

APPENDIX FOUR – Additional Obligations, WBC SPECIFIC

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i) Assets & Security

For guidance on assets & security, see Finance Regulations 12.1.5 – Assets and Security.

ii) Loans, Leases & Guarantees

For general guidance, see Finance Regulations 12.1.13 – Investments, Borrowing, Treasury Management, Leasing and Trust Funds.

Clauses that are directly relevant to loans, leases & guarantees may be found in Finance Regulations 12.1.13.7 – Loans, Leases and Guarantees and the subsequent sections.

iii) Sponsorship & Grant Monies

Council income from sponsorship or grants is covered by the Financial Regulations: 12.1.14 – External Funding.

Grants should be assessed on a case by case basis. The Glossary contains a [definition](#).

- a) Where the money is given simply to carry out works or services from which the Council derives no direct benefit this is probably satisfactory and can be considered a grant.
- b) Grants given to benefit the local community and to achieve better financial outcomes should be considered in line with Council priorities, although, where money is given and the Council receives a benefit intended to be enforceable in return then this is a contract and must follow Procurement rules.
- c) Where the Council gives an organisation money which then enables the organisation to bid/tender for a business opportunity, the Council would be acting anti-competitively and if the contravention affected trade between member states of the EU it would also contravene state aid rules. A procurement process must be followed in line with UK Law and potentially European Regulations. Any such money actually paid by the Council must be returned to the Council prior to the commencement of the tendering process.

iv) Mitigation of Risk (including Performance Bonds)

An appropriate level of security for the due performance of a contract should be considered in every case. For low value contracts no specific steps may be necessary but as contract value increases, so should the level of safeguards that are put in place.

For all contracts appropriate performance safeguards should be agreed and formally recorded in the contract documents.

Continuity is critical for many of the services that the Council provides. It is therefore essential that appropriate steps are taken to ensure that we can continue to deliver the service, even if the current contractor runs into difficulties or defaults on their deliverables. To that end, suitable clauses should be included in the contractual terms and conditions in order to mitigate the risk of any default.

There are many different ways of achieving the required safeguards; the method (or methods) selected depend on the nature and value of the specific contract and the state of the market.

The following lists the typical key factors to consider: -

- a) Maturity of the market: Where there are many capable suppliers available (especially if several are locally based), who could potentially step in to cover any urgent issues, the need for other forms of protection is diminished.
- b) Length of contract/Payment Schedule: A long-term contract with regular monthly payments, in arrears, should be quite stable and can, in practice, supply immediate funds by withholding payment for the most recent period/s, if necessary.
- c) Nature of contract: If the service can tolerate a short lapse in provision without major difficulties, the Council will have time to secure alternatives, should the incumbent contractor fail. Statutory service provision, with significant immediate consequences of failure, will need a much more secure approach.
- d) Nature of Risk: Are the real risks in the contract focussed around potential default or are localised failures and issues more likely, where appropriate insurance may be more effective. Clearly, multiple risk factors are present in all contracts and combined safeguards may be required. A balanced assessment of the likelihood and consequences of each risk factor is needed to establish the right controls and mitigation.
- e) Financial Standing: If the contractor is large and financially stable, especially when compared to the contract value, there may be no need for additional safeguards.
Alternatively, the Contractor may be a subsidiary of a larger parent company/group, which is a real entity (as opposed to a holding company name) that can draw on real resources. In these cases, a parent company guarantee can be an effective, generally cost free, safeguard.
Council's Form of Parent Company Guarantee ([LINK](#))
- f) Contract Management: The effective use of Performance Measures and Key Performance Indicators as part of an active contract management scheme can be the best safeguard. This is most effective when implemented as an integral part of the contract tender with planned development throughout the contract term.
Not only can well planned and executed contract management provide advanced warning but it can also prevent potential issues from developing into major concerns, through early intervention and a stronger relationship between Council and Contractor.
- g) Performance Bond: A performance bond (or other suitable security) may be an appropriate safeguard for the specific circumstances of the contract opportunity. This will be provided by the contractor, through a Bank or leading Insurance Company.

