testing is the process of researching and understanding the market maturity, opportunity, levels of interest and potential solutions so as to inform the procurement strategy options and likely contract values required for the authorisation process.

11.1.2 Procurement must be consulted on market testing tools and techniques to ensure the Council does not contravene any Procurement regulations or jeopardise a future Procurement process.

11.1.3 Procurement must be involved in the design, set-up and implementation of any market testing activity.

11.2 AGGREGATION AND DISAGGREGATION

11.2.1 Category Management involves the aggregation of spend by service or product category so that Value for Money is optimised following procurement.

11.2.2 Category Management requires spend analysis across all departments for Goods and Services which are similar in nature and can be bundled together, and forms the basis for the Procurement Strategy.

11.2.3 This approach will help to ensure that the Council will comply with CPRs and OJEU limits when procuring Goods and Services across the Council, rather than solely within a department.

11.2.4 Disaggregation is where the procurement of Goods and Services is unbundled or fragmented into smaller lot sizes or unduly short contract time frames. This activity may result in the Council not achieving Value for Money and being exposed to unnecessary risk and liability because of the avoidance of higher Contract Procurement Rule thresholds and is not permitted.

11.3 THE PUBLIC SERVICES (SOCIAL VALUE) ACT 2012

11.3.1 The Act requires commissioners and procurers at the pre-procurement stage to consider how what is to be procured may improve social, environmental and economic well-being of the relevant area. Procurement will provide advice and guidance on implementing the Act on all procurement activity in which the Public Contracts Regulations 2015 apply.

11.4 SAFEGUARDING VULNERABLE GROUPS ACT 2006

11.4.1 The Relevant Officer must consider whether there are any safeguarding aspects to their procurement, and if so, consult with the Safeguarding Lead for input.

11.4.2 If any safeguarding issues are identified, the relevant officer should, in consultation with the Safeguarding Lead and Supplier decide how these issues are to be addressed and what measures need to be put in place to address them.

11.4.3 Where applicable, such measures must be inserted into the contract.

11.5 ENCOURAGING A DIVERSE BASE OF SUPPLIERS

11.5.1 The Relevant Officer should consider how each procurement can be structured in order to promote supplier diversity; including the participation of small medium enterprises, 3rd sector organisations (including voluntary and community sector organisations and social enterprises), including firms and 3rd sector organisations based in Aylesbury Vale.

11.5.2 The Relevant Officer should consult with Procurement when considering how to best encourage supplier diversity through each procurement utilising procurement processes, procedures and paperwork that are open, transparent and appropriate to the risk of the contract

12. PROCUREMENT AUTHORISATION

12.1 Authorisation for any procurement to commence must be completed as set out in the Contract Procedure Rules.

13. SPECIFICATION DEVELOPMENT

13.1 SPECIFICATION WRITING

- 13.1.1 The specification is a key procurement document and will form the basis of the supplier evaluation process with which the successful supplier will be chosen. The specification is incorporated into the supply contract setting out what the supplier will deliver and how success will be measured.
- 13.1.2 A specification can be defined as "a statement of needs to be satisfied by the procurement of external resources". It is also known as an operational requirement, statement of requirement, statement of service requirement or statement of work.
- 13.1.3 It is recommended that an output or outcome-based specification is used wherever possible.
- 13.1.4 A full and approved specification will be required before engaging the market and commencing the tender process.
- 13.1.5 Refer to Procurement for guidance on writing a specification.

13.2 GUIDELINES FOR CREATING A SPECIFICATION:

- State the requirement specification completely, clearly, concisely, logically and unambiguously;
 - Focus on outputs not how they are to be met;
 - Include enough information for potential suppliers to decide and cost the goods or services they will offer, or in the case of negotiated route arrive at realistic budgetary costs;
 - clearly set out how the goods or services to be delivered will be evaluated against defined objective criteria by examination, trial, test or documentation;
 - State the clear, objective criteria for acceptance by examination, trial, test or documentation;
 - Contain only the essential features or characteristics of the requirement;
 - Be non-discriminatory and provide equal opportunity for all potential suppliers within the EU to offer a product or service which satisfies the needs of the user and which may incorporate alternative technical solutions; and comply with any legal obligations e.g. under UK law, the EEC Treaty, an EC Directive or the GATT Agreement on Government procurement.
- 13.2.1 As a general rule the specification should be developed from a statement of the business requirements created during the preparation of the business case.
 - 13.2.2 The requirement may be refined in consultation with suppliers as part of market testing or after the supplier selection stage. This can be particularly useful where

