



# Birmingham City Council Constitution

**Part D – Finance, Contract and Procurement Rules**

**September 2019**



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## **D1. FINANCIAL REGULATIONS**

### **1.1 Introduction**

- i. The functions of the Council are exercised by Council, Cabinet Members, Committees and Officers. However, the exercise of this function is subject to the supervision of the Head of Paid Service, the Monitoring Officer and the Chief Financial Officer who have a duty to report to the meeting of the full Council any proposed or actual unlawful activity or expenditure.
- ii. A Protocol setting out the roles and responsibilities of the Chief Finance Officer is attached at Appendix B to these Financial Regulations.
- iii. Whilst reference is made to Director throughout these regulations this title also includes the Chief Executive and Assistant Chief Executive and it is emphasised that financial responsibility does not solely reside with these specific officers, and managers and other staff must all have due regard to these regulations and their responsibilities in the discharge of the Council's activities.
- iv. The Financial Regulations provide an internal framework for financial administration and control within the Council. They form an integral part of the regulations and procedures used within the Council and should be read in conjunction with the Financial Management Tool (available on the [intranet](#) for officers), which provides more detail on matters covered by these Financial Regulations which should not be considered in isolation. Various formal guidance notes will also be issued from time to time by the Chief Finance Officer.

### **1.2 Compliance with Financial Regulations**

- i. Each Director must ensure that they and their relevant staff follow these Financial Regulations and use the Financial Management Tool to ensure that their services are administered in line with best practice.
- ii. The Financial Management Tool should be used as the basis of any Directorate Financial Procedures to ensure public accountability and high standards of financial integrity and consistency throughout the City Council.
- iii. The Chief Finance Officer is the responsible officer for the proper administration of the Council's financial affairs under the Local Government Act 1972, Section 151.
- iv. Where reference within these Financial Regulations is made to Chief Officers/Directors and the Monitoring Officer it is taken to also mean his / her nominated deputy / representative as set out in Part E: Scheme of Delegations.
- v. The Financial Regulations are applicable at all times and apply to both Members and employees of the City Council and external parties acting as the agent of the City Council or otherwise agreed with the Chief Finance Officer. The Financial Regulations exclude schools for which separate regulations apply.

- vi. Failure to comply with Financial Regulations, or instructions issued under them, may constitute misconduct.
- vii. The Chief Finance Officer is responsible for reviewing, maintaining and revising these Financial Regulations and only then with the approval of the Council.
- viii. The Chief Finance Officer is responsible for maintaining the Financial Management Tool. Any requests to make changes to the Financial Management Tool must be directed to the Chief Finance Officer who has the authority to approve the changes.
- ix. The Chief Finance Officer has the right to be present and give appropriate advice, at all meetings, where the Council's financial arrangements are discussed.

### **1.3 Delegated Authorities: Chief Finance Officer**

- i. To fulfil the requirements of section 151 of the Local Government Act 1972, section 113 of the Local Government Finance Act 1988 and the Accounts and Audit (England) Regulations 2015, the Chief Finance Officer will be the officer responsible for the proper administration of the City Council's financial affairs.
- ii. The Chief Finance Officer has a statutory responsibility to ensure there are appropriate and adequate systems and procedures within the City Council to:
  - account for all income and expenditure;
  - protect assets from loss, waste, theft or fraud.
- iii. The Chief Finance Officer will discharge this responsibility in part, by the issue and maintenance of the Financial Management Tool and the approval of Directorate Financial Procedures.
- iv. Any guidance issued by the Chief Finance Officer on corporate financial standards and financial management will comply with recognised best professional practice.

### **1.4 Responsibilities of Chief Officers/Directors**

- i. Each Director must ensure they have appropriate organisational structures in place to achieve effective financial administration in the fulfilment of their service responsibilities.
- ii. Each Director must:
  - ensure that all expenditure is lawful (intra vires), has been properly authorised and all necessary processes have been complied with;
  - ensure there are adequate controls and procedures in operation within their departments;
  - ensure that proper and legal budgets have been set;
  - ensure the identification, reconciliation, recording and security of all income due/received;
  - ensure the security, custody and management of all assets.
- iii. Each Director must report to the Monitoring Officer and the Chief Finance Officer where there is doubt over the legality of proposed, or already incurred, expenditure and or actions.

- iv. Each Director and their employees must:
  - ensure that net expenditure (revenue and capital) in their areas of responsibility does not exceed the annual budgets set for their services and projects;
  - comply with all laid down financial, professional, management, legal and ethical standards.
- v. It is the responsibility of each Director to ensure they have effective financial systems, processes and procedures in place. To facilitate this, each Director must either wholly adopt the procedures determined by the Chief Finance Officer in the Financial Management Tool for his / her staff to follow or, where authorised to do so by the Chief Finance Officer, tailor this to meet specific local requirements, as part of a Directorate Financial Procedures.
- vi. Each Director must prepare Equality Impact Needs Assessments for their areas of responsibility and for any proposals for major change, in a format specified by the Cohesion and Partnerships Manager.
- vii. Each Director must ensure that all of their employees receive up to date financial and systems training to properly perform their duties.
- viii. Each Director will, in accordance with the arrangements approved by and in agreement with, the Chief Finance Officer nominate an Accounting Officer (the Finance Business Partner for the service) who will manage the finance function for the Director.

## **1.5 Accounting Arrangements**

- i. The Chief Finance Officer is responsible for determining the accounting policies used in the preparation of the annual accounts and budgets with due regard to the provision of Section 151, the Accounts and Audit (England) Regulations 2011 and other statutory and corporate provisions which affect the financial affairs of the Council. The Chief Finance Officer is responsible for co-ordinating and producing the City Council's annual corporate financial accounts.
- ii. The Chief Finance Officer will determine the form and standard of all financial records, statements and accounts in line with statutory requirements and CIPFA's Accounting Code of Practice.
- iii. Each Director, through the appropriate Finance Business Partner, is responsible for ensuring adequate controls relating to accounting arrangements in accordance with the principles of effective management. Chief Officers/Directors must avoid any arrangement which would enable one officer to authorise, process and record a complete financial transaction. In cases where this would be impractical, the Chief Finance Officer must approve alternative arrangements and the Director must ensure that the work is properly monitored.
- iv. Periodic reports on actual spending against budget must be submitted by each Director in conjunction with the Chief Finance Officer, to the appropriate Executive party/Committee in a format and timetable prescribed by the Chief Finance Officer, with explanations of variances and any mitigating actions.

- v. Each Director must provide the Chief Finance Officer with the necessary information for the purposes of accounting and budgetary control, financial statements and returns, employee information and other financial information in a format prescribed by the Chief Finance Officer and in accordance with the timetable issued by that officer.
- vi. The Chief Finance Officer will decide the period for which accounting records and supporting documents will be kept (including the type of storage media) and Chief Officers/Directors must ensure that the records and documents are kept safely for that period.
- vii. Each Director is responsible for regularly reviewing and ensuring the completeness and accuracy of Unofficial Funds held in their areas of responsibility. Unofficial Funds are funds for which the City Council is legally, either in whole or in part, the custodian, but which do not form part of the City Council's revenue or capital accounts or constitute a formal trust fund of which the City Council is a trustee. The number of funds must be kept to a minimum and in accordance with the Financial Management Tool and policy / guidance relating to unofficial funds.

## **1.6 Revenue and Capital Budget Allocations & Approvals**

- i. The Council must approve the Annual Financial Plan (including the revenue and capital budget) for each financial year before the preceding 10 March.
- ii. The Council must approve the level of Council Tax in accordance with the Local Government Finance Act 1992.
- iii. The Chief Finance Officer will:
  - Determine the timetable for the completion of the Financial Plan (including the Budget);
  - Co-ordinate its production for approval.
- iv. After the Council has approved the Annual Financial Plan, the service revenue budgets for each Directorate and Committee:
  - Must by 31 March be prepared within the parameters and policies contained within the Council Financial Plan and incorporated budget.
  - Once approved will give authority for revenue expenditure to be incurred provided it complies with the City Council's Financial Regulations and Standing Orders.
  - Are cash limited and should not be exceeded without prior consent of the Cabinet.
- v. If approval is given to exceed the budget, any resultant overspends may be deducted from the following year's budget allocation or the relevant Directorate/Committee net resources. Any underspends may only be carried forward with prior consent of the Cabinet.
  - Each Director will be responsible for preparing and providing information for the content of revenue and capital estimates, which will be prepared in conjunction with the Chief Finance Officer.
  - Budget allocations and project approval decisions shall be made in accordance with the financial approval framework (Appendix A) which includes the Gateway



Business Case approvals procedure. The Gateway procedure describes a four stage process which must be followed for all projects:

- Outline Business Case (OBC) – includes options to deliver the desired outcomes and seeks authority to develop the most appropriate option further.
- Full Business Case (FBC) – seeks approval of the developed option to implementation and to procure appropriate resources.
- Contract Award – seeks authority to award contracts in line with D2.8 of this Constitution and Procurement Governance Arrangements.
- Post Implementation Review – reviews actual project performance against budget, milestones, outputs/outcomes etc. approved at FBC stage.

