

APPENDIX 3

Correction of the name of the relevant department due to a restructure. The Procurement and Contracts team currently is part of the Business Services and Finance department

13.1 Purpose and Significance

13.1.4

- a) Procurement **and Contracts** team (part of Strategy and Commissioning Support) for day-to-day advice in respect of the operation of these rules and procedures;

Clarification on the application of exemptions under the Public Contracts Regulations 2015

13.2.1.6

Rule 13.2.1.6 currently contains an obligation for officers to demonstrate value for money where they are applying exemptions from the normal procurement process. It is proposed that the wording of this rule be amended to clarify how this is to be achieved by officers recording the specific circumstances and the reasons for the recommended approach in a business case and seeking approval at the relevant level.

13.2.1.6

*Wherever Public Contracts Regulations 2015 (UK Law) allows for exemptions from the normal processes for above threshold procurements, the analogous exemptions are allowed from the normal PCRPs processes for below threshold procurements. This does not remove the obligation on Officers to demonstrate Value for Money and to meet the fundamental need for transparency. **A business case needs to be developed for each application of an exemption and Rule 13.3.1.1 – Procurement Business Case (including options appraisal) applied.** Accordingly, regardless of the process followed, every contract with a total ascertainable value exceeding £5,000 must be recorded in Wokingham Borough Council's contracts register. Contact Procurement for advice about each individual case.*

Update on the wording on the current procurement rules regarding e-procurement

13.2.3 Responsibilities and Compliance

13.2.3.1

It is proposed that the wording of 13.2.3.1 be amended to better reflect current circumstances. The existing wording was introduced prior to the implementation of the e-procurement software and needs to be updated to highlight the use of the electronic procurement.

13.2.3.1

*The PCRPs apply to every officer of the Council and anyone acting on its behalf. It is the responsibility of Directors to ensure that the Rules and Procedures are adhered to. The use of e-Procurement **became** is a statutory requirement for qualifying tenders from 18 October 2018; WBC **officers** ~~intends that~~ **should therefore manage** all relevant procurements ~~will be managed by~~ **using** the Council's e-Procurement system ~~from May 2018 onwards.~~*

Missing reference to an existing rule in another section of the Constitution

Rule 5.1.9.4 of the Constitution imposes a limit on the Executive authority to incur expenditure. This is reflected in the business case approvals level, however, a reference to the relevant rule in section 5 section is missing. It is proposed that such a reference is added in the relevant column of the table for clarity.

Chapter 13.3 – The Procurement and Contract Rules

13.3.1.1 – Procurement Business Case (including options appraisal)

The table covering business case approval levels has been modified to include a reference to the relevant rule in the last column.

Currently Constitution rule 5.1.9.4 – Limit on Executive Authority to Incur Expenditure is explicitly reflected within the process descriptions of Chapter 13 – Procurement and Contract Rules and Procedures but without a reference to this rule. This change will ensure that Officers proposing procurements are aware of the levels of scrutiny and approval required of business cases at all levels of expenditure and can easily refer to the relevant rule in section 5 – The Executive.

A new row is proposed to be added in the table below to clarify the Dynamic Purchasing Systems and Framework Agreements business case approval levels, introduced with the proposed changes of the same rule.

13.3.1.1 – Procurement Business Case (including options appraisal)

	<i>No formal business case required</i>	<i>Assistant Director & Director Approval</i>	<i>Executive Approval (see Note 1 below)</i>	<i>Full Council Approval (Rule 5.1.9.4)</i>
<i>Goods and Services</i>	< £50k	£50k - £500k	> £500k	<i>Annual Value >£5M or TAV >£25M (if Capital >£15M)</i>
<i>Schedule 3 Services</i>	< £50k	£50k - £615k	> £615k	
<i>Works</i>	< £50k	£50k - £4,551k	>£4,551k	
DPS/FA set up only	N/A	≤£500k	>500k	N/A

Approval of Business Cases for setting up a dynamic purchasing system (DPS) or framework agreement (FA)

Chapter 13.3 – The Procurement and Contract Rules

13.3.1.1 – Procurement Business Case (including options appraisal)

Currently there is an obligation for officers to develop a business case for all procurements with total ascertainable value greater than £50,000 (Rule 13.3.1.1).

DPSs and FAs are not public contracts but methods of procuring resulting in the conclusion of an agreement with a number of economic operators. The purpose of these is to have in place a list with pre-qualified capable suppliers, to whom subsequent contracts can be awarded, when a specific need has to be met. At the point of the conclusion of the FA or setting up the DPS, no financial commitment is made and no actual spend is incurred, nor committed. An estimate of the potential/indicative spend over

the life of the FA or DPS has to be provided but spend is only actual expenditure at the time of procuring individual contracts (also known as call-off contracts) under the DPS/FA. The cost to the Council for delivery of a contract and actual financial commitment would only take effect once the FA or DPS is used to award a contract for specific services/works/goods via a call-off process.

In the absence of a specific provision in the PCR, which clarifies the business case requirement in the case of a DPS or FA, the rule 13.3.1.1 would apply, creating the need for a business case to be developed and approved at the relevant financial authority level at the point of DPS or FA procurement, as well as for every contract procured under the DPS or FA where the value exceeds £50K. This leads to duplication of effort and adds unnecessary delay in the procurement process, negatively affecting the efficiency of the procurement under a DPS or FA, whose main purpose is increased speed of the procurement process and ease of access to the list of pre-qualified suppliers. To mitigate this effect while maintaining appropriate level of governance, officers propose that business cases for procurement of DPS and FAs to be approved by the relevant Director or Executive, respective of the estimated spend.

