

Appendix 19 – Members protocol for contracts and purchasing

1 Introduction

- 1.1 The County Council procures goods, services and works on a large scale, via tendering exercises or negotiations, and subsequently manages the resultant contracts and takes decisions around contract extension or termination.
- 1.2 The purpose of this protocol is to define the role of Members of the County Council in the taking of these decisions and to assist them in the exercise of that role.

2 Principles

- 2.1 This protocol is based upon the following principles:
 - protecting the personal integrity of Council Members and officers;
 - ensuring the financial and probity interests of the Council are protected;
 - ensuring decisions are based on complete and sound information and advice from appropriate professional staff;
 - ensuring decisions are in accordance with the Council's agreed processes and standards;
 - protecting the Council, its Members and officers from undue pressure or inappropriate contact from contractors and parties with a commercial interest in a transaction; and
 - ensuring openness and accountability in decisions relating to contracts and purchasing.
- 2.2 Against this background the protocol covers the following:
 - 1 the overall role of Members in such decisions
 - 2 Contract Standing Orders
 - 3 Code of Conduct
 - 4 gifts and hospitality
 - 5 lobbying
 - 6 the related transactions form
 - 7 confidentiality

3 The Overall Role of Members in such Decisions

- 3.1 The County Council's governance arrangements provide for:

1. The full County Council to adopt Standing Orders for the letting of contracts.
2. The Leader and Executive to take decisions relating to major contracts, in particular major partnership working.
3. But otherwise, for decisions to be taken by Chief Officers under Contract Standing Orders, subject to the involvement of the Executive in certain defined areas.

4 Contract Standing Orders

4.1 The County Council has adopted Contract Standing Orders, the purpose of which is to govern the letting of Council contracts, and in particular to ensure that contracts are let competitively, and, in a way, which not only ensures that the Council secures Best Value but also that the probity interests of the Council are protected. These Standing Orders generally place the responsibility for procurement with Chief Officers. The Executive may be involved in authorising procurement exercises in accordance with Contract Standing Orders, in the following circumstances:

- a) Authorising exemptions not otherwise covered in the Standing Orders.
- b) Receiving reports where Chief Officers have applied certain of the exemptions.

5 Code of Conduct

5.1 Councillors are bound by the Members' Code of Conduct and Chapter 7 of the Localism Act 2011, the requirements of which include:

- a. The registration of a range of interests including: -
 - (a) employment or office
 - (b) contracts
 - (c) land
 - (d) leases
 - (e) political sponsorship
 - (f) shareholdings

6 Gifts and Hospitality Code of Conduct

6.1 The County Council has also adopted a Code of Conduct which places major restraints on the extent to which Members may receive gifts and hospitality. The key points of this Code are that:

- b. Offers of gifts and hospitality can only be accepted in very limited circumstances and should be registered with the County Council. In particular, the Code contains the general principles that a Councillor should

never accept gifts or hospitality as an inducement or reward for anything done by them nor should they be accepted if it places a Councillor under an improper obligation.

c. Offers should be refused where they: -

- i. Appear to be an inducement or reward for something expected from the Councillor; or
- ii. Are from commercial organisations or private individuals over £25.00 in value.

7 Lobbying

7.1 It is a well-established part of the political process that those who may be affected by a proposed decision of a Local Authority should seek to influence that decision. In many cases, they will approach their local Councillor or Members of the relevant decision-making bodies. However, it is essential that the process of lobbying does not undermine the decision-making processes and that Councillors are seen to determine matters on their merit.

7.2 As a result, where a Councillor is likely to become involved in a decision on a particular procurement they should make it clear, in any situation where they are approached by or on behalf of anyone interested in procuring the contract, not to enter into any discussion. Rather, potential Contractors must be directed to the relevant Chief Officer.

7.3 In addition, Councillors should not seek to influence the procurement decisions of officers, but it is entirely appropriate for Members to understand how and why decisions were taken.

8 The Related Transactions Form

8.1 The Code of Practice on Local Authority Accounting requires that the County Council must disclose in its annual accounts details of all transactions between the Council and individual Councillors, members of their close families or of the same household, and companies, partnerships, trusts or other entities in which they or their close family or members of their household have a controlling interest. To facilitate this process, the Executive Director of Commercial Services and Finance writes annually to all Councillors asking them to disclose any relevant transactions.

9 Confidentiality

9.1 Commercial transactions, by their nature, involve the commercial activities of one or more party other than the Council. They will involve the disclosure to the Council of matters of commercial confidentiality, such as Business Plans, and pricing structure, disclosure of which to a competitor or to the market could be

very detrimental. The maintenance of confidentiality is essential both to maintain the integrity of a competitive procurement process and to ensure that those who have commercial dealings with the Council know that they can rely upon the Council to protect their commercial secrets and are therefore able to be open with the Council.

- 9.2 On the other hand, it is important that Councillors should have access to relevant information necessary to enable them to understand the business of the Council and to ensure that it is being conducted in accordance with the policies and budgets of the Council and to the highest standards of propriety. The Council therefore ensures all Councillors have the information necessary to enable them to perform their duties, but the corollary to that is that Councillors should only request access to confidential information where there are clear reasons why they need access to the information for the performance of their obligations and should ensure that they do not disclose confidential information to unauthorised persons or organisations.
- 9.3 If an officer is concerned that a Councillor's request for access to confidential information may be inappropriate then under the terms of the Access to Information Procedure Rules adopted by the Council, it must be referred to the Monitoring Officer for advice. If it is then still not considered appropriate to release the information and the Councillor disagrees, the matter will be referred to the Head of Paid Service who will consult the relevant Group Leader before making a decision.