## **1.7 Final Accounts & Year End Procedures**

- i. The Chief Finance Officer must make arrangements for the accurate and timely production of the City Council's accounts.
- ii. Each Director plays a key role in enabling the Chief Finance Officer in discharging their responsibilities in relation to the accounts.
- iii. Each Director:
  - is responsible for closing directorate accounts in accordance with accounting principles, and guidance notes and timetable provided by the Chief Finance Officer to ensure compliance with the Accounts and Audit (England) Regulations 2015 and subsequent amendments.
  - is responsible for providing the Chief Finance Officer and the Assistant Director of Property with an accurate and up to date list of assets within the assets register on 31st March.
  - must maintain prime documentation used in the preparation of the Accounts in order to provide a clear audit trail and in line with any requirements of the City Council's External Auditors.
  - must produce completed grant claims and necessary supporting documentation to and for inspection by the Chief Finance Officer in a format prescribed by him/her.
  - The Chief Finance Officer is responsible for reporting the City Council's outturn to Cabinet and for producing the Council's Statement of Accounts for approval by the Audit Committee.

## **1.8 Corporate Financial Systems**

- i. Each Director must ensure that, wherever possible, the City Council's corporate financial systems, which are detailed within the Financial Management Tool (including property record systems), are used by all appropriate employees within his / her areas of responsibility.
- ii. Each Director must ensure that if standalone systems are used, irrespective of whether these feed into the City Council's corporate financial systems or not, they have adequate

prevention and detection controls and prior approval has been obtained from the Chief Finance Officer to use the system(s).

- iii. The Chief Finance Officer will need to approve the specification, prior to tendering, for any system which will feed into the City Council's corporate financial systems.

### **1.9 Value for Money**

- i. Each Director must ensure that actions are taken to deliver services in accordance with agreed performance standards and demonstrate that they are delivering value for money.
- ii. Each Director must prepare, monitor and present performance indicators against agreed benchmark targets to the appropriate Executive party/committee.

### **1.10 Risk Management**

- i. Each Director must ensure they have identified, evaluated (using the Council's corporate risk management methodology) and recorded the risks, financial or otherwise, which exist within their area of service delivery.
- ii. Each Director must ensure there are adequate controls, procedures and resources in operation, to manage the identified key risks and take appropriate action to mitigate the risks.

### **1.11 Assurance Statements**

- i. Each Director must produce an annual Assurance Statement disclosing the following:-
  - in the format prescribed by the Chief Finance Officer, each Director or Head of Service has carried out reviews to evaluate, correct and report on the controls and systems in operation and retained evidence to support any conclusions.
  - they have complied with the City Council's Financial Regulations and Standing Orders and have, by using the corporate risk methodology identified, evaluated, recorded and managed the key risks, financial or otherwise, which exist within their area of service delivery.
  - if no risk management or reviews have been carried out then this must be disclosed within the statement, together with appropriate reasons as to why they have not been carried out and the actions that will be taken to meet these requirements in the future.
- ii. In preparing this statement, the Director must require from all relevant officers reporting to him/her a similar statement for their area of responsibility.

### **1.12 Insurance**

- i. The Chief Finance Officer in consultation with Chief Officers/Directors is responsible for determining the Council's policy in terms of insurable risks. However, each Director is responsible for ensuring any risk management processes identify, evaluate and record both insurable and uninsurable risks.

- ii. Each Director is responsible for minimising the risks from insurance claims and must ensure that procedures are in place to do so.

### **1.13 Internal Audit**

- i. Each Director must ensure there is an open, honest, transparent and accountable culture in operation within their area of responsibility and must make its services available as and when required for audit both internally and externally.
- ii. The Assistant Director of Audit & Risk Management provides a continuous internal audit and reviews the Council's financial records and operations. The service is in accordance with the Accounts and Audit (England) Regulations 2015 and relevant professional guidance.
- iii. The role of the Assistant Director of Audit & Risk Management is to review and assess both the operational and financial systems used by the Council for the delivery of its services and to advise and where appropriate participate in service reviews report on areas of significant non-delivery to the relevant Director and Chief Finance Officer.
- iv. The Assistant Director of Audit & Risk Management on the authority of the Chief Finance Officer, shall have authority to:
  - a) enter any Council premises or land at all reasonable times.
  - b) have access to all records, documents, data and correspondence relating to all transactions of the City Council, or unofficial funds operated by an employee as part of their duties.
  - c) require any employee of the City Council to provide such explanations, information or any other assistance necessary concerning any matter under audit examination.
  - d) require any employee of the Council to produce cash, stores or any other property under his / her control, belonging to the Council or held as part of the employee's duties.
- v. The rights in 1.13 apply equally to organisations which have links with or provide services on behalf of the Council (e.g. voluntary aided schools, wholly owned companies, voluntary organisations or other agents acting on behalf of the Council) where the City Council has a statutory or contractual entitlement to exercise such right. These rights shall be included in all contractual arrangements entered into with such organisations.
- vi. Internal Audit will review corporate governance structures, roles, reporting lines and responsibilities of Officers.
- vii. Internal Audit will notify the results of internal reviews in writing to Chief Officers/Directors who must respond in writing to any recommendations contained in audit reports in accordance with any agreed protocols.

### **1.14 External Audit**

- i. The key responsibilities of the Chief Finance Officer with regard to External Audit are to:

- a) Maintain accounting records and prepare statements of account.
- b) Liaise and work with External Audit on a regular basis.
- c) Receive and deal with all queries relating to the work of the Council from External Audit. Chief Officers/Directors and their designated officers should not deal directly with External Audit on matters of accounting principles. These queries / concerns should be directed through the Chief Finance Officer.
- d) Inform External Audit of all fraudulent cases that have been referred to the Police.

### **1.15 Irregularities, Fraud and Corruption**

- i. The responsibility for prevention and detection of fraud rests with all employees.
- ii. Each Director must ensure that the Chief Finance Officer, Assistant Director of Risk Management and, if applicable, the Monitoring Officer, are notified immediately whenever a matter arises which involves, or is thought to involve, any financial irregularities, fraud and corruption.
- iii. The Chief Finance Officer is responsible for deciding on the action to be taken to investigate suspected financial irregularities, including referring the matter to the Police.
- iv. If there are any suspicions that a Member may be involved/or associated either directly or indirectly in an incident that may require investigation, then the relevant Director must report this to the Chief Finance Officer, who may refer the matter to the appropriate Cabinet Member or Committee.
- v. Each Director must implement the Anti-Fraud Strategy, Anti-Money Laundering policy, the Criminal Acts Procedure and the Confidential Reporting (Whistle blowing) Code and Public Interest Disclosure Act 1998.

### **1.16 Income and Banking**

- i. Each Director must ensure that all systems and procedures relating to income and banking:
  - Have adequate prevention and detection controls.
  - Are in accordance with the Accounts and Audit (England) Regulations 2015.
  - Each transaction is identified, recorded, and accounted for, and sums received kept secure and promptly banked.
  - Comply with the requirements of the income and banking section of the Financial Management Tool.
  - Comply with the Corporate Charging Policy.
- ii. A report must be presented at least annually to gain the agreement of the appropriate decision maker regarding any fees and charges levied by the City Council, following consultation with the Cabinet Member for Finance and Resources.
- iii. Chief Officers/Directors must consult with the Chief Finance Officer on each occasion that the delegated authority to write off accounts up to £25,000 is exercised. The Chief

- Finance Officer must report, at least annually, all write-offs to the Cabinet in accordance with the procedures and limits detailed in the Financial Management Tool.
- iv. Each Director must maintain an up to date list of authorised signatories in accordance with the procedures and limits detailed in the Financial Management Tool.
- v. Only the Chief Finance Officer or authorised representative where applicable, shall have authority to:
- Operate all such bank accounts considered necessary.
  - Approve all dealings and arrangements with the City Council's bankers.
  - Authorise the ordering of cheques (inc. National Giro payment forms) and make proper arrangements for their safe custody.
  - Approve and sign all alterations and amendments to cheques.
  - Make all requests for City Council credit cards.
  - All cheques drawn on the City Council's main banking accounts will bear the facsimile signature of the Chief Finance Officer or be signed in manuscript by the Chief Finance Officer or authorised representative.

