



CONTRACT PROCEDURE RULES.

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CONTRACT PROCEDURE RULES

1. INTRODUCTION

- 1.1 In these Contract Procedure Rules the expression “the Council” shall be deemed to include reference to Cabinet or any Regulatory Committee with power to make decisions.
- 1.2 Contract Procedure Rules are formal Rules which exist to ensure that the Council lets Contracts in a fair, consistent, honest and legal manner.
- 1.3 Section 135 of The Local Government Act 1972 requires Local Authorities to introduce and implement Standing Orders for Contracts let “by them or on their behalf for the supply of goods or materials or for the execution of works”.
- 1.4 This document, therefore, constitutes the Council’s Contract Standing Orders pursuant to Section 135 of the Local Government Act 1972.
- 1.5 This edition of the Contract Procedure Rules will apply from 14th April 2008 and supersedes all previous editions.
- 1.6 All Contracts let by the Council will comply with the Local Government Act 1988 (Part II) which lays down general rules as to contracting practice and Local Government Act 1999 as to Best Value.
- 1.7 Full texts of the legislation referred to above are available on request from the Council’s Legal Section.
- 1.8 All Contracts let will take into consideration the Council’s Sustainable Procurement Strategy as well as the Council’s Policies on Sustainability.
- 1.9 In determining whether a financial threshold has been reached pursuant to Rule 4 below, it is a requirement of these Contract Procedure Rules to aggregate the value of separate Contracts for meeting a single requirement. Conversely, single requirements must not be broken down for the purpose of taking the value below the financial threshold.
- 1.10 Where under any Contract the Council is receiving rather than making payments, these Contract Procedure Rules will be observed as far as possible by the Council, and any breaches will be recorded in writing and report to Cabinet, if in the in the opinion of the Appropriate Director such a breach may result in an adverse impact on Council functions.

2. BEST VALUE

- 2.1. In all areas of contract revision to which the Council is either a party or of which it is a beneficiary, regard shall be had to the requirements of economy, efficiency and effectiveness specified in Section 3 of the Local Government Act 1999 (“the Act”) and, in particular, to any performance indicators or performance standards specified by the Secretary of State under Section 4 of the Act.
- 2.2. Contractors, sub-contractors or agents appointed pursuant to a Contract with the Council shall be, throughout the duration of the Contract, under a continuing duty to the Council:

- 2.3.1. To make arrangements to secure continuous improvement in the performance of its obligations to the Council having regard to a combination of economy, efficiency and effectiveness and, in particular, to any performance indicators or performance standards specified by the Secretary of State under Section 4 of the Act and to the provisions of any Best Value Performance Plan promulgated by the Court under Section 6 of the Act
- 2.3.2. To supply such information as the Council may from time to time reasonably request relating to the Contract and/or to the performance by that party of its obligations to the Council under that Contract.
- 2.3.3. To co-operate fully with the Council in discharging the Council's duty under Section 3 of the Act including as and where appropriate:
- setting benchmarks by which to measure performance under the Contract
 - incorporating into the Contract any applicable performance indicators or performance standards specified by the Secretary of State, whether prior to or during the course of the Contract.
 - establishing performance plans for the Contract either alone or together with other similar or related Contracts
 - Undertaking regular periodic reviews of the performance of the Contract.

3. DEFINITIONS

- 3.1 "Appropriate Director" shall mean the Corporate Director of Resources, the Corporate Director of Environment, the Corporate Director of Community Services, the Corporate Director of Support Services or such other Officers who have specifically been given powers in writing by way of delegated authority
- 3.2 "Approved List" shall mean a list of approved contractors compiled in accordance with Rule 13.2 below.
- 3.3 "Contract" shall mean a Contract as defined in English Common Law.
- 3.4 "Emergency" shall mean a situation which has arisen where in the opinion of the Appropriate Director to protect the public or the Council's interests a given course of action, such as procuring goods or services is immediately necessitated in order to deal with the emergency.
- 3.5. "External Approved List" shall mean a list of approved contractors compiled in accordance with Rule 13.3 below.
- 3.6. "Open Tender" shall mean tendering in accordance with Rule 13.4 below.
- 3.7 "Project" shall mean a sequence of related activities which are designed to achieve a defined outcome/change in service.
- 3.8. "Partnership" shall, as is defined by the Audit Commission be a joint working arrangement where the partners:
- Are otherwise independent bodies

- Agree to co-operate to achieve a common goal
- Create a new organisational structure or process to achieve a goal
- Plan and implement a jointly agreed programme, often with joint staff or resources
- Share relevant information and
- Pool risks and reward

3.9 “The Most Economically Advantageous Tender” shall enable the Council to consider the various criteria or specific evaluation criteria of particular relevance to the Council in relation to the Contract, such as – delivery or completion date, running costs, cost effectiveness, quality, aesthetic and functional characteristics, technical merit, after sales service and technical assistance, commitment with regard to spare parts, security of supplies and price.

