

PART 4 – RULES OF PROCEDURE

G – Contract Procedure Rules

Contents

Rule No.	Title	Page
	Introduction	148
SECTION A: COMPLIANCE		
1.	Contracts to Comply with Procedure Rules	149
2.	Public Notice of Contracts - European Union Directives	150
3.	Exceptions to Contract Procedure Rules	151
4.	Setting up Select Lists of Contractors	153
SECTION B: COMPETITION REQUIREMENTS AND PROCUREMENT THRESHOLDS		
	Summary of Competition Requirements and Financial Thresholds	155
5.	Contracts estimated to cost less than £1,000	157
6.	Contracts estimated to cost between £1,000 and £24,999.99	158
7.	Contracts estimated to cost between £25,000 and £49,999.99	159
8.	Schemes of a Specialist Nature - estimated contract value in excess of £25,000	160
9.	Single Tenders – estimated contract value in excess of £25,000	161
10.	Negotiated Tenders	162
11.	Selective Tendering – Select Lists Estimated contract value in excess of £50,000	163
12.	Selective Tendering – Ad Hoc Lists Estimated contract value in excess of £50,000	164
13.	Emergency Works	166
14.	Use of Central Government Purchasing Arrangements or Organisations.	167
15.	Use of Local Purchasing Organisations	168
16.	Purchase and Sale of Land/Property	169
17.	Sale of Vehicles, Plant, Machinery, Equipment etc.	170
18.	Scheme Proposal - Capital Programme	171
19.	‘Main Contractor’ Arrangements	172
20.	Nominated/Named Sub-Contractors and Suppliers	173
21.	Engagement of Consultants	174
22.	Partnerships	175

SECTION C: TENDER RECEIPT & ACCEPTANCE

23.	Tender Envelopes and Electronic Tendering System	176
24.	Late Tenders	177
25.	Attempted Alteration of Tender	178
26.	Opening of Tenders	179
27.	Acceptance of Tenders	180
28.	Acceptance of Tenders above an approved budget/ estimate	181
29.	Negotiations following Receipt of Tenders	182

SECTION D: CONTRACT & OTHER FORMALITIES

30.	Contracts to be in Writing	183
31.	Signing of Contracts/Use of Common Seal of the Council	184
32.	Contract Conditions	185
33.	Contract Bond	188
34.	Cancellation of Contracts - Inducements	189
35.	Standard/Specification	190
36.	Extending Existing Contracts	191
37.	Expenditure in excess of approved Tender Sum / Variation Orders and Extra Works Orders	192
38.	Compliance with Financial Procedure Rules	193
39.	Non-Commercial Matters	194
40.	Review of Cash Limits	195
41.	Lease or Credit Arrangements	196
42.	Claims	197

Guidance Notes

	Title	Page
A	Keeping of Records of Correspondence/Prices/Negotiations	198
B	Capital Expenditure Approval Protocol.	200
C	Compilation of Select Lists and selection of Contractors to be invited to tender for specific contracts (Procedure Rule 4).	204
D	Purchase and Sale of Land/Property (Buildings) (Procedure Rule 16).	208
E	Non-Commercial Matters (Procedure Rule 39).	209

INTRODUCTION

The Contract Procedure Rules provide a corporate framework for the procurement of all goods, services and works for the Council. These Procedure Rules have been developed to ensure that all procurement activity is carried out with high regard for the Council's Code of Conduct. They are designed to ensure the Council obtains value for money together with the required level of quality and performance in all contracts that are let.

The Contract Procedure Rules are divided into four sections:

- ❑ Section A deals with compliance of the Procedure Rules and explains the main exceptions to these Procedure Rules.
- ❑ Section B deals with the competition requirements and the relevant procurement thresholds.
- ❑ Section C deals with tendering procedures.
- ❑ Section D deals with contracts and other formalities.

These Contract Procedure Rules set out how the Council selects contractors and suppliers to perform the works and supply the goods, materials and services the Council needs to carry out its duties. Many Council contracts are also subject to UK and European laws, which specify how they must be let. These laws must be complied with and if they conflict with the Contract Procedure Rules, the law must be followed.

Rules are minimum requirements demanded of officers and members. However, where circumstances justify it, any procurement situation can be subjected to a more comprehensive competitive approach than that laid out in these Contract Procedure Rules.

Any text formatted in *italics* throughout this document is deemed to be Guidance and is not intended to be part of the Rules.

Each individual procurement exercise must be carried out with a duty to achieving Value for Money.

The submission of reports to Cabinet can often be deemed appropriate in order to keep elected members informed of project proposals, as well as the procurement aspects.

PROCEDURE RULE 1

Contracts to Comply with Procedure Rules

- 1.1 Every contract made by or on behalf of the Council shall comply with these Procedure Rules. Any exception to this Procedure Rule may only be made subject to approval first being granted by the Cabinet.
- 1.2 Subject to Procedure Rules 1.1 and 1.3 every contract for the supply of goods and services and for the execution of works made by or on behalf of the Council shall comply with these Rules and the Council's Financial Procedure Rules. All Council employees and organisations or companies engaged to act in any capacity to procure, manage or supervise a contract must be provided with a copy of (or access to) these Procedure Rules and comply with them.
- 1.3 Every contract made under these Procedure Rules shall comply with any legislative requirement of the United Kingdom NB Local Government Act 1999 and of the European Union (EU Directives).
- 1.4 All procurement activity must be undertaken with regard to high standards of probity and in accordance with the relevant sections of the Council's Constitution. Officers shall undertake procurement activity with integrity, to the highest ethical standards, and be ensure the process is well-documented to provide an "auditable trail" and in a manner, which:
 - (a) avoids any conflicts added or potential conflicts of interest, and if any such conflicts of interest do arise, these shall be referred immediately to the Head of Organisational Development and recorded in the Register of Interests.
 - (b) is open and transparent and in all cases a central file in respect of each individual procurement exercise undertaken shall be retained by the relevant Chief Officer and will contain a record of all stages in the procurement process including a record of decisions, who made them, the rationale for the decisions and, where required, signed by the appropriate officers and members as referred to throughout the Contract Procedure Rules. Where required by the individual Procedure Rules a copy of the necessary documentation shall be sent to the Head of Organisational Development.
- 1.5 Reporting requirements in respect of Capital Programme schemes are contained in Procedure Rules 18 and 38 must be complied with.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

PROCEDURE RULE 2**Public Notice of Contracts - European Union Directives**

2.1 The procurement of goods services and works must comply with the European Union public procurement legislation where applicable. Where such legislation is applicable and any conflict with these Rules arises, it takes precedence over these Rules. Current regulations require tenders to be advertised in the EU Journal where the value exceeds:

- (a) £3,611,319 for works, and *
- (b) £144,371 for the purchase of goods and services *

In estimating relevant values, officers shall have regard to the rules regarding aggregation.

2.2 Where the EU Procedure is required, the Officer shall consult the Solicitor to the Council and the Procurement Section to determine the method of conducting the purchase.

** Above figures apply from 1st January 2006 and are reviewed periodically by the EC. For any further update to these figures refer to the Council's Procurement Section.*

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

PROCEDURE RULE 3

Exceptions to Contract Procedure Rules

- 3.1 Subject to statutory requirements tenders need not be invited in accordance with these Rules in the following cases:
- (a) In the case of the supply of goods where:
 - (i) the goods or materials are proprietary articles and in the opinion of the appropriate Chief Officer no reasonably satisfactory alternative is available, or
 - (ii) the prices of goods or materials are wholly controlled by statutory bodies, trade organisations or Government Order and in the opinion of the appropriate Chief Officer no reasonably satisfactory alternative is available.
 - (b) Where the purchase of a named or proprietary product is required to be compatible with an existing installation as approved by the Chief Officer.
 - (c) The work to be executed or the goods or services to be supplied are controlled by a statutory body.
- 3.2 Where the contract for the execution of work or the supply of goods or services certified by the appropriate Chief Officer to be required so urgently as to preclude the invitation of tenders, providing the value of this contract does not exceed the current European threshold (taking account of the rules of aggregation). The Chief Officer in consultation with the appropriate Cabinet Member shall agree the appropriate procurement option to be undertaken and prepare a report for submission to the next Cabinet, for information, reflecting the urgency of the situation. A record of the decision shall be retained on a central file held by the relevant Chief Officer and a copy sent to the Head of Organisational Development (in accordance with Procedure Rule 1.4)
- 3.3 In respect of **Consortium Arrangements** tenders need not be invited in accordance with these Rules where they have been previously undertaken by or on behalf of any consortium, collaboration or similar body, of which the Council is either a member or is able to access contracts for goods, services or works (in accordance with Procedure Rules 14 and 15). Officers shall ensure that any contracts let by such a consortium, collaboration or similar body are in accordance with UK and EU procurement directives and regulations.
- 3.4 Where the Council acts as lead body on a consortium or collaborative arrangement, the procedures for tendering contained within these Rules shall be followed (including the delivery, opening and acceptance of tenders) unless those provisions are inconsistent with the method by which tenders are dealt with by the consortium, collaboration or other body concerned and are not detrimental to the Council.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

Exemptions under this rule shall be notified to the Head of Organisational Development.

