

CHANGES TO CONSTITUTION

EXECUTIVE MEMBER: Cllr E M Woodburn

LEAD OFFICER: Paul Walker

REPORT AUTHOR: Martin Jepson

Summary: Recommends revised Contract Procedure Rules for approval and one minor amendment to the Constitution.

Recommendation:	1. The Contract Procedure Rules be approved to form Chapter 17 of the Constitution; 2. The minor amendment referred to in the report be approved.
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1. INTRODUCTION

1.1 Changes to most of the Constitution were agreed and approved by Council on 24 June. The areas which still needed to come before Council were:-

Contract Procedure Rules;
Financial Regulations; and
Scheme of Delegation for Officers.

The Head of Legal and Democratic Services was also authorised by Council to make consequential changes arising from the approved revised Constitution subject to notification to the Constitution Working Group. At this point there is only one additional change he would like to put forward to Council, as described below. All changes were considered by the Constitution Working Group on 27 July 2010 and Choosing to Change Board on 4 August 2010.

1.2 Although an early draft of revised Financial Regulations has been produced at officer level our current s.151 Officer has asked that these be considered by the new s.151 Officer when appointed. Therefore these will not be put forward for approval by the Board until later in the year. It was also thought appropriate in view of the changes likely to arise from the Service Reviews that our new Chief Executive consider the Scheme of Delegation for Officers once he is in post. Therefore a report on these changes will also not be put forward until later in the year.

2. CONTRACT PROCEDURE RULES

2.1 The proposed new Rules were considered by the Constitution Working Group on 27 July and Choosing to Change Board on 4 August and are attached to this report as Appendix 1.

In re-drafting the Rules consideration was given to current best practice in other Councils.

The main changes to our current Contract Standing Orders are as follows:-

1. The definition of low value contracts has been raised to a maximum of up to £75,000 and the definition of medium value contracts has been raised from £50,000 to contracts valued between £75,000 and up to the EU Procurement Threshold limits to include the majority of standard contracts;
2. Corporate Team to be given authority to waive Contract Procedure Rules after considering a formal report from the Head of Service. Waivers to be reported to Executive. Currently Executive needs to approve waivers;
3. The definition of contracts which are not to be the subject of the Contract Procedure Rules to be extended to include a. where the work forms part of a serial programme where prices have previously been accepted for earlier stages of the programme after a written tender and b. where the Head of Service and s.151 Officer agree significant financial loss may occur if there is a delay in letting the contract;
4. A formalisation of the pre-procurement procedure;
5. Heads of Service in consultation with s.151 Officer to select tenderers;
6. A requirement that for contracts below £75,000 any Framework Agreement or Preferred Supplier List must be used where they exist;
7. A detailed requirement of what the Invitation to Tender should contain;
8. Acceptance of a tender to be made by Head of Service other than where the tender is not either the most financially advantageous or the most economically advantageous tender or there are not sufficient funds to accept a preferred tender;
9. Consultants only to be used if the Head of Service in consultation with the s.151 Officer is satisfied there is a justifiable case for their use and Executive has resolved in principle to support their use;
10. Head of Legal and Democratic Services to have authority to negotiate Leases valued at less than £10,000 per year or land disposals valued at less than £10,000;
11. HLDS in consultation with s.151 Officer to have approval to agree disposals between £10,000 and up to £50,000. Chief Executive in consultation with Leader to approve disposals between £50,000 and up to £100,000. Executive approval needed for transactions between £100,000 and up to £250,000. Council approval needed for higher value transactions.
12. A requirement that officers involved in letting contracts undertake training on the new Rules.

3. CONCLUSIONS

3.1 The general effect of the proposed changes to the existing Contract Standing Orders is to clarify the Council's procedures and to delegate further decision making powers to Corporate Team or Heads of Service where those powers relate to the technical process of awarding contracts. This will speed up decision making whilst keeping necessary checks and balances in place. It will also assist as a reference point for all involved in procurement. As

such the new Rules contribute to the Change Agenda initiated by the Council and allow and encourage more effective governance of procurement.

3.2 A minor change recommended to the Constitution Working Group and Choosing to Change Board is that whilst at present in Chapter 20 of the Constitution only the Head of Legal and Democratic Services is currently authorised to witness the sealing of documents the Group recommended this be extended to read “... the affixing of the Common Seal will be attested by the Head of Legal and Democratic Services or other person authorised by him...”

List of Consultees:

Corporate Team

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CONTRACT PROCEDURE RULES

[8th Draft Revision 28 July 2010]

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1. The Scope of the Contract Procedure Rules

- 1.1 These Contract Procedure Rules must be followed every time the Council enters into a contract or arrangement for works, goods, land or services, except where the estimated value of the contract is under £10,000 (paragraphs 3.1 and 6.2) or the contract is exempt (paragraph 2).
- 1.2 A summary of the Contract Procedure Rules has been provided in a Manager's Quick Guide, which is attached at appendix A.
- 1.3 European Union Regulations and Directives and English Law must also be followed where appropriate - See Appendix B for Guidance on Contracts Subject to the European Union Regulations.
- 1.4 In these Contract Procedure Rules :
 - "Directors and Heads of Services" means the Chief Executive, Director or a Head of Service of the Council;
 - The "Section 151 Officer" is the officer nominated by the Council to make proper arrangements for the administration of its financial affairs
 - "Contract" includes any arrangement under which the Council pays or receives money for work, goods, land, or services, including contracts, agreements, partnership arrangements, private finance initiatives, joint ventures, contracts with Consultants and Service Level Agreements with partners, including voluntary organisations. It includes where the Council is acting as an "Accountable Body" for any government funding;
 - "Contract Conditions" includes the Contract Conditions mentioned in Paragraph 18 below;
 - "Council" means Copeland Borough Council;
 - "Corporate Team" means the Chief Executive, the Directors and Heads of Service.
 - "Goods" includes materials, equipment and non-land assets;
 - "Head of Service" means the head of the relevant Council Service or any person authorised by him or her to act on his or her behalf;
 - "Valuer" means an employee of Capita Symonds plc who holds the qualification of fellow or member of the Royal Institution of Chartered Surveyors and has been appointed as the Council's valuer, or an alternative person appointed with equivalent qualifications;
 - "Land" includes premises and buildings;
 - Subject to paragraphs 11.4.3 and 11.6, the "most financially favourable tender" means the lowest tender or quote if payment is made by the Council and the highest if payment is made to the Council and the "most economically advantageous tender" strikes a balance between cost and quality within the tender;

- “Procurement Strategy” means the Council’s Procurement Strategy as agreed by the Council every three years;
- “Supplier Selection Form” shall mean the relevant form to be completed in the case of a contract for the supply of goods or services – see Appendix C;
- “Tender” is a formal tender obtained through the tender process contained within these Contract Procedure Rules.

1.5 The highest standards of probity are required of all members and officers involved in the procurement, award and management of Council contracts. At all times during the procurement process all members and officers shall consider and implement the principles of non-discrimination, equal treatment and transparency. All officers who have responsibilities in letting contracts shall prior to their involvement have training on these Rules. That training shall be repeated every three years.

1.6 These Contract Procedure Rules are intended to help and inform Officers making purchasing decisions. Advice on their use is available from the Head of Service, or in their absence the S.151 Officer or their representative. Any Officer can contact Internal Audit if he or she believes that the provisions of these Contract Procedure Rules are not being followed in a particular case.

1.7 The use of e-procurement technology (for example, e-auctions) does not negate the requirement to comply with all elements of these Contract Procedure Rules.

2. Exceptions

2.1 The Corporate Team can allow exceptions to these Contract Procedure Rules after considering a report by a Head of Service. The Corporate Team shall then inform Internal Audit and report the decision to the Executive.

2.2 These Contract Procedure Rules shall not apply if:

- i) the Head of Service, in consultation with the Section 151 Officer, is satisfied that there is no genuine competition, for example, where:
 - a) the goods are proprietary articles or are sold only at a fixed price and no satisfactory alternative is available;
 - b) the price of goods or services are wholly controlled by trade organisations or government order;
 - c) the goods or services are required for repairing or servicing existing specialist plant or equipment;
 - d) the work can only be carried out, for example, by utility companies providing gas, water and electricity supplies.

Where there is no genuine competition, the Head of Service, in consultation with the Section 151 Officer, shall obtain the most financially favourable price or the most economically advantageous price for the Council prior to awarding any contract.