### **1.17 Orders and Payments**

- i. Each Director must ensure that all expenditure is lawful (intra vires), has been properly authorised and all necessary processes have been complied with. Additionally, each Director must ensure there are adequate controls and procedures in operation within their areas of responsibility to ensure:
- The City Council's Rules relating to contracts are complied with;
  - Orders are only raised where there is sufficient budget remaining to cover all costs associated with the order taking into account likely future commitments as well as the cost relating to a particular order;
  - Wherever possible orders are only raised under contracts which have been centrally negotiated or with suppliers who appear on the City Council's Voyager E-catalogue;
  - Orders are raised, processed and paid using the City Council's Voyager System and in accordance with the procedures and limits detailed within the Financial Management Tool, unless it has been authorised by the Chief Finance Officer, not to do so;
  - Goods and services are ordered and paid for, which are for official purposes and help the effective operation of the City Council;
  - Payments are only made on appropriately certified documents (i.e. invoices, student award applications etc.) and in accordance with the procedures and limits detailed within the Financial Management Tool;
  - Orders and payments are accounted for in accordance with the procedures and limits detailed within the Financial Management Tool;
  - A list of officers authorised to certify payments is maintained in accordance with the procedures and limits detailed within the Financial Management Tool;
  - Salaries, wages, gratuities, compensation, voluntary redundancy payments and other emoluments are paid in accordance with the procedures and limits detailed within the Financial Management Tool.

### **1.18 Grants to Outside Bodies**

- i. Grants to outside bodies must follow the Council's Conditions of Grant Aid and comply with the Grant Toolkit.

### **1.19 Council Applications for Grant Funding**

- i. The Chief Finance Officer will issue guidelines for each Directorate to follow, for any bids for grants, company or partnership funding, or applications submitted to Central Government, the European Commission or any other external organisation for financial support towards the costs of City Council projects / programmes or where the City Council is otherwise involved.

### **1.20 Accountable Body Roles**

- i. Each Director must ensure that all accountable body arrangements comply with all legal requirements and relevant City Council procedures, and that arrangements are in place to identify and manage the associated financial, reputational and performance risks.

### **1.21 Companies & Partnerships**

- i. Where a Director feels that it is appropriate to discharge a service or provide a function through the formation of a new legal entity (company or otherwise), the relevant Director should consult with the Monitoring Officer and the Chief Finance Officer and comply with procedures set out by the Cabinet Committee Group Company Governance.
- ii. Each Director must notify the Monitoring Officer and the Chief Finance Officer of any changes in relation to membership or financial management of any company formed by the Council to discharge its services or function.

### **1.22 Treasury Management**

- i. The City Council has adopted CIPFA's Treasury Management in the Public Services: code of Practice and Cross Sectorial Guidance Notes, including the clauses below:
- ii. The City Council will create and maintain, as the cornerstones for effective treasury management:
  - (i) a treasury management policy statement, stating the policies, objectives and approach to risk management of its treasury management activities
  - (ii) suitable treasury management practices (TMPs), setting out the manner in which the City Council will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.
- iii. The content of the policy statement and TMPs will follow the recommendations contained in Sections 6 and 7 of the Code, subject only to amendment where necessary to reflect the particular circumstances of the City Council. Such amendments will not materially deviate from the Code's key principles.

- iv. The City Council will receive reports on its treasury management policies, practices and activities, including, as a minimum, an annual strategy and plan in advance of the year. Cabinet will as a minimum receive a mid-year review and an annual report after the year end, in the form prescribed in its TMPs.
- v. Responsibility for the implementation and regular monitoring of treasury management policies and practices is delegated to Cabinet, and for the execution and administration of treasury management decisions to the Chief Finance (Section 151) Officer, who will act in accordance with the organisation's policy statement and TMPs and, if he/she is a CIPFA member, CIPFA's Standard of Professional Practice on Treasury Management.
- vi. The relevant Overview and Scrutiny Committee shall be responsible for ensuring effective scrutiny of the Treasury Management strategy and policies, and Audit Committee shall be responsible for reviewing the adequacy of treasury risk management arrangements as set out in the Treasury Management Policy, Strategy and TMPs.
- vii. Employees of the Council must not invest Council monies, or borrow, or enter into currency exchange or hedging transactions without a written delegation from the Chief Finance (Section 151) Officer. Money held by School Governors under Fair Funding should be invested by Governors in accordance with the City Council's scheme for financing schools.
- viii. All money in the custodianship of the City Council should be under the control of the Chief Finance Officer.

## Appendix A: Financial Approval Framework

CFO – Chief Finance Officer		Within Director Delegations ( <a href="#">note 1</a> )	Above Director Delegation & below Key Decision	Key Decision
		Below £200,000	£200,000 – below £500,000	£500,000 (revenue) / from £1m+ (capital)
<b>1.</b>	<b>Revenue Budget and Resources Approvals</b>			
1.1	Allocation of corporate revenue budgets	CFO (in consultation with the Chief Exec and Leader if £100,000 or more)	Cabinet	Cabinet
1.2	Allocation of general revenue Policy Contingency			
1.3	Virement or reallocation of revenue budgets between Directorates			
1.4	Virement or reallocation of revenue budgets held by Directorates.	Relevant Director	Either relevant Cabinet Member with relevant Director, or Regulatory Committee	Cabinet
1.5	Approval to bid for external revenue resources (including any associated Accountable Body Roles) to be included in an Outline Business Case Report.	Relevant Director with CFO	Either relevant Cabinet Member with relevant Director and CFO, or Regulatory Committee	
1.6	Approval to incur expenditure funded by accepting external revenue resources (including any associated Accountable Body roles) including where 1.5 is not applicable (eg where no bid submission was required).			
1.7	Technical revenue budget reallocations or adjustments (e.g. resulting from reorganisation) (note 3)	Chief Finance Officer	Chief Finance Officer	
1.8	Allocations of Revenue/Capital Grant and Ring-Fenced related reserves			
1.9	Allocation of <b>specific</b> revenue Policy Contingency in line with the approved Financial Plan and Budget			
1.10	Allocation of <b>specific</b> revenue Policy Contingency not in line with approved Financial Plan and Budget	Cabinet	Cabinet	Cabinet
1.11	Allocation of General Reserves and Balances, and Earmarked Reserves			



		Within Director Delegations ( <a href="#">note 1</a> )	Above Director Delegation & below Key Decision	Key Decision
CFO – Chief Finance Officer		Below £200,000	£200,000 – below £500,000	£500,000 (revenue) / from £1m+ (capital)
<b>2.</b>	<b>Capital Budget and Resources Approvals</b>			
2.1	Approval to changes to the capital budget, subject to limitations and policies in the Council’s Financial Plan. This may include increases in budgets funded from capital receipts; revenue budgets; the capital fund; specific resources ( <a href="#">note 5</a> ); or prudential borrowing, provided the borrowing costs can be funded from additional income, redirection of ongoing revenue budgets, or from treasury management budgets for borrowing costs	Chief Finance Officer	Cabinet	Cabinet
2.2	Allocation of Capital Policy Contingency			
2.3	Virement or reallocation of capital budgets from one project or programme to another (including use of underspends) ( <a href="#">note 6</a> )			
2.4	Allocation of a budget to fund overspends	Chief Finance Officer	Cabinet	Cabinet
2.5	Resource allocations in kind, e.g. asset swaps, appropriations between HRA and General Fund, and discounted asset sales			
2.6	Allocation of approved general programme capital budgets to individual projects within the existing policy framework	Relevant Director	Either relevant Cabinet Member with relevant Director, or Regulatory Committee	Either relevant Cabinet Member with relevant Director, or Regulatory Committee
2.7	Approval to bid for external capital resources (including any associated Accountable Body roles) to be included in an Outline Business Case Report.			
2.8	Approval to incur expenditure funded by accepting external capital resources (including any associated Accountable Body roles) where 2.7 is not applicable (eg where no bid submission was required).	Relevant Director jointly with the CFO	Either relevant Cabinet Member with relevant Director and CFO, or Regulatory Committee	Cabinet
2.9	Technical capital budget reallocations or adjustments (e.g. resulting from reorganisation) ( <a href="#">note 3</a> )	Chief Finance Officer	Chief Finance Officer	Chief Finance Officer

