

Part 5, Section 2

Contract Procedure Rules

1 Compliance with Contract Procedure Rules

- 1.1 In these contract procedure rules, the expressions, 'the Council' and 'Responsible Spending Officer'¹ shall be deemed to include reference to Members, Directors, Service Heads or otherwise authorised officer, acting in accordance with delegated authority on behalf of the Council.
- 1.2 Every contract entered into by the Council, or on behalf of the Council, shall be entered into pursuant to or in connection with the Council's functions and shall comply with:
- (a) all relevant statutory provisions²;
 - (b) the relevant European procurement rules (the Regulations)³;
 - (c) the Council's Constitution including these contract procedure rules, financial regulations and scheme of delegation; and
 - (d) the Council's strategic objectives, procurement strategy and policies.
- 1.3 The highest standards of probity are required of all officers and Members involved in the procurement, award and management of Council contracts. As a general rule Members and officers should refuse offers of gifts or hospitality from any person, firm or organisation having or seeking to establish dealings with the Council.⁴
- 1.4 Failure to comply with these procedure rules and the associated financial regulations may result in disciplinary action against the Council officer or Member concerned.

2 Procurement Outside the Scope of these Contract Procedure Rules

- 2.1 There shall be no requirement under the provisions of these procedure rules for competitive tenders to be invited if in the opinion of the Corporate Director any of the following apply:
- (a) the purchase of proprietary or patented goods or materials or services are obtainable only from one firm, are sold only at a fixed price and no reasonably satisfactory alternative is available;
 - (b) the works, supplies or services to be executed are of a specialised nature carried out by only one firm and for which no reasonably satisfactory alternative is available;
 - (c) the purchase of goods or materials, or the execution of works or supply of services for which there would be no genuine competition;

¹ The Responsible Spending Officer is a Council officer with appropriate delegated authority to act on the Council's behalf in making spending decisions and managing procurement - § 4 of these Contract Procedure Rules refers.

² Any actions taken by the Council must be within its relevant powers as any acts outside of statutory powers may be considered ultra vires. The certification requirements of the Local Government (Contracts) Act 1997 may apply for longer-term contracts of 5 years or over and the Council may be required to provide a certificate to a supplier pursuant to this Act

³ Guidance on the general principles of EU law and compliance with EU directives is provided in the document Public Contracts Regulations – Implementing the European Public Procurement Directives. Copy available from Internal Audit or on the Intranet (*Services/Financial Services/Financial Services Documents*)

⁴ Reference should be made to the Members or Employees Code of Conduct in this respect.

(d) the works or services to be executed or the goods or materials to be supplied consist of repairs to, or the supply of, parts of existing proprietary machinery or plant;

2.2 The Responsible Spending Officer must formally consult the Head of Legal and HR and the Procurement Officer where the purchase is to be made using standing arrangements with another local authority, Government department, statutory undertaker or public service purchasing consortium.

2.3 The following types of contract are also exempt from the requirements of these contract procedure rules:

- (a) individual agency contracts for the provision of temporary staff⁵;
- (b) employment contracts⁶; and
- (c) contracts relating solely to disposal or acquisition of an interest in land⁷.

3 Exceptions to Contract Procedure Rules

3.1 Corporate Directors have the power to waive these contract procedure rules in specific instances. Exceptions and the reasons for them must be recorded⁸ and passed to the Procurement Officer who shall maintain a register of all such exemptions.

3.2 Every exception made on behalf of the Council shall be identified in Corporate Financial Monitoring Reports specifying the reason(s) that justified the exception being made, including any as a result of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services.

3.3 The following matters may be considered by Corporate Directors as an exception to these Contract Procedure Rules, any other issues must be referred to the Procurement Officer in the first instance:

- (a) the works or services to be executed or the goods or materials to be supplied constitute an extension of an existing contract;
- (b) the contract is for the execution of works or services or the supply of goods or materials authorised as being required urgently⁹;
- (c) tenders or quotations have been invited on behalf of any consortium, collaboration or similar body, of which the Council is a member, in accordance with any method adopted by such a body. Provided that where tenders or quotations are so invited by an officer of the Council, the delivery opening and acceptance of tenders shall comply with the provisions of these procedure rules, or any overriding national or European Union legislation.

⁵ Where employment agencies are used to provide temporary staff, arrangements will be subject to procurement, but agency staff will be employed on the agency's terms and conditions.

⁶ Employment contracts between the Council and its employees are not subject to these contract procedure rules but Part 4, Section 8 'Officer Employment Procedure Rules' of the Constitution applies.

⁷ Contracts relating solely to an interest in land will not be subject to the tendering procedure requirements of these contract procedure rules but other Financial Regulations (yet to be developed) will apply. Straightforward acquisitions or disposals of land are exempt from EC public procurement directives, although legal advice should be sought on the applicability of the Regulations in certain circumstances; for example where the Council is developing land and its level of involvement extends beyond the disposal of land.

⁸ A form is currently being designed for this purpose – Contact the Procurement officer for more information.

⁹ A record must be made of the reason(s) justifying the urgent procurement of the required works, goods or services.

4 Procurement Plan¹⁰

- 4.1 For each financial year, the Council shall agree a Procurement Plan setting out details of its current contracts and contracts to be procured for the forthcoming three financial years so that appropriate resources can be identified.
- 4.2 At the commencement of each financial year, the Procurement Officer shall on behalf of the Council, publish a Prior Information Notice (PIN)¹¹ in the Official Journal of the European Union (OJEU) listing the supplies and services contracts that the Council expects to be procure in that financial year. In relation to contracts for works, the Council shall publish a PIN in the OJEU when works are approved.