- ii) the proposed contract for the execution of work forms part of a serial programme, the terms having been negotiated with the contractor on the basis of the rates and prices contained in an initial contract awarded competitively following an invitation to tender in accordance with the provisions of these Contract Procedure Rules ;
- iii) a contract with a value over £10,000 is necessary to meet urgent works in a timescale that precludes the use of Contract Procedure Rules then the Head of Service, or authorised representative, shall seek approval from the Section 151 Officer not to seek quotes or formal tenders. The appropriate Portfolio Holder shall also be consulted over the dispensation of Contract Procedure Rules.

The Head of Service, or authorised representative shall complete the Supplier Selection Form – Appendix C stating that the quote or formal tender is in respect of urgent works and that there was insufficient time to follow Contract Procedure Rules ;

- iv) the goods, materials or services are required due to an emergency, in which case the Chief Executive, or their nominated representative, shall have the authority, subject to domestic and European legislation, to let any contract that is urgently required to meet the emergency;
- v) the Head of Service and the Section 151 Officer agree that significant financial loss may be incurred if the letting of the contract is delayed.

- 2.3 In cases (iii), (iv) and (v) above, the Head of Service may, with the approval of either the Chief Executive or the Section 151 officer obtain verbal quotations provided that they are subsequently confirmed in writing. A report shall be submitted to the Corporate Team as soon as possible after the award of the contract(s) justifying their actions – see paragraph 2.1

3. Estimating Contract Values

- 3.1 The total value of a contract shall be calculated on an overall basis, for example, where a contract is for £10,000 per year for four years the contract value will be £40,000. Particular elements of the contract shall not be split in an attempt to avoid these Contract Procedure Rules. Where the length of a contract is not known the Head of Service shall use 4 years as the best estimate.

4. Pre-Procurement Procedure

- 4.1 Before commencing a procurement exercise, it is essential that the Head of Service leading the procurement has identified the needs and fully assessed all options for meeting those needs. Consideration shall be given to the Procurement Strategy and Sustainable Procurement Policy as appropriate. Before undertaking procurement the Head of Service shall, where the estimated value is over £75,000:
- i) Establish a business case for the purchase for consideration and approval by the Capital Programme Monitoring Group and Corporate Team, including ensuring that there are sufficient funds in the relevant budget to cover the cost of the purchase;
 - ii) Provide a programme and project plan to deal with all aspects of the purchase;
 - iii) Consider all means of satisfying the needs, including environmental issues and sustainability;

- iv) Consult the S.151 Officer or their representative to ascertain whether there is an appropriate Framework Agreement or Preferred Supplier that should be used or whether there are options available to purchase collaboratively with other Authorities;
- v) Consider the form of the contract in consultation with S.151 Officer or their representative;
- vi) Choose a course of action which must represent best value for money to the Council;
- vii) Consult with the users of the service;
- viii) Prepare a written specification which describes the Council's requirements and tender evaluation criteria;
- ix) If a formal tendering exercise is needed, ensure the tender documents are available in an electronic format;
- x) Prepare capital appraisal documents where necessary to assess affordability;
- xi) Notify the Portfolio-Holder and then keep the Portfolio-Holder appraised of progress.

4.2 Where any officer of the Council or any employee of a service provider may be affected by any transfer arrangements, the Head of Service shall ensure that Transfer of Undertakings (Protection of Employment) (TUPE) issues are considered and obtain advice from the Section 151 Officer and/or the Human Resources Manager before proceeding to invite tenders.

4.3 Tenders received by facsimile or other electronic means e.g. e-mail shall be rejected, unless they have been sought in accordance with an electronic tendering system approved by the Head of Legal and Democratic Services and the S.151 Officer or their representative .

5. Framework Agreements and Preferred Suppliers Lists

5.1 Where an appropriate Framework Agreement or Preferred Supplier List exists, (i.e. a call off contract with a preferred supplier or e-purchasing system) this must be used up to a contract value equal to £75,000.

5.2 Contracts over £75,000 must follow the appropriate procedure – See Paragraph 6 – but the use of a Framework Agreement or Preferred Supplier List is not precluded providing competition exists.

5.3 The term of a Framework Agreement must not exceed four years and, while an Agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.

5.4 Contracts based on Framework Agreements shall be awarded by either:

- i) applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or

- ii) where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition based on a written specification of the Council's requirements in accordance with the following procedure:
 - a) inviting the organisations within the Framework Agreement which are capable of executing the subject of the contract to submit written quotes or formal tenders;
 - b) fixing a time limit which is sufficiently long to allow written quotes or formal tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;
 - c) awarding each Contract to the tenderer who has submitted the best written quote or formal tender on the basis of the award criteria set out in the specifications of the Framework Agreement.

6. Levels of Contract Values – Quotes or Tenders

- 6.1 Where contract values appear in these Contract Procedure Rules, these exclude VAT. Contract values thresholds are as follows:-

Low Value – from £10,000 up to £75,000 .

Medium Value – over £75,000 and up to EC procurement threshold levels.

High Value – contracts valued at being at least at EC procurement threshold levels.

- 6.1.1 The value or amount of the contract shall in the following cases be calculated as follows:-

- a) Where periodical payments are to be made by the Council, by reference to the maximum total amount that the Council may be obliged to pay under the terms of the contract,
- b) Where there is an undefined quantity under the terms of the contract, by reference to an estimate by the Head of Service of the total value of the contract – see also paragraph 3.1.

- 6.1.2 Heads of Service shall ensure that where proposed Contracts, irrespective of their value, might be of interest to potential contractors located in other Member States of the European Union, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other Member States, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- ii) The Council's Website;
- iii) Portal websites specifically created for contract advertisements;
- iiii) The North West Centre of Excellence "Chest"
- iv) National Official Journals; or
- iv) The Official Journal of the European Union (OJEU)/Tenders Electronic Daily (even if there is no requirement within the EU Procedure).

- 6.1.3 For all contracts, the Contracts and Property Manager or Procurement Officer must be involved from the commencement of the project and must countersign the Supplier Selection Form – see Appendix C.

6.2 Contracts under £10,000

- 6.2.1 For contracts estimated to be under £10,000, the Council's standard terms and conditions for orders apply as a minimum requirement. The Head of Service shall also consider the following:

- i) Best value for money shall be obtained, taking account of full life costs;
- ii) Use of existing Framework Agreements;
- iii) Use of suppliers on a Preferred Supplier List;
- iv) Use of the e-purchasing system;
- v) Alternative written quotes;
- vi) Use of Purchasing Cards.

- 6.2.2 There is no obligation to obtain written quotes or formal tenders, but Heads of Service shall be responsible for ensuring best value for money is obtained.

- 6.2.3 Use of specific Contract Conditions shall be included as relevant – See Paragraph 18

- 6.2.4 If any clarification is required then the Head of Legal and Democratic Services or the Contracts and Projects Manager shall be contacted. /

6.3 Contracts between £10,000 and £75,000

- 6.3.1 Existing Framework Agreements and Preferred Suppliers Lists must be used where appropriate.

- 6.3.2 A minimum of three written quotes or formal tenders shall be obtained and, in the case of a contract for the supply of goods or services, the reasons for the choice of supplier documented on the Supplier Selection Form – See Appendix C. The Supplier Selection Form shall be signed by the Head of Service.

- 6.3.3 As an exception, where three written quotes or formal tenders cannot be obtained, for example, due to time constraints, the specialist nature of the contract or use of an existing Preferred Supplier or the most financially favourable tender or the most economically advantageous tender has not been selected then, in the case of a contract for the supply of goods or services, this must be explained on the Supplier Selection Form - See Appendix C.

- 6.3.4 Use of specific Contract Conditions shall be included as relevant – See Paragraph 18.

- 6.3.5 A file note shall be made of suppliers invited to tender or quote but who failed to tender or quote.

6.4 Contracts between £75,000 and the EU Procurement threshold

- 6.4.1 A minimum of four formal tenders shall be obtained and, in the case of a contract for goods or services, the Supplier Selection Form - See Appendix C – shall be authorised

by the Head of Service. Four written tenders shall be obtained, which can include tenders from a Framework Agreement or Preferred Supplier List.

