

Leicester
City Council

WARD AFFECTED: ALL WARDS – CORPORATE ISSUE

**CABINET
COUNCIL**

**17 November 2008
27 November 2008**

**CONSTITUTION:
PART 4F: FINANCE PROCEDURE RULES,
PART 4G: CONTRACT PROCEDURE RULES AND
PART 4H: LAND & PROPERTY TRANSACTION RULES**

Report of the Chief Finance Officer and Service Director – Legal Services

A regular review of the Constitution has been carried out and a number of changes are proposed, which are shown in the attached Schedule with reference to the relevant pages and sections in the Constitution.

A full copy of the current edition of the Constitution can be viewed on the Council's Insite www.leicester.gov.uk.

The Council is recommended to:

- 1 Agree the attached revision to the Constitution in respect of CPRs, FPRs and Land & Property Transaction Rules;
- 2 Authorise the Service Director – Legal Services, in consultation with the Chief Finance Officer to make final, minor changes to the attached without changing the meaning so as to ensure the documentation is in plain English, wherever possible, and reflects current legal and organisational requirements.
- 3 Authorise the Chief Finance Officer and Service Director – Legal Services to take all necessary action to implement the proposed changes on 1 January, 2009, including the production and publication of a revised Constitution in electronic format on the internet/intranet.

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Key Decision	No
Reason	N/A
Appeared in Forward Plan	N/A
Executive or Council Decision	Executive (Cabinet)

CONSTITUTION REVIEW – NOVEMBER 2008

PAGE No	CONSTITUTION SECTION	PROPOSED CHANGE
63 – 106 (inc)	Part 4F Finance Procedure Rules	In order to reflect the changes made to Contract Procedure Rules, the Finance Procedure Rules have been amended. The more significant changes are detailed at Appendix 2.
107 – 201 (inc)	Part 4G Contract Procedure Rules (CPRs)	<p>The current Rules were created in 2005. They have been completely redesigned to reflect the outputs of the simplification agenda and the introduction of trained, accredited Approved Procuring Officers. The sections and schedules dealing with land and property transactions has been moved to its own Section (4H).</p> <p>The more significant changes are detailed in Appendix 1.</p>
202 – 227 (inc)	Part 4H Land & Property Transaction Rules	These Rules have been separated from Contract Procedure Rules to form a standalone section.

CONSTITUTION PART 4G CONTRACT PROCEDURE RULES (CPRs)

PROPOSED CHANGES

1 The revised Contract Procedure Rules (CPRs) are intended to be a practitioner's guide dealing only with new or renewed contracting for the buying of supplies, services and works and the running of mini-competition under existing framework contracts. Buying by non-approved Procuring Officers, using arrangements currently in existence will be dealt with in Finance Procedure Rules.

2 The Rules are divided into 8 Sections, as follows:

Section 1 Basic Principles

Section 2 Competition Requirements

Section 3 Form of Contract

Section 4 Formalities

Section 5 Select list

Section 6 Member Approvals

Section 7 Post-Contract Management

Section 8 Waivers

3 The more significant changes are:

3.1 Increases to the upper limit thresholds:

Minor contracts £10,000

Small contracts £50,000

Small Works contracts £250,000, when using the Select List

3.2 Change to the competition requirements:

Minor One quote

Small Three priced offers

3.3 The Rules exclude performance contracts.

3.4 For ICT software applications and associated maintenance, purchases up to £25,000 may be made on the suppliers' terms and conditions.

- 3.5 The setting of mandatory corporate insurance levels for suppliers has been removed and replaced by a need to establish appropriate levels of insurance in consultation with Risk Management Services for each procurement exercise.
- 3.6 All Approved Procuring Officers must receive training accredited by the Head of Corporate Procurement.
- 3.7 Service Directors may approve Waivers of CPRs for minor and small contracts.
- 3.8 The role Members play in the Procuring cycle is set out.
- 3.9 A section on Post-Contract Management is introduced for the first time explaining the Rules governing extension of contracts.

CONSTITUTION PART 4F FINANCE PROCEDURE RULES (FPRs)

PROPOSED CHANGES

- 1 FPRs now reflect the new Approved Procuring Officer (APO) rule and stipulate that they must comply with Contract Procedure Rules.
- 2 Other than for procedures relating to the financial administration of contracts, all other references to the administration of contracts, have been removed as they are now all contained within Contract Procedure Rules.
- 3 For general purchasing by non-APOs, FPRs have been amended to reflect the defined sources that can be used.

CONSTITUTION PART 4F FINANCE PROCEDURE RULES (FPRs)**FINANCIAL ADMINISTRATION –
REPLACEMENT OF 3.1 TO 3.3 INCLUSIVE****3.1 Approved Officers**

3.1.1 Service Directors shall authorise appropriate officers to undertake the following duties;

- (a) Purchasing supplies, services and works to the extent that contractual arrangements already exist, as described below;
- (b) Certifying Officers for order requisitions, invoice grid stamp for work done/price checked, invoice certification, other order requisitions, personnel variations, time sheets, officer expense claims, petty cash, change floats, cash advance forms, debtors accounts, internal recharges and end of year stock certificates.
- (c) Signing official orders, both those for worked procured by approved procuring officers, where the person signing will need to ensure that the order complies with Contract Procedure Rules, and those that relate to existing contractual arrangements.
- (d) Corporate certification for cheques, BACs authorisation, CHAPs authorisation and grant claims

3.1.2 Officers authorised to purchase under rule 3.1.1 (a) above are authorised to;

- (a) Purchase from existing ESPO catalogues or direct dealing contracts.
- (b) Buy internally from in-house services.
- (c) Purchase from pre-priced framework contracts, which have been made available through.

3.1.3 Only officers authorised to procure under arrangements contained within Contract Procedure Rules are entitled to test the market or purchase from select lists. No other officer is entitled to obtain quotations or run a tendering exercise.

3.1.4 Service Directors shall ensure that approved officers have appropriate seniority and expertise to ensure that they are able to discharge the functions assigned to them for the purposes of these rules. Approved officers are accountable to their Service Directors for the exercise of these functions.

3.1.5 Service Directors shall ensure that arrangements are made for effective separation of duties when designating approved officers, in order to provide adequate internal check over all transactions, in accordance with guidance given by the Chief Finance Officer. Service Directors shall ensure that the arrangements for approved officers are consistent with the departmental budgetary control framework for their departments (see Section 4 of these

Rules) and that in particular cost centre managers' ability to manage their budgets is safeguarded.

- 3.1.6 Service Directors shall maintain, in a single place, an up-to-date record of all approved officers, together with specimen signatures where appropriate, and shall ensure that no employee other than an approved officer carries out the function of an approved officer. Lists of approved officers can be found at:

<http://insite.council.leicester.gov.uk/resources-department/financial-services/corporate-procurement-support-and-income-ser/the-procurement-team/approved-officer-list>

- 3.1.7 References to **Approved Officers** in the rest of this section of Financial Procedure Rules shall be read in the context of the above.

3.2 Orders for Works, Services and Supplies

Definitions

- 3.2.1 In this sub-section of the Council's Finance Procedure Rules the following definitions apply:

An **official order** is an order for supplies or services in an approved form which is raised by an authorised officer.

A **payments register** is a formal record of routine payments for recurring charges.

A **purchase requisition** is a written request for an official order to be raised, which is signed by an authorised officer.

Rules

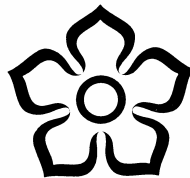
- 3.2.2 The Chief Finance Officer is responsible for providing a corporate system for raising and recording official orders. This system shall be used for all official orders, except in emergencies, or in accordance with other arrangements specifically approved by the Chief Finance Officer. In giving such approval, the Chief Finance Officer shall ensure the alternative arrangements provide for effective financial control, and shall have regard to the continuing viability of the corporate arrangements.

- 3.2.3 Official orders shall be issued for all purchases, excluding the following items:

- i. Purchases through petty cash and imprest accounts.
- ii. Recurring charges such as gas, electricity and telephone charges and other charges for which a payments register or other method of recording/monitoring payments is more appropriate than an order.

- 3.2.4 Official orders shall only be raised or signed and purchase requisitions shall only be signed by authorised officers.

- 3.2.5 In those exceptional circumstances in which the corporate system is not used, Corporate Directors shall only obtain official order forms in accordance with arrangements approved by the Chief Finance Officer and shall be responsible for their control and use.
- 3.2.6 Where urgent orders are given orally, they shall be confirmed immediately by an official order.
- 3.2.7 Official orders should be specific, e.g. they should state quantity, weight, size, grade, quality, and where practicable, price. Where supplies are ordered under contract, it is particularly important that the order and contract have the same specification of supplies required.



Leicester
City Council

PART 4G – CONTRACT PROCEDURE RULES

GUIDANCE FOR USING THE CONTRACT PROCEDURE RULES (VIA INTRANET)

Blue underlined text throughout the Rules denotes hyperlinks (eg Index and Contents pages). To use this function, place your mouse cursor on the text and follow the instructions – if any – which may automatically appear in a yellow box (dependent on the Microsoft version you have. The instruction will either be (a) To just “click” on the blue text; or (b) To “ctrl click”. If a yellow box appears giving the path but no instruction, then just click the text. Once a link has been utilised, the blue underlined text will temporarily become maroon underlined text. Please contact Amina Laher, Corporate Procurement Support Officer on Extn 29 6304 if further help is required.