		Within Director Delegations ( <a href="#">note 1</a> )	Above Director Delegation & below Key Decision	Key Decision
CFO – Chief Finance Officer		Below £200,000	£200,000 – below £500,000	£500,000 (revenue) / from £1m+ (capital)
<b>3. “Gateway” Business Case Approvals</b>				
3.1	Outline Business Case and Full Business Case reports based on estimated whole project cost ( <a href="#">note 2</a> ). (Discretion to Chief Finance Officer to vary Business Case requirements according to circumstances).	Relevant Director (reporting formats to be determined locally)	Either relevant Cabinet Member with relevant Director, or Regulatory Committee;	Cabinet
3.2	Post Implementation Review reports where required.			
3.3	Contract Strategy and Contract Award	Approvals are set out in the <a href="#">Procurement Governance Arrangements</a> in the Constitution		
3.4	Capital Project and Programme overspends compared to the originally approved Full Business Case value.	Amount of overspend to be approved in a revised Full Business Case by the relevant decision maker in line with resource thresholds in 3.1 above. Any additional budget must be approved under 2.4 above ( <a href="#">note 12</a> ).		
<b>4. Loans, other investments, guarantees and underwritings made to Other Organisations (Note 14)</b>				
4.1	Budget allocation approval in accordance with Section 2 above.	Chief Finance Officer	Cabinet	Cabinet
4.2	Business Case approval in accordance with Section 3 above. This must include Treasury Management assessment in accordance with the Financial Management Tool, and must comply with the Council’s investment limit where applicable.	Relevant Director and CFO	Either relevant Cabinet Member with relevant Director and CFO, or Regulatory Committee	Cabinet

## **Financial Approval Framework – Supporting Notes**

### **Thresholds**

- 1) The Director delegation level is below £200,000. In relation to Emergency Health and Safety works these are an exception to the usual Gateway reporting requirements. Schools have a delegated authority to incur spend up to £500,000 whilst all other directorates can incur less than £200,000 under chief officer delegations (see Part E Scheme of Delegations). Any spend above these levels need to be approved by the relevant decision maker as soon as practicably possible.
- 2) “Whole Project Cost” means the entire gross capital cost of the investment to the City Council, however funded (including for example expenditure funded by capital grants).

### **Technical budget adjustments**

- 3) These may be needed for various reasons including (but not limited to):
  - Restructuring that takes place after the budget has been set and that sees the service being provided with the same budget via a different reporting hierarchy (i.e. the overall budget for the specific service being provided remains in line with that approved by the Council). Virements should only be used when it is not possible to reappoint an entire fund centre within hierarchies.
  - Changing Directorates’ uncontrollable costs such as Central Support Costs (CSC) and asset charges.
  - Savings that have been approved in the budget but have been held corporately and require reallocating.
  - Changes to Direct Schools Grant (DSG) and changes as a result of schools academisation.
  - Adjustments to Traded Services as a result of changes in year to the volume of services provided to schools and / or changes to pricing structures (e.g. Cityserve).
  - Any budget virement required as a result of technical accounting issues

### **Corporate and Specific Capital Resources**

- 4) Corporate capital resources are those which the Council can use for any purpose or with wide discretion as to their use, including all capital receipts, earmarked capital receipts, ‘service’ and ‘corporate’ prudential borrowing, un-ringfenced capital grants, and other general resources as determined by the Chief Finance Officer; it excludes Specific capital resources. Corporate resources are predominantly allocated in the annual capital budget process. Although Cabinet may approve further allocations at other points during the year, this will not generally be done.
- 5) Specific capital resources are all other resources which have a restricted purpose, and include external grants and contributions as well as revenue contributions from a Directorate’s own budget. Specific resources may be added to the capital budget by Cabinet during the year when there is reasonable certainty that the resources are available.

### **Capital budget virements within a project**

- 6) Capital virements within a project (e.g. from one Work Breakdown Structure element to another) can be approved by the Project's Board through a documented change control request (an example is in the Major Projects Financial Management Standard in the Financial Management Tool).

### **Gateway Reports**

- 7) The required template for OBC and FBC reports are included in Financial Management Tool. OBCs and FBCs are an appendix to the normal Executive decision report.
- 8) The report formats for Director approval are determined locally. They must support good decision making and provide adequate justification for the proposal being put forward. It is recommended that the Executive report format is used to ensure all relevant issues are addressed. Decisions made by relevant Cabinet Members and relevant Directors/Regulatory Committees must be made using the Executive Decision Report template and recorded on CMIS.

### **Scope of Capital Gateway approvals**

- 9) 'Capital Gateway' means any capital expenditure, including projects, ongoing programmes, and capital grants to third parties. A programme of capital works (such as an annual programme of repairs or minor works) can be treated as a single project with a business case report to approve the programme before it starts. The approach to these reports should be agreed with the relevant Business Partner, which may include the consideration of wider delegations to officers as appropriate.
- 10) Gateway approvals will also apply to Revenue Projects where the Chief Financial Officer so decides.
- 11) Capital projects where the City Council is the 'accountable body', but the expenditure decision is assessed and approved under the associated governance process of the delegated body, will not require further 'Gateway' Options Appraisal or FBC approvals, as long as the assessment/appraisal process has been reviewed by the Corporate Director of Finance and Governance and is of a comparable or higher standard than the BCC gateway appraisal process.
- 12) Additional capital budgets (however funded) which are required to fund overspends, must be approved in accordance with section 2.4 above.

### **Outline Business Cases**

- 13) Outline Business Cases will require a recommendation to release development funding. Approval to external funding will also need to be included in these reports in order to comply with 2.9 and 2.10.

### **Loans, other investments, guarantees and underwritings**

- 14) These transactions are not always treated as capital expenditure, but are all subject to the approvals in sections 1 and 2 above. This includes investments in Wholly Owned Entities.

The decision thresholds apply to the value of the loan, investment, guarantee or underwriting.

Loans and other investments are a technically specialist activity and are subject to CIPFA and MHCLG statutory guidance and Council limits. The Treasury team must be involved in the clearance of all decision reports proposing loans/investments.

## Appendix B: Chief Finance Officer Protocol

### Introduction to Statutory Responsibilities

- i. The Chief Finance Officer is a statutory appointment pursuant to section 151 of the Local Government Act 1972. This Protocol provides some general information on how those statutory requirements will be discharged.
- ii. A summary list of the Chief Finance Officer's statutory responsibilities appears in [Annex A](#) attached. The Chartered Institute of Public Finance and Accountancy (CIPFA) has also issued a Statement on the role of the Chief Finance Officer and the key responsibilities are outlined at [Annex B](#). The Chief Finance Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on members and officers:-
  - a) complying with the law;
  - b) complying with any relevant Codes of Conduct or codes or protocols issued from time to time;
  - c) making lawful and proportionate decisions; and
  - d) generally, not taking action that would bring the Council, their offices or professions into disrepute.
- iii. The Chief Finance Officer holds a fiduciary responsibility to the local taxpayers.

### Working Arrangements

- iv. CIPFA have set out five principles that define core activities and behaviours that belong to the role of the Chief Finance Officer:
  - a) The Chief Finance Officer should be a key member of the Leadership Team, helping the organisation to develop and implement strategy and to resource and deliver the organisation's strategic objectives sustainably and in the public interest.
  - b) The Chief Finance Officer must be actively involved in, and able to bring influence to bear on, all material business decisions to ensure immediate and longer term implications, opportunities and risks are fully considered, and aligned with the organisation's financial strategy
  - c) The Chief Finance Officer must lead the promotion and delivery by the whole organisation of good financial management so that public money is safeguarded at all times and used appropriately, economically, efficiently and effectively.
  - d) To deliver these responsibilities the Chief Finance Officer must lead and direct a finance function that is resourced to be fit for purpose; and
  - e) The Chief Finance Officer must be professionally qualified and suitably experienced.
- v. Having excellent working relations with members and officers will assist in the discharge of the statutory responsibilities by the Chief Finance Officer. Equally, a speedy flow of

relevant information and access to debate (particularly at the early stages of any decision-making by the council) will assist in fulfilling those responsibilities. Members and officers must, therefore, work with the Chief Finance Officer (and his/her staff) to discharge the council's statutory and discretionary responsibilities.