- 6.4.2 As an exception, where four formal tenders cannot be obtained, for example, due to time constraints, lack of responses to advertisements, the specialist nature of the contract or the most financially favourable tender or the most economically advantageous tender has not been selected the Head of Service shall explain this, in the case of a contract for goods or services, on the Supplier Selection Form - See Appendix C.
- 6.4.3 Use of specific Contract Conditions must be included as relevant – See Paragraph 18.
- 6.4.4 One of the Open or Restricted Tendering Procedures shall be used when letting contracts of this value - See Paragraph 7.
- 6.4.5 A file note shall be made of suppliers invited to tender or quote but who failed to tender or quote.
- 6.4.6 The Council's Monitoring Officer or his delegate must approve all contracts of this value

6.5 Contracts over the EU Procurement Threshold

- 6.5.1 A minimum of four formal tenders shall be required.
- 6.5.2 The procurement must follow EU guidelines for tendering for supply, service and works contracts – See Appendix B.
- 6.5.3 One of the Open or Restricted Procedures shall be used when letting contracts of this value. - See Paragraph 7.
- 6.5.4 However, if there is a Framework Agreement available, advice shall first be taken from the S.151 Officer or their representative about whether it is more appropriate to use that Agreement - See Paragraph 10.
- 6.5.5 Prior approval to seek tenders or quotes shall be obtained from the Head of Service.
- 6.5.6 Use of specific Contract Conditions shall be included as relevant – See Paragraphs 18.
- 6.5.7 The Council's Monitoring Officer or his delegate must approve all contract documentation for contracts of this value.
- 6.5.8 Prior to the commencement of the purchasing process, approval of the proposed contract award procedure, including the evaluation criteria to be applied shall be sought by the Head of Service from the Corporate Team
- 6.5.9 Heads of Service shall ensure that sufficient time is allowed for the preparation of tenders, having regard to the value and complexity of the project. This shall normally be not less than four weeks. Invitations to tender shall be sent out by the Procurement Officer who shall record:
 - i) the name and nature of the contract,
 - ii) the number of tender invitations, of which there must be a minimum of four,
 - iii) the closing date and time for receipt of tenders.

- 6.5.11 Heads of Service shall be responsible for judgements regarding any sub-division of work or supplies into packages, for example, to enable separate contracts to be let, with a view to seeking effective competition and to secure satisfactory service delivery.
- 6.5.12 A current financial appraisal and a company search shall be carried out of all limited companies , in a form determined by the Section 151 Officer.
- 6.5.13 A file note shall be made of suppliers invited to tender or quote but who failed to tender or quote.
- 6.5.14 The Supplier Selection Form – Appendix C shall be completed when the tendering exercise is complete and signed by the Head of Service.

7. Procedures for Inviting Tenders

7.1 Open Procedure

- 7.1.1 Under the Open Procedure the Council advertises its intentions, including a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers. All contractors expressing an interest are invited to tender. The advertisement shall be placed on the Council's e-tendering portal "The Chest". The Council may also elect to publish advertisements in the local press, the national press and/or trade journal in order to target the relevant market for the particular contract.
- 7.1.2 The advertisement shall contain details of the proposed contract, including a description of the Council's requirements in sufficient detail to enable the submission of competitive offers, and specify a time limit within which interested parties may express an interest in tendering. The advertisement shall, subject to paragraphs 7.1.4. and 7.3.2, give a closing date of at least seven days.
- 7.1.3 The Head of Service shall send an Invitation to Tender (ITT) within three working days to any party expressing an interest; the ITT must state a date and time by which the Tender is to be returned.
- 7.1.4 The Head of Service shall invite tenders for high value contracts by advertising on the Council's e-tendering portal "The Chest" and, if appropriate, local/national press and/or trade journal and/or Official Journals, and where the value is above the EU Threshold shall also advertise in the appropriate Official Journal – See Appendix B. The advertisement shall include:
- i) the nature and purpose of the contract, including a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
 - ii) where further details may be obtained and where applications shall be submitted.
 - ii) the last date and time when tenders shall be received;
- and be placed at least 10 days before the closing date, or longer if EU procurement regulations apply.
- 7.1.5 The Head of Service shall be satisfied with the financial standing and technical capability of the successful contractor before any contract is awarded.

7.2 Restricted Procedure

- 7.2.1 The Council publishes its intentions as above – See Paragraphs 7.1.2 and 7.1.4 - however only those suppliers selected by the Head of Service, after consulting the Section 151 Officer, shall be invited to tender. Short-listed suppliers shall be selected on the basis of clear pre-qualification/evaluation criteria that are either published in the advertisement or available from the Head of Service. The reasons to include or exclude suppliers from the tender process must be documented by the Head of Service and must relate to the pre-qualification criteria.
- 7.2.2 Pre-qualification/evaluation criteria shall include the following as appropriate to the individual contract being tendered i.e. potential suppliers shall be asked to demonstrate:

Evidence of financial standing shall be provided from some or all of the following sources and evaluated by the Section 151 Officer:

- i) financial standing – including audited accounts and credit rating;
- ii) bankers' references;
- iii) balance sheets;
- iv) statements of turnover (both overall and for the work or services for which a contract may be let);
- v) for services, evidence of professional risk indemnity ;
- vi) for works, the provision of bonds and guarantees;
- vii) any other information considered appropriate, providing adequate notice is given regarding the additional information sought.

Minimum technical capacity as to skills, efficiency, experience and reliability may include an assessment of :

- i) applicants' qualifications and those of the personnel who it is proposed shall do the work;
- ii) statements of the plant, equipment and specialist services available;
- iii) average manpower for each of the last three years;
- iv) numbers of managerial personnel during the same period;
- v) for works, a list of the works carried out in the last five years, supported by certificates of satisfactory completion (which may be obtained direct from clients);
- vi) technical capacity, including the contractors' quality management and environmental management systems where relevant to the performance of the contract;
- vii) for services, a list of the principal contracts carried out in the last three years with their values;

- viii) the proportion of the work which applicants intend to subcontract.
- ix) health and safety, equality and diversity policies and procedures.
- x) sustainability policies and procedures
- xi) training policies and proportion of apprenticeships in place .

7.2.3 The appraisal process may also include taking up references and inviting applicants to attend for interview.

7.2.4 If there are fewer selected to tender than the required number – See Paragraphs 6.3.2 and 6.4.1 then all those considered suitable shall be asked to tender.

7.2.5 Heads of Service shall inform contractors if it is decided to exclude them from the Restricted List, and also if any request to be asked to tender is refused. If a contractor applies in writing for the reasons within 15 working days of being given such a decision, the reasons shall be provided in writing within a further 15 working days. If the contract value is over EU tendering limits this notice period is reduced to 10 days. Where the reason is an unsatisfactory reference, this fact must be stated but not its nature nor the name of the referee.

7.2.6 Heads of Service shall maintain a register of all current contracts to include expiry dates and timescales for renewal and supply a copy of the register to both the Section 151 Officer and the Procurement Unit.

7.3 Ad Hoc Approved List Tendering

7.3.1 The case for compiling an approved list on an ad-hoc basis for a specific contract shall depend on the size, nature and continuity of the Council's relevant spending programme. The restrictive procedure contained within paragraph 7.2 above will be used to compile any ad-hoc tendering list, which in turn will include the number of tendering bodies required by these Contract Procedure Rules.

7.3.2 The Head of Service shall in respect of medium and high value contracts invite contractors to be placed on a list for a specific contract by advertising as above – See Paragraphs 7.1.2 and 7.1.4. The advertisement shall include:

- i) the nature and purpose of the contract, including a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- ii) where further details may be obtained and where applications shall be submitted;
- iii) the last date and time when tenders shall be received;

and be placed at least 10 days before the closing date, or longer if EU procurement regulations apply.

7.3.3 The Head of Service must be satisfied with the contractors' financial standing, technical resources and ability to complete the contract satisfactorily before they are placed on the Approved Ad Hoc List.

- 7.3.4 The Head of Service, after consulting the Section 151 Officer, shall select contractors to be invited to tender which may include some or all of the Contractors on the Council's Select Lists.

8. Preparation of Tender Documents

- 8.1 Tender documentation shall consist of one or more of the following, as appropriate:

- i) for building works – drawings, specifications, bills of quantities, contract conditions, schedule of works and the Council's standard contract forms
- ii) for other works or services the Council's Standard Form of Agreement and brief with or including a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- iii) instructions to tenderers;
- iv) the form of tender;
- v) the tender evaluation criteria to be used to consider the quality of the response to the specific requirements of the tender.