5 Delegated Authority

- 5.1 Any procurement¹² carried out on behalf of the Council may only be undertaken by officers with the appropriate delegated authority as set out in the Constitution. Officers with delegated authority, referred to as Responsible Spending Officers (RSO's), are solely responsible for managing and making spending decisions on the procurement. The RSO must be clearly identified in the Scheme Authorisation Checklist¹³.
- 5.2 RSO's may only delegate to other officers who have the skills and knowledge appropriate to the task and these officers must be informed by the RSO of the extent of any delegated authority and any applicable financial thresholds relevant to the procurement.
- 5.3 Within approved budgets, and in accordance with the Procurement Plan where applicable, delegated officers may authorise members of their staff to place orders against Framework Agreements (Para 5.3 & 5.4 refers) which have been entered into by the Authority.
- 5.4 Contract awards over £50,000 constitute Key Decisions¹⁴ and as such shall be included in the Forward Plan¹⁵. If the award has not been included in the Forward Plan, a Key Decision Notice, approved by the relevant Corporate Director, must be published giving a minimum of five working days notice of when the decision will be taken.¹⁶
- 5.5 The decision to award the contract is delegated to the Chief Executive except where the amount of the tender proposed for acceptance exceeds the estimated budget provision. In these circumstances, Cabinet will make the decision.
- 5.6 Contract awards involving any potential transfer of Council employees to a Supplier shall be referred to Cabinet for decision.

¹⁰ A schedule identifying high value procurements so that appropriate resources can be identified. It also provides a basis for PIN's and other information provided to suppliers to give advance notice of bidding opportunities. The Corporate procurement plan shall set out details of all works, supplies and services that the Council expects to tender for over the next three financial years. The plan shall be regularly updated and held on the Council's website.

¹¹ Publication of a PIN in OJEU enables the tender period for the open and restricted tendering procedures in relation to services and works contracts to be shortened. It is not permitted to reduce the tendering period for supply tenders even if a notice has been published.

¹² Procurement means the process of acquiring goods, works and services from suppliers, for example through purchase orders, tendering procedure or via a framework agreement.

¹³ The Scheme Authorisation Checklist provides practical guidance, in the form of a checklist, on the framework for managing capital schemes. It can be found within the Financial Services section of the Intranet

¹⁴ A Key Decision is any decision in relation to an executive function that is likely to result in revenue or capital expenditure or savings exceeding £50,000.

¹⁵ The Forward Plan is produced monthly by the leader covering a period of four months and setting out matters which the Leader believes will be subject of a Key Decision (See 'Access to Information Procedure Rules' within the Constitution)

¹⁶ For further information on the Key Decision process see Section 18 on 'Awarding Contracts'.

6 Pre-Procurement Procedure

- 6.1 Before commencing procurement the RSO leading the procurement will identify the need and fully assess any options for meeting those needs.¹⁷
- 6.2 Before undertaking procurement the RSO shall:
- (a) consider all other means of satisfying the need (including recycling and reuse where appropriate);
 - (b) establish a business case for the procurement; and
 - (c) consider the most appropriate procurement method, for example, framework agreement, joint procurement (or collaboration), partnering arrangements, e-Procurement solutions (i.e. BACS payments and the use of procurement cards) etc.

Framework Agreements

- 6.3 Framework agreements are flexible arrangements that enable the Council to procure goods, works or services for low risk, low value requirements. Initially, tendered in accordance with these contract procedure rules, framework agreements allow the Council to make specific purchases (call-offs) throughout the term of the agreement, without the need to conduct further tendering exercises.
- 6.4 Where the Council has entered into a Framework Agreement through procurement or is able to call off from existing Framework Agreements procured by central government agencies¹⁸, then the Council may benefit from using those contracts without entering into a separate procurement.

Joint Procurement

- 6.5 The Council may enter into joint procurement arrangements with other local authorities and local partners (e.g. in purchasing consortia or joint procurement projects) in order to save on procurement resources (i.e. time and cost of involved in tendering individual contracts) and increase purchasing power.
- 6.6 Cabinet shall approve any joint procurement arrangements with other local Authorities or public bodies, including membership or use of Purchasing Consortia, prior to the commencement of any procurement on behalf of the Council.

Partnering¹⁹

- 6.7 Partnering arrangements are a contracting activity promoted under the Governments '*Rethinking Construction*' Agenda (the Egan Report)²⁰ in which the Council and the preferred supplier work in an open and joint relationship to achieve common objectives, with defined performance targets.

¹⁷ Consideration should be given to Council's Procurement Strategy and the Scheme Authorisation Checklist and advice sought from Legal and HR and Financial Services (Procurement Officer or Internal Audit) as appropriate

¹⁸ The Council may benefit from framework arrangements procured on a regional or national basis including the GCAT, SCAT and LCAT arrangements

¹⁹ For more detailed guidance please refer to the *Procurement through Partnering Guidelines*

²⁰ Report commissioned by Central Government in 1998 aimed at achieving radical improvements in the construction industry

- 6.8 Partnering might be considered for high risk, high value or complex procurements with the principal benefit that relationships with the supplier are strengthened and risks and benefits are shared in a previously agreed and quantifiable manner.

e-Procurement

- 6.9 e-Procurement advancements are integral to the Council's approach to Implementing Electronic Government. A number of e-procurement solutions are available including the use of procurement cards, receiving tenders and quotations electronically, ordering goods and services securely over the internet from electronic catalogues and the conduct of electronic auctions.
- 6.10 Research on the use of these e-procurement solutions is ongoing and the Council is currently conducting pilot schemes on the use of procurement cards and e-tendering with a view to these being used to improve information on which to base decisions, increase efficiency and reduce paperwork.

