

Solihull Metropolitan Borough Council

RULES FOR CONTRACTS

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Introduction

The Local Government Act 1972 requires the Council to have standing orders with respect to the making of contracts. These Rules for Contract are the standing orders required by the 1972 Act. They are part of the Council's Constitution and are, in effect, the instructions of the Council to officers and members for making contracts on behalf of the Council. The purpose of these Rules for Contracts is to set clear rules for the procurement of works, goods and services for the Council and to ensure a system of openness, integrity and accountability, in which the probity and transparency of the Council's procurement process will be beyond reproach. Accordingly, these Rules for Contracts must be followed for **all** contracts (but excluding the categories listed in para. 3.2) for:-

- the supply of goods to the Council;
- the supply of services to the Council; and
- the execution of works for the Council.

The Council has a Procurement Strategy, which is the policy of the Council setting out how the Council intends to go about procuring works, goods and services. Conformity to these Rules for Contracts, and the Council's Codes of Conduct, will ensure that contracts are let in accordance with the *Procurement Strategy*, the *Procurement Code* and associated *User Guides and Procedures*.

The Council is subject also to the EU law with regard to procurement, which requires contract letting procedures to be open, fair and transparent. These Rules for Contracts provide a basis for true and fair competition in contracts, by providing clear and auditable procedures, which, if followed, will give confidence that the Council has a procurement regime that is fully accountable and compliant with EU law.

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Definitions

In these Rules for Contracts:

Approved List means a list maintained by or on behalf of the Council of contractors who have satisfied the Council as to their legal, financial and technical capacity to undertake contracts for the Council

Authorising Officer means an officer authorised to approve the placement of orders or invoices for payment

Cabinet means the Leader of the Council and the other members of the Council's Executive

Contract means the agreement between the Council and a contractor for the supply of works, goods or services, or for any activity that generates income for the Council

Contract package means the scope for amalgamating like requirements/services currently operating at different parts of the organisation, to suit the supply market to achieve overall better value

Corporate contract means a contract or framework agreement for the supply of works, goods or services to the Council as a whole e.g. for computer consumables, stationery.

Corporate Procurement Manager means the manager of the Corporate Procurement Service or his or her authorised representative.

Corporate Procurement Service means the new centralised procurement service

Democratic Services Manager means the person holding that post or his or her authorised representative.

Director (including; Corporate; Strategic; Service) means a member of the Council's Corporate Management Team.

Framework Agreement means an agreement between the Council and a supplier for the provision of estimated quantities of goods or services. This becomes a contract when an order for a specific quantity is placed.

Monitoring Officer means the officer designated as such under Section 5 of the Local Government and Housing Act 1989 or his or deputy

Public procurement legislation includes the Public Works Contracts Regulations 1991, the Remedies directive 1992, the Public Supplies Contracts Regulations 1995

and the Public Services Contracts Regulations 1993, The Public Contracts Regulations 2006, the EC Directives from which they are derived, UK legislation affecting public sector contracts and any amendment, re-enactment or replacement of any of them.

Quotation means an offer to undertake a contract of £5,000 or more but less than £50,000 in value

Services contract means a contract or framework agreement for the provision of services to the Council

Supplier means a supplier of works, goods or services to the Council

Supplies contract means a contract or framework agreement for the sale or hire of goods to the Council and includes, where appropriate, installation of goods

Tender means an offer to undertake a contract of £50,000 or more in value

TUPE Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 1981 and any amendment, re-enactment or replacement of the same

Works contract means a contract for the construction, repair or maintenance of a physical asset

