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Dear Member

## **OVERVIEW AND SCRUTINY BOARD - WEDNESDAY, 2 OCTOBER 2024**

I am now able to enclose, for consideration at the Wednesday, 2 October 2024 meeting of the Overview and Scrutiny Board, the following reports that were unavailable when the agenda was printed.

<b>Agenda No</b>	<b>Item</b>	<b>Page</b>
5.	<b>Commercial Policy</b> Commercial Policy Appendix 3 Addressing Devon Audit Partnership Recommendations	(Pages 3 - 6)

Yours sincerely

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## Appendix 3

### Addressing Devon Audit Partnership Recommendations

The Devon Audit Partnership made a number of recommendations following a review of the Torbay Food and Music Festival.

To aid review of the Commercial Policy this document sets out where these recommendations are addressed within the Commercial Policy.

Commercial Policy Section	DAP Recommendation
<b>A6 Authority to Undertake Commercial Activity</b>	<ul style="list-style-type: none"><li>• Going forward in order to avoid any potential breach of procurement regulations, it is vital that departments precisely follow any instructions given by the Procurement Team and retain full and accurate records relating to instructions and decisions made.</li><li>• Contract monitoring must ensure that all contractual obligations are met by the supplier and any non-compliance is recorded and addressed.</li><li>• Supplier evaluation and selection must clearly record and consider the suitability of the bid proposal prior to award of contract.</li></ul>
<b>B1 Decision Making (B1.3)</b>	<ul style="list-style-type: none"><li>• Going forward in order to avoid any potential breach of procurement regulations, it is vital that departments precisely follow any instructions given by the Procurement Team and retain full and accurate records relating to instructions and decisions made.</li></ul>
<b>B2 Starting a Procurement (B2.1)</b>	<ul style="list-style-type: none"><li>• Going forward in order to avoid any potential breach of procurement regulations, it is vital that departments precisely follow any instructions given by the Procurement Team and retain full and accurate records relating to instructions and decisions made.</li></ul>
<b>B3 Planning a Procurement (B3.2)</b>	<ul style="list-style-type: none"><li>• Going forward in order to avoid any potential breach of procurement regulations, it is vital that departments precisely follow any instructions given by the Procurement Team and retain full and accurate records relating to instructions and decisions made.</li></ul>
<b>B4 Contract Values (B4.7)</b>	<ul style="list-style-type: none"><li>• Contracts such as these should consider inclusion of related public recourse against financial loss incurred.</li></ul>
<b>B6 Risk</b>	<ul style="list-style-type: none"><li>• Going forward in order to avoid any potential breach of procurement regulations, it is vital that departments precisely follow any instructions given by the Procurement Team and retain full and accurate records relating to instructions and decisions made.</li></ul>

	<ul style="list-style-type: none"> <li>• Contract monitoring must ensure that all contractual obligations are met by the supplier and any non-compliance is recorded and addressed.</li> <li>• Contract monitoring must ensure that supplier financial resilience flags are robustly considered and actioned accordingly.</li> </ul>
<b>D1 Tender Packs (D1.1, D1.2 and D1.4)</b>	<ul style="list-style-type: none"> <li>• Supplier evaluation and selection must clearly record and consider the suitability of the bid proposal prior to award of contract.</li> </ul>
<b>D4 Assessment Criteria</b>	<ul style="list-style-type: none"> <li>• Supplier evaluation and selection must clearly record and consider the suitability of the bid proposal prior to award of contract.</li> </ul>
<b>E3 Tender Assessment</b>	<ul style="list-style-type: none"> <li>• Supplier evaluation and selection must clearly record and consider the suitability of the bid proposal prior to award of contract.</li> </ul>
<b>E4 Supplier Due Diligence (E4.4 to E4.6 and E4.8 to E4.9)</b>	<ul style="list-style-type: none"> <li>• Due diligence must include a current financial check on the supplier and any related companies regardless of whether it is following a successful tender process or as a result of a waiver process.</li> <li>• Financial checks must be undertaken and repeated throughout the Procurement processes through to contract award and final signing to address the risk of decisions being made on out-of-date financial information.</li> <li>• To support accurate decision making, all financial check reports must be shared with all relevant parties.</li> <li>• Financial Regulations must be reviewed in light of this matter and the new waiver process to ensure there is no risk of misinterpretation of authority to contract award and approval. In addition, consideration should be given to strengthening the waiver due diligence to ensure it as at least as robust as the tender process e.g., requiring exemplar contract information.</li> <li>• Contract monitoring must ensure that supplier financial resilience flags are robustly considered and actioned accordingly.</li> </ul>
<b>E5 Contract Award (E5.1 and E5.2)</b>	<ul style="list-style-type: none"> <li>• Going forward in order to avoid any potential breach of procurement regulations, it is vital that departments precisely follow any instructions given by the Procurement Team and retain full and accurate records relating to instructions and decisions made.</li> <li>• Supplier evaluation and selection must clearly record and consider the suitability of the bid proposal prior to award of contract.</li> </ul>
<b>E5 Contract Award (E5.7, E5.8 and E5.11)</b>	<ul style="list-style-type: none"> <li>• When contracting, all company information must be consistent throughout to ensure that related due diligence is undertaken on the correct company(ies).</li> </ul>