3.10 “Tender” shall mean any written, binding offer to supply materials, goods, supplies, services or works in the manner laid down in these Contract Procedure Rules relating to Contracts and whose value exceeds £50,001.

3.11 “Quotation” shall mean any other offer, whether written or verbal, to supply materials, goods, supplies, services or works in the manner laid down in these Contract Procedure Rules relating to Contracts and whose value does not exceed £50,001.

3.12 “Serial Programme” shall mean any goods or services of a similar nature which are provided over a twelve month period, the total value of which exceed the limit for which Tenders would normally be obtained.

4. FINANCIAL THRESHOLDS

4.1 Where values appear in these Contract Procedure Rules, these exclude VAT. Contract values have been given financial thresholds as follows:-

Low Value	-	up to £10,000
Medium Value	-	£10,001 up to £50,000
High Value	-	£50,001 and over

4.2 The following values are relevant to EC procurement currently applicable (Rule 6 below)

£3,497.313*	(Works Contracts)
£139,893*	(Supplies and Services Contracts)

4.3 These Contract Procedure Rules will be reviewed annually by the Council and are available on the Council's Intranet.

5. COMPLIANCE WITH CONTRACT PROCEDURE RULES/FINANCIAL PROCEDURE RULES AND REGULATIONS

5.1 All Contracts made by the Council or on its behalf shall comply with these Contract Procedure Rules. The only exceptions to this will be as described in Paragraph 27 of these Contract Procedure Rules.

5.2 Every exception so made on behalf of the Council will be reported to the Council at the earliest opportunity with the reasons that justified the exception being made

- 5.3 These Contract Procedure Rules set out minimum requirements: higher levels of diligence may be appropriate for specific Contracts.
- 5.4 Appropriate Directors are responsible for ensuring that relevant legal requirements are complied with, that proper procedures are observed under these Contract Procedure Rules, the Council's Financial Procedure Rules and Regulations and that all relevant records are kept and maintained.
- 5.5 In the event of any conflict between European Community Legislation, UK Law and these Contract Procedure Rules, the requirements of European Community Legislation shall prevail over UK Law and the requirement of UK Law shall prevail over these Contract Procedure Rules.
- 5.6 The Appropriate Directors must ensure that a genuine pre-Tender estimate of anticipated costs is prepared and recorded in writing and where appropriate the value of a Contract is ascertained in accordance with the relevant European Procurement Rules.

6. COMPLIANCE WITH EUROPEAN COMMUNITY DIRECTIVES.

- 6.1 All Contracts let by the Council or on its behalf shall comply with any relevant European Community (EC) Directive. Directives are implemented by Regulations made under the European Communities Act 1972. In relation to EC procurement, EC Legislation becomes applicable when letting Contracts with an estimated value above financial thresholds referred to in Rule 4.2 above. The Directives make detailed provision for methods of specification, advertisement, selecting Tenderers, evaluating Tenders and awarding the Contract.
- 6.2 Works Contracts valued over £3,497,313* (or the equivalent in Euros), supplies and services contracts with a total value over £139,893* and service Contracts for Insurance with a total value over £139,893* must comply with European rules on specifications, advertising and selection.

Officers proposing to enter into Contracts over these limits should obtain advice from the Head of Legal Services to ensure that the correct procedures are followed.

***Note :** These are the current limits subject to change. All enquiries in respect thereof should be directed to the Head of Legal Services.

6.3 Definitions

- 6.3.1 Works - New and replacement building and civil engineering works, improvement and modernisation works to building and structures.
- 6.3.2 Supplies - The purchase of goods, plant, equipment, vehicles, materials and energy.
- 6.3.3 Services - Repair and maintenance works
Transport
Telecommunications
Financial, accounting and computing
Research and development
Consultancy, market research and advertising
Building cleaning and property management

Publishing and printing
Refuse collection and disposal
Sewage disposal
Hotel and restaurant services
Legal services
Personnel and placement services
Environmental health services
Security
Recreational, cultural and sporting Services
Insurance
Certain other services

6.3.4 Contract Value – the Total estimated value of the Contract to be placed (NOT the annual value).

7. AGENCY WORK

No agency work shall be carried out on behalf of any other organisation without the prior approval of the Council and without adequate Insurance arrangements being.

8. REGISTER OF CONTRACTS

Appropriate Directors will be responsible for ensuring contracts relating to their services are entered on the Register of all current Contracts, to include expiry dates and timescales for renewal and specify the name of the Contractor, the works to be executed or the goods, materials or services to be supplied and the Contract value. An extract from the Register shall be open to inspection by the public on the Council's website.