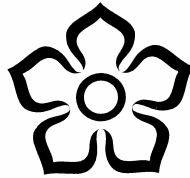
Authors: Geoff Organ, Corporate Procurement, Support & Income, Resources Department
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CONTRACT PROCEDURE RULES – PART 4G

Section 1 Basic Principles

1 What All Staff Need to Know

1.1 Procurement is the activity involved in buying supplies, services and works for the City Council. Whilst this is a simple definition, a lot of procurement involves considerable planning, and often there is follow up work involved in managing contracts.

1.2 There are two categories of Officers who are entitled to buy on behalf of the Council:

1.2.1 Officers who are allowed to buy using arrangements currently in existence.

These arrangements are dealt with in Finance Procedure Rules.

1.2.2 Officers who are allowed to make new arrangements for buying supplies, services and works or running mini-competitions. Contract Procedure Rules deal exclusively with this sort of buying. These Officers are called “**Approved Procuring Officers**”.

1.3 There is a list of Approved Procuring Officers which will have been created either by your Service Director or the Chief Operating Officer. No other Officer is allowed to procure supplies, services and works except for the limited arrangements permitted by Finance Procedure Rules described above.

2 Who Needs to Read On?

- ↳ Approved Procuring Officers
- ↳ All Officers who manage Approved Procuring Officers.
- ↳ Strategic and Service Directors, and Operations Managers.
- ↳ Procurement specialists and senior finance staff.

3 Application of these Rules

3.1 These Rules apply to the following types of procurement:

3.1.1 The carrying out of building or engineering works for or on behalf of the Council.

- 3.1.2 The provision of any Services (including research and consultancy services) to the Council.
- 3.1.3 The purchase of any supplies or materials to or on behalf of the Council.
- 3.1.4 Partnering arrangements whereby the Council is the Lead Body and where the partnering arrangement will involve secondary procurement of any of the above.
- 3.2 These Rules do not apply to contracts of employment making an individual a direct employee of the Council, purchase of land, grants given to support the aims and objectives of an organisation, or performance contracts by which the Council engages artistes or performers.
- 3.3 The exception for grants given to support the aims and objectives of an organisation applies only to general grants. Contracts with voluntary organisations for the supply of supplies, services and works are covered by these Rules.

4 Authorisation

- 4.1 The Chief Operating Officer is responsible for designating Approved Procuring Officers and shall maintain, a register of such Officers. In doing so, s/he may restrict an Approved Procuring Officer to specified categories of supplies, services or works.
- 4.2 To the extent that the Chief Operating Officer determines, the approval of Procuring Officers and maintenance of the associated registers, can be delegated to Service Directors.
- 4.3 Until determined otherwise by the Chief Operating Officer, Service Directors are empowered to approve Procuring Officers for all categories of spending within their service area, apart from:
 - 4.3.1 Legal services (ie services that would ordinarily be provided by a lawyer).
 - 4.3.2 Property valuation services.
 - 4.3.3 Property, construction and engineering related design, safety and maintenance services.
 - 4.3.4 Property management services.
 - 4.3.5 Property related project management for property development, construction, engineering and property management projects.
 - 4.3.6 ICT Services, including development, consultancy and project management.

- 4.3.7 Financial services, including accountancy, procurement, taxation and project finance.
- 4.3.8 HR senior level recruitment, management development and related areas.
- 4.3.9 Printing services, Media Buying and Leaflet Distribution.

No other Officer can be authorised to procure these services.

- 4.4 The Chief Operating Officer, or(as the case may be) front-line Service Directors shall ensure that:
 - 4.4.1 The register of Approved Procuring Officers is kept up-to-date and published by the Head of Corporate Procurement.
 - 4.4.2 Approved Procuring Officers receive and successfully complete training accredited by the Head of Corporate Procurement.

5 General Principles of Procurement

- 5.1 Each Service Director shall ensure that procedures for procurement in his/her service are robust, provide for sufficient levels of expertise and supervision and provide appropriate segregation of duties to prevent the risk of fraud, corruption or challenge. Each Service Director shall ensure that duties are only delegated to staff with appropriate competencies.
- 5.2 Approved Procuring Officers must adhere to the following general principles throughout a procurement exercise:
 - 5.2.1 Achieve Value for Money with public money spent.
 - 5.2.2 Be consistent with the highest standards of integrity.
 - 5.2.3 Ensure fairness in allocating public contracts.
 - 5.2.4 Comply with all legal requirements.
 - 5.2.5 Support the Council's Corporate Plan.
 - 5.2.6 Ensure that non-commercial considerations as defined by law do not influence any contracting decision.
- 5.3 In respect of any procurement exercise, Approved Procuring Officers should:
 - 5.3.1 Ensure that adequate budgetary provision has been made for the award of the contract.
 - 5.3.2 Ensure that the financial standing and technical ability of any potential supplier is assessed at the earliest point in a tendering exercise, as set out in the corporate PQQs and again prior to award.

5.3.3 Keep bids confidential.

5.3.4 Not negotiate with Contractors except as specifically permitted by these Rules.

5.3.5 Ensure there is a written contract or Council Order before the Supply, Services or the Works begin.

5.3.6 Keep full records of each procurement exercise for the duration of the contract plus a further period of 12 months.

5.3.7 Assess each contract post award to see how well it has met the purchasing need and service requirements.

6 Declaration of Interests by Officers

6.1 Each Service Director shall maintain a record for the disclosure of Interests.

6.2 Any Officer who has any pecuniary interest in a contract or potential contract must declare that interest in writing to the Director as soon as s/he becomes aware of it and request that the declaration be recorded in the Register. A failure to comply with this by the Officer may be a criminal offence and a disciplinary matter. The Officer shall take no further part in the procurement.

6.3 Any Officer, whether a direct employee of the Council or engaged through an external organisation or supplier shall, if they become aware of any relationship (current or past), whether pecuniary or not, with any supplier or potential supplier, make a Declaration of Interest to the Director at the earliest opportunity. The Director, after consulting with the Monitoring Officer, shall (in writing) acknowledge the declaration and determine whether the Officer can continue to take part in the procurement.

6.4 No Officer shall accept any fee or reward whatsoever in the course of or in connection with his or her duty as an Officer or employee other than his or her proper remuneration.

Section 2 Competition Requirements

Before proceeding to approach the market for any supplies, services and works, the Approved Procuring Officer must ensure that there are:

- ↳ No current arrangements in existence in-house in accordance with the Make or Buy Policy.
- ↳ No LCC specific call off or framework contracts.
- ↳ No arrangements recorded through ESPO General and Dealing Direct catalogues.
- ↳ No contractors on an approved Select List operated and managed by the Council's service provider.
- ↳ No corporately available third party contracts or framework agreements, which are available on **LINK**.

If there are any suitable arrangements identified above the Approved Procuring Officer shall use them accordingly, if not, then:

- 1 The Approved Procuring Officer must ensure that all procurement:
 - 1.1 Is subject to market testing as described below unless there is an exemption provided in these Rules.
 - 1.2 Adheres to the relevant competition requirements as specified in law.
 - 1.3 Has due regard to aggregation of contract values and whether or not this requires a fully EU compliant tender process.
- 2 **Minor Contracts – Supplies, Services and Works – (£0-£10,000) – Minimum Requirements**
 - 2.1 The Approved Procuring Officer must obtain one oral quotation.
 - 2.2 The Approved Procuring Officer must ensure that such quotation is reasonable in all the circumstances and represents Value for Money for the Council.
 - 2.3 Whilst there is only a requirement for one oral quotation the Approved Procuring Officer must consider whether a written quotation or additional quotations, are in the Council's best interests.
 - 2.4 All oral quotations must be recorded contemporaneously, signed and dated by the Approved Procuring Officer, who must also record why s/he believes the quotation represents good value and can be accepted.
 - 2.5 The Approved Procuring Officer may make the decision on whether or not to award the contract.

3 Small Contracts – Supplies and Services (£10,000-£50,000); Works not using Select List (£10,000-£50,000); Works using Select List (£10,000-£250,000) – Minimum Requirements

- 3.1 Except where using the Select List, the Approved Procuring Officer must obtain three written priced offers. Rules on obtaining quotations from the Select List are included in Section 5.
- 3.2 The Approved Procuring Officer must ensure that such offers are reasonable in all the circumstances and represent Value for Money for the Council;
- 3.3 The Approved Procuring Officer must log all details of the offers for future reference.
- 3.4 The Approved Procuring Officer may make the decision on whether or not to award the contract.

4 Large Contracts – Supplies and Services (£50,000-EU limits); Works not using Select List (£50,000-EU limits); Works using Select List (£250,000-EU thresholds) – Minimum Requirements

- 4.1 The Approved Procuring Officer must undertake a full tendering procedure in accordance with the tendering requirements detailed below.
- 4.2 When undertaking a Restricted Procedure procurement or using a Select List, the Approved Procuring Officer must ensure that at least six contractors are invited to tender. If there are fewer than six contractors included on the Select List, all of those shall be invited to tender.
- 4.3 The Approved Procuring Officer must comply with the Contract Award procedures detailed below.
- 4.4 The relevant Service Director is accountable for the award decision.

5 Contracts which Exceed the EU Threshold [LINK TO EU TABLE](#)

- 5.1 The Approved Procuring Officer is obliged to undertake a fully compliant EU Procurement exercise and is required to consult with the Corporate Procurement Team and Legal Services accordingly.
- 5.2 The Approved Procuring Officer must comply with the tendering requirements detailed below.
- 5.3 The Approved Procuring Officer must comply with the Contract Award procedures detailed below.
- 5.4 Contract Award is a function of Cabinet.