When entering into 'contracts' with suppliers/sub-contractors, the 'Contractor' must ensure that maximum protection which 'contracts' offer is secured, e.g. contracts to be "Under Seal" (Procedure Rule 31) and use of "Contract Bonds" (Procedure Rule 33) wherever appropriate.

PROCEDURE RULE 4

Preparation of Select Lists of Contractors

- 4.1 This Procedure Rule shall have effect where the Chief Officer in consultation with the appropriate Cabinet Member has determined that "Lists" be kept of persons to be invited to tender for contracts for the supply of goods services or materials of specified categories, values or amounts or for the execution of specified categories of works.
- 4.2 The "Lists" shall:-
- (a) be compiled and maintained by the Chief Officer;
 - (b) contain the names of all persons who are approved; and
 - (c) indicate whether a person whose name is included in them is approved for contracts for all, or only some, of the specified values or amounts or categories.
 - (d) be open to inspection by any Member of the Council.
- 4.3 The use of an approved list must be structured in order to ensure open and fair competition with an appropriate rotation of suppliers from the list.
- 4.4 At least four weeks before a list is first compiled, notices inviting applications for inclusion in it shall be published:
- (a) On the Council's website
 - (b) In at least one local newspaper, unless, in the opinion of the appropriate Chief Officer following consultation with the appropriate Cabinet Member, if applicable, this will not elicit any response because of the specialist nature of the contract, in which case public notice shall be given as set out in paragraph (c) below,
 - (c) In at least one newspaper or journal circulating among such persons or bodies as undertake such contracts.
- 4.5 After the expiration of the period specified in the public notice the Chief Officer must consider the expressions of interest returned and will record all the persons who have expressed an interest and those who have satisfied the criteria of technical, health and safety and financial capability, this record will remain on the central file held by the relevant Chief Officer.
- 4.6 The said "Lists" shall be amended as required from time to time with appropriate records maintained and kept on the central files as to the removal and/or addition of companies to the said "Lists" and shall be reviewed at regular intervals of not less than one year or more than five years.
- 4.7 At least four weeks before each review every person or body whose name appears in the "Lists" shall be asked whether they wish their name to remain on the "Lists" and notices shall be published as required by paragraph (4.4) of this Procedure Rule.
- 4.8 The appropriate Chief Officer shall be responsible for notifying a supplier/contractor of inclusion/non-inclusion on any "List".

- 4.9 Firms included in any "Lists" must satisfy the criteria of technical, health and safety and financial capability as determined by the appropriate Chief Officer and the Director of Resources.
- 4.10 The reasons for disqualifying any contractor on the basis of failing to meet technical, health and safety and financial capability or other pre-qualification criteria must be recorded.

Guidance Note (C) attached relating to preparation of "Lists" and procedures for selecting firms to tender for schemes must be followed.

If expenditure relates to Capital Programme reporting arrangements detailed in Procedure Rules 18 and 38 must be adhered to.

COMPETITION REQUIREMENTS - SUMMARY OF FINANCIAL THRESHOLDS

The following table summarises the procurement and approval process that needs to be taken for various financial thresholds. **REFER TO THE SPECIFIED PROCEDURE RULES FOR MORE DETAILED OPERATIONAL INFORMATION.**

CPR	Total Contract Value	Award Procedure	Approval
5	Less than £1,000	Regard to be given to the need to obtain value for money.	Chief Officer
6	£1,000 - £24,999.99	3 quotations required. Regard to be given to the need to obtain value for money.	Chief Officer
7	£25,000 - £49,999.99	Invitation to tender to 4 companies, no advert required.	Chief Officer
8	Schemes of a Specialist Nature. In excess of £25,000	A minimum number of 3 contractors or suppliers shall be invited to tender, where possible. No advert required.	Chief Officer
9	Single Tender In excess of £25,000	Single tender action shall not be taken prior to approval Invitation to tender to single contractor identified, no advert required.	Chief Officer, Director of Resources, Monitoring Officer Appropriate Cabinet Member
10	Negotiated Tenders.	Single tender action shall not be taken prior to approval Negotiate tender price with existing/previous contractor.	Chief Officer, Director of Resources, Monitoring Officer Appropriate Cabinet Member
11	Selective Tendering– Select Lists. In excess of £50,000	Invitation to tender to 4 companies on Select List.	Chief Officer
12	Selective Tendering – Ad - Hoc Lists. In excess of £50,000	Invitation to tender to 4 companies, advert required.	Chief Officer

CPR	Total Contract Value	Award Procedure	Approval
2	<p>Above EU Threshold</p> <p>£3,611,319 for works & £144,371 for goods and services *</p> <p><i>* Figures apply from 1st January 2006 and are reviewed periodically by the EC</i></p>	<p>EU Procedure or, where this does not apply, Invitation to Tender by advertisement/list to at least four contractors.</p>	<p>Formally consult the Solicitor to the Council and the Procurement Section – see Contract Procedure Rule 2</p>

PROCEDURE RULE 5**Contracts estimated value less than £1,000**

- 5.1 Where it is estimated by the appropriate Chief Officer that the value of goods, materials or services to be supplied or works to be executed at any one time or during a specified period is less than £1,000 and the provisions of Procedure Rule 4 in relation to “Lists” of Tenderers are not considered appropriate, the Chief Officer may enter into a contract for the supply of those goods or materials or for the works to be executed without obtaining tenders. However, regard must be had to the need to obtain value for money and to the fact that the expenditure can be accommodated within the appropriate budget.
- 5.2 The Chief Officer shall keep a record of all correspondence/negotiations to ensure that the appropriate evidence is available to demonstrate compliance with its duty to achieve Value for Money (subject to Procedure Rule 1.4).

Delegation referred to in 5.1 included in Schedule of Powers Delegated to Officers.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

When entering into 'contracts' with suppliers/sub-contractors, the 'Contractor' must ensure that maximum protection which 'contracts' offer is secured, e.g. contracts to be "Under Seal" (Procedure Rule 30) and use of "Contract Bonds" (Procedure Rule 33) wherever appropriate.

PROCEDURE RULE 6**Contracts estimated to cost between £1,000 and £24,999.99**

- 6.1 Where it is estimated by the appropriate Chief Officer that the value of goods, materials or services to be supplied or works to be executed at any one time or during a specified period is more than £1,000 and up to £24,999.99 and the provisions of Procedure Rule 4 in relation to “Lists” of Tenderers are not considered appropriate, the Chief Officer may enter into a contract for the supply of those goods or materials or for the works to be executed without obtaining tenders.
- 6.2 Where appropriate a minimum of 3 written quotations are required to be sought, and kept on a central file retained by the relevant Chief Officer for audit purposes (in accordance with Procedure Rule 1.4). Regard must be had to the need to obtain value for money and to the fact that the expenditure can be accommodated within the appropriate budget.
- 6.3 The Chief Officer shall keep a record of all correspondence/negotiations to ensure that the appropriate evidence is available to demonstrate compliance with its duty to achieve Value for Money (subject to Procedure Rule 1.4).

If expenditure relates to Capital Programme reporting arrangements detailed in Procedure Rules 18 and 38 must be adhered to.

Delegation referred to in 6.1 included in Schedule of Powers Delegated to Officers.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

When entering into 'contracts' with suppliers/sub-contractors, the 'Contractor' must ensure that maximum protection which 'contracts' offer is secured, e.g. contracts to be "Under Seal" (Procedure Rule 30) and use of "Contract Bonds" (Procedure Rule 33) wherever appropriate.

PROCEDURE RULE 7**Contracts estimated to cost between £25,000 and £49,999.99**

- 7.1 Where the total value of goods, services or works is estimated to cost between £25,000 and £49,999.99, the persons to be invited to tender (at least 4 wherever possible) shall be selected by the Chief Officer.
- 7.2 In cases where the goods, services or works are covered by an approved list maintained under Procedure Rule 4, the approved list must be used and at least four tenders obtained (and more where, in the opinion of the Chief Officer, there is a reasonable level of competition or variety of solutions). The use of an approved list must be structured in order to ensure open and fair competition with an appropriate rotation of suppliers from the list.
- 7.3 In determining the persons to be invited to tender regard shall be had to current technical ability and any other relevant factors with a view to ensuring that the Council obtains value for money.

Delegation included in Schedule of Powers Delegated to Officers.

If expenditure relates to Capital Programme reporting arrangements detailed in Procedure Rules 18 and 38 must be adhered to.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

When entering into 'contracts' with suppliers/sub-contractors, the 'Contractor' must ensure that maximum protection which 'contracts' offer is secured, e.g. contracts to be "Under Seal" (Procedure Rule 30) and use of "Contract Bonds" (Procedure Rule 33) wherever appropriate.