7 Estimating the Contract Value

- 7.1 For consistency, contract values shall be calculated in accordance with the Regulations²¹ even when the Regulations are not applicable.
- 7.2 The Council shall make the best use of its purchasing power by aggregating purchases wherever possible. Supplies, services or works shall not be split in an attempt to avoid the applicability of these contract procedure rules or the Regulations²².

8 Competition Requirements for procurement and disposal

Low Value Procurement

- 8.1 Officers with appropriate delegated authority shall, on behalf of the Council, procure works, goods and services with an estimated value of below £10,000. Service Heads are responsible for ensuring that value for money is achieved.
- 8.2 The official order for the procurement shall specify the services, supplies or works to be provided and set out the price and terms of payments. Any appropriate Framework Agreements in place shall be used regardless of value, provided that the requirements in relation to delegated authority are met.

Intermediate Value Procurement

- 8.3 For procurements valued above £10,000 but at or below £50,000 at least three written competitive quotations shall be invited before an official order is issued specifying the supplies, services or works to be provided. If it is not possible to obtain three quotations a record shall be kept of the reason(s) for this.
- 8.4 Quotations will only be considered if submitted in a plain sealed package addressed to the RSO concerned, bearing the word "Quotation" and the title of the works, goods or services to be supplied. The envelopes shall not bear the senders name or any other identifying marks, and only quotations that comply with this procedure rule shall be considered.
- 8.5 All quotations received shall be opened at the same time in the presence of at least two officers designated by the RSO with at least one of these officers being independent of the quotation procurement process.

²¹ The Regulations set out how contract values are estimated including calculations for aggregated contracts.

²² The Regulations contain specific rules about estimating the value of mixed contracts e.g. services and supplies or Part A and Part B Services.

- 8.6 The RSO concerned shall maintain suitable records indicating the quotations received, the action taken relating to the invitation of suppliers and the receiving and evaluation of quotations and the award to the successful supplier. Officers present at the opening of the quotations shall sign the record of quotations received.
- 8.7 Where the risk in a specific procurement is perceived to be high and/or may involve a transfer of staff, the procurement shall be treated as a High Value Procurement.

High Value Procurements

- 8.8 For procurements valued at above £50,000 (subject to exemptions under § 2 of these procedure rules, and to any overriding requirements of the Regulations) a competitive tendering procedure appropriate to the particular procurement (i.e. open, restricted or negotiated – see § 8 below) shall be conducted in accordance with these contract procedure rules.
- 8.9 For all high value procurements, the RSO responsible shall in a manner commensurate with the complexity and value of the procurement²³:
- (a) arrange for a full appraisal of the project and the estimated cost implications to be carried out;
 - (b) determine the most advantageous method of procurement and establish a framework for carrying out the project;
 - (c) take into account the requirements from any Best Value²⁴ review;
 - (d) consult with the Procurement Officer to ensure that a procurement arrangement is not already in place;
 - (e) define the objectives of the procurement and indicate how this links to the strategic objectives of the Council and/or Service concerned;
 - (f) assess the risks associated with the procurement and how to manage them;
 - (g) consult users as appropriate about the proposed procurement method, contract standards and also performance and user satisfaction monitoring; and
 - (h) record the delegated officer responsible for the procurement (RSO), the project timetable and expected length of the contract and the tendering procedure to be used.
- 8.10 The RSO shall also confirm that:
- (a) there is Member or delegated approval for the expenditure;
 - (b) there is Cabinet approval for significant new proposals in accordance with Financial Regulations; and
 - (c) prior information notices, if required in accordance with EC Regulations, have been sent.

Procurements Subject to the Regulations

- 8.11 Where the estimated value of procurement exceeds the current EU threshold then the contract shall be tendered in accordance with the Regulations²⁵.
- 8.12.1 Under the Regulations, the contract may be tendered under the open, restricted or, in exceptional circumstances as set out in the Regulations, the negotiated procedure. A contract

²³ Reference to the Scheme Authorisation Checklist (held within the Finance Documents on the Intranet) will provide a useful aide-memoir for the approval and management of capital schemes

²⁴ The duty on Council's to secure continuous improvement in the way, in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

²⁵ For the current EU thresholds (valid to 31 Dec 2007) see Appendix A.

notice in the prescribed form shall be published in the Official Journal of the European Union (OJEU) in order to invite tenders for or expressions of interest for Part A services

contracts and supplies and works contracts subject to the rules²⁶. Contracts for Part B Services do not need to be advertised in OJEU²⁷. The rules relating to technical specifications and the publication of contract award notices shall, however, be observed for all contracts as shall the EC Treaty²⁸ and the general principles of EC law including non-discrimination, equal treatment, proportionality and transparency.