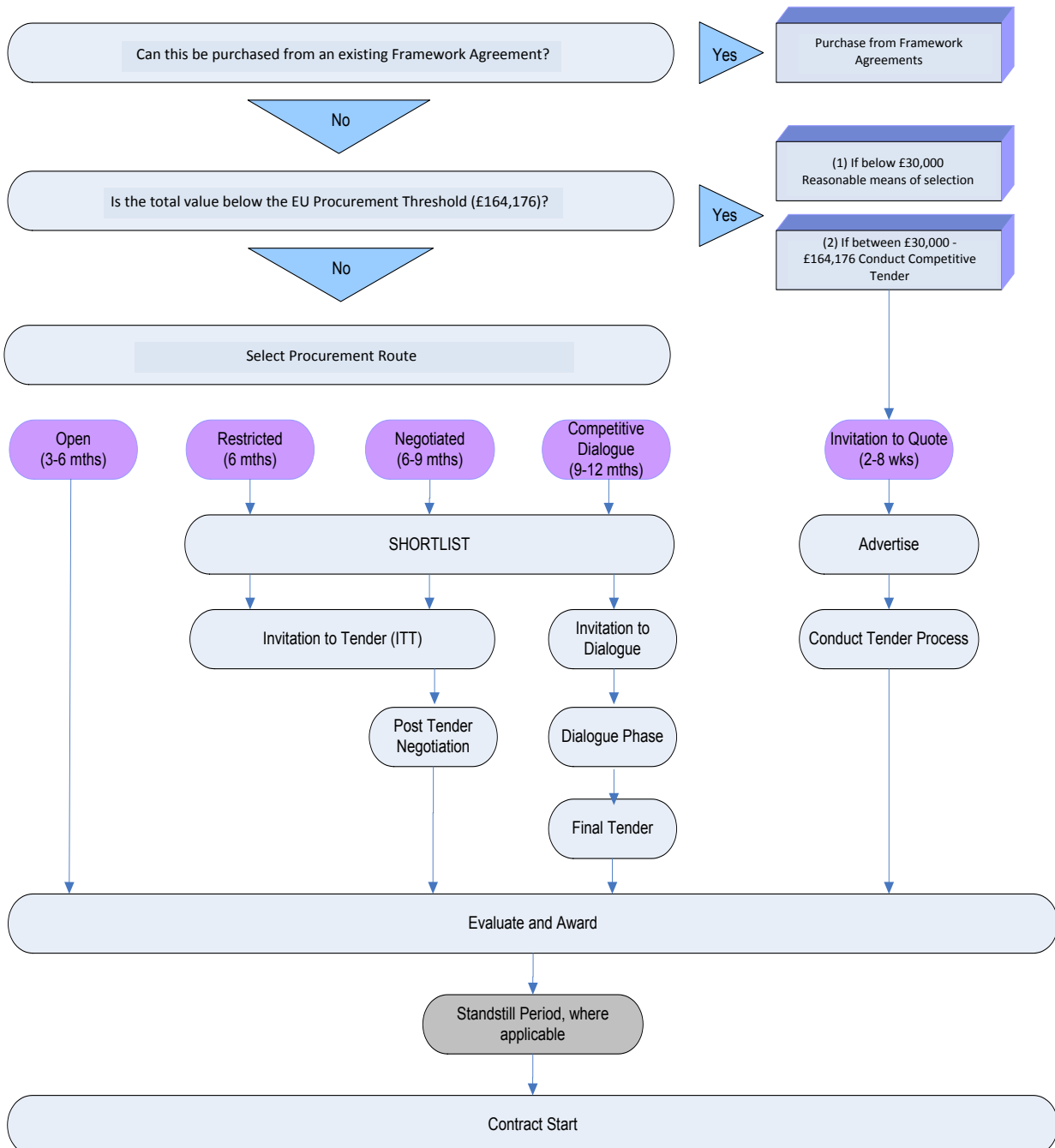
innovative solutions are being considered. This should be managed with great care and integrity to avoid contravening procurement regulations and should only be done in partnership with Procurement.