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Quick Reference Guide Table – Financial Thresholds	
£5.0m +	<i>Competitive tenders and EU procedure. Contracts in the form of Deeds must be sealed. Check whether bond required. Approval by full Council</i>
£3.6m +	<i>Competitive tenders and EU procedure required for works contracts. Contracts in the form of Deeds must be sealed. Check whether bond required. Approval by Cabinet Member as key decision</i>
£250,000 +	<i>Competitive tenders and EU procedure required for goods & services contracts. Contracts in the form of Deeds must be sealed. Check whether bond required. Approval by Cabinet Member as a key decision</i>
£144,000	<i>Competitive tenders and EU procedure required for goods and services contracts. Contracts in the form of Deeds must be sealed. Non EU contracts signed by the Director plus Corporate Procurement Manager. Check whether bond required.</i>
£50,000 +	<i>Competitive tenders required. Contract on standard form of contract or bespoke form of contract. Contract signed by Corporate Procurement Manager or authorised deputy.</i>
£5,000 - £49,999	<i>Competitive quotations required. Contract on official order form or standard form of contract. Contract signed by Corporate Procurement Manager or authorised deputy.</i>
<i>Below £5,000</i>	<i>No need for competitive quotations, but must either use corporate contracts where one exists or show value for money. Use official order form.</i>
NB Any requirement over £5000	<i>Use (a) corporate contract where one exists unless there is good reason not to; or (b) refer the requirement to Corporate Procurement Service</i>

Summary of Rules for Contracts – quick reference guide including approval levels.

(Agreed by General Purposes Committee on 27 June 2006)

Procurement Process	Over £250,000	Above EU threshold (goods/services > £144k)	Over £50,000	£5,000 to £50,000	Below £5,000
Requirement to be referred to	Corporate Procurement Service	Corporate Procurement Service	Corporate Procurement Service	Corporate Procurement Service	N/A
Approval	Cabinet Member – Key Decision Making Session. >£5m Full Council.	>£250,000 – Key Decision. <£250,000 – Cabinet Member.	Cabinet Member	Director approval or delegated authority to manager.	Delegated authority
Invitation to tender	EU Procedure except works contracts	EU Procedure except works contracts	Competitive tenders	Minimum of 3 written competitive quotations	Use of corporate contract or show value for money
Opening of tenders	Democratic Services in presence of Cabinet member	>£250,000 - Democratic Services in presence of Cabinet member. <£250,000 - Democratic Services in presence of Corporate Procurement.	<£250,000 - Democratic services in presence of Corporate Procurement.	N/A – open quotes	N/A
Form of Contract	Standard or bespoke Form of Contract Contracts in the form of Deeds must be sealed.	Standard or bespoke Form of Contract. Contracts in the form of Deeds must be sealed.	Standard or bespoke Form of Contract.	Official order form or standard Form of Contract.	Official order form
Contract to be endorsed/signed by	Corporate Procurement Manager.	Corporate Procurement Manager.	Corporate Procurement manager or authorised deputy	Corporate Procurement manager or authorised deputy.	Authorised Manager
Bonds	Check whether Bond required	Check whether Bond required	N/A	N/A	N/A

An exception to the Rules for Contracts may be granted by the Director responsible for the Procurement Service or his authorised deputy, subject to conditions. An exception cannot be granted where a breach of any UK or EU legislation would be incurred.

1. Objectives

The Rules for Contracts exist to achieve the aims set out below and to assist and protect the interests of the Council and individual Officers.

It is important that they are viewed as ***an aid to good management and not as a hindrance***. Followed properly they provide protection for Officers against criticism.

Officers must be able to demonstrate that they followed procedure or had obtained the necessary authority for not doing so, in order to:-

- ✓ *ensure value for money is obtained;*
- ✓ *ensure probity in the award of Council contracts;*
- ✓ *ensure fairness and equity in the treatment of contractors/suppliers;*
- ✓ *ensure that procedures for placing contracts/orders comply with legislation;*
- ✓ *ensure records are kept which demonstrate compliance with Rules for Contracts.*

2. Scope of Rules for Contracts

All purchases and contracts made in the name of and binding the Council, including contracts let by schools under delegated budgets must comply with these Rules for Contracts, and also any contract that involves income to the Council. This includes contracts where the expenditure is grant aided by a third party. These rules also apply to a company which is controlled by the Council for the purposes of the Local Government and Housing Act 1989. Any arrangement where the Council pays or receives money or equivalent value, other than a contract to employ staff, must comply with these Rules.

This includes contracts for:

- a) buying and selling goods;
- b) any work being carried out;
- c) services (including financial and Consultancy services);
- d) hire, rental or lease (of goods); and
- e) land.