- 8.13 The Council shall comply with the minimum timescales for receipt of expressions of interest and the receipt of tenders as set out in the Regulations²⁹. Where the Council has published a Prior Information Notice (PIN) announcing its forthcoming contracts for the year ahead, reduced timescales may be used, if appropriate³⁰.
- 8.14 Where the Regulations apply, the RSO shall consult the guidance 'The Public Contracts Regulations – Implementing the EU's Public Procurement Directives'³¹ and formally consult with the Procurement Officer to determine the method of conducting the procurement.
- 8.15 Best Value and partnering arrangements are subject to all UK and EC procurement legislation and must follow these contract procedure rules. If in doubt about the application of the EC Regulations, the RSO must seek the formal advice of the Procurement Officer in writing.

Disposal of Assets

- 8.16 Assets for disposal must be sent to public auction except where better value for money is likely to be obtained by inviting quotations and tenders. The method of disposal of surplus or obsolete stocks/stores or assets other than land, and Information Technology equipment, must be formally agreed with the Head of Financial Services.
- 8.17 IT equipment identified as obsolete or surplus to requirements must be disposed of in accordance with the Council's Information Security Policy.³²

9 Tendering Procedures

Open Procedure

- 9.1 Where publication in OJEU is not required, at least ten days public notice shall be given in one or more of the local newspapers, on the Council's website and in any appropriate national press and/or trade journals in order to target the appropriate market for the particular contract. The advertisement shall contain details of the nature and purpose of the procurement and specify a date within which interested parties may express an interest in tendering for the contract.
- 9.2 After expiry of the specified date for the receipt of expressions of interest, the Council shall send all suppliers expressing an interest an Invitation to Tender (ITT), specifying a date and time for the receipt of tenders.

²⁶ Part A – Priority Services Contracts are subject to the full scope of the Regulations and shall be advertised in OJEU.

²⁷ Part B Services are not subject to the full Regulations. Please refer to the guide 'The Public Contracts Regulations – Implementing the EU's Public Procurement Directives' or contact the Procurement Officer.

²⁸ Treaty which established the European Community

²⁹ See Appendix A for the EU timescales from despatch to publication in OJEU.

³⁰ A Prior Information Notice (PIN) shall be published in OJEU at the start of each financial year setting out the forthcoming contracts for the year ahead.

³¹ See Financial Services Documents on the Intranet.

³² The Council's Information Security Policy can be located within the Information Services section of the Intranet.

- 9.3 Where advertisement of the procurement is required in OJEU, the Council shall not publish an advertisement in the UK before publication of the OJEU Notice. Local advertisements shall not contain any further details than those included in the OJEU Notice.

Restricted Procedure

- 9.4 Suppliers selected by the Council for the supply of goods, works or services are invited to tender. Such suppliers will have been previously assessed as to their:
- (a) eligibility;
 - (b) economic and financial standing; and
 - (c) technical capacity³³.
- 9.5 In respect of procurements expected to exceed £50,000 this will be achieved by selecting firms from:
- (a) pre-qualified suppliers on Constructionline³⁴;
 - (b) an approved list of suppliers maintained by the Council and compiled following responses to a public notice in the manner described in the open procedure except that notice shall state that the restricted procedure is being used; or
 - (c) a shortlist of suppliers assessed from expressions of interest for a specific contract submitted in response to a public advertisement in the manner described in (b) above.
- 9.6 If the Regulations do not apply a minimum of three suppliers will be invited to tender, selected from the Approved List or Constructionline³⁵. Procurements subject to the Regulations shall comply with the appropriate Regulation and in these cases a minimum of five suppliers shall be invited to tender from those expressing an interest following the publication of the OJEU Notice.
- 9.7 Any procurement subject to the Regulations shall comply with the appropriate Regulation³⁶.

Negotiated Procedure

- 9.8 The Council negotiates with a number of bidders to secure a contract that achieves the most economically advantageous offer for the Council, the suppliers being selected on the basis of published pre-qualification criteria.
- 9.9 If the publication of a notice in the OJEU is not required, the advertising requirements are the same as in the restricted procedure, except where the procurement falls within one of the exemption provisions of the Regulations³⁷. Any notice shall state that a negotiated procedure is being used.
- 9.10 A minimum of three suppliers should be invited to negotiate following publication of a notice.

³³ Technical capacity may include the Supplier's quality management systems including human resources, health and safety and environmental management systems where relevant to the performance of the contract

³⁴ Constructionline is the National Database of 'qualified' firms assessed for their technical and financial capacity. Contact the Procurement Officer for more information.

³⁵ Firms selected for ITT shall be on the basis of random selection to test the market and previous tendering history. For more information please refer to the Guide to Quotations and Tenders for Council Work, Services and Supplies.

³⁶ The Regulations detail the qualification criteria and the extent to which the Council may seek supporting evidence from suppliers.

³⁷ Please refer to the guide 'The Public Contracts Regulations – Implementing the EU's Public Procurement Directives'.

9.11 At least two officers, one of who shall be the Corporate Director/Service Head responsible for the procurement or their delegate shall be present at all times during the negotiations. Negotiations carried out with potential suppliers shall be fair and transparent and all treated equally. Proper records of the negotiations shall be maintained and signed as such by all participants and the outcome of the negotiated procedure approved by Cabinet.

Serial Tenders

9.12 The Council may enter into a serial contract where the works, goods or services form part of a programme of work where the scope may change over time and/or the budgetary provision has not been allocated for the whole period of the contract.

9.13 The terms will be negotiated with the supplier on the basis of the rates and prices contained in an initial procurement awarded competitively following an invitation to tender in accordance with open or restricted tendering procedures.

9.14 The serial contract shall be tendered in accordance with EC Regulations where, over the total period of the serial contract, the estimated value of the procurement exceeds the relevant EU threshold.