9. PRE-CONTRACT APPRAISAL AND PREPARATION OF TENDER DOCUMENTS

9.1 Before inviting Tenders or quotations (or letting Contracts if no Tenders or quotations have been invited) Appropriate Directors will ensure that:-

- (i) The proposed Contract is provided for in the appropriate budget
- (ii) The proposed Contract has been approved by the Council or is authorised under delegated powers
- (iii) Proper consideration and compliance with the Council's Project Management Handbook where the proposed Contract forms part of a Project as defined in Rule 3.7
- (iv) Proper technical and financial appraisal of the scheme has been undertaken;
- (v) In the case of high value Contracts, the Contract planning process allows sufficient time for the Council to decide which form of tendering should be used;
- (vi) Appropriate time is made available at each of the key stages, for example, to allow potential contractors to provide a considered response and answer any supplementary questions.

9.2 Tender documentation will normally consist of one or more of the following documents:-

- (i) Drawings
- (ii) Specification
- (iii) Bills of Quantity
- (iv) Standard Conditions of Contract together with special conditions (if appropriate)
- (v) Invitation to Tender
- (vi) Instructions to Tenderers
- (vii) Insurance
- (viii) Collusive Tendering Contract
- (ix) Canvassing Certificate
- (x) Contract Performance Bond
- (xi) Form of Tender
- (xii) Acceptance documents.

9.3 Other information may need to be made available to ensure that Contractors' bids reflect service requirements and are competitively priced. This may include the following:-

- (i) An outline of the Tender evaluation criteria in descending order of importance;
- (ii) The Terms and Conditions under which assets will be made available
- (iii) 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 will be provided by the Appropriate Director and not by an existing Contractor;
- (iv) The amount of work likely to be available under the Contract.

9.4 The Appropriate Director will ensure that:-

- (a) Ambiguities and contradictions do not occur between documents and information provided;
- (b) Any locally prepared variations to standard documentation are clear and use generally accepted terms;
- (c) Contract conditions and specifications are in the best interests of the Council in respect of quality, cost and performance

9.5 To ensure consistency and to aid understanding by the Tenderer, Tender documentation will be collated by an experienced Officer who will obtain the advice and approval of the Head of Legal Services.

10. CATEGORIES AND FORM OF CONTRACT.

10.1 All Contracts will be categorised by estimated value into low, medium or high value and this categorisation will determine which of the following sections of these Contract Procedure Rules are followed.

10.2 Every high and medium value Contract will:-

- (i) be in writing and signed by the Chief Executive or the Corporate Director of Support Services or such person authorised by them in writing
- (ii) Contain Specification of the goods, materials and works or services to be delivered or undertaken;

- (iii) Contain details of the price to be paid to include details of any discounts or deductions;
- (iv) Contain details of the timing of the Contract
- (v) Provide for the following remedies in the event of late delivery or non-delivery by the Contractor of the contract goods, materials or services:-
 - (a) termination of the contract by the Council either wholly or to the extent of such default
 - (b) the right for the Council to purchase alternative goods, materials or services of the same or similar description to make good the default or, in the case of termination, the goods, materials or services remaining to be delivered or carried out
 - (c) state that the amount by which the cost of purchasing other goods, materials or services exceed the amount which would have been payable to the contractor shall be recoverable from the contractor
- (vi) Provide that the law governing the contract shall be the law of England
- (vii) Provide that in the event of dispute between the parties which is incapable of resolution by negotiation shall be referred to a single arbitrator to be agreed by the parties, or in default thereof, to be nominated by the President for the time being of The Law Society

10.3 The Contract letting process will allow sufficient time for the legal documentation to be completed prior to the commencement of the Contract.

10.4 In exceptional circumstances where it is essential that work starts before formal Contract signing, it may be possible for a letter of intent to be submitted but this must only be done in consultation with Head of Legal Services. Any such letter of intent must be in the name of the Chief Executive or Corporate Director of Support Services or such person authorised by them in writing. A letter of intent may be construed as a formal Contract if not drafted appropriately. Letters of intent are only appropriate for works or services to the extent required to carry out emergency works or services where there are implications which may result in death, injury or damage to Council property or to the Council's reputation if the works or services are not executed accordingly.

10.5 The practice of split ordering to obviate the need to obtain quotations and Tenders is forbidden.

11. CODE OF PRACTICE FOR LOW VALUE CONTRACTS NOT EXCEEDING £10,000 (Official Order).

11.1 Official Orders will only be placed in accordance with these Contract Procedure Rules.

11.2 Orders for works, goods or services shall be in accordance with the Council's current procedures issued by the Head of Financial Services from time to time.