- 13.2.3 The specification is prepared by the relevant department in the first instance. Procurement will review the specification and support the team to produce the final agreed specification. It is extremely important to ensure that the specification delivers the requirements needed, for large scale projects and it is good practice to have the input of stakeholders and suppliers.

14. PROCUREMENT

14.1 PROCUREMENT ROUTE MAP

The diagram below identifies the available routes dependent on contract value. The timeframe for each is subject to approval of the procurement strategy, approval of specification and approved contract form.



14.2 JOINT PROCUREMENT WITH OTHER LOCAL AUTHORITIES

14.2.1 Circumstances may arise in which it is expedient for one local authority to procure supplies, services or works on behalf of another. Such an arrangement may be formulated on the basis of some form of partnership working, or as a framework agreement, as described above.

14.1.1 The relevant Director shall determine whether (having regard to the efficient use of resources) particular supplies, services or works would be most effectively procured by the use of such an arrangement. The Director shall use his experience and judgement in order to do so. Where the supplies, services or works have a value or estimated value greater than £500,000 the Director shall prior to making a final determination:

- (a) conduct a full options and risk appraisal, and
- (b) consult with the Monitoring Officer and the Director responsible for finance.

14.1.2 Where a contract exceeds the EU financial thresholds specified on the cover page of this Procurement Code the Relevant Director must also notify the Monitoring Officer prior to commencing the procurement.

14.1.3 Prior to the Council entering into any arrangement to procure supplies, services or works on behalf of another local authority or vice versa its use must be approved as follows:

- (a) for the procurement of supplies, services or works having a value or estimated value of £500,000 or less, by the appropriate Director;
- (b) for the procurement of supplies, services or works having a value or estimated value greater than £500,000 but less than £1,000,000, by the appropriate Director, in consultation with the Director responsible for Finance;
- (c) for the procurement of supplies, services or works having a value or estimated value greater than £1,000,000 but less than £5,000,000, by the appropriate Director, in consultation with the Director responsible for Finance and the appropriate Cabinet Member, or if it so determines, the Cabinet;
- (d) for the procurement of supplies, services or works having a value or estimated value of £5,000,000, by the Cabinet.

14.1.4 It should be noted that where any such decision is taken it may still be necessary to undertake a competitive procurement exercise in order to select the supplier, and if the Procurement Directive applies the procuring authority must also comply with its requirements.

14.1.5 If the Council, Cabinet or relevant Cabinet Member (as appropriate) approve the Council leading such a procurement process the provisions of the Contracts Procedure Rules shall apply

14.1.6 If the Council, Cabinet or relevant Cabinet Member (as appropriate) approve the Council becoming a party to such a contract in circumstances in which the procurement process is to be led by another authority, the procedures for letting that contract will be regulated by that authority's own Constitution. Whilst this may not contain provisions directly equivalent to those set out in the Contract Procedure Rules, it is reasonable to assume that they will be

adequate to secure reasonable levels of financial probity, and to regulate the process and protect the interests of the parties involved.

14.2 CONSULTANT SERVICES

- 14.2.1 The Contract Procedure Rules apply to the appointment of Consultants. Director.
- 14.2.2 Where a construction/works consultant is required the Relevant Officer may use Constructionline, in which case advertising in accordance with the Rules is not required save where the EU Procurement Directives apply.
- 14.2.3 The Relevant Officer must ensure that any consultant appointed by the Council has taken out professional indemnity insurance at an appropriate minimum level of cover that reflects the nature, complexity and potential value of the commission. However, generally the minimum acceptable level of cover is not less than £1,000,000 in respect of any one incident.
- 14.2.4 Consultant contracts must be time-limited and project limited with review against continued business requirement and value delivered. The Director must approve any contract variation.