9.15 The Council's intention to enter into a serial contract must be clearly stated at the Expression of Interest and the Invitation to Tender stage of the tendering process.

9.16 The award of the serial contract shall be in accordance with these Contract Procedure Rules (See § 17 below) and the decision to allow the contractor to proceed onto the next phase of a serial contract will be subject to the following conditions being met:

- (a) completion of a Post Contract Performance Appraisal Form³⁸ in relation to the previous phase of the serial contract;
- (b) budgetary provision in relation to the next phase of the serial contract is in place;
- (c) the rates and prices for the next phase of the contract have been negotiated on the basis of the original rates when the contract was awarded; and
- (d) the RSO and Procurement Officer have agreed to the continuation of the contract to the next phase.

9.17 The Procurement Officer shall maintain a record of the serial contract through completion of the 'Record of Decision Taken to Release Phase of Serial Contract'³⁹. This document must be completed in full before permission can be given to the supplier to proceed to the next phase of the contract.

Single Tenders

9.18 The Council may invite a tender from a single supplier selected by the Council, or through negotiation with a supplier already engaged by the Council, where this is considered to be in its best interests and where and of the following applies:

- (a) tendering procedures as set out above have resulted in no acceptable tenders being received;
- (b) the work is so specialised that the chosen firm is the only one able to satisfy the criteria for selection; or

³⁸ This form is an Appendix to the 'Guide to Contract Completion and Review' available within the Financial Services section of the Intranet.

³⁹ Form available from the Procurement Officer

- (c) the nature of the procurement is such that a precise specification cannot be drawn up.

10 Pre-Tender Market Research and Consultation

- 10.1 Prior to the issue of the ITT in relation to the procurement the RSO may consult potential suppliers in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters provided this does not prejudice any potential supplier.
- 10.2 The RSO must not seek or accept technical advice on the preparation of the ITT from any supplier who may have a commercial interest in the procurement, if this may prejudice the equal treatment of all potential suppliers or distort competition.⁴⁰

11 Standards and Award Criteria⁴¹

- 11.1 The RSO must ascertain what are the relevant British (or equivalent), European or international standards that apply to the procurement and must include those standards that describe the required quality.
- 11.2 The RSO must define and document the Award Criteria appropriate to the procurement, before tenders are sought and the criteria must be designed to secure an outcome that provides the best value for money for the Council. The basic criteria shall be:
- (a) lowest price where payment is to be made by the Council;
 - (b) highest price if payment is to be received; or
 - (c) most economically advantageous offer (where considerations other than purchase price also apply).
- 11.3 Where the most economically advantageous offer is adopted it must be further defined by reference to criteria relevant to the procurement. This may include price, service, quality, running costs, whole life cycle costs, previous experience, delivery date, cost effectiveness, environmental considerations, aesthetic and functional characteristics, safety, after-sales service, technical assistance, partnering and any other relevant matters.

12 The Invitation to Tender (ITT)

- 12.1 The Invitation to Tender (ITT) shall state that no tender will be considered unless it is received by the date and time stipulated in the ITT. The Head of Democratic Services will promptly return tenders received in contravention of this clause to the supplier submitting the tender.
- 12.2 All suppliers invited to tender shall be notified that no tender will be considered unless contained in a plain sealed envelope addressed to the Chief Executive bearing the word 'Tender' followed by a description of the procurement to which the tender relates⁴². These envelopes must not bear any distinguishing mark intended to indicate the identity of the sender.
- 12.3 The ITT (or Invitation to Quote where this applies) must state that the Council is not bound to accept any submitted tender (or quotation).
- 12.4 The ITT shall include details of the Council's requirements for the particular procurement including:
- (a) a description of the services, supplies or works being procured;

⁴⁰ For further advice contact the Procurement Officer.

⁴¹ This is the criteria by which the successful tender (or quotation) is to be selected

⁴² Use should be made of orange labels available from Democratic Services to reduce the risk of tenders being opened in error and to ensure that tenders are taken to Democratic Services for safekeeping.

- (b) the procurement timetable including the tender return date and time, which shall allow a reasonable period for the applicants to prepare their tenders;
 - (c) a specification and instructions on whether any variants (or alternatives⁴³) are permissible;
 - (d) the Council's terms and conditions of contract⁴⁴;
 - (e) the tender evaluation criteria including any weightings, as considered appropriate, where considerations other than price apply⁴⁵;
 - (f) the pricing mechanism and instructions for completion including the method by which arithmetical errors discovered in submitted tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa;
 - (g) form and content of method statements to be provided;
 - (h) whether the Council is of the view that TUPE may apply⁴⁶; and
 - (i) any further information which will inform or assist potential suppliers in preparing tenders.
- 12.5 All potential suppliers invited to tender (or quote) shall be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be provided to all potential suppliers on the same basis.

13 Nominated Sub-contractors and Suppliers

- 13.1 If a sub-contractor or supplier is to be nominated by the Council to the main contractor or supplier, quotations and tenders must be obtained in accordance with these contract procedure rules.⁴⁷

14 Submission, Receipt and Opening of Tenders

- 14.1 Suppliers invited to tender must be given sufficient time in which to prepare and submit a proper bid, consistent with the urgency of the procurement, and will normally be four weeks from the date of the invitation to tender.
- 14.2 All tenders must be returned to the Chief Executive in the manner described at 12.2 above. Tenders received by fax or any other electronic means must be rejected⁴⁸.
- 14.3 Democratic Services must be notified, using a standard 'Notification of Tender Submission' form⁴⁹, as soon as practicable of the details of the procurement, the date and time for return and the number of suppliers invited to tender. The names of the suppliers invited to tender must not be disclosed to staff involved in the receipt, custody and opening of tenders.