11.3 Official orders will be issued for all work, goods or services to be supplied to the Council except:

- where a formal Contract is entered into by the Council;
- supplies of public utility services;
- periodical payments, such as rent or rates;

- petty cash purchases;
 - where in the opinion of the Appropriate Director a failure by the contractor could result in an adverse impact on Council functions in such case a formal written contract will be let
 - other exceptions approved specifically in advance by the Head of Financial Services or Head of Legal Services
- 11.4 Official Orders will be in a form designed or approved by the Head of Financial Services and be signed only by employees authorised* by the Appropriate Director, who will be responsible for all official orders issued from their Unit.
- (*Names and specimen signatures will be supplied to the Head of Financial Services and Audit and updated as necessary).
- 11.5 Orders will be completed in sufficient detail to identify accurately the materials, work or service required including quantities wherever possible and will specify where applicable the quotation, Contract or other Agreement, the price agreed and the approved budget expenditure code against which costs will be charged.
- 11.6 Any Council directions relating to central purchasing, standardisation of supplies to materials, etc., will be complied with and in accordance with the Council's Strategic and Sustainable Procurement Strategy.
- 11.7 In respect of Contracts estimated in value to be £10,000 or less, then quotations from at least three suppliers are required except where the Appropriate Director considers it expedient to obtain less than three quotations.

12. MEDIUM VALUE CONTRACTS - £10,001-£50,000.

- 12.1 Contracts with an estimated value £10,001-£50,000 will be deemed medium value Contracts.
- 12.2 The Appropriate Director concerned will:
- 12.2.1 invite written quotations from at least three Contractors taken from the Council's Approved List; or
- 12.2.2 if no appropriate Approved List is available, from at least three Contractors whom the Appropriate Director considers suitable to carry out the Contract where works, supplies or services are clearly identifiable; or
- 12.2.3 where works, supplies or services are of a particularly specialist nature and are only available from one supplier, it is permissible to use that supplier provided that the price payable is considered reasonable and is pre-quoted in writing; or
- 12.2.4 where regular purchases or commission of works, supplies or services from the same supplier are likely to be made and it is considered inappropriate by the Appropriate Director to obtain competitive quotations for each individual supply, it will be sufficient to compile a Select List of suitable suppliers for regular use, providing that the prices charged are competitively tested by quotation at least annually;
- 12.3 Any quotations must be considered and accepted in accordance with Rule 2 as to Best Value above

12.4 Sufficient time will be allowed for written quotations to be submitted, i.e. a minimum of five working days for supplies contracts and a minimum of ten working days for works contracts.

12.5 A written record will be made of Firms invited to quote but who failed to do so.

13. HIGH VALUE CONTRACTS – £50,001 AND OVER

13.1 General.

13.1.1 Contracts estimated to have a value of £50,001 and over will be deemed high value Contracts.

13.1.2 The Appropriate Directors will be responsible for exercising their judgement as to the sub-division of work into packages, for example to enable separate Contracts to be let, with a view to seeking effective competition and to secure satisfactory service delivery.

13.1.3 The Appropriate Director will invite written Tenders from at least six Contractors and no more than twelve in accordance with one of the methods described in Rules 13.2, 13.3 and 13.4 below, in accordance with the decision of the Council to let the contract. Preliminary enquiries should be made as to a Contractor's desire to Tender for a particular Contract to ensure that the required number of completed Tenders is returned. In the event of a Contractor declining, another should be substituted to make up the desired number. If six suitable Contractors cannot be found then as many Contractors as possible will be invited to submit Tenders. Reasons for the shortfall e.g. purchase of patented articles or articles of registered design will be recorded in writing and approved by the Appropriate Director.

13.1.4 Appropriate Directors will ensure that sufficient time is allowed for the preparation of Tenders, having regard to the value and complexity of the subject of the Contract. This will normally be not less than twenty eight days. Invitations to Tender will be sent out by the Appropriate Director who will record:-

- (i) the name and nature of the Contract;
- (ii) the number of Tender invitations;
- (iii) the closing date and time for receipt of Tenders.

13.1.5 Tender documentation in accordance with Rules 13.1.3 and 13.1.4 above should be sent to all Contractors who request them. Charges may be made which should not exceed the marginal cost of production and postage.

13.2. Approved Lists

13.2.1 Where the Council maintains in any given area of its functions a List of Contractors it shall nominate an Officer to be responsible for its compilation, review and maintenance.

13.2.2 Any Approved List compiled, pursuant to 13.2.1 above, shall be compiled by inviting applications from suitable Contractors for inclusion in any Approved List by placing an advertisement giving at least ten days public notice in at least one local newspaper, at least one Trade journal (where appropriate) and any other publication as required under any relevant EC Directive.