You need to consider the practicality of a bond to secure the contract. Whilst it is designed to provide a fund for alternative provision, the likelihood of being able to release those funds quickly is very low. The contractual details surrounding a Performance Bond are becoming increasingly complex and any release of funds is typically subject to Legal scrutiny.

Whilst the cost of the bond may be low when compared to the contract value, its cost in relation to the level of benefit it secures can be relatively high. The contractor may be willing to set aside funds directly with us to cover the same liability; a pragmatic and low cost alternative.

The amount of the bond shall not normally exceed 10% of the contract sum (or 15% of the annual value of a contract exceeding 12 months duration), unless otherwise agreed with Director of Finance & Resources (Chief Finance Officer) (Section 151 Officer).

Where a bond is used, the following documents must be included (as Appendices) and referred to in the tender pack: -

- i. Council's Form of Guarantee Bond ([LINK](#))
- ii. Bond Letter ([LINK](#))

The cost of a Performance Bond, where provided, shall be clearly itemised in the tender submission.

v) Insurance

Insurance is necessary to help protect the Council against the financial consequences of claims arising from the activities of contractors.

It is essential that relevant and adequate insurance details of everyone who enters into a contract with the Council are obtained before the contract commences.

'Relevant' generally refers to Public Liability cover and Employer's Liability cover, but might include Professional Indemnity insurance, and possibly others (e.g. Products Liability or Motor). Reference should be made to the Insurance summary document for more details of what is required and the procedures that are to be followed. Questions regarding the insurance requirements for a contract may be referred to the Head of Governance and Improvement Services.

It is the responsibility of the contractor to maintain adequate insurance and, where applicable, for adequate insurance to be in place for any subcontractor they have instructed to work on their behalf. This requirement must be stated within the terms and conditions of the contract.

Where Professional Indemnity insurance is required, it must be stated within the conditions of the contract that cover remains in place for a reasonable period after the expiry of the contract.

The officer, or team, entering into the contract on behalf of the Council, must carry out the monitoring of the insurance during the contract period.

Further details and a suggested template letter are [available](#).

vi) Receipt of Tenders Not Used

~~Safeguards must be in place to avoid any potential maladministration in the receipt of tenders. The day, date and time by which tenders must be returned shall be clearly indicated in the ITT documents. Democratic Services must be notified of the title (or reference number) of the tender, its return deadline and the contact details of the relevant Authorised Officer at: democratic.services@wokingham.gov.uk. An appropriate date for the tender opening meeting will then be agreed with the Authorised Officer and advised to Democratic Services.~~

~~Tenders must be returned in plain packaging, securely wrapped, and using the return details provided. The returned envelope should not be marked or franked with the name of the tenderer. The following controls apply:-~~

~~a) Tenders shall be addressed to :-~~

~~Democratic Services~~

~~TENDER RETURNS — [title of tender or reference number]~~

~~Wokingham Borough Council, Shute End, Wokingham, Berkshire, RG40 1BN~~

~~b) Upon return, tenders shall be kept in a locked and secure area until the scheduled tender opening date. The tender opening should be scheduled for the day after the published 'return of tenders' deadline date.~~

~~c) Tenders received after the appointed deadline or which do not strictly comply with the instructions to tender (as issued with the tender documents) shall be disqualified on the basis that they have failed to fulfil the tender criteria.~~

~~d) The following circumstances shall be subject to review by Democratic Services, the resultant decision to accept or reject the tender and the reasons for that decision to be recorded in a Material Decision, authorised by the Head of Governance & Improvement Services:-~~

~~• Any tender opened in error shall be considered to determine if its inclusion would be anti-competitive in any way. The circumstances of the opening shall also be recorded in the Material Decision.~~