⁴³ In these circumstances, it is good practice to request suppliers to also submit a tender which is fully compliant with the Council's specification for evaluation purposes.

⁴⁴ Where standard terms and conditions are to be used these should be reviewed for each procurement being tendered. Contact the Procurement Officer for further guidance and advice.

⁴⁵ See also § 15 and 17

⁴⁶ If it is considered that TUPE may apply the advice of the Head of Legal and Human Resources must be sought as to what information to include in the invitation to tender.

⁴⁷ Section 7 relating to Intermediate and High Value Procurements refers.

⁴⁸ An electronic tendering system is being piloted, with a view to this being available in the future. For more information, please contact the Procurement Officer.

⁴⁹ Form available from Democratic Services or the Procurement Officer and available on the Procurement page of the Council's Intranet.

- 14.4 The Head of Democratic Services shall be responsible for the safekeeping of tenders until the specified date and time for opening, and will ensure that each tender received is date stamped, initialled by the officer receiving the tender and logged upon receipt in the Register of Tenders.
- 14.5 The Head of Democratic Services will ensure that all tenders are opened at the same time when the period for their submission has ended. Tenders shall be opened by two officers of the Council, one of whom must be an officer designated by the Head of Democratic Services as custodian of the received tenders.
- 14.6 Upon opening a summary of the main terms of the submission received shall be recorded in the permanent Register of Tenders.⁵⁰
- 14.7 The Head of Democratic Services shall notify the RSO that tenders have been opened and arrangements shall be made for the opened tenders to be collected for evaluation.

15 Clarification Procedures and Post Tender Negotiation

- 15.1 Providing clarification of an ITT to potential or successful suppliers, or seeking clarification of a submitted tender is permitted provided that a written record of the details of the clarification is made and retained.
- 15.2 Post-tender negotiations may be conducted with any, or all, suppliers after submission of a tender and before the award of the contract with a view to obtaining adjustments in both price and content provided that the RSO has formally consulted the Head of Legal and HR⁵¹.
- 15.3 Negotiations shall be conducted by at least two officers and full details of the negotiations documented and formally agreed by both parties. At all times during the negotiations the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.
- 15.4 Where post tender negotiations result in a fundamental change to the specification (or terms and conditions of contract) the procurement must not be awarded but re-tendered in accordance with these contract procedure rules.
- 15.5 Where procurement is conducted pursuant to the Regulations through either the open or restricted tendering procedures no post tender negotiations shall be permitted.

16 Tender Evaluation

- 16.1 An evaluation must be made of competitive tenders submitted by those suppliers invited to tender. Tenders subject to the Regulations shall be evaluated in accordance with the relevant Regulation and the Award Criteria set out in the ITT. All other tenders shall be evaluated in accordance with the Award Criteria, which was notified to potential suppliers in the ITT.
- 16.2 All procurements, except where lowest price was predetermined to be the appropriate criteria, shall be awarded on the basis of the offer which represents Best Value for Money to the Council, taking into account the quality aspects as set out in the ITT.
- 16.3 The confidentiality of the submitted bids and the identity of the potential suppliers must be preserved at all times during the period of the evaluation and the RSO shall ensure that a

⁵⁰ This will normally be the submitted price but may include other relevant terms where applicable i.e. submissions received in a partnering procurement.

⁵¹ This will normally involve informing the Head of Legal and Human Resources that it is proposed to enter into post-tender negotiation and agree the process to be undertaken i.e. whether negotiation is to be with all potential suppliers.

Tender Evaluation Report Checklist⁵², comparing the amount(s) tendered with the pre-tender estimate is compiled.

- 16.4 For procurements subject to the Regulations or with a value above £50,000 the RSO shall form an Evaluation Team of representatives, as considered appropriate, with responsibility for evaluating submitted tenders.

17 Bonds, Guarantees and Insurance

- 17.1 For high value/high risk procurements, the Evaluation Team shall consider as part of its pre-qualification assessment and evaluation process whether a performance bond and/or parent company guarantee (if applicable) shall be required from the preferred supplier.
- 17.2 The Evaluation Team shall consider the appropriate type (employee liability, public liability, professional indemnity, etc) and level of insurance requirements for each procurement.

18 Awarding Contracts

- 18.1 An RSO with the requisite delegated authority⁵³ shall award contracts to the value of £50,000 (i.e. low or intermediate value procurements) provided that sufficient funds are in place to sustain the procurement.
- 18.2 For procurements subject to the Regulations or with a value above £50,000 (i.e. high value procurement) a standard Acceptance of Tender Form⁵⁴ shall, following evaluation of the submitted tenders, be completed and sent together with the Tender Evaluation Checklist and any other relevant information to the Procurement Officer for comment. The Procurement Officer will contact the RSO in the event of any query.
- 18.3 The Procurement Officer shall ensure that the Regulations and these contract procedure rules have been complied with and forward the completed Acceptance of Tender Form to the Chief Executive who has delegated authority to award contracts with a value in excess of £50,000 on the Council's behalf provided that the amount of the tender proposed for acceptance does not exceed the estimated budget provision. In these circumstances, Cabinet will make the decision.
- 18.4 Arrangements at this stage must ensure that a Key Decision Notice is completed in accordance with Para 5.4 of these Contract Procedure Rules.
- 18.5 The Head of Democratic Services shall, on the next available publication date⁵⁵ following the signing of the Acceptance of Tender Form by the Chief Executive, publish a 'Notice of the Decision' giving a period of 5 working days for call in. Following expiration of the call-in period the Head of Democratic Services shall notify the RSO that the contract can be formally awarded to the successful supplier.
- 18.6 Where procurement has been tendered pursuant to the Regulations, the Council shall publish a contract award notice in OJEU no later than 48 days after the date of award of the contract⁵⁶.