- 13.2.3 Contractors will only be placed on an Approved List after they have been subject to an appraisal which will directly assess evidence of;
- (a) their current financial standing as required by Rule 13.2.4 below and
 - (b) technical capacity as required in Rule 13.2.5 below.
- 13.2.4 Evidence of financial standing will be provided from some or all of the following sources:-
- ❑ banker's statements
 - ❑ balance sheets
 - ❑ statements of turnover (both overall and for the work or services for which a Contract may be let)
 - ❑ for services, evidence of professional risk indemnity
 - ❑ the provision of Bonds and Guarantees
 - ❑ any other information considered appropriate, providing adequate notice is given regarding the additional information sought.
- 13.2.5 Minimum technical capacity as to skills, efficiency, experience and reliability will include an assessment of:-
- ❑ applicant's qualifications and those of the personnel who will do the work
 - ❑ statements of the plant, equipment and specialist services available
 - ❑ average manpower for each of the last three years
 - ❑ numbers of managerial personnel during the same period
 - ❑ 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)
 - ❑ for services, a list of the principal Contracts carried out in the last three years with their values and the proportion of the work which applicants intend to sub-Contract.
- 13.2.6 The appraisal process may also include taking up references and inviting applicants to attend for interview.
- 13.2.7 All Approved Lists will identify for each Contractor the type of work and maximum value of Contracts which may be undertaken by that Contractor. The Approved List will be available for reference by members of the public on request and available for inspection on the Council's website.
- 13.2.8 The Appropriate Director will review the Approved List at least once every three years and will request Contractors to submit accounts for reappraisal as appropriate in the opinion of the Appropriate Director. This will provide an incentive for those included on the Approved List to maintain the necessary standard. If it is considered that an up to date financial appraisal is necessary for a Contractor chosen from the Approved List, the Appropriate Director will request Contractors to submit their latest accounts for reappraisal in sufficient time prior to invitations to tender being sent out.
- 13.2.9 The Council will inform Contractors if it is decided to exclude them from the Approved List and also if any request to be asked to Tender is refused. If a Contractor applies in writing for the reasons within fifteen working days of being given such a decision, the reasons will be provided in writing within a further fifteen working days. Where the reason is an unsatisfactory reference, this fact must be stated but not its nature or which referee gave it.
- 13.3 External Approved List
(compiled with or by another Authority, Consortium of Authorities or Central Government)**

13.3.1 These Contract Procedure Rules recognise that with a view to improving the efficiency and effectiveness of procurement and in order to obtain the maximum benefits from procurement, collaborative working arrangements are essential as provided for within the Council's Strategic and Sustainable Procurement Strategy

13.3.2 Prior to selecting a Contractor from an External Approved List the Appropriate Director must be satisfied that the Contractors' current financial standing and technical capacity to complete the Contract satisfactorily has been appraised by another Authority, Consortium of Authorities or Central Government before the Contractor has been placed on the External Approved List and such External Approved List is reviewed regularly (preferably at least every 3 years).

13.4 Open Tendering

13.4.1 Open tendering is generally desirable only where the Council does not have access to an External Approved List or does not have an appropriate Approved List. The Appropriate Director will invite Tenders by giving at least ten days public notice in at least one local newspaper before the closing date for receipt of Tenders and in at least one Trade journal (where applicable) and any other publication as required by any relevant EC Directive. The advertisement will include:-

- (i) The nature and purpose of the Contract;
- (ii) All the criteria which the Council intends to apply to the award, where possible in descending order of importance;
- (iii) Where further details may be obtained and where applications should be submitted;
- (iv) The last date and time when Tenders will be received

13.4.2 The Appropriate Director must be satisfied with the financial standing and technical capability of the successful Contractor in accordance with Rules 13.2.4, 13.2.5 and 13.2.6 above before any Contract is awarded

13.5. Submission of Tenders

13.5.1 Tenders will be considered only if they are delivered to the Council in a plain, securely sealed envelope or in any special envelope provided by the Council for the purpose. Such envelopes will in no way indicate the identity of the sender.

13.5.2 The outside of the envelope will be marked "Tender" and with the name of the Contract to which the Tender relates.

13.5.3 On receipt of each Tender the envelope will be endorsed with the date and time of arrival.

13.5.4 Tenders received by hand will be receipted on receipt as 13.5.3 above.

13.5.5 All Tenders received will remain unopened in the secure custody of the Chief Executive until the appointed time for opening.

13.5.6 Any Tenders received after the closing date and time for receipt of the Tender shall not be considered.

13.6. Opening of Tenders

13.6.1 All Tenders will be opened at the designated time in the presence of at least:-

- (i) The appropriate Cabinet Member and
- (ii) The Head of Democratic Services or their official representative and
- (iii) The Appropriate Director or their official representative.

13.6.2 Tenders will be numbered by the Head of Democratic Services or their official representative as they are opened

13.6.3 The Head of Democratic Services or their official representative will immediately prepare a list of Tenders received in a Register for the purpose, detailing names of Tenderers and Tender sums and this will be certified by those present as a true record.

13.6.4 A record will also be made in the Tender Register of any Contractors who were invited to Tender but did not do so.

13.7. Evaluation of Tenders and Correction of Errors

13.7.1 Tenderers must complete all parts of the Tender documentation required to be completed. Any omissions will render a Tender null and void with no further consideration given.

13.7.2 Wherever possible, Tender evaluation will be carried out by the Appropriate Director. The Appropriate Director will ensure that Tenderers are compared impartially and on the same criteria, with a view to securing the most economically advantageous Tender.