- 8.2 Other information may need to be made available to ensure that contractors' bids reflect service requirements and are competitively priced, including the following:

- i) the terms and conditions under which assets etc. shall be made available;
- ii) workforce information required for the purpose of assessing prospective liability in relation to the possible transfer of an undertaking; to ensure consistency of provision of information, this shall be provided by the Head of Service and not by an existing contractor;
- iv) the amount of work likely to be available under the contract.

- 8.3 The Head of Service shall ensure that:

- i) ambiguities and contradictions do not occur between documents and information provided;
- ii) any locally prepared variations to standard documentation are clear and use generally accepted terms;
- iii) contract conditions and specifications are in the best interest of the Council in respect of quality, cost and performance;

- 8.4 To ensure consistency and to aid understanding by the tenderer, tender documentation shall be collated by an experienced officer who shall obtain the advice and approval of the S.151 Officer or their representative.

9. Joint Procurement, Collaborative and E-Procurement Arrangements

- 9.1 Any joint procurement arrangements with other Local Authorities or public bodies including membership or use of Purchasing Consortia shall be approved by the Section

151 Officer or their representative prior to the commencement of any procurement by the Council.

- 9.2 All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these Contract Procedure Rules and no exception is required. However, purchases above the EU Threshold – See Appendix B – must be let under the EU Procedure, unless the consortium has satisfied this requirement already by letting their contract in accordance with EU Procedures on behalf of the Council and other consortium members.
- 9.3 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the Contract Procedure Rules of the leading organisation, shall be deemed to comply with these Contract Procedure Rules and no exemption is required. However, advice must be sought from the S.151 Officer or their representative.
- 9.4 Where appropriate electronic procurement, such as e-ordering, e-tendering, e-marketplace and e-auctions, may be used with the requirement to comply with all aspects of these Contract Procedure Rules and the Council's Financial Regulations.

10. The Office of Government Commerce

- 10.1 The Office of Government Commerce (OGC) has in place various Framework Agreements that have already been tendered through EU Procedures and therefore can be used by the Council without the need for re-tendering for contracts up to £75,000 in value. The S.151 Officer or their representative shall be contacted for guidance. Details can be found on the OGC website: www.ogcbuyingsolutions.gov.uk.

Contracts over this value still need four formal tenders, although the use of a Framework Agreement as part of the tendering process is allowed.

11. The Tendering Process

11.1 Invitation to Tender (ITT)

- 11.1.1 The ITT shall include details of the Council's requirements for the particular contract including:
- i) A description of the works to be undertaken, the goods or services being purchased, including a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers, including any environmental management systems;
 - ii) The procurement timetable including the tender return date, which shall allow a reasonable period for the applicants to prepare their tenders;
 - iii) Information on whether any variations are permissible;
 - iv) The Council's terms and conditions of contract or main contract clauses as relevant - See Paragraphs 18 - 23;
 - v) The evaluation criteria including any weightings, for example, price, quality service, quality of response, understanding of requirements, successful track record;

- vi) Pricing formats or mechanisms and instructions for completion;
- vii) Whether TUPE will apply;
- viii) Form and content of Method Statements to be provided;
- ix) Rules for the submission of Tenders;
- x) Any further information which shall inform or assist tenderers

11.2. Submitting tenders

- 11.2.1 Tenders up to the value of £75,000 shall be delivered to the service department requesting the tender. Tenders over £75,000 shall be delivered to the Democratic Services Manager.

Tenders can be delivered in either paper or electronic form. Paper tenders must be delivered in a plain, securely sealed envelope, or in any special envelope provided by the Council for the purpose. Such envelopes shall in no way indicate the identity of the sender.

- 11.2.2 The outside of the envelope shall be marked "Tender" and with the name of the contract to which the tender relates.
- 11.2.3 On receipt of each tender the envelope shall be endorsed with the date and time of arrival.
- 11.2.4 Tenders received by hand shall be receipted.
- 11.2.5 All tenders received valued at over £75,000 shall remain unopened in the secure custody of the Democratic Services Manager or such other Officer appointed for that purpose until the appointed time for opening. Tenders valued at £10,000 or over up to £75,000 shall remain unopened in the secure custody of the relevant Head of Service or their representative
- 11.2.6 Electronic tenders are to be kept in a separate secure structure which cannot be opened until the deadline has passed for receipt of tenders by the officer conducting the procurement.

11.3 Opening tenders

- 11.3.1 Tenders valued at £10,000 or over up to £75,000 shall be opened in the presence of at least two officers. Tenders over £75,000 shall be opened at the designated time in the presence of the following:

- i) Democratic Services Manager or their representative;
- ii) the Head of Service or their representative
- iii) the Section 151 Officer, or their representative for all contracts above the EU Procurement Threshold,

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- 11.3.2 Tenders valued at £10,000 or over and up to £75,000 shall be numbered by the relevant Head of Service and their representative as they are opened. Tenders over £75,000 shall be numbered by the Democratic Services Manager or their representative as they are opened.
- 11.3.3 For tenders over £75,000 the Democratic Services Manager shall immediately prepare a list of tenders received in a Tender Book detailing the names of tenderers and the tender sums and this shall be certified by those present as a true record. For tenders valued at £10,000 or over the relevant Head of Service or their representative shall carry out the same exercise in their own Service's Tender Book
- 11.3.4 A record shall also be made in the relevant contract file of any contractors invited to tender but who failed to tender.

11.4 Evaluation of Tenders and Correction of Errors

- 11.4.1 Tenderers must complete all tender documentation or parts thereof. Any omissions shall render a tender null and void, with no further consideration given, save for omissions which are of an insignificant nature, any such omissions being recorded in the Tender Book.
- 11.4.2 Tenders subject to EU Regulations shall be evaluated in accordance with the relevant EU Regulations and the evaluation criteria set out in the ITT. All other tenders shall be evaluated in accordance with the evaluation criteria set out in the ITT.
- 11.4.3 All contracts shall be awarded on the basis of the most financially favourable tender or the most economically advantageous tender for the Council. This means that the Council is not obliged to accept a tender just because it is the lowest price. Other non-price elements must also be taken into account such as quality, service, references, professionalism, sustainability, socio-economic benefits, environmental considerations etc. The evaluation criteria shall be prepared by the Head of Service and shall be listed in the ITT documentation. In addition, the criteria shall be strictly observed (and remain unchanged) at all times throughout the Contract Award Procedure.
- 11.4.4 All tenderers shall be compared impartially using the same criteria with a view to securing the most financially favourable tender or the most economically advantageous tender with the same degree of security and confidentiality as at all stages of the tendering process.
- 11.4.5 All tenders shall be checked for arithmetical accuracy, including the correct extension and summation of rates tendered in the bill of quantities.
- 11.4.6 Tenders received shall be evaluated; particular attention shall be given to rates and prices, percentage adjustments, balancing items, ambiguities, qualifications and alternative offers.
- 11.4.7 If a tender is found to contain ambiguities or arithmetical errors, the tender total shall be corrected and the tenderer notified accordingly. The tenderer will then be given the opportunity of confirming the rate or withdrawing the tender. In order to preserve parity of tendering, amendment to tender rates after submission of tenders shall not be permitted. If the tenderer withdraws or the revised tender is no longer the most competitive, the next most competitive shall be examined and dealt with in the same way. Where the Council has made an error in a tender then all bidders shall be informed and given the opportunity to either amend their tender or withdraw from the tender process.

- 11.4.8 The Head of Service must keep a written record of all amendments.
- 11.4.9 There shall be no significant changes in specification in any dealings with tenderers after tenders have been opened. Where post-tender negotiations are necessarily undertaken, no tenderer shall be given an opportunity to reconsider a tender on the original specification, unless similar opportunities are given to all tenderers.
- 11.4.10 Any changes which affect the original tendered sum(s) shall be notified to the Democratic Services Manager for inclusion in the Tender Book which shall be signed by the Democratic Services Manager or their representative and the Head of Service or their representative.
- 11.4.11 The Head of Service shall compile a report on the evaluation of the tendered amounts with the original estimate; this report shall form the basis for acceptance of the preferred tender.

11.5 Late or incomplete tenders

- 11.5.1 Late or incomplete tenders shall not be considered but shall be opened by the Democratic Services Manager or his or her representative to ascertain the name of the tenderer so that the tender may be promptly returned. An exception shall be allowed if the relevant Head of Service is satisfied that a tender had been sent in good time but for technical reasons beyond the tenderer's control the tender had not been received in time by the Council.