6 Exemptions to Competition Requirements

6.1 The Approved Procuring Officer will not have to undertake the competition requirements for Small and Large Contracts outlined above in the following circumstances:

6.1.1 Sole Supplier: Contracts that the Service Director certifies can only be adequately provided by a sole supplier.

6.1.2 Urgency: Where the Service Director certifies needs as being urgent because of unforeseeable or unforeseen emergency involving immediate risks to persons, property or serious disruption to Council services and where it would be contrary to the Council's interest to seek tenders **PROVIDED THAT** the Statutory Monitoring Officer has endorsed this in the case of large contracts. The Director's action shall be reported to a subsequent meeting of the Cabinet and Select Committee. This exemption does not extend to situations which are attributable to the Council's lack of forward planning. The urgency exemption does not apply to contracts which exceed the EU threshold unless the Statutory Monitoring Officer has confirmed that a legal exemption is available.

7 Waiver

7.1 If the Approved Procuring Officer is not able to comply with the competition requirements outlined above and an Exemption ground is not applicable then a waiver may be authorised if there is a business case to do so and legally permissible grounds.

8 Market Engagement

Where there is a requirement or need to tender the Council's requirements, the following options shall, following consultation with the CPT, be considered.

8.1 Open Procedure: This is a procedure by which a contract is let following publication of an advertisement inviting all those expressing an interest in the contract to submit a bid at the same time. This route to the market is not recommended where a large response is anticipated. This is a one-stage procedure.

8.2 Restricted Procedure: This is a two-stage procedure by which a contract is let following publication of an advertisement to participate. Following an evaluation of the pre-qualifying submissions, no fewer than 5 qualified bidders shall be invited to tender for the contract. This route to the market is particularly suitable where a large response is anticipated.

8.3 Negotiated Procedure: This procedure may be considered where the nature of the services(s) is such that "specifications cannot be drawn up with sufficient precision to permit the award of the contract using the open or restricted procedures". This is especially useful for "intellectual service". This

procedure can only be used with the written consent of the Head of Legal Services.

- 8.4 **Competitive Dialogue:** This procedure is available for procurement in which the Council is unable to define the financial, legal or technical elements of the project. This, like the restricted procedure, requires a pre-qualification stage. This is the most complex route to the market and is really intended for PFI, PPP contracts and can be carried out with or without a call for competition. This procedure can only be used with the written consent of the Head of Legal Services.
- 8.5 **Auctions:** The use of on-line reverse auctions, where admitted bidders can see, in real time, competitors' pricing and adjust their own accordingly. The auction is time-limited and at the end, the lowest price, coupled with any qualitative considerations, will win the contract. This is particularly suitable for purchasing of known volume supplies eg computers.
- 8.6 **Methods of Approaching the Market:** Market engagement can be carried out in two ways:
- 8.6.1 Documents sent out in conventional form either printed or on CD. Returns are in the same form, ideal where the market may not be familiar with on-line applications.
- 8.6.2 Everything available on-line, often called e-Tendering. The Council subscribes to an e-Tendering solution. This saves time and cost of printing and is ideal for well-developed IT-literate markets.

9 Tendering Procedure for all Contracts Exceeding the Small Contract Threshold

- 9.1 The Approved Procuring Officer must consult with Risk Management Services (RMS) prior to any procurement process commencing, for advice about insurance values. Should the Procuring Officer wish to proceed with lower levels of cover, the written consent of the Chief Finance Officer must be obtained.
- 9.2 When a contract is subject to tendering, the tender documents shall include:
- 9.2.1 The basis on which the tender evaluation shall be carried out and the resulting award made.
- 9.2.2 A statement that the Council does not bind itself to accept the lowest or any tender.
- 9.2.3 A statement that the Council will be obliged to comply with the provisions of the Freedom of Information Act 2000.
- 9.2.4 The closing date and time for receipt of tenders and the name and address to which tenders should be sent or, for electronic tenders, the web address and closing date and time (recommended to be 13:00 hours).

- 9.2.5 A requirement that the tenderer should keep the tender open for acceptance for a period of not less than 90 days.
- 9.2.6 For conventional tenders, a requirement that the tender should be submitted in the official envelope supplied or in a plain envelope labelled only by an address label which shall be included with the tender documents. For e-Tendering, a requirement to submit tendering as stated in the tender box.
- 9.2.7 For conventional tenders, a requirement that no mark or wording which might indicate the identity of the sender (within a mark affixed by the Post Office or other carrier) shall appear on the cover of the package containing the tender.
- 9.2.8 A requirement that the tenderers accept full responsibility for ensuring compliance with the terms of this Contract Procedure Rule and that any failure to do so may render that tender liable to disqualification.
- 9.2.9 A note to the effect that the persons authorised to open tenders are the Service Director (or nominated representative), the Head of Legal Services (or nominated representative) and the Chief Finance Officer (or nominated representative).
- 9.3 The CPT shall be given the opportunity to comment on the Invitation to Tender before market engagement.
- 9.4 The proposed Terms of Contract must include the following provisions. Officers should refer to the standard contract documentation which has been approved by Legal Services for use in certain situations and which is available from the **Procurement Toolkit** link.
- 9.4.1 The termination of the contract and the recovery of any sums paid where there has been evidence of bribery or corruption.
- 9.4.2 Entitling the Council to terminate part or all of the contract or to obtain substituted provision of the supplies, services and works to be supplied under the contract in the event of a breach of contract by or the insolvency of the Contractor.
- 9.4.3 Prohibiting the Contractor from sub-contracting, assigning or otherwise transferring the contract without the prior written consent of the Council and providing that the Contractor shall remain liable to the Council for any part of the contract that may be sub-contracted.
- 9.4.4 The compliance by the Contractor with legislative requirements in respect of:
- (a) Health and safety, including the setting up of appropriate systems and procedures for the supplies, services and works processed.
 - (b) Discrimination.

- (c) Human rights.
- (d) Freedom of information.
- (e) Data protection.
- (f) Workforce transfer legislation, where appropriate, including associated codes of practice.
- (g) The Public Interest Disclosure Act.
- (h) Any other legal obligation.

9.4.5 The provision to the Council of indemnities for any breach of the above.

9.4.6 Compliance with the Council's environmental policies.

9.4.7 Indemnities for any claim in respect of employer's liability or public liability arising from the contract and appropriate insurance requirements of the contractor.

9.4.8 Indemnities in respect of claims made against the Council made in respect of a Contractor's activities and the provision of satisfactory insurance against such claims.

9.4.9 The provision to the Council of evidence of satisfactory professional indemnity insurance held by the Contractor.

9.4.10 For large contracts involving the carrying out of works or the provision of services, the provision of adequate security in respect of completion by the Contractor either by means of retention of sums due or the obligation to pay liquidated damages or substituted performance or (where appropriate) the provision of a Performance Bond or Parent Company Guarantee.

9.4.11 The provision to the Council of adequate Intellectual Property protection together with an indemnity protection where appropriate.

9.4.12 The provision to the Council of adequate Warranties in contracts for the purchase of Supplies.

9.4.13 If necessary, Criminal Records Bureau (CRB) and Protection of Vulnerable Adults (POVA) checks if the contractor is working with children or vulnerable adults.

9.4.14 The Council's entitlement to undertake monitoring and compliance procedures.

9.4.15 The provision to the Council of adequate Confidentiality and Data Protection obligations together with appropriate indemnities.

- 9.5 Except when using the approved standard contract documentation, Legal Services approval to the proposed Terms of Contract must be received.
- 9.6 All tenders, except when using the Corporate Select List, shall as a minimum be advertised on the Council's website (contact CPT). Any additional advertising shall be at the Approved Procuring Officer's discretion.
- 9.7 Before tenders for a contract are sought using a conventional exercise, the Service Director responsible shall designate an Officer to whom tenders shall be addressed and shall determine the date and time when the tender shall be opened. A closing time of 13:00 hours is recommended.
- 9.8 The Officer so designated in accordance with Rule 9.7 shall retain and keep safe all tenders until the time appointed for their opening. All tenders shall be opened on the same occasion in the presence of that Officer and the Statutory Monitoring Officer and Chief Finance Officer (or Officers authorised to act on their behalf) (see 9.2.9). A tender opening record shall be prepared and signed off by all those present.
- 9.9 A written record shall be kept of all those persons to whom tender documents were sent, of all tenders submitted, and of whether a person to whom tender documents were sent failed or declined to tender.
- 9.10 No tenderer shall be permitted to alter its tender after it has been received by the Council except to correct any arithmetical error made in the tender. If a tender has been accepted before the correction is made the correction shall only be accepted if the tender remains the most favourable to the Council following the making of the correction.
- 9.11 No tender received after the closing time and date for receipt of tenders shall be accepted and any tender received after that date and time shall be returned to the tenderer with an explanation in writing of the reason for its return.
- 9.12 Award Criteria must be designed to secure an outcome giving best Value for Money for the Council. The basic criterion shall be either:
- 9.12.1 "Lowest price" where payment is to be made to the Council.
- 9.12.2 "Highest price" if payment is to be received.
- 9.12.3 "Most Economically Advantageous Tender" where considerations other than just price applies.

If the last criterion is adopted it must be further defined by reference to sub-criteria. Sub-criteria may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost-effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics, safety, after sales services, technical assistance and any other relevant matters. Guidance should be given to tenderers on how good scores will be achieved for each sub-criteria.