13.7.3 All Tenders containing figures, including Bills of Quantities, shall be checked for arithmetical accuracy.

13.7.4 The Tenders received will be evaluated to ascertain the most economically advantageous Tender paying particular attention to rates and prices, percentage adjustments, balancing items, ambiguities, qualifications and alternative offers.

13.7.5 If a Tender is found to contain ambiguities or arithmetical errors, the Tender total will be corrected and the Tenderer notified accordingly. If, in the Appropriate Director's opinion, any tendered rate is considered unrealistic, the Tenderer may 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 will not be permitted. If the Tenderer withdraws or the corrected Tender is no longer the most economically advantageous, the next most economically advantageous Tender will be examined and dealt with in the same way.

13.7.6 There will 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 will be given an opportunity to reconsider a Tender on the original Specification unless similar opportunities are given to all Tenderers.

13.7.7 Any changes which affect the original tendered sum(s) will be entered in the Tender Register, which will be signed by the Appropriate Director.

13.7.8 The Appropriate Director will compile a report on the evaluation of the Tenders contrasting the tendered amounts with the original estimate. This

report will form the basis for acceptance of the preferred Tender to be reported to the Council.

13.8 Late or Incomplete Tenders

Late Tenders will not be considered but will be opened by the appropriate Director to ascertain the name of the Tenderer so that the Tender may be promptly returned.

13.9 Acceptance of Tenders

13.9.1 The Appropriate Director may accept the most economically advantageous Tender received on behalf of the Council provided that:-

- (i) It is within the approved estimate;
- (ii) The acceptance is reported to the Council as soon as is practicable

In all cases, the Appropriate Director will cause a written record to be made recording the preferred Tenderer, along with the names of all Officers and Members involved in the decision making process.

13.9.2 The successful Tenderer will be notified promptly following the decision to accept its offer.

13.9.3 Where the most economically advantageous Tender is outside the approved estimate provision the Appropriate Director will 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 Council requesting an increase in the estimate provision; or
- (iii) Report to the Council 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.

13.9.4 Once the Contract has been let, all unsuccessful Tenderers will be notified of the results and may be informed of the successful price on request. The letter of acceptance will not seek to qualify the terms and amounts previously tendered by the Contractor.

13.9.5 Whilst a letter of acceptance establishes a legally binding Contract a formal written Contract signed by the Chief Executive or Head of Legal Services and signed or sealed by the successful Tenderer is nonetheless required under these Contract Procedure Rules.

13.9.6 For Contractors who did not tender, a pro forma questionnaire may be sent to them inviting them to give reasons.

14. SUB-CONTRACTORS TO MAIN CONTRACTORS.

The Tender will provide that the consent of the Council is required if the main Contractor intends to sub-contract.

15. LIQUIDATED DAMAGES.

15.1 Where the estimated amount of a Contract exceeds £50,000, provision will be made in the Contract for payment of liquidated damages or other

compensation to be paid by the Contractor where the Contractor fails to complete the Contract within the time specified or fails to perform the contract in accordance with the Contract terms.

- 15.2 The methodology for calculating the amount of liquidated damages will be determined by the Appropriate Director prior to submitting the Tender to Contractors.

16. PERFORMANCE BONDS.

- 16.1 Where the estimated amount of a Contract exceeds £50,000 in relation to Contracts for works and services the Appropriate Director will normally require the Contractor to provide a Bond or other security. Any decision not to require a Bond will be recorded in writing.

- 16.2 If a Bond or other security, for example, retention, is deemed necessary, the amount will be at the discretion of the appropriate Director but will be at least 5% of the Contract sum

17. INSURANCE

- 17.1 Prior to letting a Contract, the Appropriate Director will ensure that the Contractor holds adequate Insurance policies to include, where appropriate, Professional Indemnity Insurance, which will protect the Council's interests and cover all potential losses that may arise. An adequate level of Insurance will be determined in consultation with the Council's Principal Personnel and Insurance Officer.

- 17.2 For Contracts of long duration, the Appropriate Director will make and record such checks in consultation with the Council's Principal Personnel and Insurance Officer as are necessary to ensure that the Contractor's Insurance policies are still in force.

18. AVOIDANCE OF CORRUPT OR RESTRICTIVE PRACTICES.

- 18.1 All Contractors submitting a Tender or request for inclusion on any Approved List will sign a Declaration that:-

- (i) They will not communicate the amount of the proposed Tender to anyone except the Council;
- (ii) They will not receive details of a proposed Tender from any other Contractor.
- (iii) They will not adjust the amount of a proposed Tender as a result of an arrangement with any person other than the Council;
- (iv) They will not agree with any other person:-
 - (a) The amount of the proposed Tender
 - (b) Not to tender.

- 18.2 If the Contractor breaches these conditions, the Appropriate Director concerned will be informed so that relevant action can be taken to include reporting to the Council

19. ASSIGNMENT

All Contracts will include provision preventing assignment of Contracts except with the written permission of the Council.