11.6 Acceptance of tenders

- 11.6.1 Subject to the provisions below, the Head of Service shall accept the most financially favourable tender or the most economically advantageous tender received on behalf of the Council, provided that:-
- i) it is within the approved estimate; in all cases, the Head of Service shall document and sign a file note recording the preferred tenderer, along with the names of all Members and Officers involved in the decision making process;
 - ii) the contract is awarded using the tender evaluation criteria.
- 11.6.2 The successful tenderer shall be notified promptly following the decision to accept the tender.
- 11.6.3 Where the most financially favourable tender or the most economically advantageous tender is outside the approved estimate provision, the Head of Service shall either:
- i) write to all tenderers explaining the situation and giving them the opportunity to lower their tenders to within the approved estimate; or
 - ii) report to the Executive requesting an increase in the estimate provision; or
 - iii) report to the Executive requesting authority to revise the specification and seek new tenders. If it is decided to re-tender, all previous tenderers shall be asked to tender again, and no tenderers shall be given any information about any of the first tenders.
- 11.6.4 No tender other than the most financially favourable tender or the most economically advantageous tender (see 11.4.3) shall be accepted until the Corporate Team and the

Executive has considered a report from the Head of Service which shall include reasons for arriving at this decision and the comments of the Head of Legal and Democratic Services as Monitoring Officer.

- 11.6.5 For all contracts up to £10,000 the decision to award a contract shall be made by the Service Manager or Head of Service.
- 11.6.6 For all low value contracts £10,000 - £75,000 the decision to award a contract shall be made by the Head of Service and, in the case of contracts for the supply of goods and services, evidenced on the Supplier Selection Form for Order Values £10,000 - £75,000 - See Appendix C.
- 11.6.7 For medium value contracts over £75,000 but below the EU Procurement threshold the decision to award a contract shall be made by the Head of Service. However, if four tenders have not been obtained, approval of the tender shall be determined by the Corporate Team. In the case of contracts for the supply of goods or services, the decision to award the tender will be evidenced on the Supplier Selection Form for Tender Values over £75,000 - See Appendix C.
- 11.6.8 For high value contracts over the EU Procurement threshold, the decision to award a contract shall be made by the Head of Service and approved by the Section 151 Officer. However, if four tenders have not been obtained, approval of the tender shall be determined by the Corporate Team. In the case of contracts for the supply of goods or services, the decision to award the tender will be evidenced on the Supplier Selection Form for Tender Values over £75,000 - See Appendix C.
- 11.6.9 Only the Executive can accept a tender that would require an increase in the Council's total revenue or capital budget.
- 11.6.10 Once the contract has been let, all unsuccessful tenderers shall be notified of the results, and may be informed of the successful price on request. The letter of acceptance shall not seek to qualify the terms and amounts previously tendered by the contractor.
- 11.6.11 The letter of intent establishes a legally binding contract which shall be subsequently supported by a deed if the contract is to be under seal.
- 11.6.12 Heads of Service shall have discretion to contact contractors who did not tender inviting them to give reasons for their failure to tender.
- 11.6.13 Heads of Service shall keep written records of contractors for a period of six years; however, written documents which relate to unsuccessful contractors may be microfilmed or electronically scanned or stored by some other suitable method after 12 months from award of a contract, provided there is no dispute about the award.

12. Post-Tender Negotiation

- 12.1 For contracts under the EU Procurement threshold price negotiation shall be allowed but the Head of Service must consider and implement the principles of non-discrimination, equal treatment and transparency. If the contract value requires completion of a Supplier Selection Form - See Appendix C - then any price negotiations must be recorded on the form. The Head of Service shall seek clarification on specifications and assistance from the S.151 Officer or their representative.

12.3 If a contract is over the EU Procurement threshold s then price negotiation is not permitted.

13. Letters of Intent / Payments Prior to the Signing of a Contract

13.1 No payments shall be made to any supplier, partner or consultant prior to the signing of a contract or, in exceptional circumstances, a letter of intent has been issued. Any letter of intent shall only be issued with the agreement of the Head of Service and then only after a risk assessment has been considered.

14. Contract Extension

14.1 Any contract may be extended by the Head of Service in accordance with its terms. Where the terms do not expressly provide for extension then, subject to any legal constraints, the contract may be extended by negotiation. The Head of Service shall always be satisfied that the extension shall achieve best value for money, that it is truly an extension of an existing contract and that it is reasonable in all the relevant circumstances.

14.2 All such extensions shall be notified to the Head of Legal and Democratic Services and the S.151 Officer or their representatives.

14.3 Once a contract has expired it cannot then be extended.

14.4 A contract may not be extended if the value of the extension is more than 50% of the original contract value.

15. Contracting with the Not for Profit Sector

15.1 These Contract Procedure Rules shall also apply in full to any Contracts or Service Level Agreements made between the Council and any Not for Profit Organisation.

15.2 Where the Council is acting as an Accountable Body for any government funding then these Contract Procedure Rules shall also apply in full.

16. Form of Contracts

16.1 All contracts shall be in writing, which can be a formal document or an official order or a letter, and signed by both parties.

16.2 All medium and high value contracts shall be in writing and (subject to Paragraph 24 below) signed by the Head of Legal and Democratic Services or by any other Officer of the Council duly authorised to sign such contracts by the Head of Legal and Democratic Services. Contracts may also be in an electronic format and must include, as a minimum:

- i) The work to be undertaken, or the goods or services etc. to be supplied;
- ii) The price and any discounts;
- iii) The place of supply and/or delivery of goods or services;
- iv) Any specific time scales to be achieved.

17. Nominated Sub-Contractors and Suppliers

- 17.1 If a Sub-Contractor or Supplier is to be nominated or named to a main Contractor, quotations or tenders shall be invited in accordance with these Contract Procedure Rules and the terms of the invitation shall be compatible with the main contract.

18. Contract Conditions

- 18.1 Below is a selection of Contract Conditions which are to be used in different types of contract. Those that are appropriate must be selected and if in doubt advice as to their use obtained from the Head of Legal and Democratic Services.

18.2 Health and Safety

The contractor, their sub-contractor(s), consultants and any self employed person(s) engaged for the purposes of the contract shall comply fully with:

- i) Their obligations under the Health and Safety at Work etc. Act 1974 and all relevant statutory provisions; NOTE- THERE IS A HEALTH ACT 1999 RELATING TO THE HEALTH SERVICE BUT THE 1974 IS STILL THE CORRECT ACT TO QUOTE HERE
- ii) The Council's general and specific health and safety policies and procedures, including any local, or site-specific health and safety requirements in force for the time being, and;
- iii) Any other reasonable requirements, specified to them, in writing or otherwise, by the Council's competent person appointed for the purpose of health and safety assistance.
- iv) Construction, Design and Management Regulations for building contracts

Uses: This should be in all contracts for the provision of works and most contracts for services to, or on behalf of, the Council where health and safety could possibly be an issue.

18.3 Indemnity

The contractor shall indemnify the Council against any claim for bodily injury, loss of life or damage to property of third parties provided always that this indemnity shall not apply where the bodily injury, loss of life or damage to property results from any act or default of the Council, its Officers or agents or other Contractors (not being employed by the Contractor).

The Contractor shall effect and maintain insurance policies which provide full cover in respect of such claims and shall when required by the Council or its Officers produce satisfactory evidence that it is insured against such liability.

Uses: In all works and services contracts where there is any possibility of injuries to persons or property.

Consultants entering into a contract with the Council need to have an appropriate level of professional indemnity insurance in place to protect the Council against losses arising from negligence on the part of the consultant or their staff. The level of professional indemnity insurance required will be assessed by the S.151 Officer or their representative,

Uses: In all works or services contracts where financial loss may arise as a result of errors of professional judgement on the part of the consultant.

18.4 Anti-Corruption (Gifts or Rewards to Councillors or Officers)

The Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or refrain from doing or for having done or refrained from doing any action in relation to the obtaining or execution of the Contract or any other Contract with the Council or for showing or refraining to show favour or disfavour to any person in relation to the Contract or any other Contract with the Council, or if the like acts shall have been done by any person employed by him or her or acting on his or her behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the Council the Contractor to or any person employed by him or her or acting on his or her behalf shall have committed any offence under the Prevention of Corruption Act 1889 to 1916 or shall have given any fee or regard the receipt of which is an offence under the sub-section (2) of section 117 of the Local Government Act 1972. Gifts or consideration is defined for both the Council's member and employee Code of conduct as being valued at £25 or over.