⁵² Please refer to Appendix C of the Guide to Quotations and Tenders for Council Works, Services and Supplies.

⁵³ As set out in Section 4 of these Contract Procedure Rules.

⁵⁴ A copy of the Acceptance of Tender form can be obtained from Democratic Services or the Procurement Officer and on the Procurement section of the Council's Intranet.

⁵⁵ Decisions are published at approximately fortnightly intervals on agreed dates available on the Intranet.

⁵⁶ Contract award notices are not required for Part B Services except where the Council published a contract notice prior to commencement of the procurement.

19 Debriefing

- 19.1 The RSO responsible for the procurement shall provide a debriefing to suppliers submitting unsuccessful tenders upon written request. For consistency this shall be in accordance with the Regulations even where the regulations do not apply⁵⁷.

20 Contract Documents & Terms and Conditions

- 20.1 Contracts shall be entered into on the Council's terms and conditions, which shall be included with each purchase order and ITT.⁵⁸ All contracts shall be held in the custody of the Head of Legal and HR or in a manner determined by him/her.
- 20.2 Every contract which exceeds £50,000 in value and contracts of any value involving demolition works shall be in writing in a form approved by the Head of Legal and HR, and shall specify:
- (a) the work to be done, or services, goods or materials to be provided including any appropriate technical specification(s); and
 - (b) the price to be paid with a statement of discounts or other deductions, and the time or times within which the contract is to be performed.

Letters of Intent

- 20.3 This provision shall not prevent the Head of Legal and HR, in his/her absolute discretion, from issuing, or authorising the issue of, a letter of intent⁵⁹ to the contractor, or approving procedures for giving permission for work to commence prior to the completion of the written contract.

Assignment

- 20.4 In every written contract⁶⁰ for the execution of work or the supply of goods or materials the following clause shall be inserted:

"The contractor shall be prohibited from transferring or assigning directly or indirectly, to any person or persons whatever, any portion of his contract without the written permission of the Council. Sub-letting of any part(s) of the work, except to the extent permitted in writing by the officer concerned, shall be prohibited."

Specifications and Standards

- 20.5 Where contracts are subject to the Regulations, the rules relating to technical specifications shall be followed and any reference to a technical standard, make or type shall be prefaced with the words "or equivalent". This requirement applies to both Part A and Part B Services.
- 20.6 All written contracts shall require that supplies used in their execution shall as a minimum, be in accordance with European and/or British Standards current at the date of the tender, as applicable.

⁵⁷ The Regulations require that an unsuccessful supplier shall within 15 days of written request be informed of the reasons why they were unsuccessful and, if an admissible tender was submitted, the characteristics and relative advantages of the successful tender as well as the name of the supplier awarded the contract.

⁵⁸ Further advice is available from Legal and HR and the Procurement Officer

⁵⁹ Letters of intent are commonly used for building and engineering contracts where it is essential that works start by a certain date but the contractual arrangements have not been finalised. Letters of intent are rarely required for services and supplies contracts and should only be used in exceptional circumstances. The advice of the Head of Legal and HR should be sought as appropriate.

⁶⁰ Written contract in these contract procedures rules refers to any contract exceeding £50,000.

Insurance and Health and Safety

- 20.7 Every written contract must state that the supplier will indemnify the Council against all losses and claims for injury or damage to any persons or property, which may arise as a consequence of the procurement. The supplier shall throughout the execution of the contract, maintain suitable insurance for which they are liable and shall produce the relevant insurance policies on demand.
- 20.8 In every written contract a clause shall be inserted requiring the supplier to acquaint themselves with the Council's policy on Health & Safety at Work and the relevant codes published for the Council's operations.

Other contractual requirements

- 20.9 Written contracts shall, as considered appropriate, state other contractual obligations including race equality, equal opportunities and sustainability obligations⁶¹. Consideration will also need to be given to statutory requirements relating to data protection and the Freedom of Information Act⁶², as well as operational requirements in relation to accessibility of relevant documentation maintained by the Council and the successful supplier⁶³.
- 20.10 All tender processes and contract awards shall comply with EU Public Procurement Directives and the principles of non-discrimination, equal treatment and transparency and other duties under UK law. A diverse and competitive supply market, including small firms, social enterprises, ethnic minority businesses and voluntary and community sector suppliers shall be encouraged.

Termination of Contract

- 20.11 In every written contract a clause shall be inserted empowering the Council to terminate the contract and to recover from the supplier the amount of any loss resulting from such termination, if the supplier or any person acting on their behalf (whether with or without the knowledge of the supplier) shall have:
- (a) offered, given or agreed to give any persons any gift, inducement or reward in relation to the awarding or execution of any contract with the Council; or
 - (b) shown favour or disfavour to any person in relation to any contract with the Council; or
 - (c) if, in relation to any contract with the Council, the contractor shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or any amendment to them, or shall have given any fee or reward the receipt of which is an offence under sub-section 2 of section 117 of the Local Government Act 1972.
- 20.12 For any contract exceeding £50,000 in value, the Chief Executive shall approve termination of the contract and subsequently report to Cabinet the reason(s) for this action being taken. Contracts of a lesser value may be terminated early by agreement prior to the expiry date or in accordance with the termination provisions set out in the contract. The advice of the Head of Legal and HR should be sought as appropriate.