- vi. The Chief Finance Officer must be a qualified member of a specified accountancy body and has the statutory responsibilities for maintaining finance administration and stewardship including the responsible finance officer duties and with strategic and corporate roles. CIPFA states that the Chief Finance Officer in a public service organisation should be a key member of the leadership team, helping it to develop and implement strategy and to resource and deliver the authority's strategic objectives sustainably and in the public interest. The Chief Finance Officer will:

#### *Resources*

- Report to the Council, as necessary on the staff, accommodation and resources s/he requires to discharge his/her statutory functions;
- Have sufficient resources to enable him/her to address any matters concerning his/her Chief Finance Officer functions;
- Appoint a deputy and keep him/her briefed on any relevant issues that s/he may be required to deal with in the absence of the Chief Finance Officer. Appoint an appropriate external adviser in cases where the Chief Finance Officer is precluded from offering advice and the deputy is unable to advise.

#### *Access to information/meetings*

- Be alerted by members and officers to any issue(s) that may become of concern to the council, including in particular, issues around financial management, accounts and audit regulations, proposed expenditure or proposed actions which might lead to a loss or deficit or which may be unlawful;
- Have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings and delegated decision making of the council at which a decision may be made (including a failure to take a decision where one should have been taken);
- Have the right to attend any meeting of the council (including the right to be heard and report to the Executive Board) before any decision is taken (including a failure to take a decision where one should have been taken);
- in carrying out any investigation(s) and exercising any fiduciary duties have unqualified access to any information held by the council and to any officer who can assist in the discharge of his functions;
- to be a member of the Council Management Team and Executive Management Team, receiving advance notice of agendas and reports and have the right to attend and speak on all matters which have financial implications;

#### *Relationships*

- A reciprocal responsibility to ensure the other statutory officers (Head of Paid Service and the Monitoring Officer) are kept up-to-date with relevant information regarding any financial management, accounts and audit regulations, proposed expenditure or proposed actions which might lead to a loss or deficit;

- meet regularly with the Head of Paid Service and the Monitoring Officer to consider and recommend action in connection with corporate governance issues and other matters of concern regarding any financial management, accounts and audit regulations, proposed expenditure or proposed actions which might lead to a loss or deficit;
- develop effective working liaison and relationship with the external auditor (including having the authority, on behalf of the council, to complain to the same, refer any breaches to the same or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary);
- in consultation, as necessary, with the Leader, the Executive Board and the external auditor, defer the making of a formal report under sections 114, 115 and 116 of the Local Government and Finance Act 1988 where another investigative body is involved;

#### **Member and Officer Responsibilities**

- vii. To ensure the effective and efficient discharge of the arrangements set out in paragraph 2 above, members and officers will report any breaches of statutory duty or council policies or procedures and ultra vires or constitutional concerns to the Chief Finance Officer, as soon as practicable.

#### **Advice**

- viii. The Chief Finance Officer is also available for members and officers to consult on any issues of the council's financial powers, possible unlawful payments, or general advice on the financial arrangements.
- ix. The Chief Finance Officer or deputy will record details of any advice given.

#### **Monitoring the Protocol**

- x. Annually, the Chief Finance Officer will report to the Corporate Governance and Audit Committee regarding whether the arrangements set out in this protocol have been complied with and will include any proposals for amendments in the light of any issues that have arisen during the year.

#### **Sanctions for Breach of Protocol**

- xi. Complaints of a breach of this protocol by an officer will be referred to the relevant Director and/or the Chief Executive for appropriate action to be considered, including disciplinary investigation.



### Annex A: Summary of Chief Finance Officer Statutory Functions

Description	Source	
1	That the Treasurer is not merely a servant of the Council but holds a fiduciary relationship to the local taxpayers.	Case law - Attorney General -v- De Winton (1906).
2	To make arrangements for the proper administration of their Finance affairs. Legal opinion taken states that the term "administration" means responsibility for managing the totality of the Finance affairs of a local Council in all of its dealings.	Section 151 of the Local Government Act 1972
3	The Officer appointed as the responsible Chief Finance Officer must, be a Member of a specified accountancy body. The statutory role must be performed by an "Officer" of the Council.	Section 113 of the Local Government Finance Act 1988
4	In consultation with the Monitoring Officer and Head of Paid Service, reporting to all members and the external auditor if there is, or is likely to be, unlawful expenditure or an unbalanced budget.	Section 114 Local Government Finance Act 1988
5	Advising whether particular decisions are likely to be contrary to the policy framework or budget of the council.	Local Government Act 2000
6	Maintain an adequate and effective system of internal audit for accounting records and control systems.	Accounts and Audit Regulations 2015
7	Reporting to Council on both the robustness of the budget estimates and the adequacy of financial reserves, and ensuring compliance with the prudential capital regime.	Local Government Act 2003

### Annex B

In its Statement CIPFA sets out the five principles that define the core activities and behaviours that belong to the role of the Chief Finance Officer in public service organisations. The core responsibilities against each of these principles are set out below.

a) Principle 1 - contributing to Corporate Management and Leadership

- Contributing to the effective leadership of the authority, maintaining focus on its purpose and vision through rigorous analysis and challenge.
- Contributing to the effective corporate management of the authority, including strategy implementation, cross organisational issues, integrated business and resource planning, risk management and performance management.
- Supporting the effective governance of the authority through development of
  - corporate governance arrangements, risk management and reporting framework
  - corporate decision making arrangements.

- Contributing to the development of public service partnership to deliver objectives.
- Leading or promoting change programmes within the authority.
- Leading development of a medium-term financial strategy and the annual budgeting process to ensure financial balance and a monitoring process to ensure its delivery.

b) Principle 2 – responsibility for financial strategy and influencing decision making

*Responsibility for financial strategy;*

- Agreeing the financial framework and planning delivery against the defined strategic and operational criteria.
- Maintaining a long-term financial strategy to underpin the authority's financial viability within the agreed performance framework.
- Implementing financial management policies to underpin sustainable long-term financial health and reviewing performance against them.
- Evaluating the financial implications of alternative delivery models.
- Appraising and advising on commercial opportunities and financial targets.
- Developing and maintaining an effective resource allocation model to deliver business priorities.
- Developing an approach for the delivery of collaborative services within a structured framework.
- Leading on asset and balance sheet management to allow the authority to maximise its effective use of resources.
- Co-ordinating the planning and budgeting processes.
- Involvement in strategic assets management.

*Influencing decision making;*

- Ensuring that opportunities and risks are fully considered and decisions are aligned with the overall financial strategy.
- Providing professional advice and objective financial analysis enabling decision makers to take timely and informed business decisions.
- Ensuring that efficient arrangements are in place and sufficient resources available to provide accurate, complete and timely advice to support members' strategy development.
- Ensuring that clear, timely, accurate advice is provided to the Executive in setting the funding plan/budget.
- Ensuring that advice is provided to the scrutiny function in considering the funding plan/budget.
- Ensuring that the authority's capital projects are chosen after appropriate value for money analysis and evaluation using relevant professional guidance.
- Checking, at an early stage, that innovative financial approaches comply with regulatory requirements.
- Financial information for decision makers
- Monitoring and reporting on financial performance that is linked to related performance information and strategic objectives that identifies any necessary corrective decisions.

- Preparing timely management accounts.
  - Ensuring the reporting envelope reflects partnerships and other arrangements to give an overall picture.
  - Monitoring the service impact of third party contacts on the delivery of organisational objectives.
  - Monitoring the longer-term financial impact of third party contracts.
- c) Principle 3 – Financial Management, value for money, safeguarding public money and assurance & scrutiny.