PROCEDURE RULE 8**Schemes of a Specialist Nature - Estimated Contract Value in Excess of £25,000**

- 8.1 This Procedure Rule shall apply where a Chief Officer considers that, because of the specialist nature of works to be undertaken, it is appropriate to invite tenders only from those firms with the relevant experience and expertise. Examples of when this rule can be used are:-
- The purchase or repair of patented or proprietary articles or articles sold only at a fixed price;
 - Works primarily involving specialist professional or technical skills or competencies or expertise in a subject or area where it is recognised that such skills or expertise are not generally available.
- 8.2 A minimum number of 3 contractors or suppliers shall be invited to tender, where possible.
- 8.3 The Chief Officer shall identify the firms to be invited to tender. The reasons for selecting the particular contractors or suppliers shall be recorded and retained on the central file held by the relevant Chief Officer (subject to Procedure Rule 1.4).
- 8.4 Firms must satisfy the criteria of technical, health and safety and financial capability as determined by the appropriate Chief Officer and Director of Resources before any contract is awarded.
- 8.5 The Chief Officer shall keep a record of all correspondence/negotiations to ensure that the appropriate evidence is available to demonstrate compliance with its duty to achieve Value for Money (subject to Procedure Rule 1.4).
- 8.6 This Procedure Rule cannot be used if EU Procedure applies (refer to Procedure Rule 2).

Delegation referred to in 8.2 included in Schedule of Powers Delegated to Officers.

If expenditure relates to Capital Programme reporting arrangements detailed in Procedure Rules 18 and 38 must be adhered to.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed. This note also contains guidance as to the definition of Schemes of a Specialist Nature.

When entering into 'contracts' with suppliers/sub-contractors, the 'Contractor' must ensure that maximum protection which 'contracts' offer is secured, e.g. contracts to be "Under Seal" (Procedure Rule 31) and use of "Contract Bonds" (Procedure Rule 33) wherever appropriate.

PROCEDURE RULE 9**Single Tenders - Estimated Contract Value in Excess of £25,000**

- 9.1 This Procedure Rule shall apply where the Chief Officer has decided that there is only one possible contractor or supplier suitable for a given contract. Where this is the case, the Chief Officer concerned may invite and accept a tender from a single person or body.
- 9.2 Before single tender action is to be taken, a report shall be prepared for written approval by the Chief Officer in consultation with the Director of Resources, the Monitoring Officer and the appropriate Cabinet Member and a record of the decision shall be retained by the service. This report will set out in detail the justification for the single tender.
- 9.3 Single tender action shall not be taken prior to approval from the Director of Resources, the Monitoring Officer and the appropriate Cabinet Member.
- 9.4 The Chief Officer shall keep a record of all correspondence/negotiations to ensure that the appropriate evidence is available to demonstrate compliance with its duty to achieve Value for Money (subject to Procedure Rule 1.4).

Delegation referred to in 9.2 included in Schedule of Powers Delegated to Officers.

If expenditure relates to Capital Programme reporting arrangements detailed in Procedure Rules 18 and 37 must be adhered to.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

When entering into 'contracts' with suppliers/sub-contractors, the 'Contractor' must ensure that maximum protection which 'contracts' offer is secured, e.g. contracts to be "Under Seal" (Procedure Rule 31) and use of "Contract Bonds" (Procedure Rule 33) wherever appropriate.

PROCEDURE RULE 10**Negotiated tenders**

- 10.1 This Rule shall apply where the Chief Officer has decided that it is economic to re-engage a contractor who previously performed successfully on a similar project, or is carrying out an existing contract nearby the proposed contract. In such cases, the Chief Officer concerned may negotiate a tender price with the selected contractor.
- 10.2 Before negotiations take place a report shall be prepared for written approval by the Chief Officer in consultation with the Director or Resources, the Monitoring Officer and the appropriate Cabinet Member and a record of the decision shall be retained by the service and a copy sent to the Head of Organisational Development (in accordance with Procedure Rule 1.4).
- 10.3 This report will set out in detail the justification for entering into negotiations - financial (e.g. outcome of recent competitive tendering) and non-financial, together with criteria governing cost increases if the negotiations relate to contractual arrangements for specific categories of work.
- 10.4 Negotiated tender action shall not be taken without prior approval from the Director of Resources and the Monitoring Officer.
- 10.5 As with all issues of this nature regard must be had to achieving value for money.

Delegation referred to in 10.2 included in Schedule of Powers Delegated to Officers.

If expenditure relates to Capital Programme reporting arrangements detailed in Procedure Rules 18 and 38 must be adhered to.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

When entering into 'contracts' with suppliers/sub-contractors, the 'Contractor' must ensure that maximum protection which 'contracts' offer is secured, e.g. contracts to be "Under Seal" (Procedure Rule 31) and use of "Contract Bonds" (Procedure Rule 33) wherever appropriate.

PROCEDURE RULE 11**Selective Tendering - Select List - Estimated contract value in excess of £50,000**

- 11.1 Select Lists may be used for the selection of suitable contractors (including national frameworks such as Construction Line, G-CAT or S-CAT) for contracts that are estimated to be for amounts exceeding £50,000. The procedures for establishing Select Lists are outlined in Procedure Rule 4.
- 11.2 Where invitation to tender for a contract is limited to persons whose names appear on the "Lists" maintained under Procedure Rule 4, an invitation to tender for that contract shall be sent to:
- (a) at least four of those persons whose names appear in the "Lists" as being approved for a contract for that value or amount or of that category.
 - (b) the selection of potential sub-contractors to be invited to submit bids from select lists will be strictly by rotation, except whereby otherwise justified and agreed with the appropriate Chief Officer.
 - (c) If there are fewer than four such persons on the list then the invitation to tender shall be sent to all such persons unless the Chief Officer believes that there is a reasoned justification for not doing so. The reasons for which must be recorded and retained on the central file held by the appropriate Chief Officer (in accordance with Procedure Rule 1.4).
 - (d) If there are more than four such persons, the persons invited to tender shall be determined by the appropriate Chief Officer who shall have regard to current technical capability and any other relevant factors with a view to ensuring that the Council obtains value for money.
- 11.3 Where the value of the contract is likely to exceed the European threshold (taking account of the rules of aggregation), it must be tendered in accordance with the relevant European procurement directive and procurement regulations. The exception to this Rule is in cases where goods, services or works can be obtained through an approved list or framework contract which has been established via the relevant EU procurement process (for example, S-CAT).

Delegation referred to in 11.3 included in Schedule of Powers Delegated to Officers.

If expenditure relates to Capital Programme reporting arrangements detailed in Procedure Rules 18 and 38 must be adhered to.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

When entering into 'contracts' with suppliers/sub-contractors, the 'Contractor' must ensure that maximum protection which 'contracts' offer is secured, e.g. contracts to be "Under Seal" (Procedure Rule 31) and use of "Contract Bonds" (Procedure Rule 33) wherever appropriate.

PROCEDURE RULE 12**Selective Tendering – Ad Hoc List - Estimated contract value in excess of £50,000**

- 12.1 This Procedure Rule shall apply where the Chief Officer has decided that invitation to tender for a contract whose estimated value exceeds £50,000 is to be limited to some or all of those contractors who have replied to a public notice published in accordance with this Procedure Rule.
- 12.2 For the purpose of this Procedure Rule public notice shall be given:
- (a) on the Council's website;
 - (b) in at least one local newspaper, circulating in the Borough unless, in the opinion of the appropriate Chief Officer, this will not elicit any response because of the specialist nature of the contract, in which case public notice shall be given as set out in paragraph (c) below, and
 - (c) where the value of the proposed contract exceeds £100,000 in at least one newspaper or journal circulating among such persons or bodies who undertake such contracts, and
 - (d) at the discretion of the Chief Officer to all or a selected number of persons or bodies named in a list maintained under Procedure Rule 4. The Chief Officer shall record their reasons for selection and criteria adopted in making such selection.
- 12.3 The public notice shall
- (a) specify details of the contract into which the Council wish to enter and state where further details can be obtained;
 - (b) invite expressions of interest from persons or bodies wishing to be considered in the tender list and
 - (c) specify a time limit, being not less than 14 days, within which such applications are to be submitted to the Council.
- 12.4 After the expiration of the period specified in the public notice invitations to tender for the contract shall be sent out to not less than 4 of the persons or bodies who applied for permission to tender, selected by the Chief Officer, or where fewer than 4 persons or bodies have applied and are considered suitable, to such of those persons or bodies as the Chief Officer considers suitable.
- 12.5 The Chief Officer shall keep a record of all correspondence/negotiations to ensure that the appropriate evidence is available to demonstrate compliance with its duty to achieve value for money (subject to Procedure Rule 1.4).

Delegation referred to in 12.1, 12.2, 12.3 included in Schedule of Powers Delegated to Officers.

If expenditure relates to Capital Programme reporting arrangements detailed in Procedure Rules 18 and 38 must be adhered to.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

When entering into 'contracts' with suppliers/sub-contractors, the 'Contractor' must ensure that maximum protection which 'contracts' offer is secured, e.g. contracts to be "Under Seal" (Procedure Rule 31) and use of "Contract Bonds" (Procedure Rule 33) wherever appropriate.