9.13 Award Criteria must not include:

9.13.1 Non Commercial Considerations (Officers are advised to contact Legal Services for current advice on what these would constitute).

9.13.2 Matters which discriminate against suppliers from the European Economic Area.

9.13.3 A general provision allowing for the highest mark to be awarded for tenders which exceed the specification.

Award criteria shall be fully described in the Invitation to Tender.

10 Contracts over EU Threshold – for both Part A (Priority Services) and Part B (Residual Services) – Additional Requirements

10.1 Tendering processes shall comply with the procedures described above, together with further requirements to satisfy legislation.

10.2 Officers should refer to the Procurement Toolkit site on the Intranet home page for the current EU threshold values, or alternatively, follow this link for current values.

10.3 Officers should always contact the Service Director – Legal Services on Extn 29 6378 and the Corporate Procurement Team on Extn 29 6304 if they expect that the contract – or the aggregate value of contracts – will exceed these thresholds.

10.4 CPT will advise the Approved Procuring Officer on the procurement options available.

10.5 Cabinet approval must be obtained prior to undertaking any procurement exercise over the EU threshold. This can be by inclusion of the requirement in the Procurement Plan, which is prepared periodically by the Head of Corporate Procurement. Contract Awards must be approved by Cabinet prior to commencement of the Alcatel standstill period. The Cabinet has delegated approval of contract awards to individual Cabinet leads.

10.6 The Approved Procuring Officer must note that the EU Procurement Rules contain minimum timescales for a procurement exercise and therefore, it is imperative that advice is sought well in advance of the commencement of the procurement exercise.

10.7 All advertisements in the Official Journal of the European Union (OJEU) shall be placed by the Corporate Procurement Team (Extn 29 6304) and must be accompanied by a Project Plan. Where it is intended to place an advertisement for any purchase above the EU threshold, contents of that advertisement must be approved by Corporate Procurement in advance of publication (Extn 29 6304).

10.8 The “Alcatel” standstill period requires Officers to notify all bidders of the result of the tendering exercise (see Toolkit) and allows a period of a

minimum of 10 days in which bidders can ask for a debrief prior to an award decision. Should such a challenge be received during this period, the award of contract shall be delayed until the challenge is resolved. If no challenge is received within the minimum 10 days, the Service Director may proceed to award the contract.

- 10.9 An Award Notice must be placed in the OJEU within 48 days of contract award (contact the Corporate Procurement Team on Extn 29 6304).

11 Shortlisting and Selection

- 11.1 All shortlisting and selection for large contracts and contracts over the EU threshold, must at all times be in accordance with the published evaluation criteria included in the Invitation to Tender.
- 11.2 Where an existing framework contract is used, the selection procedure from within the contract shall be used.
- 11.3 Evaluation of tenders should be carried out by a panel consisting of at least 2 Officers, one of whom has not been directly involved in the tender.
- 11.4 If the Approved Procuring Officer considers the Lowest Price tender, Highest Price Tender or Most Economically Advantageous Tender as may be appropriate to be abnormal given the nature of the contract, the tenderer shall be asked to clarify in writing the reasons for its Tender and the Service Director shall take that explanation into account in deciding which Tender s/he will accept.
- 11.5 Where the Service Director considers that none of the tenders submitted meets the evaluation matrix or satisfies the Award Criteria s/he may authorise negotiations to take place with all of the tenderers who submitted bids to seek to meet the required standard in order that a contract may be awarded. Such action shall be recorded in writing by the Director. The negotiations shall be carried out by at least two Officers authorised for the purpose by the Director and their progress shall be recorded contemporaneously in writing.

12 Contract Award Requirements

- 12.1 Before awarding any large contract or contract exceeding EU thresholds, the Approved Procuring Officer shall ensure:
- 12.1.1 That the successful tenderer's financial standing has been assessed and approved by the Chief Finance Officer in the light of the size and nature of the contract to be awarded and due regard being made to any current contractual liabilities that the successful tenderer may have with the Council;
- 12.1.2 That the successful tenderer satisfies or will be able to satisfy any Health and Safety, Environmental, Equality and Technical Capability requirements relating to the contract.

- 12.2 A Service Director shall only award the contract based upon the Award Criteria previously determined.
- 12.3 All contract awards shall be notified to the Corporate Procurement Team.

Section 3 Form of Contract

1 Minor Contracts

- 1.1 Minor contracts shall be entered into by means of an Official Order on the Council's Terms and Conditions.
- 1.2 Notwithstanding (a) above, in respect of ICT Contracts for Software Applications and associated maintenance, an Approved Procuring Officer may place an order on the Supplier's terms and conditions providing potential liabilities or costs arising if the contractor fails to properly carry out his obligations are adequately catered for in these terms and conditions.

2 Small Contracts

- 2.1 The correct form of contract is determined to a large extent on the risk that the proposed purchase/provision of service/undertaking of works places upon the Council.
- 2.2 The Approved Procuring Officer must therefore consider the following factors:
 - 2.2.1 The degree of complexity involved.
 - 2.2.2 Whether there are any sophisticated project management requirements.
 - 2.2.3 Whether there are any copyright issues.
 - 2.2.4 The expected lifespan of the purchase.
 - 2.2.5 Whether there are any TUPE/Employment issues.
 - 2.2.6 Potential liabilities or costs arising if the contractor fails to properly carry out his obligations under the contract.
 - 2.2.7 Whether there are any additional funders requirements.
 - 2.2.8 Whether there are any other substantial concerns.Together referred to as the "Risk Factors".
- 2.3 Should the Approved Procuring Officer consider that the Council is not exposed to undue risk then:
 - 2.3.1 S/he may proceed to place an Order on the Council's terms and conditions.
 - 2.3.2 If the proposed purchase relates to ICT Contracts for Software Applications and associated maintenance, an Approved Procuring Officer may proceed to place an order on the Supplier's terms and conditions PROVIDED the value does not exceed £25,000.

- 2.4 Should the Approved Procuring Officer consider that the Council is exposed to a degree of risk s/he must use an approved form of contract for the proposed purchase/provision of service or undertaking of works which will contain clauses to address these risks.
- 2.5 The Approved Forms of Contract currently are:
- 2.5.1 For the supply of Goods - (*link to be included*).
 - 2.5.2 For ICT Software Applications and Associated Maintenance exceeding £15,000 the Approved Procuring Officer should consult with the Corporate ICT Contract team for the latest terms and conditions.
 - 2.5.3 For contracts for the provision of a Service (*link to be included*). Please note this is **not** applicable for use in a framework situation.
 - 2.5.4 For Contracts for the provision of Consultancy services (*link to be included*). Please note this is **not** applicable for use in a framework situation.
 - 2.5.5 For Works Contracts the Approved Procuring Officer should use an industry standard construction contract suitable for this value range such as the JCT Jobbing contract, JCT Minor Works Contract or the NEC Short Form Contract.
- 2.6 Should the Approved Procuring Officer consider the Council is exposed to risk, and no approved form of contract exists, s/he should consult Legal Services.

3 Large Contracts and Contracts Exceeding the EU Limits

- 3.1 The approved form shall be the form of contract included within the Invitation to Tender, subject to such amendments as are included in the tender submission.

4 Waiver

- 4.1 If the Approved Procuring Officer is unable to comply with the above requirement regarding form of contract, s/he shall seek a Waiver as described in Section 9.

Section 4 Formalities

Minor and Small Contracts

Minor and small contracts in the standard form can be signed by Service Directors, or Officers nominated by them in accordance with Finance Procedure Rules, provided the Approved Procuring Officer has complied with these procedure Rules and no exemption or waiver has been relied upon. The contract should not be signed by the Approved procuring Officer for the procurement.

Service Directors are responsible for keeping a record of all contracts signed by them, or officers nominated by them; and for the safekeeping of these contracts.

In all other cases, contracts must be signed by Legal Services. A standard instruction to Legal Services is provided for this purpose (LINK) and should include details of the reasons for exemptions and records of waivers granted. Financial evaluations should also be included together with advice received by the Approved Procuring Officer on insurance values.

All contracts shall be notified to the Corporate Procurement Team.

Section 5 – Select Lists

1 Select List of Approved Contractors

- 1.1 For the purposes of this Rule, a “Select List” is an approved list of pre-accredited contractors qualified to undertake certain areas of Services, Supplies and Works chosen after each contractor has met the standard necessary for inclusion. The Select List of Approved Contractors is for use by the whole Council and is accessible via the <https://epass.exorgroup.net/login.cfm> site.
- 1.2 No Select List shall be used for any contract that exceeds the [threshold](#) for the application of the EU Public Procurement Rules. In determining whether the EU Public Procurement Rules apply, the Approved Procuring Officer shall have regard to whether the contract should be considered as aggregated with any other contract in accordance with those Rules. Should Approved Procuring Officers have any queries on such aggregation, they are advised to contact the Corporate Procurement Team.

2 Use of the Select List Of Approved Contractors

- 2.1 Link to [Exor Guide/Training Manual](#).
- 2.2 Suppliers should be invited to tender in rotation. The Approved Procuring Officer shall first select the appropriate Exor category for the required scheme. The next five suppliers plus the current supplier shall be invited to tender. The Approved Procuring Officer shall check the trade value of each of these to ensure they are accredited to that value of work. If fewer than six contractors are available, then all shall be invited to tender.