3. Compliance

3.1 Every contract entered into on behalf of the Council must comply with these Rules for Contracts and all relevant UK and EU legislation and directives.

3.2 The only areas excluded from these rules are:

- a) Community Care contracts relating to the placement of clients and Domiciliary Care which shall be the subject of separate procedures approved by the Director of Resources;
- b) Internally recharged services;
- c) Schemes where the Council has delegated a function to a third party to perform and where a contract makes separate provision for procurement rules
- d) Test purchasing in the course of an Officer's duty. (e.g. Trading Standards).

If in doubt the Internal Audit Section should be contacted for advice.

3.3 All contracts must be in writing. Whenever possible, contracts under £50,000 in value must be made on an official Council order form, approved by a designated Authorising Officer, with the Council's standard terms of trading endorsed or referred to. For works contracts, one of the standard forms of contract, such as the JCT or ICE forms may be appropriate. The Solicitor to the Council will advise on other forms of contract.

3.4 Whilst responsibility for compliance with Rules for Contracts remains at all times with the Director and the Corporate Procurement Manager, internal or external audits or inspections will be carried out as appropriate.

4. Justification of Need and Definition of Requirements

4.1 Before any purchase is made consideration must be given to:

- a) whether the purchase is really needed; and
- b) whether it can be met from within existing resources or whether it is being funded through grants or other approved income sources
- c) the revenue consequences of any capital investment.

4.2 If the purchase is justified then the exact requirements must be defined. This should lead to an outline specification which can be used to produce a detailed specification after approval is obtained.

5. Exceptions to Rules for Contracts

5.1 An exception to the Rules for Contracts is a permission to let a contract without complying with one or more of the Rules. An exception to Rules for Contracts may be granted subject to conditions. An exception cannot be granted where a breach of any UK or EU legislation would be incurred.

5.2 Only the Director responsible for the Procurement Service or his authorised deputy may grant an exception to these Rules for Contracts. Applications for exceptions must be made in writing to the Director responsible for the Procurement Service, and include the exception that is requested and the justification for the exception.

5.3 The Director responsible for the Procurement Service will keep a register of all exceptions to Rules for Contracts, which shall be available by appointment for inspection by members of the Council and the public.

5.4 An application for an exception to Rules for Contracts to allow a contract to be let without genuine competition will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not permit an exception to Rules for Contracts. If an application is granted, the Director/Corporate Procurement Manager responsible for the contract must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value for money.

5.5 An exception to the requirements to follow the tender or quotation procedure **may** be granted in the following circumstances:

- an unforeseeable emergency involving danger to life or health or serious damage to property, in which the work, goods or services are required more urgently than would be possible if the tender or quotation procedure were followed;
- for justifiable technical reasons, the works, goods or services can be obtained from only one supplier;

- acquiring goods or services from a different supplier would result in incompatibility with existing goods or service or disproportionate technical difficulties;
- the proposed contract is an extension to or variation of the scope of an existing contract, if permitted by the public procurement legislation ie below the required EU limit, *unless* the existing contract provides for an extension;
- the purchase of works of art, museum artefacts, manuscripts or archive collection items;
- there is a need to develop and influence the market by extending the range and provision of services, provided the contract is for a fixed term of no more than three years;
- it is necessary to enable the continuation of a new service, development of which was initially grant-aided, provided the contract is for a fixed term of no more than three years;
- value for money can be demonstrated by inviting a single tender or quotation from a voluntary sector provider;
- value for money can be achieved by the purchase of used vehicles, plant or materials;
- when a grant from a public body includes a recommendation as to the supplier or is time limited;
- in furtherance of the Council's social enterprise policy, or other economic development aims, subject to the prevailing financial support limits for this type of activity and without breaching public procurement rules;
- if there are exceptional circumstances in which it would not be in the Council's best interests to follow the tender or quotation procedure or another Rule for Contract;
- negotiation in place of tenders where exceptional circumstances and justifiable reasons for such negotiation prevail (*see also "Post Tender Negotiations" under paragraph 18 below*)

5.6 An exception to Rules for Contracts is granted and separate authorisation is not required in the following circumstances :