PROCEDURE RULE 13

Emergency Works

- 13.1 Where the contract is for the execution of work or the supply of goods or materials where, in the opinion of the appropriate Chief Officer emergency action is necessary to render a building, highway or structure safe and watertight, or to preserve property for which the Council is responsible or to deal with a source of danger to persons (including a danger to health). A report of action and expenditure incurred under this part of this Procedure Rule of an amount exceeding that delegated to the relevant Chief Officer shall be made to Management Team.

Delegation referred to in 13.1 included in Schedule of Powers Delegated to Officers.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

PROCEDURE RULE 14**Use of Central Government Purchasing Arrangements or Organisations**

- 14.1 This rule shall apply where the Chief Officer has decided that the most appropriate method of appointing a contractor or supplier is to utilise a central government purchasing arrangement or organisation such as the Office of Government Commerce(2), Construction Line etc. The procedures established by Central Government for the use of such an arrangement or organisation must be followed, as must any relevant European Union Procurement rules and any applicable requirement of this constitution.
- 14.2 The reasons for using a central government purchasing arrangement or organisation shall be recorded and personally signed by the Chief Officer and retained on a central file held by the said Chief Officer (subject to Procedure Rule 1.4).

Delegation referred to in 14.2 included in Schedule of Powers Delegated to Officers.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

PROCEDURE RULE 15**Use of Local Purchasing Organisations**

- 15.1 This rule shall apply where the Chief Officer has decided that the most appropriate method of appointing a contractor or supplier is to utilise a local purchasing organisation such as the North East Purchasing Organisation (NEPO).
- 15.2 The procedures established by such a local purchasing organisation for its use must be followed, as must any relevant European Union procurement rules and any applicable requirement of this constitution.
- 15.3 References to a “local purchasing organisation” shall include participation in informal consortia of other public and private bodies where the lead organisation is from the public sector and uses tendering procedures which are broadly comparable with these rules.
- 15.4 The reasons for using a local government purchasing organisation arrangement shall be recorded and personally signed by the Chief Officer and retained on a central file held by the said Chief Officer (in accordance with Procedure Rule 1.4).

Delegation referred to in 15.4 included in Schedule of Powers Delegated to Officers.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

PROCEDURE RULE 16**Purchase and Sale of Land/Property**

- 16.1 Before disposing of an interest in land/property held by the Council the appropriate Chief Officer shall prepare a report for submission to the Cabinet containing full details of the most appropriate method of disposal, the price and other terms and conditions.
- 16.2 In so doing, regard shall be had to the requirements of sections 123 to 127 of the Local Government Act 1972 (or any statutory modification thereof) and, in particular, shall consider (where applicable) the need for obtaining ministerial consent in those cases where a disposal is contemplated at less than the best consideration reasonably obtainable.
- 16.3 The Chief Officer shall determine the most appropriate method of the disposal and if appropriate tendering shall be undertaken in accordance with Procedure Rules.
- 16.4 As far as possible reserve prices shall be placed in order to ensure that the Council obtains value for money. However, there is a need to consider the provisions of the 1972 General Disposal Consent (England) 2003 which gives Local Authorities freedom to dispose of lands at less than best price reasonably obtainable where the Council considers that such disposal will secure the promotion or improvement of the economic social or environmental well-being of its area.
- 16.5 Where there is a proposal to dispose of land at less than the best which is reasonably obtainable, using the provisions of the 2003 General Disposal Consent this shall be included in the report prepared for submission to Cabinet.
- 16.6 Any proposal to acquire any interest in land/property shall be the subject of a report by the appropriate Chief Officer to the Cabinet containing full particulars of the interest to be acquired, price and other terms and conditions.

The Council's Cabinet has the following delegated power where urgent action is essential:-

"To agree to the acquisition, management and disposal of all land and buildings and to confirm terms."

Guidance Note (D) attached - must be followed.

If expenditure relates to Capital Programme reporting arrangements detailed in Procedure Rules 18 and 38 must be adhered to.

With respect to the sale of land or property, consideration needs to given to whether VAT needs to be included. Accountancy Section must be consulted for guidance in this area.

PROCEDURE RULE 17**Sale of Vehicles, Plant, Machinery, Equipment etc.**

- 17.1 The Chief Officer of each Department shall have authority to declare that the Council has vehicles, plant, machinery, equipment etc. surplus to requirements and that he wishes to dispose of them accordingly.
- 17.2 The Chief Officer shall decide upon an estimated residual value for each item he wishes to dispose of.
- 17.3 Where individual items to be disposed of are valued at £1,000 or less, then the Chief Officer shall arrange to dispose of such items by whatever means is considered the most cost effective.
- 17.4 Where individual items to be disposed of are valued in excess of £1,000 but less than £25,000 the Chief Officer concerned shall invite quotations to purchase from interested parties by way of public notice or he shall arrange to sell the items by public auction, if he considers this latter course of action more suitable.
- 17.5 If it is proposed to sell an item(s) by public auction, proper arrangements shall be made with a reputable organisation, normally involved with such business on a regular day-to-day basis, and those arrangements shall include confirmation by the organisation that the auction will be open to members of the general public.
- 17.6 If the estimated value of individual items to be sold is £25,000 or more, or, in the opinion of the Chief Officer, the item(s) are of a specialist nature (whether or not the value exceeds £25,000), then the Chief Officer may, as an alternative to sale by public auction, invite quotations to purchase by means of advertisement in trade or specialist publications instead of, or in addition to, local newspaper advertisement.
- 17.7 The disposal of any assets subject to leasing arrangements must be in a manner approved by the leasing company.
- 17.8 Detailed records must be kept to ensure that the appropriate evidence is available to demonstrate compliance with its duty to achieve value for money (in accordance with Procedure Rule 1.4).

Delegation referred to in 17.3, 17.4, 17.6 included in Schedule of Powers Delegated to Officers.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

With respect to the sale of land or property, consideration needs to be given to whether VAT needs to be included. Accountancy Section must be consulted for guidance in this area.

PROCEDURE RULE 18

Scheme Proposal - Capital Programme

18.1 Before tenders or quotations for the execution of any works included in the Capital Programme are invited, the Cabinet shall obtain from the appropriate Chief Officer a report on the proposals including the relevant financial information.

Link to Procedure Rule 38.

Guidance Note (B) attached relating to Capital Programme procedures must be followed - also relates to Procedure Rule 38.

PROCEDURE RULE 19**‘Main Contractor’ Arrangements**

- 19.1 Where it is necessary to enter into sub-contracts and/or supply arrangements whilst operating as a ‘main contractor’ such arrangements will be approved by the relevant Chief Officer in relation to the use of select lists of contractors and short-listing arrangements (all “Select Lists” shall be prepared in accordance with Procedure Rule 4).
- 19.2 The selection of potential sub-contractors to be invited to submit bids from select lists will be by rotation, except whereby otherwise justified and agreed with the appropriate Chief Officer.
- 19.3 In respect of Procedure Rule 19.1 above the appropriate Chief Officer shall not be obliged to seek tenders in accordance with these Procedure Rules but shall be required to ensure that value for money is obtained and keep detailed records of quotations, processes and negotiations on the central file of sub-contractors selection criteria, quotations, prices and negotiations to ensure that the appropriate evidence is available to demonstrate compliance with its duty to achieve value for money.

Delegation referred to in 19.3 included in Schedule of Powers Delegated to Officers.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

When entering into ‘contracts’ with suppliers/sub-contractors, the ‘Contractor’ must ensure that maximum protection which ‘contracts’ offer is secured, e.g. contracts to be “Under Seal” (Procedure Rule 30) and use of “Contract Bonds” (Procedure Rule 33) wherever appropriate.

PROCEDURE RULE 20**Nominated/Named Sub-Contractors and Suppliers**

- 20.1 Tenders for sub-contracts and supplies to be performed by sub-contractors and suppliers shall be invited in accordance with the methods and arrangements prescribed in these Procedure Rules.
- 20.2 The appropriate Chief Officer is authorised to nominate or name to the main contractor the sub-contractor or suppliers whose tender, obtained in accordance with the preceding sub-paragraph is, in his or her opinion, the most satisfactory; provided that, where the tender is not the most economically advantageous received, the Chief Officer sets out in writing the reasons for this which shall be personally signed by the Chief Officer concerned, or his or her nominee and retained on a central file held by the said Chief Officer (in accordance with Procedure Rule 1.4). The appropriate Cabinet Member shall be kept informed.

PROCEDURE RULE 21**Engagement of Consultants**

- 21.1 A Chief Officer may only appoint external consultants (including Construction and Catering) or advisors providing professional or consulting services if such services are not available within the Council or if Council officers providing them do not have the resources to meet the needs of the service. Where such services are available in-house, the Chief Officer must consult with the Director of Resources before taking any decision to make an external appointment.
- 21.2 External consultants and technical officers engaged to supervise contracts must follow these Rules as applicable and their contracts for services must state this requirement.
- 21.3 All contracts for external consultants and advisors shall explicitly require that the consultants or advisors provide without delay any or all documents and records maintained by them relating to the services provided on request of the Chief Officer,.
- 21.4 The Chief Officer shall ensure that any consultant working for the Council has appropriate professional indemnity insurance.
- 21.5 The engagement of a Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment.