NOTE: THERE ARE NO LATER PREVENTION OF CORRUPTION ACTS

Uses: All contracts.

18.5 Human Rights, Equality and Discrimination

- a) Comply with the Human Rights Act 1998;
- b) Comply with all equality and anti-discrimination legislation including the provisions of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 1995 as amended by the Disability Discrimination (Amendment Act) 2005, the Equal Pay Act 1975, the Sex Discrimination Act 1975, the Gender Reassignment Regulations 1999, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations (2006) and the Equality Act 2006 and accordingly will not treat one group of people less favourably than others because of their colour, race, nationality, religion, ethnic origin, gender, sexual orientation, age, disability or otherwise in the decision to recruit, train, promote, discipline or dismiss its personnel and will have regard to the need to eliminate unlawful discrimination and to promote equality and diversity;
- c) Observe all equality and anti-discrimination codes of practice including the Commission for Racial Equality's Code of Practice in employment as approved by Parliament in 1983 and the Disability Rights Commission and the Equal Opportunities Commission Code of Practice issued in 2003;
- d) Comply with the Council's own policies on equality and anti-discrimination;
- e) Maintain and promote an equality policy with the aim of ensuring an environment free from discrimination and set this out in instructions to those concerned with recruitment, training and promotion; in documents available to its personnel recognised trade unions or other representative groups of its personnel; and in recruitment advertisements and other literature;
- f) On request provide the Council with examples of the instructions and other documents, recruitment advertisements and such other literature as the Council

may reasonably request for the purpose of assessing the Contractor's compliance with this clause;

- g) Monitor and review the representation within its workforce and provide the Council with a breakdown of job applicants and workforce of; colour, race, nationality, ethnic origin, religion or belief, gender, sexual orientation, age or disability having regard to the Council's own procedures for monitoring representation among its own employees;
- h) On request attend meetings to review and discuss the Contractor's compliance with equality and anti-discrimination requirements;
- i) In the event of any investigation or legal proceedings (whether civil or criminal) brought against the Contractor relating to its obligation under this clause shall provide details to the Council and the steps taken to remedy the situation;
- j) Indemnify the Authority in the case of any finding under any anti-discrimination legislation arising out of the contractor's acts or omissions; and
- k) Impose the same obligations on any sub-contractor used to deliver the contract.

Uses: In all contracts where:

- i) The contractor's staff work on Council premises or alongside the Council's employees; or
- ii) Services are provided to the public on behalf of the Council or as a joint or consortia arrangement; or
- iii) The contract consists of major capital works; or
- iv) Labour costs are a major cost of the overall project.

18.6 Freedom of Information

The Freedom of Information Act 2000 ("the Act") gives a general right of public access to all types of recorded information (subject to exemptions) held by the Council or on behalf of the Council by another party, and places a number of obligations on the Council with regard to disclosure of information. The Contractor will accept the Council's duty to comply with the Act and will co-operate in providing information held on behalf of the Council to enable the Council to meet its statutory obligations. The Council shall undertake to consider the application of exemptions with respect to any information supplied by the contractor to the authority.

Uses: All contracts.

18.7 Third Party Rights

Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement.

Uses: All contracts where a person who is not a party to the contract might feasibly claim that they were affected by a term in the contract, for example, a person discriminated against by the contractor might try to use the anti-discrimination clause in

the contract to claim that the Council should compensate them for the actions of the Contractor.

18.8 Data Protection

The Council shall comply with the Data Protection Act 1998 and accompanying legislation in respect of the use of all personal data arising from the performance of the contract, whether supplied by the Council or otherwise obtained.

Uses: All contracts where the Contractor holds or uses information (or works on information held by the Council) about individuals, whether they are members of the public or employees – this shall therefore be required in most contracts where services are provided to the public, software contracts with consultants who are working on the Council's computer network etc.

18.9 Dispute Resolution

In the first instance, the parties will use reasonable endeavours and act in good faith to resolve any disputes or claims that may arise in connection with this Contract through both parties negotiating. If these negotiations should fail to resolve the dispute within 28 days, both parties will attempt to resolve the dispute through mediation.

The decision as to who shall act as mediator is to be agreed between the parties. Failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of a mediator, the mediator must be appointed by the Centre for Dispute Resolution within 14 days of the appointment of the mediator, the parties must meet the mediator to agree the procedure to be adopted for the mediation.

All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.

If the parties agree on a resolution of the dispute, the agreement shall be put in writing and once signed by the parties, will be binding on them.

If the parties fail to resolve the dispute within two months of the mediator being appointed (or longer period by agreement) or if either party withdraws from the mediation procedure then either party may exercise any remedy it may have under or in connection with the contract through the English courts.

Neither party shall be prevented, by the inclusion of this mediation clause, from applying at any time to the English courts for such interim or conciliatory measures (including but not limited to preservation of property) as may be considered appropriate".

Uses: All contracts over £10,000 unless a standard RIBA or ICE Contract is used, or some other professional body contracts which have their own dispute resolution mechanism.

19. Liquidated Damages

- 19.1 Provision shall be made in all works contracts for payment of liquidated damages by the contractor where there is a failure to complete the contract within the time specified.

- 19.2 The amount of liquidated damages shall be determined by the appropriate Head of Service in consultation with the Section 151 Officer.

20. Performance Bonds

- 20.1 Where the estimated amount of a construction contract exceeds £250,000 the Head of Service shall normally require the contractor to provide a bond or other security. Any decision not to require a bond, which will require the approval of the Section 151 Officer, will be recorded on the appropriate contract file.
- 20.2 If a bond or other security is deemed necessary, the amount shall be either risked based to cover the estimated loss to the Council if the contractor defaults and a replacement has to be found or a minimum of 10% of the contract value.

21. Assignment and sub-letting

- 21.1 All contracts shall include clauses preventing:
- i) the assignment of contracts except with the prior written permission of the Council;
 - ii) the sub-letting of any part of the work contained in the contract except with the prior written approval of the Head of Service.

22. Cancellation and Determination

- 22.1 The following clause shall be included in every written contract:
- “The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf commits any fraud in connection with this or any other Council contract whether alone or in conjunction with Council Members, Contractors or Officers. Any clause limiting the contractor’s liability shall not apply to this clause. “
- 22.2 In the event of it being necessary to consider the termination of a contract, the Head of Service shall discuss the proposed course of action with the Section 151 Officer.

23. Compliance with British Standards

- 23.1 Where applicable, all contracts shall require that all works carried out or goods supplied conform to the current British Standard Specification, European equivalent or Code of Practice, if such exists.
- 23.2 Where applicable, reference shall be made in contract documentation to specific British Standards or European equivalent as appropriate to define more clearly the scope of the contract.
- 23.3 Heads of Service will keep details of the value of their procurement that conforms to individual British Standards and/or their European equivalent.

24. Sealing Contract Documents

- 24.1 The Head of Legal and Democratic Services, or any other person authorised by him/her from time to time, has delegated authority under the Council’s Constitution to seal contracts.

25. Insurance

- 25.1 Prior to letting a contract the Head of Service shall ensure that the contractor holds adequate insurance policies to include, where appropriate, professional indemnity insurance which shall protect the Council's interest and cover all potential losses that may arise. An adequate level of insurance shall be determined in consultation with the Council's Insurers.
- 25.2 The Head of Service shall make and record such checks as are necessary from time to time to ensure that the contractor's insurance policies remain in force.

26. Avoidance of Restrictive Practices

- 26.1 All contractors submitting a tender or a request for inclusion on a Select List or Ad Hoc List shall sign a declaration that:
- i) they shall not communicate the amount of the proposed tender to anyone except the Council;
 - ii) they shall not receive details of a proposed tender from any other contractor;
 - iii) they shall not adjust the amount of a proposed tender as a result of an arrangement with any person other than the Council;
 - iv) they shall not agree with any other person:
 - a) the amount of the proposed tender;
 - b) not to tender.
- 26.2 If the contractor is in breach, the Directors and Heads of Services shall be informed so that relevant action can be taken to include taking a report to the Executive.