*Promotion of financial management*

- Assessing the authority's financial management style and the improvements needed to ensure it aligns with the authority's strategic direction.
- Actively promoting financial literacy throughout the authority.
- Actively promote good financial management throughout all partnerships and alternative delivery models.
- Assisting the development of a protocol which clearly sets out the roles and responsibilities of both democratically elected councillors (members), whether acting in executive or scrutiny roles, and of officers for financial management, including delegated authority/powers.
- Ensure effective monitoring of partnerships through monitoring and access to information.

*Value for money*

- Challenging and supporting decision makers, especially on affordability and value for money, by ensuring policy and operational proposals with financial implications are signed off by the finance function or being clear on the reasons for alternative selection.
- Advising on the financial thresholds for 'key' decisions where there is a requirement to do so.
- Developing and maintaining appropriate asset management and procurement strategies.
- Managing long-term commercial contract value.

*Safeguarding public money;*

- Applying strong internal controls in all areas of financial management, risk management and asset control.
- Establishing budgets, financial targets and performance indicators to help assess delivery.
- Implementing effective systems of internal control that include standing financial instructions, operating manuals, and compliance with codes of practice to secure probity.
- Ensuring that the authority has put in place effective arrangements for internal audit of the control environment and systems of internal control as required by professional standards and in line with CIPFA's Code of Practice on Local Authority Accounting in the United Kingdom.<sup>14</sup>

- Ensuring that delegated financial authorities are respected.
- Promoting arrangements to identify and manage key business risks, including safeguarding assets, risk mitigation and insurance.
- Overseeing of capital projects and post completion reviews.
- Applying discipline in financial management, including managing cash and banking, treasury management, debt and cash flow, with appropriate segregation of duties.
- Ensuring the effective management of cash flows, borrowings and investments of the authority's own funds or the pension and trust funds it manages on behalf of others; ensuring the effective management of associated risks; pursuing optimum performance or return consistent with those risks.
- Implementing appropriate measures to prevent and detect fraud and corruption.
- Establishing proportionate business continuity arrangements for financial processes and information.
- Ensuring that any partnership arrangements are underpinned by clear and well documented internal controls.
- Be alert to potential conflicts of interest and ensure the authority has access to appropriate independent advice.

*Assurance and scrutiny;*

- Reporting performance of both the authority and its partnerships to the board and other parties as required.
- Ensuring that financial and performance information presented to members of the public, the community and the media covering resources, financial strategy, service plans, targets and performance is accurate, clear, relevant, robust and objective.
- Supporting and advising the audit committee and relevant scrutiny groups.
- Ensuring that clear, timely, accurate advice is provided to the Executive and the scrutiny functions on what considerations can legitimately influence decisions on the allocation of resources, and what cannot.
- Preparing published budgets, annual accounts and consolidation data for government-level consolidated accounts.
- Ensuring that the financial statements are prepared on a timely basis, meet the requirements of the law, financial reporting standards and professional standards as reflected in CIPFA's Code of Practice.
- Certifying the annual statement of accounts.
- Ensuring that arrangements are in place so that other accounts and grant claims (including those where the authority is the accountable body for community led projects) meet the requirements of the law and of other partner organisations and meet the relevant terms and conditions of schemes
- Liaising with the external auditor.

d) Principle 4 - Lead and direct a finance function that is resourced to be fit for purpose.

- Leading and directing the finance function so that it makes a full contribution to and meets the needs of the business.
- Determining the resources, expertise and systems for the finance function that are sufficient to meet business needs and negotiating these within the overall financial framework.

- Managing partnership delivery.
- Implementing robust processes for recruitment of finance staff and/or outsourcing of functions.
- Reviewing the performance of the finance function and ensuring that the services provided are in line with the expectations and needs of its stakeholders.
- Seeking continuous improvement in the finance function.
- Ensuring that finance staff, managers and the leadership team are equipped with the financial competencies and expertise needed to manage the business both currently and in the future whether directly or indirectly employed.
- Ensuring that the head of profession role for all finance staff in the authority is properly discharged.
- Acting as the final arbiter on application of professional standards.

## D2. RULES RELATING TO CONTRACTS

### 2.1 Introduction

- i. These Rules shall be regarded as Standing Orders of the Council for the purposes of Local Government Act 2972.
- ii. These amended Standing Orders apply to all new procurement processes which are commenced after **10 September 2019**.

### 2.2 Application and Interpretation

In these rules:

**“Authorised Officer”** means the officer to whom the function has been delegated in accordance with delegations or sub-delegations set out in the Constitution or appendices.

**“Authorised Recipient”** means the officer responsible for the receipt of tenders and quotations.

**“Best Value”** means the Council's duty under Section 3 Local Government Act 1999.

**“Building Regulation Authority”** means a local authority as defined by Section 126(1) Building Act 1984.

**“Candidate”** means a contractor that has sought an invitation or has been invited to take part in a restricted procedure, a competitive procedure with negotiation, a negotiated procedure without prior publication, a competitive dialogue or an innovation partnership.

**“Closing Date”** means the time and date specified in the invitation to tender, quote or negotiate (or any later date that is notified to all persons invited to tender, submit a quote or negotiate where such notification is provided at least 24 hours before the previous Closing Date).

**“Competitive Dialogue”** and **“Competitive Procedure with Negotiation”** mean negotiations carried out in accordance with Public Procurement legislation.

**“Contract”** means a contract for supplies, services, or for the execution of any works and also includes a Framework Agreement and Dynamic Purchasing System. It excludes contracts for the acquisition or disposal of an interest in land, and the grant of a licence.

**“Contractor”** means any person seeking to enter into a contract with the Council.

**“Decision Maker”** means the Council, Cabinet, Cabinet Member, Committee or Sub-Committee or Authorised Officer to whom a function has been delegated in accordance with the Council's Constitution (Part E or the Directorate Sub-Delegations).

**“Estimated Total Cost”** means the aggregate total cost of the supplies or services to be provided or works to be performed under a contract, including any form of option, estimated prior to its procurement.

**“Public Procurement Legislation”** means the Public Contract Regulations 2015 as amended or Concession Contract Regulations 2016 as appropriate or any other successor legislation.

**“Procurement Threshold”** means the published financial threshold applying to in scope supplies, services and works contracts and concession contracts as identified in the Public Procurement Legislation.

**“Framework Agreement”** means a contract concluded in accordance with the Public Procurement Legislation by the Council or by another contracting authority, which establishes the terms under which a contractor will enter into contracts with a contracting authority covered by the scope of the agreement in the period during which the framework agreement applies.

**“Innovation Partnership”** means a procedure carried out in accordance with regulation 31 of the Public Contract Regulations 2015 or any successor legislation, in which the aim is the development of an innovative product, service or works, not already available on the market.

**“LEP Authority”** means the following local authorities:

Solihull MBC, East Staffordshire Borough Council, Lichfield Borough Council, Tamworth Borough Council, Bromsgrove District Council and Cannock Chase District Council and any other local authority (or authorities) that may join the Greater Birmingham & Solihull Local Enterprise Partnership.

**“Negotiated Contracts”** means the process undertaken by Officers in order to award contracts as set out in Section 2.5.

**“Open Procedure”** means a procedure leading to the award of a contract where any interested contractor may submit a tender in response to a contract notice.

**“Restricted Procedure”** means a procedure leading to the award of a contract where any interested contractor may submit an expression of interest in response to a contract notice, but only candidates selected by the Council will be invited to submit tenders.

**“Unforeseen Priority”** means a situation where there is an overwhelming and immovable requirement to complete an item of work, such requirement could not have been foreseen within sufficient time to have allowed a competitive procurement, and the adverse consequences of delaying the completion of such work significantly outweigh the consequences of not securing effective competition. This is provided that the overwhelming and immovable requirement is not attributable to the Council.

## **2.3 Compliance**

- i. Every contract made by the Council shall comply with these Rules and be carried out in a fair, open and transparent manner that treats all contractors equally and without discrimination, provided that this does not include contracts for the appointment of barristers, or legal advice where in the opinion of the City Solicitor urgent advice is needed to protect the interests of the council.
- ii. Instruction of any legal firm or barrister must be approved by the City Solicitor.

### **Subdivision of Contracts**

- iii. No contract shall be subdivided into smaller contracts so as to avoid compliance with Standing Orders.

### **Value Added Tax (VAT)**

- iv. All figures in Standing Orders are net of VAT.

### **Exemption**

- v. Exemption from any Standing Order may be authorised by the Decision Maker PROVIDED THAT the Decision Maker is satisfied that the exemption is justified by special circumstances and the Decision Maker records in writing the ground(s) for being so satisfied as part of that decision.