Appointment of Consultants

- 21.1 The engagement of consultant architects, engineers and surveyors or other professional consultants shall be subject to completion of a formal letter, contract of appointment or brief.
- 21.2 Consultants shall be selected, tendered and commissions awarded in accordance with the procedures detailed in these contract procedure rules.

⁶¹ For further advice contact the Head of Legal and HR and the Procurement Officer

⁶² For further advice contact the Information Management Officer.

⁶³ This will be particularly relevant where partnering arrangements have been entered into (i.e. open book accounting arrangements).

- 21.3 It shall be a condition of the engagement of the services of any consultant responsible for the supervision of a contract on behalf of the Council that in relation to that contract the consultant shall:
- (a) comply with these procedure rules subject to the modification that the tendering procedure to be followed shall be approved in advance by the Service Head or Corporate Director concerned;
 - (b) at any time during the carrying out of the contract, produce to the Service Head, Director, Head of Financial Services or other designated officer, on request, all the records maintained by him/her in relation to the contract; and
 - (c) on completion of a contract, forward all such records to the Service Head, Director or other designated officer.
- 21.4 Consultants shall not make any decision on whether to award a contract or whom a contract should be awarded to.
- 21.5 Throughout the commission monitoring arrangements must ensure that the due performance of the consultant is in accordance with the levels and standards of service specified in their conditions of appointment.
- 21.6 Arrangements should ensure copyright and title of any works performed by consultants belongs to the Council.
- 22 Records of Contracts**
- 22.1 Service Heads shall maintain his/her own register of contracts entered into by his/her Service of whatever value, and until such time as an electronic Contracts Register of all contracts exceeding £50,000 has been developed⁶⁴.
- 22.2 For every individual contract a Contracts file shall be maintained.
- 23 Statistical Returns**
- 23.1 Each year the Council shall make a statistical return to Department of Transport, Local Government and the Regions (DTLR) for onward transmission to the European Commission concerning the contracts awarded during the year under the European rules.
- 23.2 The Procurement Officer is responsible for this statistical return and will make the necessary arrangements for information to be collected annually. Service Heads shall comply with these arrangements.
- 24 Review and Amendment of Contract Procedure Rules**
- 24.1 These contract procedure rules shall be reviewed and updated on a regular basis, not less than annually. Power to amend the contract procedure rules has been delegated to the Audit Committee.

⁶⁴ Internal Audit currently maintains an electronic contract register that will be developed and made available Council wide.

EU THRESHOLDS 2010-2011

The proposed tender will fall within the Regulations if its estimated value is greater than the prescribed thresholds. These have been summarised in Table 1 below.

Table 1: Relevant Thresholds for Supply, Works and Services Regulations (net of VAT)

Regulation Threshold	European Threshold	Equivalent UK*
Supply Contract	193,000 ECU	£156,442 ¹
Prior Information Notice	750,000 ECU	£607,935
Services Contract	193,000 ECU	£156,442 ¹
Prior Information Notice	750,000 ECU	£607,935
Works Contract	4,845,000 ECU	£3,927,260 ²
Prior Information Notice**		

* - Applying from 1 January 2010

** - Must be published for each proposed contract

Note

¹ With the exception of the following Services which have a threshold of £156,442 Euro 193,000:-

- Part B (residual services)
- Research and Development Services (Category 8)
- The following Telecommunications services in Category 5
 - CPC7524 – Television and Radio Broadcast services
 - CPC 7525 – Interconnection services
 - CPC 7526 – Integrated telecommunications services
- Subsidised services contracts under Regulation 34.

² For subsidised works contracts under Regulation 34 of the Public Services Contracts Regulations 1991 the threshold is £3,927,260 (Euro 4,845,000)

The Regulations provide guidance on how to estimate the value of proposed tenders, and you should refer directly to the appropriate Regulations when calculating the total value of a proposed contract.

If, after calculation, the value of the contract exceeds the appropriate threshold, it will fall within the scope of the Regulations. The method of calculation used depends upon the type of purchase to be undertaken.

EU TIMESCALES FROM DESPATCH TO OJEU

Table 2: Summary of time periods prescribed for the Open, Restricted and Negotiated Procedures.

Procedure	PIN Issued	Expressions of Interest (days)	Tender Response (Days)
Open	No	-	52
Open	Yes	-	36
Restricted	No	37	40
Restricted	Yes	37	36
Negotiated	No	37	-
Negotiated	Yes	37	-
Accelerated	No	15	-10
Competitive Dialogue	No	37	-

Notes:

- The count starts on the day after the notice is despatched to the OJ. If the last day is a Saturday, Sunday or public holiday then the receipt or closing date will be the first ordinary working day.
- PIN - Prior Information Notice

Extreme Urgency

In cases of extreme urgency it is possible to use accelerated restricted or negotiated procedures. The use of the shortened time periods is strictly defined and their use must be justified. The cause of the 'cases of extreme urgency' must be outside the Council's control and should be unforeseeable. It should be noted, for example, that having to spend funds before a specific date would not be considered an appropriate reason.