14.3 SINGLE TENDER ACTION

- 14.3.1 Single Tender Action (STA) is the awarding of a contract to a single party without undertaking a competitive tendering exercise. Single Tender Actions are permitted under the EU Procurement Directives in the following, exceptional circumstances:
- Technical Reasons – only one enterprise has the expertise to do the work.
 - Exclusive Rights – only one party can perform the contract due to intellectual/industrial property rights e.g. patents/trademarks or copyright.
 - Artistic Reasons – engaging an artist or performer.
 - Consultancy Services – follow up work to complete the assignment previously awarded on a competitive tendering exercise; see guidance on aggregation rules.
- 14.3.2 Procurement must be consulted when the use of a STA is being considered and Procurement can advise whether the Single Tender justification fits within the four exceptions noted above.
- 14.3.3 Single Tender Action is not permitted in the following circumstances:
- time constraints through poor project planning;
 - previous relationships with suppliers;
 - to avoid the competitive tendering exercise.
- 14.3.4 The Director must approve all STA requests.

14.4 RECEIPT AND OPENING OF TENDERS

- 14.4.1 The Relevant Officer will manage the receipt of tenders in accordance with the specified procedure stated in the tender documents.
- 14.4.2 Procurement and Business Assurance must be in attendance at the opening and recording of all tenders.

14.5 TENDER EVALUATION

14.5.1 All tenders must be evaluated in accordance with the Most Economically Advantageous Tender (MEAT). The criteria for evaluation and award must be included in the published tender document. This must include any non-financial criteria in the form of method statements as well as the financial criteria. The weighting for all criteria, including any sub-criteria must be clearly stated.

14.5.2 All tenders above £30,000 (thirty thousand pounds) must be evaluated independently by at least 2 (two) individuals. Evaluators must record their individual comments and scores using the scoring range clearly laid out in the published tender documents, prior to the consensus meeting. Summary comments must be recorded at the consensus meeting and kept on file. These will be used to support the debriefing exercise. Procurement will advise on the tender evaluation process for contracts over £30,000 (thirty thousand pounds).

14.6 FINANCIAL EVALUATION

14.6.1 This evaluation should be undertaken by:

- Procurement if the contract is valued at less than the EU thresholds for supplies, services or work; or
- Procurement and a Financial Officer as delegated by the Chief Finance Officer if: (a) the contract is valued at more than the EU thresholds for supplies, services or works; or (b) the contract is considered to have significant impact on the local community.

In all cases the financial evaluation must be completed within a period not exceeding two weeks prior to acceptance of the procurement process recommendation.

14.7 RECORDS MANAGEMENT

14.7.1 Comprehensive records of every purchase, must be kept in accordance with the Council's Records Retention Policy

14.7.2 For tenders, contracts and framework agreements, all original written procurement documentation must be managed and stored by the relevant department. This includes tenders; specifications; data protection due diligence evidence; tender packs; supplier correspondence; contracts; service level agreements; contract variations; contract extensions, and termination letters.

14.7.3 A copy of all signed/sealed contracts must be sent to Procurement.

14.8.4 Supporting documentation must be attached to the relevant purchase requisition or contract in Technology One.

14.8 MAINTENANCE OF A CONTRACTS REGISTER

- 14.8.1 All contracts with a value or estimated value in excess of £5,000 (five thousand pounds) at the time of award shall be recorded in the Council's Transparency Contracts Register which shall be maintained by Procurement
- 14.8.2 The Transparency Contracts Register shall be maintained in electronic format, and the contents shall be made available for inspection by members of the public.
- 14.8.3 The Relevant Officer shall be responsible for ensuring that the requisite details are sent to Procurement by no later than 5 Working Days after the award of the contract concerned.

14.9 POST TENDER CLARIFICATION

- 14.9.1 Any post-tender clarification must be based on the tender submission received and approval must be sought from Procurement before proceeding.
- 14.9.2 In the case of European procurements there is a mandatory requirement to provide bidders with certain, specified, information. Please consult with Procurement.

14.10 DEBRIEFING SUPPLIERS

14.10.1 Debriefing gives bidders feedback on the quality of their response and the reason they did or did not get selected. It is carried out at the bidder's request, following a pre-qualification or tender exercise. Debriefing is an important and integral part of good procurement practice because it provides a useful learning tool for you and the bidder.