PROCEDURE RULE 22**Partnerships**

- 22.1 These Rules apply to any proposal for the Council to become involved in a partnership, including the management and termination of any such arrangement.
- 22.2 A 'partnership' is a joint-working arrangement involving the Council and one or more legally independent organisations through which either a specific programme or project or through which services within any of the functions of the Council are to be provided.
- 22.3 Partnerships represent a variety of arrangements both statutory and non-statutory including public sector joint committees, joint boards and consortia, partnering arrangements/pooled budgets, joint ventures with private sector companies, companies limited by guarantee (trust) and a charities.
- 22.4 The development of a partnership must always be subject to the Council's formal approval mechanism, in which Corporate Management Team and Cabinet must approve a business case for the proposed partnership demonstrating its contribution to corporate objectives. The business case will include a proportionate cost benefit analysis of each potential option for delivery including a full risk assessment in order to support the case for partnership creation.
- 22.5 If the partnership is prescribed by statute, all partners will sign a formal and comprehensive partnership agreement and the partnership managed accordingly.
- 22.6 If the proposal is for a discretionary partnership, the Contract Procedure Rule relevant to the value of the proposed contract will be followed in order to select the best value partner.
- 22.7 Discretionary partnerships will be subject to formal contractual agreement appropriate to the partnership structure to be adopted. Advice must be sought from Legal Services in the preparation of such contracts.
- 22.8 Each partnership will be recorded in the corporate partnerships database and its performance managed and monitored in accordance with the corporate guidance on partnerships governance.
- 22.9 Procurements within partnerships will be undertaken in line with the lead organisation's contract procedure rules, provided this complies with all legal obligations and the Council's objectives in respect of value for money.
- 22.10 Termination of partnerships before the scheduled end-date will be determined by a range of factors, including poor performance, partner relationships and external factors such changes in the operating environment. Any decision on early termination will be subject to Cabinet approval.

PROCEDURE RULE 23**Tender Envelopes**

23.1 Where invitation to tender is required in accordance with these Procedure Rules, every notice of such invitation shall state that no tender will be received except in the envelope provided by the Council or, where no such envelope is available, in a plain sealed envelope which shall bear the word "Tender -" followed by the subject to which it relates and the closing date and time for receipt of the tender, but shall not bear any name or mark indicating the sender, and such envelopes shall remain in the custody of the Chief Executive Officer or an official of the Council designated by him until the time appointed for their opening.

Electronic Tendering System

23.2 Where the Council's electronic tendering system is used for invitation to tender every notice of such invitation shall state that a fully priced tender is to be returned, via the Council's electronic tendering system delivered electronically to the Chief Executive Officer. In the event that tenderers are unable or unwilling to submit a response electronically officers shall ensure that procedures in respect of 'opt out' are adhered to. Completed tenders shall be returned in the sealed tender envelope, which must not bear any name or mark indicating the sender. Particular care should be taken that the Tenderer's identity is not apparent from any image, resulting from a postal franking device, appearing on the envelope or package.

PROCEDURE RULE 24**Late Tenders**

- 24.1 Where a tender is submitted in competition and is received after the specified time then it shall be disqualified. Any such tender shall be returned promptly to the tenderer who should be notified accordingly. The tender envelope may be opened to ascertain the name and address of the tenderer concerned.
- 24.2 The only exception to Procedure Rule 24 where a late tender may be considered is if none of the other tenders received have been opened or no other tenders have been received. The officer responsible for the opening of tenders must keep a record of the date and time of receipt of late tenders and the circumstances resulting in their acceptance.

PROCEDURE RULE 25

Attempted Alteration of Tender

- 25.1 If any person, firm or company who, having submitted to the Council a tender shall, subsequent to the opening of tenders, seek to amend such tender (other than may be provided for in the tender documents) then such amendment shall disqualify that tender from further consideration by the Council.

PROCEDURE RULE 26

Opening of Tenders

- 26.1 All tenders will be opened at the same time as soon as possible after the deadline for their receipt.
- 26.2 If all tenders are received via the electronic tendering system, they will be opened by 2 officers representing the Chief Executive.
- 26.3 If at least one is received in a tender envelope, all tenders will be opened in the presence of:-
- (i) Two Members of the Council - wherever possible one will be a member of the Cabinet, and
 - (ii) The Chief Executive or an official of the Council designated by him.
- 26.4 The Chief Executive will keep a record of all tenders received, which will be signed by those present when the tenders are opened.

PROCEDURE RULE 27**Acceptance of Tenders**

- 27.1 The most economically advantageous tender for the supply of goods or services to the Council shall be accepted by the Chief Officer and where it has been judged as the most appropriate against a pre-determined evaluation model available at the time the tenders are sought. Due regard must be made to achieving value for money.
- 27.2 The most economically advantageous tender for the purchase of goods or services from the Council shall be accepted by the Chief Officer.
- 27.3 Any tender not satisfying Rules 27.1 and 27.2, shall not be accepted except as authorised by the Chief Officer following consultation with the appropriate Cabinet Member, the Monitoring Officer and Director of Resources where it is in the interests of the Council as being the most suitable having regard to the Budget and Policy Framework. Full details should be retained on the central files held by the relevant Chief Officer.
- 27.4 The appropriate Chief Officer shall have authority to negotiate with any tenderer for the purpose of rectifying or taking account of some error or omission appearing in any tender or priced bill of quantities.
- 27.5 For all procurements covered by the EU Procurement Directives, a minimum of 10 calendar days mandatory standstill period is required between the communication of the notification of the award decision and contract conclusion, with day 1 being the day after the award decision is issued, by fax or email and in writing to all tenderers. This is to allow contractors/suppliers an opportunity to challenge the decision. The notification of the award decision, based on the most economically advantageous tender, shall contain:
- the award criteria;
 - the score the tenderer obtained against those award criteria;
 - the score the winning tenderer obtained;
 - the name of the winning tenderer.

Delegation referred to in 27.1 included in Schedule of Powers Delegated to Officers.

For guidance on Evaluation Criteria, contact the Procurement Officer.

PROCEDURE RULE 28

Acceptance of Tenders above approved budgets/estimates

28.1 A report in writing shall be made to the Cabinet seeking approval where the acceptance of a tender would exceed an approved budget/estimate.

Need to comply with Financial Procedure Rules.

If expenditure relates to Capital Programme reporting arrangements detailed in Procedure Rules 18 and 38 must be adhered to.

PROCEDURE RULE 29**Negotiations Following Receipt of Tenders**

- 29.1 This Procedure Rule applies only to negotiations following the receipt of a quotation or tender submitted in accordance with these Procedure Rules.
- 29.2 Subject always to the statutory procurement framework the Chief Officer may, after consulting with the Council's Procurement Section, authorise negotiations with the two most economically advantageous tenderers (and such other tenderers as the appropriate Chief Officer decides in the interests of genuine competition) or quotation providers if he or she considers that none of the tenders or quotations are acceptable and it is in the Council's interest to do so. In cases where a procurement process is for multiple providers, the number of tenderers selected for negotiation may be increased appropriate to the number of contracts to be let.
- 29.3 Negotiations shall be conducted on behalf of the Council by at least two appropriate officers from the service concerned. The Council's Procurement Section shall be invited to the negotiation meetings. A full written record shall be kept of the results of the negotiations, signed by the Chief Officer or his or her nominee personally, retained on a central file held by the said Chief Officer and a copy sent to the Procurement Section (in accordance with to Procedure Rule 1.4). The appropriate Cabinet Member shall be kept informed.
- 29.4 An amended tender following negotiations under Procedure Rule 29 may not be accepted unless it is demonstrably more economically advantageous than all of the written tenders previously obtained.
- 29.5 Procedure Rule 29 shall not apply to any contract that is governed by EU procurement directives.

Guidance Note (A) attached relating to keeping records of correspondence/negotiations etc. must be followed.

PROCEDURE RULE 30**Contracts to be in Writing**

- 30.1 All contracts shall be in writing in a form approved by the Chief Executive Officer.
- 30.2 The Chief Executive Officer's approval of forms of contracts is deemed to be given in respect of any form of contract approved by the relevant professional association or other recognised body appropriate to the subject matter of the contract concerned.

The Chief Executive Officer's approval of forms of contracts may be given by the Director of Resources or the Solicitor to the Council. Such approval shall not be necessary in the case of forms of contract issued by the following professional associations or other recognised bodies:-

- Institute of Civil Engineers*
- Joint Contractors Tribunal*
- Joint Contracts Landscapes Industries*
- Institute of Electrical Engineers*
- Law Society*
- Royal Institution of Chartered Surveyors*
- Royal Institute of British Architects*
- Chartered Institute of Building Services Engineers*

However, forms of contract which, in the ordinary course of business, are commonly used by suppliers of goods or services, will still require approval e.g. computer contracts or contracts for the provision of software.

In cases of doubt then the matter shall be referred to the Director of Resources or the Solicitor to the Council well in advance of the time when contract commitments are to be entered into.