## **2.4 Quotations**

### **Low Cost Quotations**

- i. Where the estimated total cost of a contract does not exceed £10,000 no contract shall be entered into unless three written quotations have been secured from contractors listed on the finditinbirmingham.com database who the Authorised Recipient considers are suitable.<sup>1</sup> If the Authorised Recipient is unable to secure the submission of 3 written quotations then the Authorised Recipient shall record the reasons and proceed with a single quotation, subject to the Decision Maker's agreement being obtained pursuant to vi

### **High Cost Quotations**

- ii. Where the estimated total cost of a contract exceeds £10,000 but is below the Procurement Threshold no contract shall be entered into unless either:
- The contract has been advertised on finditinbirmingham.com<sup>2</sup> and a minimum of seven calendar days allowed for the submission of quotations and at least three quotations have been submitted. (Due regard should be given to the complexity of the proposed contract and the time required for drafting a tender response when setting the time limit for bidding). If at the end of the advertising period less than 3 quotations have been submitted then the Authorised Recipient shall record the reasons and proceed with a single quotation, subject to the Decision Maker's agreement being obtained pursuant to vi.; or
  - Where there is a suitable Framework Agreement, then quotations should be sought by either a mini-competition or direct award in accordance with the call-off rules established for that Framework Agreement.
  - Where the estimated total cost of a contract exceeds £25,000 the contract has also to be advertised on [www.gov.uk/contracts-finder](http://www.gov.uk/contracts-finder) .

### **Building Regulation Authorities and Local Enterprise Partnership (LEP) Authorities**

- iii. Where the proposed contract is for building consultancy work with a Building Regulation Authority or for services to be undertaken by a LEP Authority and the estimated total cost

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<sup>1</sup> If the contract delivery is outside the West Midlands, the procuring officer shall determine the means of advertising in order to secure the appropriate number of quotations to achieve value for money.

<sup>2</sup> As above



of the contract does not exceed the Procurement Threshold the Council shall be entitled to enter into the contract with the Building Regulation Authority or the LEP Authority as appropriate without first seeking quotations or advertising the contract on [finditinbirmingham.com](http://finditinbirmingham.com).

### **Tenders**

- iv. No contract whose estimated total cost exceeds the Procurement Threshold shall be entered into unless tenders have been invited in accordance with either the open or restricted procedures, or one of the negotiated contracts or framework agreement procedures set out below and carried out in accordance with Public Procurement Legislation.

### **Pre Estimate of Tender Sum**

- v. No tender shall be invited for a contract unless:
- an authorised officer has prepared an estimate in writing of the probable expense of the supplies or services or of executing the works; and
  - in the case of a tender for the execution of any works, an authorised officer has prepared an estimate of the annual running costs after completion.

### **Publication of Notices**

- vi. Contracts shall be advertised and awarded in accordance with Public Procurement Legislation through the Council's e-tendering provider. Contract notices shall also be published on [www.finditinbirmingham.com](http://www.finditinbirmingham.com).<sup>3</sup>

## **2.5 Negotiated Contracts**

### **Multiple Contractor Negotiations (MCN)**

- i. A contract may be negotiated and concluded with three or more prospective contractors where the City Solicitor (or Assistant Director, Legal), the Chief Finance Officer (or the Assistant Director Development and Commercial Finance) has certified in writing prior to the commencement of such negotiations that the method of procurement:
- Satisfies Best Value;
  - (Where the value exceeds the Procurement threshold) is in accordance with the Procurement Directives; and
  - Contractors would be unlikely to submit an unqualified tender or quotation.
- ii. Where such authorisation has been issued, the Quotations and Tenders sections above (except for Pre-estimate of Tender Sum) and the Submission of Quotations and Tenders section below shall not apply to that contract.
- iii. MCNs are not to be used as a means to extend contracts that have failed to be re-procured in sufficient time.

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<sup>3</sup> See footnote 1 above

### **Single Contractor Negotiations (SCN)**

- iv. A contract may be negotiated and concluded with a single contractor where the City Solicitor (or Assistant Director, Legal) and the Chief Finance Officer (or the Assistant Director Development and Commercial Finance) has certified in writing prior to the commencement of such negotiations that the method of procurement:
- Where the value exceeds the Procurement Threshold) is in accordance with Public Procurement Legislation;
  - As a result of a market investigation there is only one contractor that can meet the Council's requirements for that contract; or
  - There is an unforeseen priority
- v. Where such authorisation has been issued, the Quotations and Tenders sections above (except for Pre-estimate of Tender Sum) and Submission of Quotations and Tenders section below shall not apply to that contract.
- vi. SCNs are not to routinely be used as a means to award or extend contracts that have failed to be re-procured in sufficient time.
- vii. The duration of contracts awarded under SCNs should be proportionate to the subject matter of the contract.

### **Competitive Dialogue, Competitive Procedure with Negotiation or Innovation Partnership**

- viii. A contract may be the subject of Competitive Dialogue, Competitive Procedure with Negotiation or Innovation Partnership where the City Solicitor, the Chief Finance Officer, or the Assistant Director Development and Commercial Finance has agreed the Procurement Strategy report prior to the publication of a contract notice, that use of an alternative procurement procedure will not satisfactorily allow the award of contract.
- ix. Where such authorisation has been issued, the Quotations and Tenders sections above (except for Pre-estimate of Tender Sum) and Submission of Quotations and Tenders section below shall not apply to that contract.

## **2.6 Framework Agreements**

### **Single Contractor Framework Agreement**

- i. Where a single contractor has entered into a contract with the Council based on a Framework Agreement established by the Council or by a Contracting Authority that has included the Council within the scope of their Agreement, the issue of individual orders for work within the scope of that contract shall not require further action under Standing Orders.

### **Multiple Contractor Framework Agreements**

- ii. When more than one contractor has entered into a Framework Agreement with the Council then the issue of orders shall be in accordance with any allocation rules agreed with the Decision Maker on the award of the contract. Where the rules require opening

up competition between the Framework Contractors, then a report shall be issued to the Decision Maker under the Evaluation and Award section below setting out the reason for the award to the particular contractor and how the price payable by the Council has been reached.

- iii. Contracts to be concluded by a call off from a Framework Agreement established by another Contracting Authority shall be carried out in accordance with the rules for the operation of that Framework Agreement; ensuring that the scope covers the Council as a Contracting Authority to which the framework is open.

#### **Dynamic Purchasing Systems**

- iv. Dynamic purchasing systems shall be operated as a completely electronic process, and shall be open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria. In order to procure under a dynamic purchasing system, the rules of the Restricted Procedure shall be followed in accordance with the Public Procurement Legislation.

## **2.7 Submission of Quotations and Tenders**

#### **Method of Submission**

- i. All invitations to tender or quote shall state that no tender or quotation shall be considered unless it is submitted in accordance with the requirements described in the instructions for tendering or submitting quotations.

#### **Closing Date**

- ii. No tender or quotation received after the closing date shall be accepted or considered.

#### **Record**

- iii. The authorised recipient shall be responsible for ensuring that there is an accurate record of the receipt of tenders and quotations.

## **2.8 Evaluation and Award**

#### **Evaluation principles**

- i. All invitations to tender or to submit a quotation shall specify the selection and award criteria.

#### **Award Report**

- ii. A written report on the evaluation of tenders shall be issued to the decision maker, following any procurement in accordance with the Tenders, Negotiated Contracts or Framework Agreements sections above including the opening up of competition when calling off from a framework agreement and when establishing a dynamic purchasing system.
- iii. Award reports shall include at least the following:

- a) A brief summary setting out the subject matter of the report and the desired outcomes;
- b) results of the qualitative selection and the reasons for selection or rejection of contractors;
- c) and additionally (where appropriate):
  - The reasons for selection or rejection of Candidates;
  - The reasons for the rejection of tenders found to be abnormally low;
  - Any delegations sought to take up options to extend the contract subject to satisfactory performance and budget availability;
  - The pre-estimate of expenditure or the total value of orders; and
  - The rules for the allocation of orders.

#### **Contract Award**

- iv. Following the authorisation of the award report, all tenderers shall be notified in writing of the outcome, subject to the requirements of the Public Procurement Legislation regarding standstill periods. Debrief and publication of the award notice(s) shall be complied with.