14.10.2 The objective is to provide positive and constructive feedback on the bidder's response, together with an opportunity to understand the evaluation process. It is aimed to assist bidders to improve their performance in future procurement exercises.

14.10.3 Key requirements for debriefing:

- Debriefing must be conducted at the request of an unsuccessful bidder.
- Debriefing successful bidders is good practice and should be encouraged wherever possible.
- 'Unsuccessful Bidder' letters should always include the bidders scores and feedback as well as an invitation to bidders to attend a debrief meeting.
- Debriefing should always be undertaken with caution and must be planned thoroughly.
- Debriefing should be a face-to-face interview with representatives of the bidder,
- Ideally the Debrief team should include someone from the evaluation team and Procurement.
- The timetable should enable debriefing of unsuccessful suppliers prior to contract signature.

14.10.4 If subject to the EU procurement regulations, debriefing must take place at least three days before the end of the standstill period if requested by midnight of the second working day following contract award notification, or otherwise within 15 days of receipt of a request from an unsuccessful bidder.

15 INFORMATION GOVERNANCE

- 15.1 As stated in the Contract Procedure Rules, the council must carry out due diligence checks in the area of information governance. External contractors do not necessarily need to comply with the council's own information governance policies, but it is important that they follow procedures that are at least the same standards as the councils. We may require contractors to abide by the council's policies if they are using council equipment. As part of the due diligence process the contractor's information governance policies need to be checked by the officer undertaking the procurement to ensure they are (or an assurance obtained that they will be amended to be) at least equal to the council's standards in terms of compliance with the relevant data security legislation.
- 15.2 All contracts entered into on behalf of the Council may be subject to disclosure under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 ("EIR"). A contract clause cannot exclude the contract from the council's responsibilities under FOIA.
- 15.3 Information belonging to the Council but held by a contractor on the Council's behalf may be subject to disclosure under the Freedom of Information Act 2000. A contract clause cannot remove this responsibility under FOIA .
- 15.4 PRE-CONTRACTUAL CHECKS
- 15.4.1 There is an obligation under the Data Protection Act 1998 (the Act) to undertake pre-contractual checks on the contractor. The Act deals with the processing of personal data. i.e. information which relates to a living, identifiable individual, which includes names, address, date of birth etc. Whilst there may be some contracts that do not include the processing of personal data, many of the Council's contracts will include the processing of personal data by the contractor on the council's behalf. The contractor will be the "Data Processor" and the council the "Data Controller". It is a requirement of the Act for the Council as Data Controller to ensure that the Data Processor provides sufficient guarantees concerning its technical and organisational security measures which govern the processing to be undertaken.
- 15.4.2 The department carrying out the procurement should make enquiries with the potential Data Processor and should take account of the responses to these enquiries as part of the procurement process when choosing a provider. Copies of letters and documentation should be retained as evidence in the event of a data protection audit or if an incident occurs and they are required by the Information Commissioner.
- 15.4.3 The data security systems and risk assessment procedures of the Data Processor have been thoroughly tested and meet the required standards of the Council's Information Governance policy
- 15.4.4 Both physical and electronic measures must be covered, as well as provision for training and staff verification. As a minimum, copies of appropriate information security policies and procedures must be obtained.

15.5 ONGOING CHECKS

- 15.5.1 Regular monitoring of information security policies of the Data Processor should be undertaken and the results retained, together with any communications between the council and the Data Processor concerning improvements or amendments required to their processes or systems. The frequency of monitoring would be dependent on nature of data being processed and the circumstances of the contract.