Section 6 – Member Approvals

- 1 The Cabinet is responsible for:
 - 1.1 Approval of the Procurement Strategy. This will include the Council's approach to procurement, procurement management arrangements and approved methodologies.
 - 1.2 Approval of a Procurement Plan – periodically reported list of all forthcoming activity above EU thresholds which advises Members and the market of significant expected procurement activities.
 - 1.3 Approval of individual contract awards above EU thresholds. This has been delegated to individual Cabinet Members.
- 2 The Procurement Plan will be reviewed and updated periodically.
- 3 The Performance & Value for Money Select Committee will receive twice yearly reports monitoring:
 - 3.1 Delivery of the Strategy.
 - 3.2 Achievement of the Procurement Plan.
 - 3.3 Performance of the Procurement function.

Section 7 – Post Contract Management

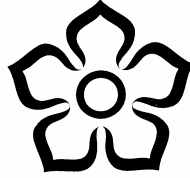
- 1 The contract management arrangements shall be set out in the ITT and subsequent contract.
- 2 A contract may not be varied without the consent of the Head of Legal Services.
- 3 A named Contract Manager shall be appointed for each contract.
- 4 No contract exceeding EU thresholds may be extended by duration or value unless:
 - 4.1 Such extension was included in the original OJEU Notice and contract documentation; **or** such extension is less than the small lots provision (currently 20% of the published contract value; **and**
 - 4.2 Alternative options have been considered by way of an options appraisal; **and**
 - 4.3 The Contract Manager is satisfied that the extension demonstrates value for money and is in the best interests of the Council in the light of the contractor's performance.
- 5 Contracts below the EU threshold may be extended by duration or value if:
 - 5.1 Such extension would not mean that, had it been included in the original contract, the overall value would have exceeded the EU threshold; **and**
 - 5.2 Alternative options have been considered by way of an options appraisal; **and**
 - 5.3 The Contract Manager is satisfied that the extension demonstrates value for money and is in the best interest of the Council in the light of the contractor's performance; **and**
 - 5.4 The combined value of this and other similar contracts regardless of supplier, remains below the EU threshold.
- 6 All extensions shall be notified to the Corporate Procurement Team.

Section 8 – Waivers

- 1 Contract Procedure Rules may be waived only:
 - 1.1.1 By the Monitoring Officer, Deputy Monitoring Officer, or
 - 1.1.2 For Minor and Small Contracts, by the Service Director.

- 2 All waiver requests must be in the format available on the [Procurement Toolkit](#) site on the Intranet home page and must record the grounds for the waiver.

- 3 All waivers must be reported to a subsequent Cabinet and Select Committees (this will be actioned by the Head of Corporate Procurement).



Leicester
City Council

PART 4H –

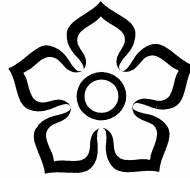
LAND & PROPERTY

TRANSACTION RULES

Section 4 Land Transactions

1 Application

- 1.1 This Procedure Rule applies where there is a land transaction.
- 1.2 The handling of Formal Tenders and Informal Tenders for Land Transactions is governed by the principles contained in the document entitled “Formal Tenders and Informal Tenders in Land Transactions”, attached as Schedule 1 to these Rules.
- 1.3 The disposal of land is governed by the principles contained in a document entitled “The Framework for the Disposal of Property”(frameworkproperty) as approved at Cabinet on 13 October 2003. It is not proposed to repeat the principles as individual Rules within these Contract Procedure Rules and Officers should refer to the document attached as Schedule 2 to these CPRs directly for Guidance.
- 1.4 The handling of Late and/or unsolicited Offers in connection with Property Disposals is governed by the principles contained in the document “A Protocol for responding to Late and/or unsolicited offers in connection with Property Disposals” attached at Schedule 3 to these Rules.
- 1.5 With the exception of Contracts Procedure Rule 1, none of the Council’s other Contracts Procedure Rules apply to Land Transactions, unless otherwise stated in this Procedure Rule.



Leicester
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Schedule 1: Dealing with Formal Tenders and Informal Offers in Land Transactions

Contents

[1 Dealing with Formal Tenders and Informal Offers in Land Transactions.....](#)

SCHEDULE 1

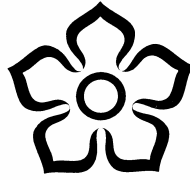
1 Dealing with Formal Tenders and Informal Offers in Land Transactions

- 1.1 When the deadline is set for receipt of Tenders, arrange meeting with the relevant Finance Officer to be held within 1 hour of that time (eg deadline Tuesday 2.30pm – meeting arranged for Tuesday 3.00pm). Legal Services (the Practice Manager) must be given notice of the receipt of Tenders, this notice to be either at least 6 weeks or before the first advertisement appears in the press, whichever is the earlier. Legal Services will arrange for a private area to be available in which to open the Tenders (confirm the availability with Legal Services a few days prior to the opening time).
- 1.2 Address labels supplied to interested parties must state the delivery address as Practice Manager, Legal Services, Leicester City Council, 'A' Block New Walk Centre, Welford Place, Leicester LE1 6ZG, preferably with a contact name.
- 1.3 Documentation supplied to the Tenderer must state the following Tender requirements:
 - 1.3.1 The closing date and time for the receipt of Tenders.
 - 1.3.2 That the Tender envelope/package submitted is only to be labelled using the official address label supplied with the Tender documents.
 - 1.3.3 That the Tender envelope/package must bear no indication of the identification of the Tenderer. Consequently, the Tenderer must ensure that, for example, if the Tender envelope/package is returned by recorded delivery or courier, that the name and address of the sender is not stated on the recorded delivery/courier's label, usually attached to the envelope/package.
 - 1.3.4 That delivery must be to the location on the official address label ie Legal Services. If the Tender envelope/package is delivered by hand, the person delivering it must obtain an official receipt from Legal Services.
 - 1.3.5 Any late Tenders and Tenders delivered to the wrong location, even if it is another City Council office, may be deemed void and may be opened (to identify the sender) and returned to the sender with an explanation in writing of the reason for its rejection. Notwithstanding this Rule, when dealing with a Late and/or Unsolicited Offers in connection with Property Disposals Officers should have regard to the Protocol entitled "A Protocol for Responding to Late and/or Unsolicited Offers in Connection with Property Disposals", attached at Schedule 3 to these Rules.
 - 1.3.6 That it is the Tenderer's responsibility to deliver the Tender to the location on the official address label before the closing date and time and the City Council does not accept any liability for non delivery, late delivery or delivery to the wrong location, by any company or other

organisation or person charged by the Tenderer for its delivery (also make reference to the office hours when Tenders can be delivered prior to the closing date).

- 1.3.7 That the tendered bid must not be calculable by reference to another bid, document or formula and must be exclusive of VAT.
- 1.3.8 That the Council does not bind itself to accept the highest or any Tender.
- 1.3.9 That Tenderers must accept full responsibility for ensuring compliance with the above requirements and that failure to do so may render the Tender liable for disqualification.
- 1.3.10 Although not required under the Council's Constitution, Tenderers are likely to find it helpful if the Tender documentation indicated when it was anticipated that the successful Tenderer would be notified (remember to take into account the Member challenge period following a Cabinet decision, and the consequent delay if a challenge is received).
- 1.4 All Tenders must be delivered to Legal Services directly. On receipt of each Tender, details are to be entered into a fixed leaf register and a reference number from the register is to be written on the envelope. The register is to be kept and administered by Legal Services.
- 1.5 Under no circumstances must other staff accept Tenders on behalf of the Council. Anyone trying to hand one in elsewhere must be redirected to Legal Services.
- 1.6 All Tenders delivered by hand must be entered into the register and the person delivering the Tender must be given an official receipt by Legal Services with the date, time and receipt number being written on the Tender envelope/ package. Any spoilt receipt(s) must be logged in the register as spoilt and the spoilt receipt(s) placed with the Tenders in the safe.
- 1.7 When Tenders are received in the Post Room they will be logged (as current practice) and hand delivered on their next round (at about 2.00pm, as they are usually second post). On the day of the deadline, the Property Officer is to contact the Post Room after the second post has been delivered (at about 11.00am) and check if any Tenders have arrived. If they have, the Property Officer must immediately pick them up and take them to Legal Services to be entered into the register and stored with the others.
- 1.8 All the Tenders are to be stored in the strong room in Legal Services until opening time.
- 1.9 Before opening the Tenders, reference numbers on the envelopes are to be checked against the register to ensure none are missing or misplaced within the safe. The register is to be signed and dated as correct, below the last entry for that Tender, by the Finance Officer and Property Officer when all Tenders have been accounted for.

- 1.10 The Standard form is to be used when opening Tenders to record relevant information for cross-referencing and signed by both Officers at the end of opening and recording.
- 1.11 After opening, all documentation is to be retained by the Property Officer and kept in a secure file, including envelopes, the standard opening form, any spoilt receipts and a copy of the relevant page in the register, to provide a complete audit trail.
- 1.12 Receipt books will be issued by the Practice Manager, Legal Services, who shall be responsible for their safe custody and accountable for all receipts therein.