PROCEDURE RULE 31**Signing of Contracts/Use of Common Seal of the Council**

- 31.1 Every contract which does not exceed £50,000 shall be signed by the appropriate Chief Officer or an officer designated on his behalf - this shall not apply to contracts entered into under the Common Seal of the Council.
- 31.2 Every contract which exceeds £50,000 shall be signed by the Chief Executive Officer or the Director of Resources or the Solicitor to the Council.
- 31.3 Every contract which exceeds £100,000 shall be entered into under the Common Seal of the Council and where appropriate.
- 31.4 In addition to (3) above the use of the Common Seal shall be obligatory in the following circumstances:-

The Common Seal shall be used in connection with the Council entering into a Deed, unless otherwise required by statute, for the disposal or acquisition of interests in land, in connection with any building contract, construction contract or contract for works of an engineering or technical nature where the use of the Seal will afford additional protection to the Council. In these situations the use of the Seal shall be dispensed with only with the approval of the Chief Executive Officer, the Director of Resources or the Solicitor to the Council.

Delegations referred to in 31.1 and 31.2 included in Schedule of Powers Delegated to Officers.

Procedure Rule 38 in Part VI of Procedure Rules relating to Meetings and Proceedings states the signing of documents to which the Common Seal is affixed can only be undertaken by the Chief Executive Officer, Director of Resources or the Solicitor to the Council.

Essential that in order to maximise protection the conditions in this Procedure Rule be used as appropriate in respect of contracts/sub-contracts entered into.

PROCEDURE RULE 32**Contract Conditions**

32.1 Every contract in writing or electronic format shall, where appropriate, specify:-

- (a) the goods, materials or services to be supplied and the work to be executed;
- (b) full details of all prices to be paid, detailing the frequency and method of calculation (if any) with a statement of discounts or other deductions; and
- (c) the period of time within which the contract is to be performed;
- (d) such other conditions and terms as may be agreed between the parties.

32.2 Liquidated and Ascertained Damages

Every contract which exceeds:-

- (a) £100,000 and is anticipated to exceed 12 months duration; or
- (b) £250,000 irrespective of duration;
- (c) or where appropriate;

and is either for the execution of works or for the supply of goods, materials or services otherwise than at one time shall provide for liquidated damages to be paid by the Contractor in case the terms of the Contract are not duly performed.

A clause shall be inserted to secure that, should the contractor fail to execute the work or deliver the goods or materials, either in whole or in part, within the time(s) specified in the contract, the Council, without prejudice to any other remedy for breach of contract, shall be entitled to determine the contract, either in whole or in part, or to the extent of the default, and to make alternative arrangements for the execution of the work or to purchase other goods or materials, as the case may be to make good:

- (i) such default, or
- (ii) in the event of the contract being wholly determined, the unexecuted work or the goods or materials remaining to be delivered.

The clause shall further secure that the amount of work by which the cost of providing for the execution of the work by other means, or the purchasing of other goods or materials, exceeds the amount which would have been payable to the contractor, within the time or times specified, shall be payable by the contractor.

Essential that in order to maximise protection the conditions in this Procedure Rule be used as appropriate in respect of contracts/sub-contracts entered into.

32.3 Breach

Every written or electronic contract must contain a clause to secure that if the contractor fails to comply with its contractual obligations in whole or in part, or commits a fundamental breach of the contract, the Council may, without prejudice to any other remedy available to it:

- (a) Terminate the contract, either wholly or to the extent of such default;
- (b) Complete the contract itself or through another contractor or agent to make good the default,
- (c) Recover from the contractor any additional costs incurred in completing the contract to the original specification.

32.4 Late Payment

The contract shall require that if one or more sums of money to be received by the Council, the contractor responsible for the payment of such sum or sums must pay interest in respect of late payment at the rate stated in the contract from the date when payment is due until the date when payment is received.

In every written or electronic contract consideration will be given to inserting the following clauses or a variant thereof:

32.5 Statutory Requirements - Equality & Diversity

In the performance of the contract, the contractor must comply with all statutory requirements and current legislation relating to the promotion of equality on the grounds of race, gender, ethnicity, age, disability, religion or belief and sexual orientation.

32.6 Statutory Requirements – Health & Safety

In the performance of the contract, the contractor must comply with the requirements of the Health and Safety at Work etc. Act 1974 and of any other relevant Acts, Regulations or Orders pertaining to health and safety.

32.7 Statutory Requirements – Best Value

Contractors discharging Council functions must comply with the duty of Best Value under the Local Government Act 1999 (as amended).

32.8 Transferring, Assigning and Sub-letting

In every written or electronic contract for the execution of work or for the supply of goods or materials the following or equivalent clauses shall be inserted.

“The contractor shall be prohibited from transferring or assigning directly or indirectly, to any person or persons whatever, the whole or any portion of its contract without the written permission of the Council. Sub-letting of any part of the work shall be prohibited, except to the extent permitted in writing by the officer concerned in accordance with the provisions of the contract”.

32.9 Performance Information

Every written and electronic contract shall contain detail of relevant performance criteria, targets, standards and information on how the contract will be monitored, reviewed and managed by the Council.

32.10 Freedom of Information Act 2000

All tenders and contracts must contain a notice relating to the Freedom of Information Act and a schedule that clearly identifies those sections of clauses that are commercially confidential within the terms of the Freedom of Information Act.

32.11 Other

Other contractual conditions shall be included as required within these Procedure Rules, the Code of Practice or as directed by the Solicitor to the Council.

PROCEDURE RULE 33**Contract Bond**

33.3 The Council will also require a contractor to give sufficient security for the due performance of any Contract as follows:-

- (i) The Contractor will be required to enter into a Contract Guarantee Bond in a sum equal to 10% of the Contract sum or 10% of the annual sum if the Contract exceeds 12 months duration and he must allow in his tender for the cost of this provision.
- (ii) In the event of the Contractor being unable to obtain a satisfactory Contract Guarantee Bond within 14 days of notification to him of acceptance of his Tender, the acceptance of his Tender may be revoked.

Essential that in order to maximise protection the conditions in this Procedure Rule be used as appropriate in respect of contracts/sub-contracts entered into.

PROCEDURE RULE 34**Cancellation of Contracts - Inducements**

- 34.1 In every written contract a clause shall be inserted to ensure that the Council shall be entitled to cancel the contract, and to recover from the contractor the amount of any loss or damages resulting from such cancellation, if the contractor or its employees or agents (with or without its knowledge):
- (a) does anything improper to influence the Council to award the contractor any contract; and/or
 - (b) commits an offence under the Prevention of Corruption Acts 1889 to 1916 (as amended) or under Section 117 of the Local Government Act 1972.
- 34.2 For the purposes of this Procedure Rule the term "contractor" includes any person acting on behalf of the contractor or with his knowledge or consent and whether or not the contract is in writing or oral or made by way of order for goods or services.

It is essential that all parties with whom the Council has dealings must be aware of the Council's attitude regarding 'inducements'.

Correspondence leading to a contract can be construed as part of the contract.

The following must be incorporated into all orders/correspondence:-

"This order is subject to the current Procedure Rules of the Council".

"The Council may cancel this contract/order if any inducement has been offered to any employee".

Standard Forms of Contract e.g. ICE, JCT etc. usually contain a specific section relating to 'inducements' etc.

PROCEDURE RULE 35**Standard/Specification**

- 35.1 Except where the law requires otherwise, where an appropriate International Standard, British Standard Specification, or British Standard Code of Practice issued by the British Standards Institution is current at the date of the tender, every written contract the value or amount of which exceeds £25,000 shall require that, as the case may be, all goods and materials used and supplied, and all workmanship, shall be in accordance with that standard, any equivalent European Union standard, or of a higher standard.

A clear specification of requirements (identifying outputs or outcomes rather than inputs, unless there is a demonstrable need to specify inputs) shall be produced.

PROCEDURE RULE 36**Extending Existing Contracts**

- 36.1 The Chief Officer, after consultation with the appropriate Chief Officer, may extend a contract up to a limit of 10% of the original contract value and subject to the extension being within the scope of the original scheme. All such decisions shall be recorded and personally signed by the Chief Officer concerned, or his or her nominee and retained on a central file by the said Chief Officer (in accordance with Procedure Rule 1.4). A copy of the decision shall also be sent to the Procurement Section, and the Chief Officer shall ensure that the appropriate Cabinet Member is kept informed.
- 36.2 Extensions to capital project contracts that will fall outside the scope of the original scheme will require the approval of the relevant Chief Officer for values below £100,000. Extensions with a value of £100,000 or more must go to the Cabinet for approval. This does not apply to operational contracts for goods and services that are not key decisions (i.e. where annual or periodic contracts are to be extended). The definition of a key decision is set out in Part 3, Responsibility for Functions, B - Cabinet Functions, of the Constitution. In such cases the Chief Officer or the Cabinet must, before taking the decision, consider tendering or negotiating the additional work, and ensure that any additional required funding is secured. A written record of the decision with reasons shall be personally signed by the Chief Officer concerned or his or her nominee and the record be retained on a central file held by the said Chief Officer, and a copy sent to the Procurement Section.
- 36.3 If the original contract was subject to the EU procurement regulations, the contract can only be extended within the parameters identified in the original EU contract notice, or if the notice explicitly contained provision for extension.
- 36.4 If the contract was not subject to the EU procurement regulations, any extension must not take the total value of the contract above the EU thresholds.
- 36.5 If the contract was awarded as a framework contract, the total contract period, including any extensions, cannot exceed four years.