16 DATA PROTECTION CONTRACT PROVISIONS

16.1 The Data Protection Act 1998 Compliance Toolkit provides full details and checklists:

- 16.1.1 All contract terms for Data Processing services must be approved by an Information Governance Officer from the council's Information Management Team;
- 16.1.2 Contracts for Data Processors must state that they will only act on the instructions of the Data Controller.
- 16.1.3 Contracts must state that the Data Processor is required to comply with obligations equivalent to those imposed on a Data Controller by the 7th Data Protection Principle of the Act.
- 16.1.4 The contract must include the right to make reasonable spot checks on the Data Processor's information security measures and the Council must not engage any Data Processor who refuses such access.
- 16.1.5 Contract contains performance monitoring to ensure that the Data Processor continues to meet these standards throughout the life of the contract and beyond if necessary.
- 16.1.6 Clauses should be included in the contract that cover the provision of information from the contractor to the council to enable it to comply with its statutory duties under the Freedom of Information Act 2000, Data Protection Act 1998 and other legislation.
- 16.1.7 If there are any queries about the applicability of information governance requirements to the contract, specialist advice should be sought from the council's Information Management team.
- 16.1.8 The contract should contain provision to ensure that the Council is immediately notified of any data security incident involving Council data.

16.2 SUB-PROCESSORS

- 16.2.1 Any sub-contracting undertaken by a Data Processor must further bind any sub-contractor to comply with the same terms as those to which the contractor is required to comply with under the main contract.

16.3 EXIT ARRANGEMENTS

- 16.3.1 The contract exit arrangements must include provisions that cover the managed return or secure deletion of the Council's data.

16.4 EXISTING ARRANGEMENTS

16.4.1 All existing contractual arrangements should be reviewed to ensure they are in line with Data Protection Act requirements.

17 CONTRACT DETAILS

17.1 All contracts should use Council standard Terms and Conditions. Any changes to these must be approved by Procurement and the Monitoring Officer prior to signature.

17.2 For capital projects, the use of JCT or NEC contracts may be more appropriate.

17.3 The Monitoring Officer and Procurement should be consulted before a decision is made on the form of contract to be used.

18 FRAMEWORK AGREEMENTS

18.1 The relevant officer, in consultation with Procurement, may conclude a Framework Agreement with economic operators. Having established the Framework Agreement in accordance with the rules detailed under Contract Procedure Rules, the Relevant Officer may award specific contracts to the economic operator's party to the Framework Agreement.

18.2 For purposes of the rules, Framework Agreements are broken down into two categories:

18.2.1 A single supplier framework: call offs/specific contracts are awarded without further competition but they should remain within the limits of the terms laid down in the framework agreement

18.2.2 A multi supplier framework must contain at least three (3) suppliers. Call off contracts can be awarded either:

- a. by application of the terms set out in the agreement itself; or
- b. where not all the terms are set out in the framework agreement, by mini competition.

18.2.3 Rules applicable to both types of Framework Agreements:

- The terms may not exceed four years; and
- When awarding contracts based on a Framework Agreement the parties must not make substantial amendments to the terms laid down in that agreement. Any amendments to the Framework Agreement must be approved by Procurement.

18.2.4 Additional rules applicable to Framework Agreement mini competitions:

- consult in writing all the economic operators capable of performing the proposed call-off contract;

- fix a time limit for the receipt of mini competition quotations which takes into account factors such as the complexity of the subject matter of the contract and the time needed to send in tenders;
- keep each mini competition quotation unopened and in a secure location until the expiry of the time limit for the receipt of tenders; and
- award each contract to the contractor that has submitted the best offer on the basis of the award criteria, which is in accordance with framework evaluation criteria
- call-offs based on mini competitions above the threshold value (EU Public Procurement threshold applicable at the time) are subject to a 10 day standstill period, appropriate "Alcatel" letters to be released.

18.2.5 For framework agreements, the mandatory standstill period applies at the stage at which a framework agreement itself is awarded, but not during subsequent call-offs or mini-competitions within framework agreements. It is best practice to have a standstill period during the call-off stage, if possible.

19 CONTRACT AWARD

19.1 For all procurements, you must keep the supplier, contractor or service provider informed about the award of the contract.

19.2 This must be done in writing by the quickest means available, as soon as possible after the award decision has been made, and include details of:

- the award criteria
- the score of both the, relevant, unsuccessful tenderer and the successful party
- the name of the winning tenderer

19.3 At least 10 days must be allowed between the date of despatch of this information (known as 'notice of award'), and the date on which the new contract starts or framework agreement concludes ("Standstill Period").