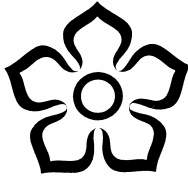


Leicester
City Council

Schedule 2: The Framework for the Disposal of Property (as approved by Cabinet)

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Leicester
City Council

SCHEDULE 2

THE FRAMEWORK FOR THE DISPOSAL OF PROPERTY (As approved at Cabinet on 13 October 2003)

1 INTRODUCTION

- 1.1 The City Council is a major property owner in the City with land and buildings held for operational and non-operational purposes. The operational property includes administrative buildings, schools, libraries, museums, leisure centres, residential centres of various types, council housing stock, theatres and parks. The non-operational property is principally freehold and let by way of ground leases, leases, tenancies and licences. It includes a wide range of retail, commercial and industrial property held for economic development, regeneration and other strategic purposes.
- 1.2 With this large property holding, inevitably the City Council receives requests from a wide variety of individuals and organisations seeking to acquire particular properties. This disposals framework is intended to guide Members in relation to the legal position, the Council's current policy and to ensure that, as far as possible, consistent and equitable responses are given to these requests. Prospective purchasers reading this framework must not assume that they will secure a particular site or property if they consider they fall within one of the exceptions to open marketing of property.

2 METHODOLOGY TO DETERMINE WHETHER DISPOSAL IS APPROPRIATE

- 2.1 When considering the disposal of any property asset it is first necessary to determine:
- 2.1.1 Whether the Council still requires the property in order to deliver the function for which it is currently held and, if so, whether by:
- (a) Direct service provision by the City Council.
- OR
- (b) Indirectly through third parties (by way of, for example, lease, partnership, management agreement).
- 2.1.2 Whether it is still required to fulfil another function of the authority.

2.1.3 Whether it should be disposed of to facilitate the exercise of any function of the authority (eg housing land for the provision of housing accommodation).

2.1.4 Whether, if it is identified as surplus, to dispose of the property to obtain the capital receipt or revenue equivalent.

3 THE COUNCIL'S LEGAL REQUIREMENTS

3.1 The umbrella under which all local authorities operate in relation to the transfer/disposal of their assets is the Local Government Act 1972. In addition, there is a general fiduciary duty placed on local authorities to act reasonably and in the interest of the tax payers, and consistent with the effective, economic and efficient discharge of the authorities functions. In other words, the Council should not divest itself of a valuable asset at an undervalue unless it is satisfied that circumstances justify such action.

3.2 It is Section 123 of the Local Government Act 1972 that requires local authorities to dispose of land for the best price reasonably obtainable, unless either consent is obtained from the Secretary of State to the disposal or the disposal is a short-term one, (less than 7 years). Price can either be a sum of money or something that has a commercial or monetary value that is capable of being assessed. Further, local authorities must be able to evidence that best consideration has been obtained. In some cases, particularly development land, this requires a marketing exercise to be undertaken. Established good practice and a previous public interest report produced by the District Auditor's Office indicates that third party valuations are not adequate evidence of best consideration. The Council therefore needs to ensure an open competitive marketing of property takes place in all but a few circumstances.

3.3 Reference was made above to the consent of the Secretary of State. A specific application to the Secretary of State for consent may not be necessary in every case where the disposal is at less than best consideration. The Local Government Act 1972: General Disposal Consent (England) 2003 gives local authorities consent to the disposal of land within specified circumstances ie where the authority considers that the purpose for which the land is to be disposed of is likely to contribute to the achievement of any one or more of the following objectives in respect of the whole or in any part of its area, or of all or any persons resident or present in its area:

3.3.1 The promotion or improvement of economic well-being.

3.3.2 The promotion or improvement of social well-being.

3.3.3 The promotion or improvement of environmental well-being.

In each case it is a condition that the undervalue must not exceed £2 million. Further, the authority must remain aware of the need to fulfil its fiduciary duty in a way which is accountable to local people (this consent does not apply to land held under powers derived from certain Planning and Housing Acts nor does it enable the disposal of public open space without undertaking the advertising procedure set out in, for example, the Local Government Act 1972).

4 EXISTING POLICY – THE GENERAL ASSUMPTION RE PROPERTY DISPOSALS

- 4.1 The general assumption is that the City Council's property is marketed on the open market in accordance with the established good practice procedures to obtain best consideration and therefore not requiring the Secretary of State's consent (or use of the General Consents).
- 4.2 In addition, however, a few specific exemptions have been agreed to address particular circumstance, such as the disposal of land to facilitate the building of the National Space Science Centre.
- 4.3 In recognition of this, and in order to seek to address the changing priorities and pressures, it has been decide to review the policy and seek approval to the inclusion of some specific exceptions, rather than dealing with cases on a one off basis.

5 THE FRAMEWORK AND PROPOSED POLICY

5.1 The General Assumption re Property Disposals

The general assumption is that the City Council's property is marketed on the open market in accordance with the established good practice procedures to obtain best consideration and therefore not requiring the Secretary of State's consent (or use of the General Consents).

5.2 Exceptions to Open Marketing

A number of exceptions have been identified where requests to purchase property from the City Council, negotiated on a 'one-to-one' basis and to the exclusion of other potential purchasers, would be appropriate. Disposals on this basis are likely to require the consent of the Secretary of State (unless either covered by the General Disposal Consent or where there is adequate comparable evidence to support the valuation of the property). These exceptions are as follows:

5.2.1 Regeneration.

5.2.2 Service Delivery.

5.2.3 Major Projects of Regional or National Significance.

5.2.4 Special Purchasers.

5.2.5 De minimus.

Considering each in turn:

5.2.1 Regeneration

The disposal to any person or body where the terms of the disposal are to facilitate regeneration within the area of the Leicester Regeneration Company (LRC) where the City Council and the LRC are in agreement that, for reasons of either site assembly, preferred developer status, or preferred scheme, it is necessary to treat with that person or body to the exclusion of others, but nonetheless on reasonably commercial terms. Such a disposal may involve a Development Alliance, or involve a disposal of property to enable the relocation of displaced occupiers from sites.

A Development Alliance is an agreement for the disposal of land for the purposes of development or redevelopment where any consideration is, in whole or in part, deferred and is calculable in whole or in part by reference to the profit or value of the development or redevelopment to be undertaken. The financial policy set out in the appendix shall apply to these Development Alliances.

Relocation property would only be made available exclusively to a displaced occupier where it was agreed between the City Council and the LRC that it was appropriate in the circumstances.

5.2.2 Service Delivery

A disposal to a person or body where the terms of the disposal are to facilitate the exercise of the Council's functions, subject to the Council's Community Plan and Budget and Policy Framework and where there are:

- (a) Significant returns or benefits to the Council commensurate with the level of service or function that would otherwise have been provided by the Council or
- (b) Where the services are of a high priority but the Council is not delivering the service direct.

However, in both cases, where there is a market for similar service provision this category shall not apply.

5.2.3 Major Projects of Regional or National Significance

Disposals to a Charity, Community Association or similar where the terms of the disposal require the use of the land for a major project of regional or national importance and where major social, economic or environmental benefits and levered in funding are anticipated to the local community or Leicester as a whole. Also disposals to other organisations that have broad based community support and which generate significant economic benefits to the City.

In such cases in order to maintain transparency, appropriate criteria are required to provide an “audit trail” of the decision as to why one interested party was selected without undertaking a marketing exercise. It is suggested that the following are considered:

- (a) Other Potential Purchasers
 - (i) Likelihood of alternative uses.
 - (ii) Likelihood of alternative bodies able to deliver the project outputs.
- (b) Location
 - (i) The proposal complements existing regeneration priorities.
 - (ii) The site is situated within a ward ranking in the 10% of the most deprived wards nationally.
 - (iii) The geographic location of the property is effectively limited by the nature of the constitution of the purchasing organisation.
- (c) Strategy
 - (i) The proposed use and outputs relate to a key action(s) within the Leicester Neighbourhood Renewal Strategy and is a Priority within the Community Plan.
 - (ii) Is community-based and “not for profit”.
 - (iii) The disposal is on a leasehold basis only.
- (d) Funding
 - (i) The prospective lessee has secured sufficient external funding to enable acquisition of the property at open the market value. (An Agreement to Lease is likely to be required by the prospective lessee to enable a period of time for funding to be applied for and secured [together with securing any other consents] and also to evidence to funders the availability of the property to the applicants).
 - (ii) An appropriately approved Business Plan and Project Appraisal are in place.

5.2.4 Special Purchaser

It is recognised that consent may not be required in the case of special purchasers where the valuation advice is that the method of disposal, even if that is to deal with a particular party without seeking to ascertain what others may be willing to pay (ie on a one to one basis), will secure, and does secure, the best consideration reasonably obtainable. These

circumstances will be limited; examples are ransom strips and 'the tenants bid'.

5.2.5 De minimus

Disposals to a person or body for the purposes of, and on the terms that, they become responsible for keeping the land and buildings erected, or to be erected, eg garages or garden sheds, in good condition and repair where any marketing exercise would merely involve abortive expense and where the land has a capital value of less than £1,500, or where it would be to the mutual advantage of the Council and an adjoining owner to make minor adjustments in boundaries by undertaking an exchange of lands.

6 **The Terms of these “Exceptional Disposals”**

Freehold or Leasehold

- 6.1 Whether the disposal is on a freehold or leasehold basis will depend on the particular circumstances in each case. Freehold disposals maximise the capital receipt but result in a loss of future control of the property (restrictive covenants could be imposed but enforcement can be problematic).
- 6.2 Leasehold disposals allow greater control and are appropriate where disposals are seeking particular outputs (eg service delivery) on an annual basis.