20. FREEDOM OF INFORMATION AND DATA PROTECTION

20.1. All Contracts will include a provision:

20.1.1. That the Contractor shall comply with the provisions of the Data Protection Act 1998 (as amended from time to time) and shall indemnify the Council against any loss, damage or expenses which may be incurred as a result of any breach

20.1.2. That the Contractor will follow all procedures and controls and safeguards as determined by the Council if accessing any data in accordance with the Contract that is subject to the provisions of the Data Protection Act 1998 (as amended from time to time)

20.1.3 that the Contractor will consent to disclosure of any information contained in the Contract where such disclosure is required under the Freedom of Information Act 2000 (as amended) or such other statute having like effect or to the Council's Auditors, H M Inspector of Taxes, H M Custom and Excise and any other person or bodies having a right, duty or obligation to know the Council's business.

21. COUNCIL'S WHISTLE BLOWING POLICY

21.1. The Contractor's attention is drawn to the Council's Whistle Blowing Policy which can be found on the Council's website which is intended to encourage and enable Council Staff as well as staff of suppliers and contractors or organisations providing goods and services to the Council to raise serious concerns with the Council.

21.2 The Whistle Blowing Policy provides a mechanism should the Supplier have concerns that the Council:

21.2.1. has acted unlawfully

21.2.2. is or has provided a service falling below established standards

21.2.3. committed an act of impropriety

21.2.4. put the health and safety of people at risk

22. CANCELLATION AND DETERMINATION

22.1 All Contracts will include provision stating that the Council may cancel the Contract and recover from the Contractor any loss arising from the cancellation, if it is proved that the Contractor or any person employed by him has received or offered any consideration other than that properly due under the Contract.

22.2 In the event of the Appropriate Director considering it necessary to determine a Contract, the Appropriate Director will discuss the proposed course of action with the Head of Legal Services and the Appropriate Director will submit a report to the Council.

23. COMPLIANCE WITH BRITISH STANDARDS AND QUALITY OF WORK, GOODS, ETC.

- 23.1 All Contracts will require that all works carried out or goods supplied conform to the current British Standard Specification or Code of Practice, if such exists.
- 23.2 Reference will be made in Contract documentation to specific British Standards or European Standards as appropriate to more clearly define the scope of the Contract.
- 23.3 Arrangements must be made to check work done and supplies received and Contractors must be notified of defects immediately in writing. Payment should not be made for defective works or supplies.
- 23.4 When preparing specifications care should be taken to ensure that such specification is not so prescriptive to lead any potential Tenderer to the view that the Council has a preference for a particular supplier.

24. EQUALITY

All contracts will require the Contractor to positively promote equality and to comply with the Council's equality policies including contributing to the Council fulfilling its legal obligations under equality legislation.

25. ARBITRATION/ALTERATIVE DISPUTE RESOLUTION

- 25.1 The contract will provide that the law governing the contract shall be the law of England
- 25.2. The contract will provide that any dispute between the Council and the Contractor which is incapable of resolution by negotiation shall be referred to a single arbitrator to be agreed by the Council and the Contractor, or in default thereof to be nominated by the President for the time being of The Law Society.

26. APPOINTMENT OF CONSULTANTS.

- 26.1 Consultants will only be used if, in the opinion of the Appropriate Director and where the Low Value threshold is exceeded, the work cannot be handled by Council Officers and a report is to be submitted to the Council by the Appropriate Director for the Council's decision.
- 26.2 Appointment of Consultants shall be made having regard to Rule 2 as to Best Value and the financial thresholds contained in Rules 4.1 and 4.2 above and compliance with the relevant Rules in relation to those financial thresholds
- 26.3 The appropriate Professional Institution or Trade Association will be contacted to verify a Consultant's qualifications prior to their engagement.
- 26.4 The Council must have resolved to support a Project in principle before Consultants are appointed. A note will 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 Members and Officers were involved in the selection process

- 26.5 Where Consultants are employed by the Council, the appropriate Director will ensure that the requirements of 25.6 below are written into the terms of their engagement and will verify that this has occurred.
- 26.6 Any Consultant who is to be responsible for supervising any stage of the Contract process on behalf of the Council will:-
- (i) Comply in all respects with the Council's Contract Procedure Rules and Financial Procedure Rules and Regulations, Council Project Management Handbook and Council's Sustainable Procurement Strategy.
 - (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 relating to the Contract to the Appropriate Director whenever requested during the currency of the Contract;
 - (iv) Pass all relevant records to the Appropriate Director on completion of the Contract.
 - (v) Report to the Appropriate Director when requested to do so during the currency of the Contract
- 26.7 For all types of Consultants, the Appropriate Director will:-
- (i) Ensure that consultancies can be properly funded, within an approved budget and expenditure code;
 - (ii) Consider the kind of Contract and how payments will be made;
 - (iii) Draw up a written Contract with any Consultants employed;
 - (iv) Appoint a project Officer to manage and monitor each consultancy project in accordance with the Council's Project Management Handbook.
 - (v) Ensure that all documentation relating to a proposed consultancy is drawn up in consultation with the Council's Head of Legal Services.
 - (vi) Comply with the Council's Project Management Handbook.
- 26.8 When grants are awarded to outside bodies for feasibility studies, the Organisation concerned will be responsible for appointing and monitoring the Consultants. Grant funded projects agreed by the Council should proceed without variation to the brief which would result in the Council incurring extra costs.

