

APPENDIX THREE – Additional Obligations, STATUTORY

Index

- i. ~~Transparency Reporting~~ No longer required – process managed by the e-Procurement system
 - ii. The Social Value Act / Localism
 - iii. Safeguarding – DBS (Disclosure & Barring Service)
 - iv. Supported Organisations
 - v. Social Enterprises (VCSE)
 - vi. Contracts involving Council Assets
 - vii. TUPE (Transfer of Undertakings (Protection of Employment))
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i) ~~Transparency Reporting~~ Not Used

~~The Council will publish details of current contracts with a description of what is being provided, the duration of the contract, the name of the supplier and data concerning the total value of the contract.~~

ii) The Social Value Act / Localism

For all:

- Service contracts with a value in excess of the EU threshold and
- all works contracts over £1m;

the contractor and its supply chain will be required to actively participate in the achievement of social objectives relating to the participation in skills development, employment and training programmes in accordance with Wokingham Borough Council's Employment and Skills Guidance for Tenders, which can be found on the Council's website.

iii) Safeguarding – DBS (Disclosure & Barring Service)

Wherever a contract or tender involves working regularly with children or vulnerable adults, or wherever required as appropriate to the nature of the contract, DBS checks must be included as a requirement at the outset within the tender specification and the terms and conditions document.

These must also clearly state that all costs relating to DBS checks shall be borne by the contractor. DBS checks should be repeated at 3-yearly intervals for those who remain in post. Contractors should be asked to provide evidence that DBS checks are monitored and kept up to date.

Contractors should be asked to confirm that they are aware that:

- An organisation which knowingly employs, in a relevant role, someone who is barred to work with children or vulnerable adults is breaking the law.
- They must inform the Independent Safeguarding Authority if they dismiss or remove a member of staff because they have harmed a child or vulnerable adult, or they would have dismissed or removed them had they not left.

iv) Supported Organisations

In the case of a supported business, supported employment programme or sheltered workshops as defined in Regulation 20 of the PCR2015 (essentially establishments where more than 30% of the workers are disabled or disadvantaged); the Council may restrict the scope of invitations to tender to those types of organisations. This is termed a "Reserved Contract" and the call for competition shall make reference to Article 20 of the Public Contracts Directive. Other relevant procurement rules and procedures continue to apply.

This should not be confused with the completely separate arrangement (Regulation 77) for reserved contracts to support mutual and social enterprises: Appendix Three (v) – Social Enterprises below

v) Social Enterprises (VCSE)

PCR2015 includes a significant alteration in the treatment of Social Enterprises, mutuals, charities and other similar organisations (or VCSEs).

Covered under the Schedule 3 regulations (specifically Regulation 77); contracts may be reserved for qualifying organisations ONLY if they are exclusively for one or more services covered by a specific sub-set of the Schedule 3 CPV codes.

The relevant codes are highlighted in yellow in the list of [Schedule 3 CPV codes](#).

A “qualifying organisation” is one that fulfils all of the following conditions: -

- a. its objective is the pursuit of a public service mission linked to the delivery of those services;
- b. profits are reinvested with a view to achieving the organisation’s objective, and any distribution of profits is based on participatory considerations;
- c. the structures of management or ownership of the organisation are (or will be, if and when it performs the contract):
 - i. based on employee ownership or participatory principles, or
 - ii. require the active participation of employees, users or stakeholders;
- d. the organisation has not been awarded, pursuant to this regulation, a contract for the services concerned, by the contracting authority concerned, within the past 3 years.

The contract may only be awarded for a maximum of 3 years.

The call for competition shall make reference to Article 77 of the Public Contracts Directive.

This regulation is designed to promote opportunities to qualifying social enterprises by protecting them from full EU competition for the first 3-years of a particular type of contract. They are expected to be able to develop their services during that initial period and will then be subject to full competition.

This should not be confused with the completely separate arrangement (Regulation 20) for reserved contracts for: Supported Organisations – Appendix Three (iv) above.

vi) Contracts involving Council Assets

In order to comply with the International Finance Reporting Standard (IFRS), wherever a contract is proposed which includes use of a defined asset (i.e. an item of property, plant or equipment) or conveys the right to use a specific asset, prior to the agreement of such a contract the permission of the Chief Financial Officer should be sought. The contract agreement should split the payment between those elements applicable for the asset and those elements applicable for the service.

vii) TUPE (Transfer of Undertakings (Protection of Employment))

If existing employees are associated with the contract opportunity (either internally or externally) the Transfer of Undertakings (Protection of Employment) Regulations 2006 must be observed. For example: a contract for services is retendered as it has come to the end of its term and the existing supplier employs staff specifically to provide us with those services. Those staff would be covered by TUPE regulations should the new contract be awarded to a different supplier.

If in any doubt, the Contract must be checked with the Service Manager – Shared Legal Solutions or the Service Manager – Human Resources.

A Confidentiality Undertaking form must be used as part of the tender process where TUPE applies.

Field Code Changed

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