### **2.9 Content of Contracts**

- i. Every contract shall be in writing and shall contain clauses which are currently approved by the City Solicitor which address:
  - a) The prevention of corruption;
  - b) Equal opportunities;
  - c) The Council's procurement policy framework for jobs and skills where applicable;
  - d) The Council's Birmingham Business Charter for Social Responsibility where applicable; and
  - e) Where the contract exceeds the Procurement Threshold; the contract shall contain clauses reflecting obligations under Public Procurement Legislation.

### **2.10 Execution of Contracts**

#### **Sealing**

- i. Every works contract which exceeds £250,000 in value, every contract for supplies or services which exceeds £1,000,000 in value and all Framework Agreements irrespective of their value shall be sealed with the Common Seal of the Council and shall be executed by the contractor as a Deed.

#### **Signing**

- ii. Every contract shall be signed on behalf of the Council either by a senior lawyer who is duly authorised by the Council or an authorised officer.

**Members**

- iii. No Member of the Council shall enter either orally or in writing into any contract on the Council's behalf.

## **D3. PROCUREMENT GOVERNANCE ARRANGEMENTS**

### **3.1 Scope**

- i. This sets out the governance arrangements for approval and award of contracts and for the exercise of the chief officer delegations where the supplies, materials, services to be purchased or the works to be executed are between the Procurement Threshold and £10,000,000 in value. Chief Officers/Directors will put in place a scheme of sub-delegations to other officers and these will be published on the Council's webpage.
- ii. These figures refer to the Council's expenditure only, notwithstanding that the Council may permit its Framework Agreements to be used by other contracting authorities.
- iii. Where the estimated value of a contract is £10,000,000 or above, Cabinet is required to approve the strategy report and the contract award. Where the estimated value of a contract is under £10,000,000, the contract award decision shall normally be delegated to Chief Officers/Directors in accordance with the Procurement Governance Arrangements; provided that the [tolerances](#) below are not exceeded, in which case such contract award decision will be made jointly by the Cabinet Member – Finances and Resources together with the relevant Chief Officer. Where it is likely that the award of the contract will result in staff employed by the Council transferring to the successful contractor under TUPE, in which case the decision must be made by Cabinet.

### **3.2 Sounding out Cabinet – Planned Procurement Activities Report (PPAR)**

- i. The Assistant Director of Development and Commercial Finance shall present a monthly report to Cabinet plus a copy to the Resources Overview and Scrutiny Committee of all relevant planned procurement activity ("Planned Procurement Activities Report") over the following quarter.
- ii. The report is in header form listing the goods or services with estimated timescale, together with a briefing note. Estimated contract values may in most cases be exempt from public disclosure subject to the public interest test in accordance with Schedule 12A of the Local Government Act 1972.<sup>4</sup> This report is:
  - a) To inform Cabinet and the Resources Overview & Scrutiny Committee of planned procurement activities over the following quarter.
  - b) To act as a sounding for Members for the planned activities where decisions are delegated to Chief Officers/Directors;
  - c) For Cabinet to identify any sensitivities or requirements that necessitate a procurement report to be presented to Cabinet for an executive decision prior to starting the procurement rather than delegating the decision to Chief Officers/Directors.

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<sup>4</sup> Further guidance on exempt information can be found in Part C2 Access to Information

- iii. Any planned procurements can, at the discretion of Cabinet, be brought back to Cabinet for an Executive decision.

### **3.3 Strategy Report**

- i. Prior to commencing a procurement process and the issue of tender documents, a brief outline of the proposed activity (“Strategy Report”) will be prepared by the Directorate Chief Officer, or if the contract is designed to service two or more Directorates, the relevant Head of Category from within Corporate Procurement (“**the Contract Owner**”) seeking approval from:
- Finance - to validate that the anticipated benefits can be realised and to confirm the budget is available;
  - Legal Services - to confirm the proposal including the method of procurement is within the Council’s powers.; and
  - Corporate Procurement Services - to confirm that the strategy demonstrates the best form of procurement, is likely to secure effective competition and deliver best value and approve the market engagement strategy.
  - The Contract Owner shall gain approval to the content of the Strategy Report from City Solicitor, Chief Finance Officer and Assistant Director of Development and Commercial Finance (or their delegates) by email. It is required that the same, final version of the Strategy Report having been seen and authorised by all parties.

### **3.4 Tolerances for operation**

- i. If a project within the Planned Procurement Activities Report is not approved for the goods or services required, then an Executive decision will need to be made by Cabinet (or the relevant Cabinet Member in consultation with a Chief Officer if it is within the appropriate financial limits).
- ii. Also if:
- the estimated total value of the contract exceeds the figure stated in the Planned Procurement Activities Report by 20% or £500,000 (whichever is the lower), or exceeds £10,000,000;
  - the proposed length of the contract exceeds by more than 12 months the term stated in the Planned Procurement Activities Report;
  - there is a material change to the scope of the contract as set out in the Planned Procurement Activities Report;

the Executive decision on contract award will be delegated to the Cabinet Member – Finance and Resources acting with the relevant Chief Officer.

### **3.5 Contract Award Report**

- i. At the end of the tender and to enable a contract award to be made and an award notice to be published, an award report shall be produced in accordance with the Public Procurement Legislation for consideration by the relevant Decision Maker in order to authorise approval (“Contract Award Report”).

- ii. The Contract Award Report should make clear where authorisation is being sought to delegate to the appropriate Chief Officer the taking up of the option to extend, in whole or in part, by written notice to the contractor(s), subject to satisfactory performance and funding availability. See Award Reports section D2.8 iii above for the minimum content of Award Reports.
- iii. The Contract Award Report shall be approved by the City Solicitor, the Chief Finance Officer and the Assistant Director Development and Commercial Finance (or their delegates); the same final version of the Contract Award Report having been seen and authorised by all parties.

### **3.6 Combined Strategy and Contract Award report**

- i. Where the proposed procurement route is the use of (or “call off” from) another Contracting Authority’s Framework Agreement, a combined strategy and award report may be presented to the relevant Decision Maker provided that, in addition to the applicable requirements of the Framework and Award sections above, the report contains an options appraisal stating:
  - The justification for use of the framework agreement;
  - How the Council’s policies (including the Social Value and Living Wage Policies) will be addressed; and
  - The reason for the award to the particular contractor and how the price payable by the Council has been reached.
  - See Award Reports section D2.8 iii above for the minimum content of Award Reports.

### **3.7 Contract Extension Report**

- i. A Contract Extension Report may authorise an extension to a contract where a contract has expired and a replacement contract has not been procured in time, this delay is not attributable to the actions of the Council, and there is no option outstanding to extend the contract provided that:
  - The City Solicitor, the Chief Finance Officer and the Assistant Director Development and Commercial Finance (or their delegates) are satisfied that there is no viable alternative solution, having regard to the Public Procurement Legislation;
  - The value of the extension does not exceed £500,000;
  - Where the contract exceeds the Procurement Threshold, due regard is to be given to the circumstances in which a modification of a contract or a framework agreement is permitted under the Public Procurement Legislation.
  - The contract conditions are similar to those of the contract which has expired; and
  - There is no change to the specification to that contained in the contract which has expired.
- ii. Such Extension Report shall set out the business case and appraisal of options, the outcome of any negotiations with the contractor and the reasons why it was not practicable to complete a procurement process and award a contract prior to the expiry of the current contract.



### **3.8 Framework agreements**

- i. Where the award of a framework agreement has been approved by a Cabinet Member with a Chief Officer, or by a Chief Officer in accordance with the Procurement Governance Arrangements then Chief Officers may issue further orders under the framework agreement provided that they comply with the scope of the agreement and Framework Limits.

### **3.9 Record of decisions**

- i. The Assistant Director Development and Commercial Finance shall:
  - Maintain a record of all decisions made by Chief Officers/Directors ; and
  - Report on a quarterly basis to Cabinet on all decisions taken by Chief Officers/Directors during the previous quarter;

to which these Procurement Governance Arrangements apply. The report will be in header form listing the contract values, timescales and goods, services or works.

### **3.10 Compliance**

- ii. This process shall be consistently applied across the Council and directorates should not need to add any additional processes. The relevant Chief Officer is responsible for ensuring these Procurement Governance Arrangements are followed and all approvals required are in place before any contract is awarded.