- placing an order with a single supplier under an existing corporate contract or framework agreement;
- placing an order through a buying consortium of which the Council is a member.
- as part of a partnering contract that contemplates a series of contracts with a single supplier;
- legislation requires the Council to let a contract differently from these Rules for Contracts;
- placing an order under an arrangement, of which the Council is an affiliate, that has gone through an EU compliant competitive process eg the Office for Government Commerce, GCAT, SCAT, LCAT etc
- for Utilities contracts, due to the volatile nature of utilities markets and the need for decision making within 2 hours of bids being submitted, utilities contracts may be let by electronic means with bids confirmed in writing, ensuring that there is no discrimination for bidders. Authority has been delegated by full Council to the Cabinet Member for Resources or his nominated representative to award utilities contracts in this manner even if the contract value exceeds £5million. All utilities contracts will be let through the Corporate Procurement Service and in line with the procedures dictated by the Corporate Procurement Manager

6. Valuation of contracts and Aggregation of Requirements

- 6.1 The Director responsible for each contract must record an estimated value for the contract before any offers are sought.
- 6.2 The value of a contract is the total amount that the Council expects to pay for the contract, either in a single sum or periodically over time. If the contract is for an indefinite term, the value is the amount the Council expects to pay over four years.
- 6.3 Contracts for the same works, goods or services must not be split into smaller, separate contracts to avoid compliance with these Rules for Contracts or the EU public procurement legislation. If it will achieve best value for money, contracts for the same or similar works, goods or services must be aggregated into a single contract of greater value.

7. Duties of Directors and the Corporate Procurement Manager

- 7.1 The Director is responsible for ensuring that all expenditure involving procurement activity comply with the Rules for Contracts, in conjunction with the Corporate Procurement Manager. He/she is also responsible for ensuring that contracts within his/her division are managed and operated within the terms of the contracts themselves.
- 7.2 The Corporate Procurement Manager is responsible for maintaining a register of contracts and for providing an up-to-date copy of the register at the end of each financial year. Contracts for less than £5000 need not be recorded in the register.
- 7.3 As soon as practicable after the Council's budget has been set and in any event before the end of March in each financial year, the Director must notify the Corporate Procurement Manager of all contracts (including their values) that his/her division plans to enter into during the following financial year. This will enable the Corporate Procurement Manager to publish the Council's Prior Information Notice (PIN) in accordance with the EU regulations.
- 7.4 The Director must use corporate contracts, where they are in place. To do otherwise would be unlikely to give value for money for the Council and would probably be in breach of public procurement law.
- 7.5 If there is an in-house service available that operates as a trading unit, the Director must consider, in accordance with Best Value principles, whether that service should be used or whether a contract should be let to an external provider, although all resource implications e.g. TUPE implications and/or redundancies for directly employed staff, must be considered as part of the best value assessment.

8. Selection of Procurement Route

- 8.1 When selecting the most appropriate procurement route to secure best value, the Director, in consultation with the Corporate Procurement Manager, shall adhere to the following principles :
- All practical options for contract packages and methods of procurement should be analysed and evaluated, with the object of

selecting the option that most effectively ensures best value and provides full, fair and open competition.

- The scope of contract packages should take into account cross-cutting themes and outcomes identified by strategic, policy and service reviews. Stakeholders within and outside the Council should be consulted about service standards and specifications and investigation of the market undertaken. Performance under any current contract should be appraised and prospective performance considered in the light of consultations and investigations.
- The contract package should seek to stimulate diversity and innovation, enhance choice for service users and attract new suppliers.
- Partnerships between the public, private and voluntary sectors should be sought, which demonstrate a shared commitment to objectives that benefit users of the Council's services.
- The principles of Best Value [challenge, compare, consult, compete] with the objective of achieving a contract that best serves the needs of service users and contributes to sustainable development.

8.2 The Council has a *Procurement Code* that sets out minimum requirements for reporting and decision-making with regard to contracts and the key stages and actions the Council requires major procurements to follow, including market assessment and analysis, user consultation, risk analysis and project planning and management.

9. Authority to enter into a contract

9.1 Officers of the Council have no authority in their own right to enter into any contract on behalf of the Council. They may only enter into a contract if authority is delegated to them under a scheme of delegation or by specific decision of the Council, the Cabinet or a Committee or Sub-Committee.