19.4 A supplier that has been sent a notice of award may request an accelerated debrief. If this is received *in writing* by midnight of the second working day of the standstill period, you must provide this information at least three full working days before the end of the standstill period.

19.5 Where this is not possible, the standstill period must be extended to allow at least three working days between the feedback and the date the Council proposes to enter into the contract.

19.6 The Council must provide a debrief within 15 days of receipt of the request, if a request for feedback is received outside of the accelerated time limit. There is no need to extend the standstill period in these circumstances

19.7 For further guidance about awarding contracts and debriefs, please speak to Procurement.

20 CONTRACT MANAGEMENT

20.1 Directors, managers and officers are responsible for ensuring contract management and monitoring activities are carried out in accordance with the Contract Procedure Rules. Contract Management

and Monitoring is required for all contracts. Contract management activities can be broadly grouped into the following areas:

- **Service delivery management:** ensures that the service is being delivered as agreed, to the required level of performance and quality.
- **Relationship management:** is ensured through regular contract monitoring meetings which keep the relationship between the two parties open and constructive.
- **Contract administration:** handles the formal governance of the contract and changes to the contract documentation. Performance against contract standards must be monitored and recorded on a regular basis proportionate to the risk and value of the contract.
- **Contract Dispute:** Guidance must be sought from Procurement.

20.2 Contract monitoring is a key part of contract management which must be carried out during the lifetime of a contract to ensure an efficient, relevant, productive service.

20.3 Effective monitoring of contracts will ensure that all those who are responsible for contract management in the Council regularly and accurately assess the performance of goods, works and service providers. This will allow the right management information to be available to make operational and strategic decisions

20.4 Management Information reporting and/or access should be built into the contract and arrangements should be in place to deal with the results of that self-monitoring information. The views of service users should be reported and acted upon where appropriate.

20.5 It is essential that contract monitoring clauses are built into the contract and that both parties are clear about what is expected in terms of performance prior to the contract starting.

21 CONTRACT TERMINATION, NOVATION or ASSIGNMENT

21.1 Contract termination, novation, assignment or transfer may only be completed by Procurement who will work with the Monitoring Officer to ensure correct legal procedure is followed. To terminate a contract, please contact Procurement.

22 NEW SUPPLIER

22.1 New suppliers will only be set up following an approved procurement exercise. It is strictly prohibited to request a new supplier after receipt of an invoice. Any new supplier request must be made using the approved form and must clearly state the reason. Procurement may reject a new supplier if a current contract/framework has not been used and/or a properly managed procurement process has not been undertaken.

23 PURCHASE ORDERS

23.1 A purchase order must be raised and sent to the supplier for every purchase.

23.2 If the supplies and services purchased are to be paid for in full, then a purchase requisition must be raised in Tech One and authorised accordingly, in order for a purchase order to be created.

23.3 If the supplies, services or works are to be provided and paid for over a period of time, then a contract needs to be set up in Tech One. A purchase order can be raised within that contract and sent to the supplier.

23.4 User guides on how to use Tech One are available on Mavis.

24 PURCHASING CARDS

24.1 A purchasing card can be ordered by completing the application form (found on Mavis under forms) authorised by their Director or Head of Service and approved by the Finance Manager.

24.2 Transaction limits and authorisation categories will be set in consultation with the departmental Head of Service and authorised by the Head of Service.

24.3 A purchasing card may only be used for the purchase of supplies, services or goods required by the Council. Cards will be issued and monitored by the Council's Company Credit Card Monitoring Officer. A cardholder is not permitted to approve their own transactions on the statement and authorisation must be performed independently.

24.4 The terms and conditions upon which a Purchasing Card may be used by an Officer shall be made known to the officer in writing at the time of issue of the Purchasing Card.

25 DEFINITIONS

“Acceptance” is the authorisation to enter into a contract with a particular supplier(s) on the terms, conditions and at the price(s) as set out in the contract documents.

“Authorisation” is the approval required to enable any Procurement to occur.

“Procurement” is the Council’s procurement function.

“Contract” means a formal written agreement between the Council and the provider of any supplies, services or works, including Terms and Conditions as approved by Procurement with input from HB Public Law where appropriate.