~~• Tampered or damaged tenders (i.e. torn, opened envelopes, etc.).~~

~~• Late tenders, where the reason for lateness is beyond the control of the tenderer or there is clear evidence of the tender being sent in adequate time in order to achieve the tender deadline.~~

~~e) The Tender Opening Administrator shall record the late receipt of, or other reason for disqualifying, a tender. The disqualified tender documents shall be retained with all other tender documentation in accordance with the Council's Records Retention Policy.~~

vii) Opening of Tenders Not Used

Safeguards must be in place to avoid maladministration in the opening of tenders. Any breaches of this Regulation will be reported to the Corporate Leadership Team (CLT). Details of the full procedure and a copy of the Tender Opening Summary sheet are documented separately.

Democratic Services shall be notified in advance of the dates of all tender openings. A Tender Opening Summary sheet and any relevant qualifying documents must be stamped, signed and dated by all present.

All tenders with an estimated value of £50,000 or over shall be opened in the presence of:

- a) the Service Manager Democratic Services or directly authorised representative;
- b) the Director of Finance and Resources (Chief Finance Officer) (Section 151 Officer) or directly authorised representative;
- c) a relevant Service Officer (usually the relevant budget manager, but could also be the relevant Director or the Head of Governance and Improvement Services);
- d) the Project Manager (if not already covered by (c) above);

and the Tender Opening Summary sheet completed.

All such tenders should be notified to the relevant Executive Member as soon as possible after the opening process has been completed.

Tender Opening Summary Sheet

The Director or authorised representative shall complete the top section of the Tender Opening Summary Sheet with the information shown below and take this to the tender opening:-

- a) the date, time and location of the tender opening;
- b) names and signatures of all attending the opening procedure;
- c) budget available and cost centre; and
- d) the name of each tenderer and total amount of tender bid, if ascertainable.

The Democratic Services Officer is required to:-

- a) ensure that the Tender Opening Summary Sheet has been fully completed.
- b) scan the completed Tender Opening Summary sheet and provide a copy to all Officers present

Discrepancies

Special consideration is required in the case of tender discrepancies. Where examination of tenders reveals errors/discrepancies, which would affect an otherwise successful tender, the tenderer shall be allowed to either confirm or withdraw their offer. If the tenderer withdraws, the next tenderer in competitive order is to be selected.

If you have any doubts or questions about how to handle a discrepancy, contact your Procurement Business Partner.

viii) Acceptance of Contracts Not Used

Directors can accept a tender providing it complies with all of the following:

- a) it is less than £500,000 in aggregate value, (if over £500,000 then it can be accepted by way of a Material Decision);
- b) it does not exceed the overall approved budget by the lesser of 10% or a maximum of £20,000, providing sufficient budget can be secured;
- c) it is the lowest tender, or the most advantageous, as measured against previously set criteria;
- d) it is the highest tender, (if payment is to be received by the Council), or the most advantageous, as measured against previously set criteria.

Directors may only accept a tender which falls outside these criteria subject to consultation with Director of Finance & Resources (Chief Finance Officer) (Section 151 Officer) and if applicable, the Head of Human Resource Operations with regard to Transfer of Undertakings of Employees (TUPE), as a Material Decision.

ix) Setting up Supplier Details & Recording of Contract/ Tender Information ~~Not Used~~

Supplier Details

~~It is the responsibility of the relevant Director or Responsible Officer to ensure that all Suppliers to the Council are entered into the Council Purchase to Pay (P2P) system (or any replacement system) and that a purchase order is created to allow for the payment of invoices. The process description is available on Grapevine; including the necessary form.~~

Recording of Contract/Tender Information

~~Shared Legal Solutions shall retain original copies of contracts valued over £50,000 during the term of the contract. These contracts will be archived for a period of 6 years from the contract end date or 12 years if under seal.~~

~~Directors (or a delegated Responsible Officer) shall retain copies of contracts under £50,000, which should be archived at the contract end date, as a guide, for a period of 5 years. Directors are responsible for ensuring that details of all agreed Contracts are entered into the central contracts register.~~

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