27. Engagement of Consultants

- 27.1 Consultants shall only be used if, in the opinion of the Head of Service, in consultation with the Section 151 Officer, there is a justifiable case for the use of external consultants. The relevant Head of Service shall also inform the Human Resources Manager prior to appointment.
- 27.2 The Executive must have resolved to support the actual project in principle before consultants are appointed. A note shall be placed on each project's file stating:
- i) why it was necessary to use an external consultant;
 - ii) the brief for the project;
 - iii) the brief for selecting the consultant and how this was met;
 - iv) which Officers were involved in the selection process.
- 27.3 Where Consultants are employed by the Council, the Head of Service shall ensure that the requirements of Paragraph 18 above are written into the terms of their engagement.

- 27.4 Any Consultant who is to be responsible for supervising any stage of the contract process on behalf of the Council shall:
- i) comply in all aspects with these Contract Procedure Rules and the Council's Financial Regulations;
 - ii) hold, where appropriate, an adequate level of Professional Indemnity Insurance to cover any potential loss that may arise;
 - iii) produce all records maintained by him or her relating to the contract to the Head of Service or his or her representative whenever requested during the period of the contract;
 - iv) pass all records to the Head of Service on completion of the contract.
- 27.5 The Head of Service shall:
- i) ensure that consultancies can be properly funded, within an approved budget and expenditure code;
 - ii) consider the nature of the contract and how payments shall be made;
 - iii) draw up a written contract with any consultants employed;
 - iv) ensure that all documentation relating to a proposed consultancy is collated by an experienced officer in consultation with the Head of Legal and Democratic Services.
- 27.6 When grants are awarded to outside bodies for feasibility studies, the organisation concerned shall be responsible for appointing and monitoring the Consultants. Grant funded projects agreed by the Council shall proceed without any variation to the brief which would result in the Council incurring extra costs.

28. Disposal of Land by the Council

- 28.1 The initial valuation of assets to be disposed of shall be carried out by the Council's valuer, who shall be provided with written instructions over the proposed sale (or exchange of land where the disposal is part of an exchange), including an assessment of the expected economic benefits of the sale, prior to the commencement of the valuation process.
- 28.2 The Head of Legal and Democratic Services has delegated authority to approve
- a: leases and licences where the rental or fee is less than £10,000(or any premium is less than £10,000) or is for a period of less than 15 years;
 - b. sales, purchases and easements where the value of the transaction is less than £10,000;
 - c. landlord's consent in respect of existing leases; and
 - d. variations to existing leases, licences and charges if the variation is within the limits set out above in 28.2 or the variation relates to terms other than rental or period.
- 28.3 The Head of Legal and Democratic Services, in consultation with the Section 151 Officer, has delegated authority to approve;

- a) leases and licences where the rental or fee is between £10,000 and £50,000 per annum (or any premium is between these limits) or is for a period between 15 and 25 years ;
- b) sales, purchases and easements where the value of the transaction is between £10,000 and £50,000 per annum;
- c) variations to existing leases, licences and charges if the variation is within the limits set out above in 28.3 and new charges over property;
- d) Other transactions where the Executive or Council has given delegated authority in respect of specific matters. When additional delegated authority has been given, this must be supported by signed documentation.

28.4 The Chief Executive, in consultation with the Chair of the Executive, has delegated authority to approve;

- a) leases and licences where the rental or fee is between £50,000 and £100,000 per annum (or any premium is between those limits) or is for a period of 25 years or more;
- b) sales, purchases and easements where the value of the transactions is between £50,000 and £100,000;
- c) all variations to existing leases, licences and charges not delegated by 28.2.4 and 28.3.4.

28.5 The Executive must approve:-

- a) leases and licences where the rental exceeds £100,000 per annum (or if for any premium exceeding that amount);
- b) sales, purchases and easements where the value of the transaction is between £100,000 and £250,000

28.6 The Council must approve sales, purchases and easements where the value of the transaction exceeds £250,000 .

28.7 Disposals can be made by either open market competitive tender, in the form of a sealed bid, by auction or by direct negotiation with prospective buyers where no competition exists. At all times, the Council must achieve best value by maximising disposal proceeds wherever possible. The way a disposal is to be arranged shall be subject to agreement between the Head of Legal and Democratic Services, the Section 151 Officer and the S.151 Officer or their representative.

28.8 Disposals or leases at less than market value as defined by the Valuer require the following approvals; NOTE: FOR CLARIFICATION I HAVE NOT ADDED IN REFERENCE TO A SECOND VALUER AS THE VALUER IN ANY CASE NEEDS TO BE PROFESSIONALLY QUALIFIED ETC. HOWEVER, PLEASE LET ME KNOW IF IT'S THE VIEW THAT THERE SHOULD BE A SECOND VALUATION IN SUCH CIRCUMSTANCES

- Where the value is less than £50,000, the consent of the Head of Legal and Democratic Services;
- Where the value is between £50,000 and £100,000, the consent of the Head of Legal and Democratic Services and the Section 151 Officer.

- Where the value is between £100,000 and £250,000, the consent of the Executive.
- Where the value is £250,000 or more, the consent of the Council;
- Where required the consent of the appropriate Secretary of State.

The Ward Councillor(s) shall also be consulted.

- 28.9 Where the Section 151 Officer and the Head of Legal and Democratic Services decide that land shall be disposed of by way of a formal open market competitive tender then:
- The procedure for the receipt, custody and opening of tenders and for dealing with late bids shall be in accordance with these Contract Procedure Rules , except that:
 - a defined range of uses which may be acceptable to the Council shall be provided in the tender documentation;
 - late tenders received shall be opened in the same way but the tender shall not be considered unless no other tenders have been submitted;
 - All persons by whom or on whose behalf a tender is submitted shall declare on the form of tender whether they are Members or Officers of the Council or whether they are related to a member or employee of the Council. Failure to make such a declaration or the making of a false declaration shall invalidate the tender and render voidable at the option of the Council any contract entered into as a result of the tender
 - A tender may be accepted in accordance with these Contract Procedure Rules provided that in the event of there being a proposal to accept a tender from a Member or Officer of the Council or a relative of such a person this shall be referred to the Executive for consideration.
- 28.10 Where the Section 151 Officer and the Head of Legal and Democratic Services decide that land shall be disposed of at auction, then the Directors and Heads of Services shall have the necessary authority to appoint and instruct independent auctioneers. Reserve prices shall be agreed between Head of Legal and Democratic Services and the auctioneers instructed in conjunction with the Section 151 Officer. A schedule of land disposed of, auctioneers used, reserve prices and achieved receipts shall be reported retrospectively to the Executive on an annual basis.
- 28.10 Where the Section 151 Officer and the Head of Legal and Democratic Services decide that where the land shall be disposed of by direct negotiation with a prospective buyer then;
- where the disposal is in accordance with delegation limits set in paragraphs 28.3 and 28.4 above then;
 - the Council's shall appoint a representative with appropriate valuation expertise to be present at all negotiations with the prospective buyer.
 - a written record of all negotiations held with the prospective buyer shall be kept, which must include details of all the key facts and specific issues that

were considered to arrive at the decision(s) determining the terms and conditions of the disposal.

- iii. the Executive shall receive a post-disposal report, detailing the decisions taken as part of the disposal process, the results of the negotiations and the expected benefits of the disposal,
- b) where the disposal is over £250,000 in value, then
- i) the Council will be represented in negotiations with the prospective buyer by the Chief Executive and the Council's Valuer or their representatives,
 - ii) a written record of all negotiations held with the prospective buyer shall be kept, which must include details of all the key facts and specific issues that were considered to arrive at the decision(s) determining the terms and conditions of the disposal. This record must be certified as a true record by a member of the negotiation team.
 - iii) the Council may approve the disposal of the land on the terms agreed by the negotiation team either directly, or by appointing a panel of members to consider the terms of the disposal and recommend approval or rejection of the terms of the sale as appropriate.
 - iv) If a member panel is appointed, full Council shall receive a post-disposal report, detailing the decisions taken as part of the disposal process and the results of the negotiations.

28.11 Where there is a proposal to dispose of land to a Member or Officer of the Council other than by a competitive tender and the disposal is in the opinion of the Chief Executive not a routine disposal, the proposal shall be referred to the Executive for consideration and a full report shall be made by the Directors and Heads of Services on the proposal.

28.12 For the purpose of this Contract Procedure Rule, persons shall be deemed to be related if they would be so deemed for the purposes of the officer employment rules of the Council.

28.13 For the purpose of this Contract Procedure Rule, 'Officers' includes any person who receives remuneration directly from the Council.