<b>F1 Managing a Contract</b>	<ul style="list-style-type: none"> <li>• Contract monitoring must ensure that all contractual obligations are met by the supplier and any non-compliance is recorded and addressed.</li> <li>• Contract monitoring must ensure that supplier financial resilience flags are robustly considered and actioned accordingly.</li> </ul>
<b>F3 Contract Review Meetings</b>	<ul style="list-style-type: none"> <li>• Contract monitoring must ensure that all contractual obligations are met by the supplier and any non-compliance is recorded and addressed.</li> <li>• Contract monitoring must ensure that supplier financial resilience flags are robustly considered and actioned accordingly.</li> </ul>
<b>F4 Contract Performance</b>	<ul style="list-style-type: none"> <li>• Contract monitoring must ensure that all contractual obligations are met by the supplier and any non-compliance is recorded and addressed.</li> <li>• Contract monitoring must ensure that supplier financial resilience flags are robustly considered and actioned accordingly.</li> </ul>
<b>F6 Defaults, Disputes and Remedies</b>	<ul style="list-style-type: none"> <li>• Contract monitoring must ensure that all contractual obligations are met by the supplier and any non-compliance is recorded and addressed.</li> <li>• Contract monitoring must ensure that supplier financial resilience flags are robustly considered and actioned accordingly.</li> </ul>
<b>F7 Poor Performance and Breach of Contract</b>	<ul style="list-style-type: none"> <li>• Contract monitoring must ensure that all contractual obligations are met by the supplier and any non-compliance is recorded and addressed.</li> <li>• Contract monitoring must ensure that supplier financial resilience flags are robustly considered and actioned accordingly.</li> </ul>
<b>F9 Contract Compliance Documentation</b>	<ul style="list-style-type: none"> <li>• Contract monitoring must ensure that all contractual obligations are met by the supplier and any non-compliance is recorded and addressed.</li> <li>• Contract monitoring must ensure that supplier financial resilience flags are robustly considered and actioned accordingly.</li> </ul>
<b>H Waiver Procedure (H1.2)</b>	<ul style="list-style-type: none"> <li>• When wording supporting narrative within a waiver, care must be taken to ensure the narrative is clear and reduces the risk of misinterpretation.</li> <li>• To ensure robust waiver approval, the information contained within it must be complete and accurate, which may be achieved through the provision of evidence supporting the waiver content.</li> <li>• The information stated within the waiver must be accurate and challenged by all involved in the approval.</li> </ul>

	<ul style="list-style-type: none"><li>• Financial Regulations must be reviewed in light of this matter and the new waiver process to ensure there is no risk of misinterpretation of authority to contract award and approval. In addition, consideration should be given to strengthening the waiver due diligence to ensure it as at least as robust as the tender process e.g., requiring exemplar contract information.</li></ul>
<b>Appendix 2 – Financial Checks Guide</b>	<ul style="list-style-type: none"><li>• Due diligence must include a current financial check on the supplier and any related companies regardless of whether it is following a successful tender process or as a result of a waiver process.</li><li>• Financial checks must be undertaken and repeated throughout the Procurement processes through to contract award and final signing to address the risk of decisions being made on out-of-date financial information.</li><li>• To support accurate decision making, all financial check reports must be shared with all relevant parties.</li><li>• In addition to company financial checks, due diligence could include Procurement checks of Companies House information on the supplier and any related companies.</li><li>• Contract monitoring must ensure that supplier financial resilience flags are robustly considered and actioned accordingly.</li><li>• Financial Regulations must be reviewed in light of this matter and the new waiver process to ensure there is no risk of misinterpretation of authority to contract award and approval. In addition, consideration should be given to strengthening the waiver due diligence to ensure it as at least as robust as the tender process e.g., requiring exemplar contract information.</li><li>• Contract monitoring must ensure that supplier financial resilience flags are robustly considered and actioned accordingly.</li></ul>