27. EXCEPTIONS.

- 27.1 In rare circumstances Contract Procedure Rules relating to Contracts will not apply if:-
- (i) The Appropriate Director is satisfied that there is no genuine competition. For example, where:-
 - (a) The goods or materials are proprietary articles or are sold only at a fixed price and no satisfactory alternative is available;
 - (b) The price of goods, materials or services is wholly controlled by Trade organisations or Government order;
 - (c) The goods, materials or services are required for repairing or servicing existing specialist plant or equipment;

- (d) The work is to be carried out by public service providers, e.g. gas, water, electricity.
- (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 Rule 13 above.
- (iii) The goods, materials or services are required due to an emergency;
 - (a) The Appropriate Director can take action pursuant to Rule 3.4 above.
 - (b) Emergency action must be taken only following consultation with the Director of Resources and the Director of Legal and Support Services whose views must be sought and obtained in writing
 - (c) It is the responsibility of the Appropriate Director to be satisfied that the circumstances are sufficient to be classified as an emergency pursuant to these Contract Procedure Rules
- (v) The Appropriate Director considers that significant financial loss may be incurred if the letting of the Contract is delayed.

27.3 Where the Council carries out work using a standard form of Contract (e.g. Institution of Civil Engineers Conditions of Contract) procedural requirements may differ slightly to those laid down in these Contract Procedure Rules.

28. PROJECT CONTROL.

The Appropriate Director shall be responsible for ensuring that all Projects comply with the Council's Project Management Handbook.

29. PREVENTION OF BRIBERY

Every Contract must include a Clause allowing the Council to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if:-

- (a) The Contractor has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything relating to the Contract or any other Contract with the Council or for favouring or not favouring any person in relation to such Contract;
- (b) Similar acts have been done by any person employed by the Contractor or acting on their behalf; or
- (c) The Contractor or any person employed by them or acting on their behalf has committed any offence under the Prevention of Corruption Acts 1889 to 1916 or given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

30. ELECTRONIC PROCUREMENT

The Council is actively engaged in encouraging use of electronic service delivery and in administration of its functions. The Contract Procedure Rules at this time do not permit Contracts by the Council to be entered into

using electronic means unless the Contract does not exceed £10,000 and complies with Contract Procedure Rule 11. The Council will keep under review electric procurement to facilitate its “e” government programme.

31. PARTNERSHIPS

- 31.1 For the avoidance of doubt when the Council is involved in a partnership where there is consideration payable to the Council or on behalf of the Council then the Council Contract Procedure Rules will apply as for any other Contract. However the Council may waive these Contract Procedure Rules where compliance could jeopardise the Council’s Corporate objectives and priorities as identified in the Council’s Partnership Strategy
- 31.2 Where the Council on its own is involved in a joint working arrangement with a Contractor (e.g. IT Contract) these Contract Procedure Rules apply but to facilitate partnership negotiations and openness the process prior to tender may provide for flexibility subject to Council’s approval (2 stage approach) and in cross reference with the Council’s Partnership Strategy.
- 31.3 No waiver of the Council’s Contract Procedure Rules will be made in relation to Partnerships other than by Resolution of the Full Council.

32. FRAUD & CORRUPTION

- 32.1 The Council is committed to an effective anti-fraud and corruption strategy which is designed to:
- 32.1.1 encourage prevention
 - 32.1.2 facilitate detection
 - 32.1.3 provide prompt investigation
- 32.2 The Council’s anti-fraud and corruption procedures are designed to frustrate any attempted fraudulent or corrupt act and cover:
- 32.2.1 values and commitment
 - 32.2.2 prevention
 - 32.2.3 detection and investigation
 - 32.2.4 training
- 32.3 As the Council’s affairs are open to scrutiny by a variety of external bodies and people including:
- 32.3.1 An external Auditor appointed by the Audit Commission
 - 32.3.2 The Public via the Council’s Complaints procedure
 - 32.3.3 Local electors via the Annual Inspection of Accounts
 - 32.3.4 The Business Community via the Annual business Consultation
 - 32.3.5 Her Majesty’s Revenues & Customs
 - 32.3.6 Dept for DDA Works and Pensions
- 32.4 The Council through its Internal or External Auditors may request information relating to the Contract pursuant to the provisions of condition 32.3 above and Contracts entered into by the Council shall provide that contractors, suppliers or consultants shall provide the Council’s Internal or External Auditors with the information forthwith upon request.