9.2 Unless the Council's Scheme of Delegation gives an officer authority to enter into a contract, all contracts involving capital expenditure must be authorised by a specific decision of the Cabinet or a Cabinet member (see 9.4).

- 9.3 Unless the Council's Scheme of Delegation gives an officer authority to enter into a contract, all contracts involving revenue expenditure must be authorised by a specific item in the approved revenue budget for the relevant year or by a specific decision of the Cabinet or a Cabinet member (see 9.4). A specific item in the approved revenue budget is deemed to be an authority for the relevant Director to enter into a contract up to the value estimated.
- 9.4 A Cabinet member may authorise entering into a contract up to £250,000 in value (or such other value as may be approved by the Cabinet), within the scope of his/her portfolio. Contracts valued at £250,000 or more require a key decision making session for the Cabinet Member. Authority will be given by a recorded decision of the portfolio holder, following a written report from the Director or the Corporate Procurement Manager. Contracts valued in excess of £5,000,000 must be approved by the Council.
- 9.5 All contracts will be let through the corporate procurement service with the involvement of service users and technical experts, once the service is fully operational.

10. Specifications

- 10.1 The Director in conjunction with the Corporate Procurement Manager, must ensure that an appropriate technical specification is prepared for every contract, which sets out clearly the Council's requirements with regard to the works, goods or services to be supplied.
- 10.2 All works, goods and services must be specified by reference to European or national standards as appropriate.
- 10.3 Specifications should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the contract to be monitored and should build in a capacity for flexibility and innovation, to secure sustained improvements and the ability to meet changing local and national circumstances.
- 10.4 Where appropriate, specifications should identify and allocate the risks inherent in the contract.
- 10.5 If a contract may involve the transfer of employees (from the Council to a contractor or from one contractor to another), the specification should if the

contractor has assured confidentiality of personal information, include all relevant information relating to those employees.

- 10.6 The Director must obtain all necessary professional and technical advice and assistance in preparing a specification, to ensure a comprehensive document that expresses the Council's requirements and protects its interests. Consultants who assist in the preparation of a specification must not be invited to tender or quote for the contract.

11. Contract procedures

- 11.1 If a corporate contract is in place for the supply of any works, goods or services, the Director must place orders under that contract. The Corporate Procurement Service publishes data to enable Directors to order from corporate contracts.
- 11.2 The Director in conjunction with the Corporate Procurement Manager must establish whether the public procurement legislation applies to a proposed contract. If in doubt, the Solicitor to the Council will advise whether the legislation applies. When public procurement legislation does apply, the Director/Corporate Procurement Manager must use the open or restricted procedure unless the Solicitor agrees the use of the negotiated procedure. Whenever possible, a competitive procedure must be adopted.
- 11.3 The Corporate Procurement Manager, will place all notices relating to contracts in the Supplement to the Official Journal of the European Union and will provide the statutory annual returns to HM Treasury of contracts let by the Council.
- 11.4 The Director need not obtain competitive quotations for contracts of less than £5,000 in value, but must demonstrate in any event that the Council is receiving value for money (see the "*Quick Reference Guide*" Table on page 6). Additionally all relevant documentation will need to be retained for audit or scrutiny purposes in line with Council policy.

12. Invitation to Formal Tender

- 12.1 If the public procurement legislation applies to a contract, the selection of suppliers to be invited to tender for the contract must follow the requirements of that legislation.

12.2 If the public procurement legislation does not apply, and the estimated contract value is greater than £50,000 at least three potential contractors, who have expressed an interest, should be invited to tender. The number of contractors invited to tender should ensure full competition is achieved.

Potential contractors should be selected in one of the following ways:

- a) Using an Approved List;
- b) Placing an advertisement in one or more newspapers circulating in the West Midlands or in one or more newspapers or journals circulating among persons who undertake such contracts or sub-contracts. The placing of the advertisement should aim to achieve maximum interest amongst contractors. If less than three contractors express an interest, the decision making body must agree to proceed, and the steps taken to try and obtain the minimum number of tenderers documented.