28.14 The Directors and Heads of Services shall have regard at the outset to matters of Value Added Tax on the acquisition and disposal of land. Guidance can be sought from the Section 151 Officer or their representative..

29. Works Contracts – Financial Provisions

29.1 This Contract Procedure Rule applies to works contracts only.

29.2 Payments to contractors for works with a total value of over £75,000 will only be made on a formal certificate signed by the service manager responsible for the supervision of the contract or other person(s) authorised to do so by the service manager.

29.3 For contract payments below £75,000, The Section 151 Officer can approve payments against invoices signed by the appropriate service manager, architect or contract supervisor.

- 29.4 All contract variations on works contracts shall be authorised in writing by the appropriate service manager, or other person(s) authorised to do so after consulting with the service manager. Estimates of the cost variations arising from the contract variation shall be forwarded to the Section 151 Officer when the contract value or budget for the project will be exceeded.
- 29.5 The final payment on any contract with a value of over £75,000 shall be supported by a detailed statement of account prepared by the appropriate service manager, architect or contract supervisor. Where necessary, further documents and other information, will be provided to the Head of Service for examination to satisfy him/herself that the contract records are accurate and that the contract conditions have been met. When the Head of Service has completed this examination of the final account for the contract, the final contract certificate will be approved for payment.

30. Risk Assessment, Contingency Planning and Business Continuity

- 30.1 A business case must be prepared for all procurements with a potential value over £75,000. Resources for the management of the contract, for its entirety, must be identified in the business case.
- 30.2 For all high value contracts, Heads of Service must:
- i) maintain a risk register during the contract period;
 - ii) undertake appropriate risk assessments and for identified risks;
 - iii) ensure contingency measures and business continuity plans are in place.

31. Amendment and Review of Contract Procedure Rules

- 31.1 No amendments shall be made to these Contract Procedure Rules unless they have been approved by a meeting of the full Council, following the recommendation of the Executive, consequent on that forum having approved a report submitted by the Head of Legal and Democratic Services recommending the amendments.
- 31.2 In this context an amendment shall mean any additions, changes or deletions.
- 31.3 The Contract Procedure Rules will be reviewed at intervals of not more than 3 years.

Managers' Quick Guide – Contract Procedure Rules

1. The value of a contract is its total cost. Various elements of the whole supply must be added together. Where the whole supply is over a fixed period of time the total cost of all supplies over the period is used. Where the whole supply is over an indeterminate period of years, then 4 years shall be taken as the cost period.
2. A budget must be available before a contract can be entered into.
3. Contract Procedure Rules apply to all contracts for goods, services and works with a value greater than £10,000.
4. Managers have a duty to act efficiently and achieve value for money where the contract value is less than £10,000.
5. For contracts between £10,000 and £75,000 managers are required to obtain written prices, quotations or tenders from at least 3 suppliers, accept the most economically advantageous quotation or tender to the Council and obtain Head of Service approval.
6. For contracts over £75,000 but below the OJEU threshold, managers are required to advertise tenders and establish ad-hoc and/or select lists for approval by the Head of Service. Then managers can invite and evaluate tenders and select and obtain approval of the most economically advantageous tender and obtain approval from the Head of Service.
7. For contracts above the OJEU threshold, EU competition regulations must also be complied with. The value of the work to be put out to tender differs between supplies, services and works contracts. For all contracts covered by EU competition regulations a contract notice must be placed within the European Journal and this precludes the requirement to advertise elsewhere. The contract notice can either be open allowing anyone to apply and be allowed to tender or restricted for the selection of companies to be included on an ad-hoc list.

A pre-qualification questionnaire may be needed or the notice used to enable technical and financial appraisal, evaluate tenders and select the most economically advantageous tender for approval by the Head of Service and the Section 151 Officer. The award of a contract over EU competition thresholds must be recorded in the OJEU.
8. There are restrictions on timescales allowing unsuccessful tenderers to challenge the tender acceptance process within 15 days of being notified that they were unsuccessful (10 days in EU contracts).
9. Use of framework contracts and consortia is allowed but if used managers must still demonstrate a robust approach to obtaining value for money.
10. The full life cost of a contract has to be assessed and contract evaluation will include a balance between cost and quality to ensure the most economically advantageous tender is accepted.
11. There are provisions within Contract Procedure Rules to deal with;
 - The correction of errors

- The extension of existing contracts
 - Post tender negotiations
 - Exceptions not requiring the use of Contract Procedure Rules including emergency and urgent contracts
 - Contracts for the disposal of land
 - Cost variations
 - Disputes procedure
 - Health and Safety, Equality and Discrimination issues
 - Corruption
 - Anti-competitive behaviour
 - Compliance with British Standards or the European equivalents
12. Heads of Service are required to maintain a record of contracts and lists of staff authorised to deal with contracts. Contract records must be copied to the s.151 Officer or their representative and the Procurement Team.
 13. If a breach of Contract Procedure Rules occurs, then the Head of Service must be advised as soon as the breach is found.
 14. Contract Procedure Rules need not be used for the purchase of goods, services and work with a value of less than £10,000, when normal ordering procedures shall apply. Nevertheless even at this level managers need to ensure that best value is obtained and that the supply of the goods, services or works is appropriate and necessary.
 15. Contracts for the supply of the same type of goods, services or works to meet Council requirements over a continuous period of time shall be aggregated.
 16. The value of a contract where either party has an automatic right to renew will include the initial value and any subsequent value over the remaining life of the contract.
 17. Framework agreements which provide for the ordering of goods, services or works (or a combination of these) will be valued on the basis of a reasonable estimate of the total value of the supplies to be provided under the agreement. If agreements are open-ended, then the expected value should be aggregated over four years.
 18. If at any time a manager thinks that by virtue of the aggregation of ongoing values in a contract, the contract should have been dealt with differently under Contract Procedure Rules, for example by exceeding EU competition limits, the manager should immediately inform the S.151 Officer.

Contracts Subject to the European Union Regulations

The Head of Legal and Democratic Services may be contacted for further details of the EU Procedures and up to date thresholds.

Where an estimated value of a contract exceeds the current EU Threshold, the contract shall be tendered in accordance with the Regulations. Under the Regulations, the contract may be tendered under the Open, Restricted Negotiated or the Competitive Dialogue. Procedures; tenders shall also be advertised in the local press and on the Council's Website; standstill Procedures shall also apply.

EU thresholds are reviewed every two years and the current levels are as follows;

	Supplies	Services	Works
Public Sector Contracting Authorities	£156,442	£156,442	£3,927,260
	Euro 193,000	Euro 193,000	Euro 4,845,000

SUPPLIER SELECTION FORM FOR TENDER VALUES £10,000 - £75,000		
Service		
Officer undertaking supplier selection		
Description of goods or services to be purchased:		
Suppliers selected to tender: (please keep tenders with this form)		
Supplier Name	Tender Value (£)	
1		
2		
3		
Please document rationale for selecting these suppliers		
Have you obtained tenders or quotes from at least three suppliers?	Yes	No
If not, please document the reasons why not, for example, Framework Agreement in place		
Successful Supplier:		
Please state your reasons for selecting this supplier. If the most financially favourable tender or quote or the most economically advantageous tender or quote has not been selected, please explain why.		
AUTHORISATION		
In authorising this contract , I confirm that:		
The value of this contract is within my prescribed authorisation limits; and		
I confirm there are sufficient financial resources available within my budget to fund the purchase.		
Head of Service	Job Title	
(please print name)	Date	
Countersigned by	Job Title	
(please print name)	Date	

SUPPLIER SELECTION FORM FOR TENDER VALUES over £75,000		
Service		
Officer undertaking supplier selection		
Description of goods or services to be purchased:		
Suppliers selected to tender: (please keep tenders with this form)		
Supplier Name	Tender Value (£)	
1		
2		
3		
4		
Please document rationale for selecting these suppliers		
Have you obtained tenders or quotes from at least four suppliers?	Yes	No
If not, please document the reasons why not, for example, Framework Agreement in place		
Successful Supplier:		
Please state your reasons for selecting this supplier. If the most financially favourable tender or quote or the most economically advantageous tender or quote has not been selected, please explain why.		
AUTHORISATION		
In authorising this contract , I confirm that:		
The value of this contract is within my prescribed authorisation limits; and		
I confirm there are sufficient financial resources available within my budget to fund the purchase.		
Head of Service	Job Title	
(please print name)	Date	
Countersigned by	Job Title	
(please print name)	Date	