“Data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed.

“Data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller.

“EU” means European Union.

“Framework agreement” is an agreement between: (1) one or more contracting authorities; and (2) one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. In the UK we would know this as a “standing offer to treat”.

“Non-Procurement” expenditure applies where the Council has to pay for a Service which it did not initiate or are contained within the Exemptions list duly authorised by the Director.

“OJEU” means the Official Journal of the European Union.

“Personal data” means data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

“Procurement” means any activity which includes the identification of need, options appraisal and the execution of a competitive selection process, quotation or tendering process.

“Purchase” means the activity which uses a mechanism to undertake Procurement under the Council’s standard terms and conditions or against an accepted contract.

“Quotation” means a priced bid for the provision of goods, a service, or supply of works.

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FUNDING FOR THE WOODLANDS DEVELOPMENT PROPOSALS

Andrew Small

Cllr Steve Bowles, Deputy Leader and Cabinet Member for Economic Development Delivery

1. Purpose

- 1.1. To seek agreement of Cabinet to allocate funds to support the next stages of the activity related to the Woodlands project, being promoted by the Aylesbury Vale Advantage Legacy Board.

2. Recommendations

- 1.1. That Cabinet approve the use of £500k of the remaining Local Authority Business Growth investment funds to support the next stages of work related to this proposal.
- 1.2. That Cabinet delegates authority to approve the details of the funding agreement for this investment to the Director with responsibility for Finance, in consultation with the Cabinet Member for Economic Development Delivery.

3. Supporting information

- 1.1. AVDC and Buckinghamshire County Council are both joint promoters of the Woodlands Project in Aylesbury, which is being taken forward as one of the Aylesbury Vale Advantage Legacy Board projects. The work on the initiative to date has been funded from the monies that were held by Aylesbury Vale Advantage, when it existed as a Local Delivery Vehicle (LDV) Members will recall that this was initiated with funds received from Government as part of the growth deal proposals and funding for the LDV.
- 1.2. The AVA Legacy Board was established when the Aylesbury Vale Advantage Company was expanded to become the Buckinghamshire Advantage Company and those funds associated with AVA at the time of dissolution were ring-fenced for Aylesbury Vale related projects.
- 1.3. Woodlands has been the key project that the AVA Legacy Board has been progressing and this initiative has now reached a crucial stage in terms of additional funds are required in order that the project can be progressed to the detailed planning stage. There are a number of on-going commercial and planning related matters concerning the application related to Section 106 agreements, reserve matters discharges, detailed design and on going survey work that will need to be maintained and provided for. The work on these activities is being led by Buckinghamshire Advantage and behalf of the AVA Legacy Board.
- 1.4. Both AVDC and BCC have each been asked to contribute £500k of funds to help support the project going forward. This will be supported by a legally binding funding agreement, which will detail any conditions about how the funds will be paid and the repayment terms.

- 1.5. In 2007, Council agreed the funds that were received from the Local Authority Business Growth Incentive Scheme (LABGI) should be committed to projects that supported economic development and growth in the district. This fund has been used to help to support a number of projects in the past including the Enterprise and Innovation Centre in Aylesbury, the Golden Welcome Scheme, and land purchase in Aylesbury Town Centre. The uncommitted balance of this fund stands at £534k and it is therefore proposed that £500k of this be used to fund the next stages of work associated with the Woodlands Project.
- 1.6. Attached as appendix 1 is a report from BA on the budget position in relation to this project and details of the key components of the work that needs to be taken forward. This is in the confidential part of the report due to the commercially sensitive nature of the information it details in relation to the project.

4. Options considered

- 1.1. There are no alternatives to consider in respect of the need for this additional funding in order to progress the scheme.

5. Reasons for Recommendation

- 1.1. In order that the proposals for the Woodlands area can be progressed by the AVA Legacy Board.

6. Resource implications

- 1.1. The funds required for this next stage of work can be met from the remaining unallocated LABGI reserves and the aims are consistent with the objectives that were agreed for this funding.

Contact Officer Andrew Small, Director, 01296 585007
Background Documents None

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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