13.3.1.1

*A formal business case is required for ~~any~~ the procurement of individual contracts with a total value above £50k (Rule 13.2.2 for estimating value) with the varying levels of approval shown in the table below:- **For the purposes of this rule, dynamic purchasing system and framework agreement are not considered contracts and have their own requirements (outlined below).***

TABLE

**These figures are aligned to the ~~OJEU~~ GPA Threshold Values (as set out in Appendix One) and will be amended as and when the Threshold Values change.*

Note 1 *The default option is Executive approval.*

In exceptional circumstances, where this is not practical and delay will have negative financial consequences, approval by two Executive Members is allowed. This will usually be the Executive Member for the relevant service area and the Executive Member with responsibility for Finance, unless the relevant service is Finance, in which case approval must be carried out in conjunction with the Deputy Leader of the Council, or if the Deputy Leader is the Executive Member with responsibility for Finance, or is unavailable, in which case the approval must be carried out in conjunction with the Leader of the Council (Rule 5.5.1 g). An explanation of the exceptional circumstances must be included within the Individual Executive Member Decision report.

In the case of the procurement of a dynamic purchasing system or framework agreement, officers are required to develop a business case outlining the overall procurement strategy, providing justification of the selected procurement method and highlighting the main benefits and risks associated with this method of procurement. All business cases for DPS and FA with estimated value up to and including £500K require Director's approval; Executive approval is required if the total ascertainable value of the DPS or FA is estimated to be greater than £500K. Rule 13.3.1.1 will apply to procurement of call-off contracts from either an internal or third party DPS/FA, unless a different governance mechanism has been proposed and approved in the DPS/FA business case or via a separate business case at the relevant level of authority.

All Business cases should include the following elements in an appropriate form:

- a) *a brief justification linked to service or corporate objectives;*

- b) *vision and description of objectives to be achieved / specific need to be addressed;*
- c) *appraisal of options;*
- d) *statement of benefits and justification of expenditure, including financial costs and benefits, where relevant over the life of the contract. (Works business cases should include a financial feasibility assessment in terms of investment payback, return on investment or discounted cash flow value);*
- e) *timetable;*
- f) *procurement approach and commentary;*
- g) *source and approval of funding and whether it is revenue or capital;*
- h) *overall approvals as indicated in table above;*
- i) ***Any specialist opinion/sign off, as appropriate (e.g. IMT and/or Business Change for any purchase of software, Finance, Procurement etc.)***

The value of a Business Case shall not be distorted or split with the aim of avoiding any threshold. The exact nature of any Business Case will vary depending on the requirements of the services being procured but all should consider the elements listed above to an appropriate degree. In consultation with Procurement, Directorates may design their own templates and requirements for Business Cases, in particular where regularly recurring or rapid procurements are required.

Further guidance on the production of a Business Case is available from Procurement.

Correction on updated references

**Chapter 13.3 – The Procurement and Contract Rules
13.3.3.1 Overview of Contract Terms and Conditions**

The term “procurement cards” is no longer used and credit cards used for corporate purchases are now referred to as “corporate credit cards”. Clarity regarding when a contract should instead be used/procured has also been included in order to align with earlier rules.

Modify the table covering contractual terms and the note:

13.3.3.1

<i>Contract Value</i>	<i>Duration</i>	<i>Procurement Cards Corporate Credit Cards</i>	<i>Standard Purchase Order Terms</i>	<i>Template Contract</i>	<i>Formal Contract Terms (via SLS)</i>	<i>Suppliers' Terms</i>
<i>< £50k</i>	<i><12mth</i>	<i>✓</i>	<i>✓</i>	<i>if necessary</i>		<i>By exception and only with input</i>
	<i>>12mth</i>	<i>n/a</i>	<i>✓</i>	<i>if necessary</i>		

£50k – £100k	any	n/a	n/a	✓		of Shared Legal Solutions
>£100k	any	n/a	n/a	n/a	✓	

Note

Services may have ~~Procurement Cards~~ **Corporate Credit Cards**, which can be utilised for low value, low risk, one off transactions, subject to the individual spending limit on the card. All ongoing / recurring requirements should be procured under a purchase order **and/or an appropriate contract.**

Chapter 13.3 – The Procurement and Contract Rules

13.3.3.2 Acceptance of Tenders and Signing of Contracts

Following an introduction of new names of the Directorates, the following corrections are suggested:

13.3.3.2

*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)~~ **Deputy Chief Executive (Chief Finance Officer/Section 151 Officer) or nominated Deputy, if delegated to**, and if applicable, the Head of Human Resources **and Organisation Development Operations** with regard to Transfer of Undertakings (Protection of Employment) Regulations [TUPE], as a Material Decision.”*

Clarification regarding Obligations for Recording Contracts (Re-insertion)

Chapter 13.3 – The Procurement and Contract Rules

13.3.4.1 Recording of Contract / Tender Information

Previously, greater clarity was stated regarding the Transparency obligations the Council and its officers are obliged to provide under the Local Government Transparency Code 2015. Following a recent exercise sponsored by CLT, it was found at least over £5 million worth of annual contract expenditure had not been recorded on the Central Database, therefore reinsertion of previously removed wording may better clarify officers' responsibilities.

13.3.4.1

All ~~C~~contracts awarded by other means and exceeding £5,000 must be entered into the Council's e-Procurement system (Contracts Register) following award. It is the responsibility of the relevant Assistant Director to ensure that contract information is recorded and kept up-to-date.

The details will be made directly available to the public, via the WBC external website, as required by the Local Authorities Transparency Code 2015.

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