12.3 Suppliers on the Approved List will already have satisfied the Council as to their legal, financial and technical capacity to undertake the contract. Suppliers expressing an interest in being invited to tender in response to a public notice must satisfy the Council as to their legal, financial and technical capacity (including their health & safety and equal opportunities policies) to undertake the contract by completing a pre-qualification questionnaire in a form approved by the Corporate Procurement Manager.

12.4 The Corporate Procurement Manager shall be responsible for ensuring that an "Invitation to Tender" procedure – that demonstrates public sector best practice – is available and adhered to, at all times.

13. Opening Formal Tenders

13.1 The Democratic Services Manager is responsible for marking the tender envelopes or parcels with the date and time of receipt; keeping tenders in a secure place until after the last date and time for receipt and for returning tenders that are received late or identify the sender. The same principles will apply also to electronic tendering and a separate procedure is in place for this process and appropriate to the specific electronic software employed and its facilities for guaranteed receipt of tenders.

- 13.2 Until the contract has been awarded, the information obtained at the opening of tenders is confidential to those involved in the opening process and those directly involved in evaluation of the tenders. Confidentiality must be maintained and any breach reported to the Monitoring Officer.
- 13.3 Tenders must be opened one at a time by a member of the Democratic Services Manager's team in the presence of :
- a member of the Corporate Procurement Manager's team
 - in the case of contracts estimated at £250,000 or more in value a Member of the Cabinet or other Member of the Council authorised by the Cabinet.
- 13.4 The Democratic Services Manager must number all tenders in the order they are opened and all persons present must initial them.
- 13.5 The representative of the Democratic Services Manager must record :
- the works, goods or services to be supplied;
 - the name of each tenderer;
 - the amount of each tender or such other information as may be relevant to the procurement;
 - the date and time of opening of each tender;
 - the names of all persons present at the time of opening.

A member of the Corporate Procurement Manager's team or a Member of the Council must certify the record as correct.

14. The Quotation Procedure

- 14.1 For contracts of under £50,000 in value, suppliers to be invited to quote may be selected from the Approved List (if applicable).
- 14.2 The Corporate Procurement Manager must satisfy him/herself as to the legal, financial and technical capacity of suppliers invited to quote to undertake the contract for the Council and that they will provide value for money.
- 14.3 A sufficient number of suppliers must be invited to quote to ensure genuine competition. The minimum number is three.
- 14.4 The Corporate Procurement Manager shall be responsible for all procedural aspects of seeking quotations, ensuring that probity and proper public accountability standards are in operation. Monitoring shall be carried out periodically by either the internal or external auditor.

15. Acceptance of Formal Tenders and Quotations

- 15.1 The decision making body to whom powers have been delegated shall determine which tender shall be accepted. It shall not be bound to accept the lowest tender if payment is to be made by the Council or the highest tender if payment is to be received.
- 15.2 Unless a contract is to be awarded under the “most economically advantageous” criterion (see para. 15.3) a tender other than the lowest or highest respectively is to be accepted, the decision making body shall require a written report from the Corporate Procurement Manager requesting approval for acceptance and detailing the special reasons for doing so. This shall be recorded in writing. In extreme urgency the decision making body may agree and this be reported to the next meeting.
- 15.3 Tenders or quotations may be evaluated on the basis of price only or on the basis of which is most economically advantageous to the Council. The basis of evaluation must be stated in the contract notice published in the OJEU and in any other public notice. The basis of evaluation must also be stated in the invitation to tender or quote. If the basis of evaluation is ‘most economically advantageous’, the criteria for evaluation must be set out in the invitation to tender or negotiate, in descending order of priority, with the weightings to be given to them. The criteria may also be set out in the OJEU and public notices. Whole life and environmental costs may be included in criteria for evaluation.