PROCEDURE RULE 37***Variation Orders and Extra Works Orders***

- 37.1 The Chief Officer must record every variation order or extra works order immediately it is raised. If the issue of Variation Order(s) would at the date of the Variation Order(s) increase the original contract price by more than 10% these must be reported to the Director of Resources who will consider if it should be reported to Cabinet.
- 37.2 Where contracts are entered into on fluctuating basis, the 10% relates to the original tender sum as adjusted under the terms of the contract.
- 37.3 Where the contract price is inclusive of a sum for contingencies, the limits outlined in paragraph 37.1 above must relate to the total contract price.
- 37.4 Where such additional expenditure relates to a Capital Scheme, every effort must be made to meet the cost from within the overall Capital Programme for that Service. If this is not possible, a report must be submitted to the Cabinet.

Included in Schedule of Powers Delegated to Officers.

Link to Capital Programme and Contracts Sections of Financial Procedure Rules – paragraphs 24 and 54.

PROCEDURE RULE 38

Compliance with Financial Procedure Rules

38.1 The Cabinet and Officers of the Council shall comply with the Council's Financial Procedure Rules. Particular attention is drawn to the Rule relating to Capital Programmes.

Link to Procedure Rule 18.

Guidance Note (B) attached relating to Capital Programme procedures must be followed - also relates to Procedure Rule 18.

PROCEDURE RULE 39

Non-Commercial Matters

- 39.1 In relation to the making of a Public Supply or Works contract within the meaning of Section 17 of the Local Government Act 1988 consideration shall be given to the duty imposed by that section to exercise the functions regulated by that section without reference to non-commercial matters.

Guidance Note (E) attached details the non-commercial matters which must not be referred to in making Public Supply or Works Contracts.

PROCEDURE RULE 40

Review of Cash Limits

- 40.1 The cash limits referred to in these Procedure Rules shall be reviewed annually by the Procurement Section and an appropriate notification shall be provided to each Chief Officer. Such notification shall not amount to a formal amendment of the Constitution.

PROCEDURE RULE 41

Lease or Credit Arrangements

- 41.1 The Chief Officer must consult with the Head of Financial Services prior to entering into any lease or credit arrangement.

PROCEDURE RULE 42

Claims

- 42.1 The Chief Officer must inform the Solicitor to the Council immediately of any claims (or anticipated claims) by or against contractors that are the subject of dispute between the Council and the contractor.

Guidance Note A

KEEPING OF RECORDS OF CORRESPONDENCE/NEGOTIATIONS ETC.

The Contract Procedure Rules provide varying degrees of delegated power for officers to obtain and accept competitive prices and enter into contracts on behalf of the Council for goods, materials or services to be supplied or works to be executed.

Throughout the exercise of these delegated powers it is essential to ensure that value for money is achieved.

In addition officers exercising these delegated powers must ensure that detailed records are kept of all quotations, prices and negotiations etc. in a form acceptable to the Chief Executive Officer and the Director of Resources held on a central file by the relevant Chief Officer.

Where the Total Value is **less than £25,000**, the following records must be kept:

- any exemption under Rule 3** together with the reasons for it
- any reasons for deciding that the provisions of Rule 4 in relation to “Lists” of Tenderers are not considered appropriate
- how and why persons etc. invited to submit quotations were selected
- invitations to quote and Quotations
- methods of receiving and recording quotations
- a record:
 - of any exemptions and the reasons for them
 - of the reason if the most economically advantageous quotation is not accepted
- written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced
- details of acceptance of finally agreed prices, terms and conditions

Where the Total Value **exceeds £25,000** the Officer must record:

- any exception under Rule 3** together with the reasons for it
- any reasons for deciding that the provisions of Rule 4 in relation to “Lists” of Tenderers are not considered appropriate
- any reasons for not selecting particular contractors in relation to Rule 8

- the nature of the specialist works, the reasons for deciding that works are of a specialist nature and why fewer than three contractors have been selected in relation to Rule 8*
- the method for obtaining bids
- any Contracting Decision and the reasons for it
- the Award Criteria in descending order of importance
- Tender documents sent to and received from Candidates
- pre-tender market research
- clarification and post-tender negotiation (to include minutes of meetings)
- the contract documents
- post-contract evaluation and monitoring
- communications with Candidates and with the successful contractor throughout the period of the contract
- the reasons why it is considered that selection from the List referred to in Rule 7 is not considered appropriate

**** Definition of Specialist Works – Works primarily involving specialist, professional or technical skills or competencies or expertise in a subject or area where it is recognised that such skills or expertise are not generally available.***

***** Definition of “Urgent” - The urgency must be unforeseen – for example, a current supplier ceases to operate, or a contract is terminated for poor performance. Urgency caused by previous delay by the Council or a requirement to implement a strategy or project urgently will not justify an exception to the financial thresholds.***

Guidance Note B**CAPITAL EXPENDITURE APPROVAL PROTOCOL**

The Council's Corporate Capital Strategy, Asset Management Plan, Housing Revenue Account Business Plan and Medium Term Financial Plan will set the framework for developing and evaluating capital projects over a three year period (reviewed and agreed on an annual basis) – from the preparation of bids (CP1's) through to the reporting of capital expenditure at

- Strategic Working Group
- Management Team
- Cabinet.

This is summarised as follows:-

1. PREPARATION OF CAPITAL PROGRAMMES

- 1.1 From July/August onwards, Working Groups will begin preparation of initial Capital Programmes for the following three years. Account will be taken of national, local priorities, corporate and portfolio priorities, schemes already underway and others previously agreed by reviewing progress / outcomes of existing programmes. In accordance with good risk management practice, all schemes must be risk assessed using the risk prioritisation matrix (as per the CP1 proforma);
- 1.2 All potential capital projects must be detailed in CP1 forms and considered by the Strategic Working Groups using the agreed corporate assessment methodology and guidance in order to prepare a scored/prioritised list of potential schemes. Potential schemes will be considered in light of spend to date information and all bids must be accompanied by a detailed justification statement - identifying contributions to Aims, Community Outcomes and Corporate Values;
- 1.3 The indicative timetable to be used for preparation and monitoring of Capital Programmes is as follows:

DATE	ACTION
July / August	Departmental Directors, Heads of Service and Strategic Working Groups commence review of current Capital Programme and emerging CP1 forms. <ul style="list-style-type: none"> □ Update current/ongoing schemes □ New proposals
September / October	Consideration of CP1s by Directors/Heads of Service <ul style="list-style-type: none"> □ Rank/prioritise CP1 bids
November / December	Management Team consider and review CP1 bids

DATE	ACTION
January / March	Strategic Working Groups □ consider proposed CP1 schemes against allocated resources and reprioritise where necessary
March	Report to Management Team and then Cabinet to finalise programme (complete by 31 March 20XX).
During Year (April – March 20XX)	Quarterly finance/performance report submitted to SWG/MT/Cabinet to monitor implementation/progress on Capital Programme

NB: In determining the recommended allocation of resources, Management Team will adhere to the following key principles:

- Resources will be directed towards achieving the Council's vision and priorities and asset management plan requirements.
- All potential sources of external grant funding will be explored in resourcing priorities.
- Impact on revenue budgets.
- Alternative approaches to procurement (such as partnering).

2. PROCEDURE RULES AND FINANCIAL REGULATIONS

2.1 Procedure Rules relating to Contracts (18 and 38) and Financial Procedure Rules (paragraphs 3.3.5) make specific reference to Capital Programme expenditure.

Capital Programme expenditure, like other expenditure, must comply with Procedure Rules as far as the process of obtaining prices for work, etc., is concerned – this relates to tenders/quotations/negotiations, etc.

In addition Contract Procedure Rules and Financial Regulations impose additional controls in the way Capital Programme expenditure is reported to the Cabinet.

Procedure Rule 18 states:-

“Before tenders or quotations for the execution of any works included in the Capital Programme are invited, the Cabinet shall obtain from the appropriate Chief Officer a report on the proposals including the relevant financial information.”

2.2 Following the allocation of capital resources by Council and no later than 31st March each year, detailed programmes for each portfolio area will be prepared by the relevant Chief Officer and reported to Cabinet for approval, as follows:-

PORTFOLIO	CHIEF OFFICER
<ul style="list-style-type: none"> □ Strategic Leadership □ Social Regeneration and Partnership □ Learning and Employment 	Chief Executive
<ul style="list-style-type: none"> □ Community Health □ Leisure and Culture 	Director of Leisure
<ul style="list-style-type: none"> □ Housing Revenue Account 	Director of Housing
<ul style="list-style-type: none"> □ Safer Communities □ Environment □ Planning 	Director of Neighbourhood Services

NB: These reports will be based on the prioritised schedule of schemes agreed by the Strategic Working Group and include estimated costs for each scheme in an itemised programme. The report will clearly identify those schemes required for asset management and Decent Homes Standards purposes. The report will also contain the recommendation for Cabinet to approve the programme and that, subject to the necessary arithmetic checks, the appropriate Chief Officer is authorised, in consultation with the appropriate Cabinet Member, to accept the most economically advantageous tender provided that the figure is within approved budgets/estimates.