Best Consideration

- 6.3 The general assumption with regard to these 'Exceptional Disposals' is that the property will be disposed of at 'the best consideration reasonably obtainable'. The exceptions to this assumption will be either:
- 6.3.1 The Council has agreed to a disposal at less than best consideration,
- OR
- 6.3.2 The consideration payable under the disposal cannot be evidenced as best consideration (see 3.2 above).
- (Note: Development Alliances will always require 'best consideration', (see Appendix).
- 6.4 In both these exceptions the disposal will be subject to the consent of the Secretary of State (unless covered by the General Disposal Consent (England) 2003) and also having regard to the City Council's general fiduciary duty (see 3.1 above).
- 6.5 In those cases where 'best consideration' is not required then, before arriving at this decision, it is suggested that the following factors are considered:
- 6.5.1 The ability of the purchaser/lessee to pay the full value.

- 6.5.2 The value of non-monetary benefits.
 - 6.5.3 The value any other conditions imposed by the City Council.
 - 6.5.4 The planning position.
 - 6.5.5 The Council's general fiduciary duty.
 - 6.5.6 The possibility of the disposal setting a precedent.
 - 6.5.7 Additional wider community benefit that would not otherwise be realised.
 - 6.5.8 Whether the disposal will lever in external funding.
 - 6.5.9 Whether the disposal contributes to the achievement of the promotion or improvement of economic, social or environmental well-being.
- 6.6 In those cases where the consideration cannot be evidenced then, in order to seek the Secretary of States consent, it will be necessary to identify at least a modest undervalue in order to obtain the consent and protect the City Council from challenge. The circumstances must nonetheless justify such action and the sort of factors mentioned in 6.7 are again relevant. An independent valuation will be obtained in these instances to support the application to the Secretary of State or the use of the General Disposal Consent.

7 Revocation of Previous Policies

- 7.1 This 'Framework for Disposals' revokes all previous policies relating to disposal of property directly to individuals, companies, organisations and any other bodies without undertaking a full marketing exercise. Those decisions taken prior to the introduction of this policy will not be affected (unless the need to review any decision arises from a change in circumstances eg default by the previously identified prospective purchaser).

Report Author:
Head of Asset Strategy and Development

APPENDIX 1

FINANCIAL POLICY TO BE ADOPTED FOR DEVELOPMENT ALLIANCES

- 1 The following principles shall always apply:
 - (a) Obtaining value for money in all transactions.
 - (b) That all functions are discharged economically, effectively and efficiently. All valuations shall be fair and current and to relevant and appropriate professional standards.
- 2 Processes shall be transparent and consistent and all financial dealings and commitments shall be subject to proper bookkeeping and capable of disclosing an adequate audit trail.
- 3 Land disposals shall be compliant with Section 123 of the Local Government Act 1972 (or any equivalent provision) and also provide a reasonable return to the Council. There shall be sufficient evidence to ensure and demonstrate compliance with this principle.
- 4 Due consideration shall be given to the VAT position and the efficiency of opting to tax to ensure the best return from the project, subject always to the protection of the Council's VAT shelter.
- 5 Arrangements and transactions shall be above board and provision shall be set out in particular to deal with situations of actual or apparent conflict of interest and the prevention of the making of improper inducements.
- 6 Any special purpose vehicle shall avoid being subject to regulation, regulated, controlled or influenced under Part V of the Local Government & Housing Act 1989 (or any equivalent provision).
- 7 Provision shall be made so that any borrowing/charging shall be prudent and that there are no adverse capital or revenue implications to the Council under Part IV of the Local Government and Housing Act 1989 and regulations thereunder (or any equivalent provision).
- 8 Proper provision shall be made to cover insurance and risk management.
- 9 Provision shall be made for the proper treatment of income and expenditure in relation to project property during the project.
- 10 Any financial plan shall be of a robust standard, in particular having regard to proper practices of audit and account and prudent forecasting.
- 11 There should be no commitment to the resources of the Council above that which has been specifically agreed by the Council.

APPENDIX 2

POLICY FOR TRANSFER OF ASSETS FOR COMMUNITY GOVERNANCE

1. Background

- 1.1 The Local Government White Paper 'Strong and Prosperous Communities' published in Autumn 2006, sets out a new relationship between local government and its communities based on devolution of power by giving residents greater say over local services.
- 1.2 One element touched upon was that of the transfer of property assets to the community based upon the view that there are realisable benefits to be obtained from giving the community a greater stake in their area.
- 1.3 On the back of this Barry Quirk, Chief Executive of Lewisham Council, has led a review team into the issues around asset transfer and the report was published in May 2007.
- 1.4 In essence the report is clear that what is required is not legislation but guidance, helping in the understanding and use of existing powers, being clear on risks associated and learning to manage them effectively. The clear lead from government is that local management and ownership of assets makes for strong communities. The objective is for community empowerment.
- 1.5 The main specific element is for asset management planning to have a strong community focus and Councils will be expected to fully consider the benefits of asset transfer within the asset management planning process. Further guidance on this will be forthcoming later in 2007.
- 1.6 Quirk perceives that Councils either do not fully understand the existing powers available to them or are unwilling to use them due to apparent risks involved, problems of being fair to all parties and financial constraints. The clear intention is that Councils be encouraged to face these issues as the underlying principle is that asset transfer to the community can work and the report includes many examples to try and prove this point.
- 1.7 Two options open to communities who wish to have assets transferred to them, and which are highlighted in the report, are the 'Community call for action' and 'Public Request to Order Disposal' (PROD). The former would allow groups to progress desires for asset transfer to Scrutiny Committee for review and the latter is an existing mechanism by which the public may ask the Secretary of State to direct authorities to dispose of property assets which are either not being used, or not being efficiently used for the performance of their functions. Both these options will empower local communities to approach Councils to purchase, lease or manage property assets.
- 1.8 In the light of the report the Council must be fully prepared to deal with applications from the local community for the transfer of assets and therefore

need a clear policy framework against which such applications should be judged.

- 1.9 Beyond the principles within Quirk there is very little clarity or detail in terms of defining communities, suitable community groups etc partly due to the range of public authorities that the report covers.
- 1.10 The report does make it clear though that it expects transfer of assets not liabilities. In view of the lack of detail it is necessary for Councils to make their own judgements based on the needs of their own circumstances and it is recommended that the Council seek to introduce an approved policy in relation to asset transfer including a set of criteria against which applications can be considered.

2. Existing Disposals Policy

- 2.1 The Council's policy towards the disposal of property is found within the 'Framework for Disposal of Property' which was approved by Cabinet in October 2003. This identifies that, as a general principle, sales of Council property will be carried out through open marketing to ensure equality of opportunity for all to purchase, transparency by the Council in its disposal of assets and compliance with current legislation. Incoming receipts then feed the Capital Programme which is a reflection of Members' priorities for investment.
- 2.2 The Framework does identify five different cases in which one to one sales to a particular purchaser at market value can be considered (de minimus sales, sales to special purchasers, support of regeneration, to support schemes of regional or national importance and to parties who can provide Council services). Sales under these criteria would normally require Cabinet approval.
- 2.3 Within the Framework it is outlined that under the General Disposal Consent 2003 Councils do have the power to sell at less than best consideration in cases where well being benefits would arise. Sales where the consideration is £2 million or more less than best, however, require Secretary of State's consent. Councils are still required to meet their general fiduciary duty.
- 2.4 Due to the difficulties of precedent and the issue of hidden subsidies in property transactions, the Council have only used this consent sparingly.
- 2.5 It is felt that requests for community asset transfer will not fit comfortably into the existing Framework and therefore the following criteria are to be adopted to enable all such requests to be judged on a similar basis. It is not felt that the Disposals Framework needs amending as such but the criteria be added as an appendix.

3. Criteria to be adopted as policy towards requests for Community Asset Transfer

- 3.1 Requests for the transfer of Council owned assets will be considered where the following criteria are met:-

3.2 The applicant

3.2.1 The applicant is a community led organisation.

3.3 The asset

3.3.1 The asset is in the freehold ownership of the Council.

3.3.2 The Council is comfortable that service delivery can be best provided through asset transfer and will deliver the strategic priorities of the sponsoring department.

3.3.3 The asset has been identified as available for community transfer in the Council's Asset Management Plan (AMP).

3.4 Proposed use

3.4.1 The proposed use will demonstrably help in the delivery of the Council's community strategy, Corporate Plan and will build an active community.

3.4.2 The proposed use will ensure extensive and inclusive reach into the community.

3.4.3 The proposed use will maintain a wide variety of use in line with community needs and, in the case of competing proposals, will best meet identified community needs.

3.5 Business plan and finance

3.5.1 The applicant has provided a viable business plan for their use of the asset including clear proposals, with identified funding, for the management and maintenance of the asset.

3.5.2 The applicant has clearly identified any sources of funding which asset transfer will release.

3.5.3 The applicant has clearly identified any revenue or capital funding implications for the Council, and in the case of revenue the proposed length of time of the commitment and proposals for how the applicant will seek to end the Council's commitment through funding from elsewhere. The Council will assist in the identification of funding sources where appropriate.

3.5.4 The applicant has clearly identified how it will invest in and maintain the asset, including a specific plan as to how all Health and Safety responsibilities will be met.

3.5.5 The applicant has clearly identified the planned outcomes and benefits to result from the asset transfer and accepts that they may be expected to enter into agreements that link continued community governance with achievement of such outcomes and benefits.

3.5.6 The applicant has demonstrated a community governance structure with capability to sustain asset transfer and has identified necessary capacity

building requirements within their organisation and has identified the role they see for the Council in this.