2.3 No further reports will be submitted to Cabinet in relation to the individual schemes, unless:

- There is a significant change in the nature of the project
- The gross value of the project is in excess of £50,000 and is in relation to an outward facing service area.

NB: The £50,000 trigger will not apply to schemes included in the Asset Management Plan and Decent Homes Standards Plan. In other cases, the itemised capital programme report will note that further reports will be submitted as the year progresses in relation to these schemes to ensure sufficient engagement of members in these proposals.

- There is a change in the year due to resource availability (grant related issues) or a change in priorities that impacts on the programmed use of capital resources for the portfolio;

NB: In such cases the itemised capital programme will be redrawn and re-submitted for approval, with a clear rationale given for the required change and impact on the existing three year programme.

- Once tenders/quotations, etc. have been sought and received in accordance with the Procedure Rules, it is necessary to report details to Cabinet in accordance with Contract Procedure Rules 18, 16 and 17.

2.4 Cabinet will receive monitoring reports on the progress of Capital Schemes at least three times per annum, [position as at 31/7/20XX, 30/9/20XX and 31/12/20XX

Actual Outturn against the approved capital programmes for each portfolio will be reported to Cabinet no later than 30 June each year, together with reasons for the difference and any learning issues etc, where the actual cost exceeded approved budget by more than 5%.

- NB: All overspends will be automatically deducted from the resources available in the following financial year and appropriate adjustments made against the programmes reported to Council by 30 June. Any committed underspend may be carried forward, subject to approval by the Director of Resources.

3. CONTRACTS - GENERAL

- 3.1 It is essential to ensure that Contract Procedure Rules and Financial Regulations are adhered to in respect of all schemes, whether or not they are included in Capital Programmes.
- 3.2 Particular attention is drawn to the need for expenditure in excess of approved tender sums to be reported to the Cabinet in accordance with Contract Procedure Rule 37.

Guidance Note C**COMPILATION OF SELECT LISTS AND SELECTION OF CONTRACTORS TO BE INVITED TO TENDER FOR SPECIFIC CONTRACTS****(PROCEDURE RULE 4)**

This note has been prepared as guidance to members of staff who are involved with the establishment of Select Lists and to those who are involved with the procedures for selecting contractors from those for each scheme within a particular financial year.

It relates to the selection of contractors for works in relation to Procedure Rule No. 3 4.

A COMPILATION OF SELECT LISTS**1. Through the process of advertising**

- (a) Advertising procedures will comply with the appropriate UK and EC regulations as described in Procedure Rules 4 and 12.
- (b) Those contractors who respond to the advertisements are required to complete a questionnaire and provide various documentation which is evaluated in order to ascertain the company's financial, safety and technical suitability.

The general principles given below will be complied with.

- (c) The timetable for the production of select lists is:-
 - *Advertise locally and nationally.*
 - *Carry out checks for technical, financial and safety requirements on all applications.*
 - *A list of all applicants for each category, with those recommended for each list being highlighted, is submitted to Cabinet for approval.*

2. Through the use of Constructionline* (See note on page 207)

Where Contractors are to be selected through the Constructionline process, it will be necessary to identify Contractors from the list providing the appropriate category of work and taking into consideration the various matters detailed in this Guidance Note Para. B(i) to (vi) below. The "final checks" described in Para. C will also be applied.

B SELECTION OF CONTRACTORS FOR A PARTICULAR TENDER

Upon completion of either of the above processes the following criteria shall be considered before Contractors are selected to tender for particular schemes:-

(i) Is the company of an appropriate size?

(eg as the majority of the schemes undertaken by the Highways Group are less than £20,000 in value, the larger companies who are normally involved in multi-million pound projects are not, as a rule, able to compete with the small, locally based operator). The size of the contractor is therefore matched with the price range of works for which he may compete.

(ii) Is the company fairly local?

(eg it is unlikely that a small company based in Leeds say, will be able to compete with a similar sized firm located in Middlesbrough or Bishop Auckland).

(iii) Do they have any financial restrictions?

As part of its submission, the company must include certain financial information for examination by the Council's Resources Department.

The result of these would be to identify if the company is financially sound enough to be included on a particular list and whether there would be any limitations to the value of work for which they would be allowed to tender.

(iv) Do they have relevant experience?

(e.g. a number of firms apply for the Highways category list who are largely building-orientated with their civil engineering experience limited to footpaths and parking associated with buildings. As there is a considerable difference between this and working in the Adopted Highway these firms are rejected). Matters such as size of project, experience, reputation for quality, efficient organisation are taken into account.

(v) Is the Health and Safety document satisfactory?

All Health and Safety documentation shall be examined by the Council's Human Resources Officer (Policy and Safety) every 3 years.

(vi) Have they carried out work for the Authority before?

If not, have they been able to submit the names of referees who could give some indication of their capabilities? If the answer to both these questions is NO then the firm is rejected.

C SELECTION OF CONTRACTORS FOR A PARTICULAR CONTRACT FROM THE ABOVE SELECT LISTS

Once the contractors have been identified for each select list they are put into a randomly ordered list.

Contractors are then selected in succession for each subsequent scheme subject to continued satisfactory performance by each of the contractors included.

A number of final checks would be made including:-

- (A) *What work are contractors currently tendering for SBC?*
- (B) *What is their financial limit?*
- (C) *Who else is on the list (comparing past tender prices (too high etc.)?*
- (D) *Are any of the contractors currently working on other schemes within another category of work?*
- (E) *Inadequate performance on a particular scheme may preclude a contractor from future tender opportunities.*
- (F) *Past performance both positive and negative may influence whether or not a company is invited to tender for a particular contract.*

It will be standard practice to invite four contractors to tender for contracts unless circumstances require otherwise. The Housing Department will always be invited to tender for contracts it is capable of carrying out.

An explanation will be placed on file, sanctioned by the Section Head, as to why those firms listed for each particular scheme were included (i.e. on rotation; or why out of rotation eg a particular contractor failed to perform and was therefore precluded from a particular list). The overall aim in selecting contractors to tender is to achieve value for money for the Council.

Constructionline:

Constructionline is the UK's largest register of qualified construction services. It is designed to streamline pre-qualification procedures, increase quality and reduce costs by supplying the construction industry and clients with a single national qualification system. That is a system of vetting contractors and consultants according to strict technical and financial criteria, so as to allow them to pre-qualify for tender lists for public and private sector contracts. By providing a central source of information, Constructionline cuts through the current duplication of effort by both firms and clients in applying for inclusion on and maintaining individual in-house lists.

Created and owned by the Department of Communities and Local Government (DCLG), Constructionline is a key part of the Government's drive to improve quality and efficiency in the construction industry. Anyone who procures construction services has a duty to examine how Constructionline can strengthen their own internal procedures and realise their own savings. DCLG has ensured that the service is FREE to all public sector clients.

There are over 8,000 contractors and consultants registered on Constructionline operating from 16,000 branch offices across the UK. They are qualified to criteria set and audited by DCLG. They cover the full spectrum of construction activities, from architecture to demolition, and range in size from small specialists to the largest main contractors.

Guidance Note D**PURCHASE AND SALE OF LAND/PROPERTY****(PROCEDURE RULE 16)**

1. The terms "Purchase" and "Sale" shall respectively include purchases and sales of freehold and leasehold interests, the grant of leases and land assembly exercises undertaken for the purposes of the Council's functions.
2. Every report to the Cabinet shall contain such information as to the terms of the transaction as is reasonably necessary to enable the Committee to arrive at its decision in an informed manner.
3. In particular, Cabinet shall be given full details of the terms, including consideration for money or monies worth, obligations to be imposed upon the Council, e.g. in respect of the grant of planning permission or the exercise of other statutory functions.
4. If "early entry" is being requested, the date shall be specified in the report, together with details of arrangements for advance payment and appropriately worded indemnities in order to protect the Council's position pending final completion of the transaction.
5. Full details of costs and fees which are to be incurred shall also be set out in the report or an estimate thereof.
6. Where the Council is contemplating compulsory acquisition, details of the planning justification, together with particulars of proposed applications for planning permissions shall also be set out in the report.

Guidance Note E

NON-COMMERCIAL MATTERS

(PROCEDURE RULE 39)

Non-Commercial Matters which must not be referred to in making Public Supply or Works Contracts:-

- (a) Terms and conditions of employment.
- (b) Terms of sub-contracts which constitute contracts, in the case of individuals, for the provision by them as self-employed people of their services only.
- (c) Involvement of contractors in irrelevant fields of Government Policy.
- (d) The conduct of contractors or their employees in industrial disputes.
- (e) Country of origin of supplies to, or the location in any country of the business interests of contractors.
- (f) Any political industrial or sectarian affiliations or interests.
- (g) Financial support or lack of it towards any institution which the local authority either supports or withholds support.
- (h) The use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984.

(Local Government Act 1988 - Section 17(5))

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