3.6 Proposed Terms for Disposal

3.6.1 For the applicant to complete the business planning elements above it will be necessary for the applicant and Council to negotiate terms for the disposal of the asset. These will deal with tenure (freehold, leasehold or licence), consideration, user clause and covenants, responsibility for repairs and insurance and arrangements should the proposal fail and the property is to return to the Council. The terms will define the financial liabilities of the applicant from occupation of the property. In addition to guarantee continued provision of services a service level agreement is likely to be required to be entered into, linked directly to the lease such that failure to provide the services leads to lease termination.

3.6.2 In view of the range of assets within the Council ownership it is unlikely that there will be any disposal methodology which suits all circumstances. However, as a general principle, the policy will be that disposals will not be on a freehold basis, with leases or licences preferred, and it would be expected that the security of tenure to the applicant will be subject to improvement over time in accordance with the success of the project and the growing strength of the applicant in terms of community governance capability. Freehold disposal is generally not supported in particular due to issues arising should community governance fail. In a leasehold situation the Council would be in a better position to reclaim the property on behalf of the citizens of Leicester than should the freehold have been sold. Also leasehold allows for a continued partnership with the community. It is expected that best consideration will be achieved by the Council in all disposals.

4. Consideration by the Council

4.1 Should an applicant meet all the criteria outlined in 3.2 – 3.5 above, then the application will be considered by the Council.

4.2 Such consideration will include:-

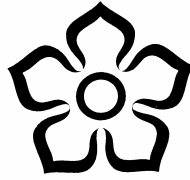
4.2.1 A whole life options appraisal of the different alternative options available to the Council weighing community benefit against other criteria.

4.2.2 A risk analysis of the proposal.

4.2.3 Consideration as to whether any revenue or capital funding requested from the Council will be made available, and whether any capacity building help can be provided.

4.2.4 The acceptability of the proposed terms for the transfer of the asset.

4.3 Should the application be judged favourably following such consideration a report will be taken to the Council Cabinet for decision on the proposal.



Leicester
City Council

Schedule 3: A Protocol for Responding to Late and/or Unsolicited Offers in Connection with Property Disposals

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SCHEDULE 3

A PROTOCOL FOR RESPONDING TO LATE AND/OR UNSOLICITED OFFERS IN CONNECTION WITH PROPERTY DISPOSALS

1 INTRODUCTION

The receipt of late and/or unsolicited offers cannot be avoided when property disposals are being undertaken. Further, local authorities' property dealings are conducted within a fairly inflexible legal framework and must have regard to the Council's general fiduciary duty to act reasonably and in the interests of the tax payers and consistent with the effective, economic and efficient discharge of the authorities' functions. It is therefore necessary to have in place a protocol to guide the response to the unsolicited offer together with precautionary measures to reduce the likelihood of late offers arising. This guidance covers the most likely scenarios but exceptional circumstances may arise which may require separate consideration. The Council's Constitution refers to tendering procedure but this relates to Tenders for the supply of works, services and goods rather than land. Nevertheless, the relevant principles are followed within this Protocol.

APPLICATION OF THE PROTOCOL

This protocol applies to unsolicited offers received during a property disposal exercise and the response to the offer will be dependent upon:

- 1 At which stage in the disposal process the offer is received.
- 2 The basis upon which the property has been marketed.

3 THE PROTOCOL

3.1 In relation to disposals by way of formal or informal Tender ie when offers are required before a fixed date and time (the Closing Date).

3.2 Late Tenders ie received after the Closing Date, or Tenders delivered prior to the Closing Date but to the wrong location and subsequently received late.

3.3 Offers received outside the Tender process (ie without the official Tender label) after the Closing Date but before consideration by Cabinet (or the Chief Operating Officer exercising delegated authority).

3.3.1 All offers must be considered.

3.3.2 If the late offer is higher and obviously not spurious or otherwise considered unsustainable, the parties that have already submitted offers be invited to make "full and final" offers by a specified date. In considering the sustainability of the late offer regard will be had as to whether the offer is compliant with the requirements of the Tender process (other than meeting the time limit).

3.3.3 In the event that the unsolicited/late offer remains the highest offer then this offer, together with the highest compliant offer from the

second round of bids from the Tenderers (ie received from one of the parties who submitted Tenders before the Closing Date) effectively the second highest bid, should be reported to Cabinet (disposals at less than best consideration are reserved to Cabinet). In the event that Cabinet wishes to accept the second highest bid then the Secretary of State's consent for a disposal at less than best consideration will be required (see below).

In deciding whether or not to accept the second highest bid, the Council must act reasonably and have due regard to:

- (a) Its general fiduciary duty (as referred to above).
- (b) Usual and prudent commercial practices.
- (c) Best practice.
- (d) Case law.

In the event that the second highest bid is accepted, reasons to support the decision must be recorded.

3.4 Offers received after the Cabinet decision (or exercise of the Chief Operating Officer's delegated authority) but before the exchange of contracts or before entering into conditional contract or lock out agreement

- (a) As 1.2 above.

3.5 Offers received after the exchange of contracts or entering into conditional contract or lock out agreement

- (a) Write to advise the party making the offer that the property has been sold or that conditional contract or lock out agreement entered into, thanking them for their interest (and offering similar property if currently available for disposal). Record this interest in the event that the contract is not completed and the property is remarketed.

4 Disposals by private treaty (ie following a marketing exercise without a Closing Date or a "one-to-one" disposal when no marketing has taken place).

4.1 Offers received during the period of the negotiation with the prospective purchaser/lessee.

4.1.1 If the negotiation arises from a marketing exercise without a Closing Date then each party should be invited to submit their full and final offers within a specified time period.

4.1.2 If the offer arises during an off-market "one-to-one" disposal (eg where agreement of Cabinet has been obtained to dispose of the property to secure a particular use or facility from one particular party) then the offer is rejected (but can be used as useful evidence in the negotiations). In these instances the Statutory Monitoring Officer must advise on the

need to obtain the Secretary of State's consent to a disposal at less than best consideration (see below).

4.2 Offers received before provisionally agreed terms are considered by Cabinet (or the Chief Monitoring Officer exercising delegated authority).

(a) As 1.2 above.

4.3 Offers received after the Cabinet decision (or the Chief Operating Officer exercising delegated authority) but before the exchange of contracts or entering into conditional contract or lock out agreement.

(a) As 1.2 above.

4.4 Offers received after the exchange of contracts, entering into conditional contract or lock out agreement.

(a) As 1.4 above.

5 Disposals by Auction

5.1 Offers received prior to the auction.

(a) Refer the offer to the appointed auctioneers and agree whether or not to accept the offer. If the offer is recommended for acceptance then the acceptance must be subject to the purchaser exchanging contracts quickly (in accordance with the auction conditions of sale) before the date of the auction, ideally giving sufficient time to notify other parties who may have expressed an interest in the property of its withdrawal from the auction.

(b) Offers received after the auction.

If the property was sold under the hammer:

(i) As 1.4 above.

If the property failed to sell:

(ii) As 3.1(a) above but within an appropriate short time period (ensuring the appropriate authority is in place for the auctioneer to accept such offers on behalf of the City Council).

PRECAUTIONARY MEASURES TO BE ADOPTED TO SUPPORT THIS PROTOCOL

In order to minimise the likelihood of unsolicited offers being received then the following good practice should be adopted when undertaking the marketing exercise:

- 1 Late offers must never be encouraged or in any way solicited.
- 2 Where the offer arises from a bidder who has already submitted a compliant bid within a tendering exercise, then consideration of the revised higher bid would only be undertaken provided there was clear justification for the second offer being made.
- 3 The market must be fully explored at an early stage in the marketing process so that every effort is made to identify all potentially interested parties.
- 4 Ensure that time periods between receipt of offers and an executive decision to accept and between acceptance and exchange of contracts (or entering into conditional contracts or lock out agreements) are kept to a minimum. The use of conditional contracts should be considered, with a strict time period by which it must be entered into by successful party, and when each element of conditionality has to be met.
- 5 Offers reported to Cabinet are considered on the private agenda.
- 6 The Cabinet public Minute contains no reference to the disposal price or the purchaser.
- 7 In those cases where reports refer to values of property, for example anticipated capital receipts, only totals are referred to, unless the transaction has been completed.
- 8 Ensuring that prospective purchasers are aware that their costs incurred prior to the exchange of contracts are at their own risk. (However, in the event that the City Council decides not to proceed, there may be a case for reimbursing the purchasers abortive costs. Each case would be considered on its merits).

CONSENT OF THE SECRETARY OF STATE TO DISPOSE AT “LESS THAN BEST CONSIDERATION”

Where a disposal at less than best consideration is proposed then this will require the consent of the Secretary of State. A specific application to the Secretary of State for consent may not be necessary in every case. The Local Government Act 1972: General Disposal Consent (England) 2003 gives local authorities consent to the disposal of land within specified circumstances ie where the authority considers that the purpose for which the land is to be disposed of is likely to contribute to the achievement of any one or more of the following objectives in respect of the whole or in any part of its area, or of all or any persons resident or present in its area:

- 1 The promotion or improvement of economic well-being.
- 2 The promotion or improvement of social well-being.

3 The promotion or improvement of environmental well-being

In each case it is a condition that the undervalue must not exceed £2 million. Further, the authority must remain aware of the need to fulfil its fiduciary duty in a way that is accountable to local people (this consent does not apply to land held under powers derived from certain Planning and Housing Acts (which is subject to its own consent regime, most recently revised in March 2005) nor does it enable the disposal of public open space without undertaking the advertising procedure set out in s.123 (2A) the Local Government Act 1972).