16. Electronic tendering and quotations

- 16.1 In furtherance of the e-government project, the Council has developed methods by which tenders and quotations may be invited and submitted by electronic means, having due regard to the need for security and probity.
- 16.2 The Corporate Procurement Manager is responsible for the procedure for these processes and will also be responsible for any necessary amendments that are governed by forthcoming changes to the European Public Procurement Directives,
- tenders and quotations may be invited on-line, provided paper copies of any documents that cannot be sent on-line are sent by post and

paper copies of all documents are sent to suppliers who do not specify an e-mail address for receipt of tenders or quotations. In selecting suppliers to be invited to tender or quote, the Corporate Procurement Manager must not discriminate against suppliers who do not have facilities for receiving invitations by e-mail;

- invitations to tender and quotes may be submitted electronically copied onto cd-rom, and sent with the paper copies of all invitation documents;
- forms of tender, and forms of quotation not given by telephone, must be submitted on paper, signed in manuscript by an authorised representative of the supplier. Accompanying tender or quotation proposals, including pricing documents, may be submitted on cd-rom with the paper form of tender or quotation;
- the procedure will also include arrangements for e-auctions.

17. Amendments and alterations to tenders and quotations

- 17.1 Amendments to invitation to tender or invitation to quote documents, made after the invitations have been sent out, must be clearly headed “Tender Amendment” or “Quotation Amendment” as appropriate and sent to all suppliers who have been invited to tender or quote. If there is more than one amendment, they should be numbered consecutively. Amendments should be sent out in sufficient time to allow suppliers to adjust their tenders or quotations as appropriate.
- 17.2 A supplier’s tender or quotation is his offer to the Council, which the Council may accept as it stands. Once a tender or quotation has been submitted, no alteration by the tenderer or supplier to the amount of the tender or quotation or any of the tender or quotation proposals will be permitted.
- 17.3 If a supplier attempts to alter his offer after the last date for receipt of tenders or quotations, he must be given the opportunity to stand by or withdraw his original offer. Correction of an obvious arithmetical error, which would reduce the price to be paid by the Council or increase the price to be paid to the Council, may be accepted.
- 17.4 A tender or quotation that is expressed to be conditional upon the Council’s acceptance of alterations to the specification or the terms and conditions of

contract must be treated as non-compliant and rejected. This does not prevent the Council inviting variant bids (that is an invitation to submit an alternative bid that could then be considered as being to the Council's benefit provided that the condition applying to the mandatory reference bid is followed) If variant bids are invited, suppliers must be required to submit a mandatory reference bid based on the specification and terms and conditions included in the invitation to tender or invitation to quote, so that all bids may be compared fairly.

- 17.5 Post-tender or post-quotation negotiations are not allowed by the public procurement legislation unless under the "Negotiated Procedure" (see 17.6 below), although the impending Consolidated EU Public Procurement Directive – to be enacted at the end of 2005, will allow for "Competitive Dialogue". The Corporate Procurement Manager may contact a tenderer or supplier, after close of tenders or quotations and before the contract is awarded, to clarify the tender or quotation but must not negotiate any changes to the tender or quotation price. **(See "Post Tender Negotiation" for other contracts at para. 18 below)**
- 17.6 A properly approved and EU-compliant negotiated procedure will normally result in one or more Best and Final Offers as a result of negotiation with selected bidders. No alteration to the Best and Final Offer, in terms of outcomes or contract price is permitted without the specific approval of the Monitoring Officer.
- 17.7 Before a tender or quotation has been accepted, the Corporate Procurement Manager may ask all tenderers or suppliers to maintain their tendered or quoted prices for a longer period. Tenders and quotations should in any event remain open for acceptance for a period of (ninety) days from the last date for receipt of tenders or quotations, or such other period as the Corporate Procurement Manager considers appropriate, and the form of tender or quotation should make this clear.
- 18. Post Tender Negotiations and Negotiation in Exceptional Circumstances**
- 18.1 Post tender negotiation relates specifically to price and not to the normal period of discussion on issues relating to the management and delivery of the

contract. However, care must be taken when changes to the original specification result in amendments to prices. Any changes to prices as a result of specification changes can leave officers and the Council open to criticism from the other bidders, if they are not allowed to submit a revised bid.

18.2 Where the lowest tender exceeds the approved budget for any particular requirement, negotiation may be used to explore means for reducing cost to the Council without material breach of quality.

18.3 Negotiation in exceptional circumstances is a procedure in place of tendering.

In such cases negotiations should be the exception rather than the rule.

There must be justifiable reasons for negotiations, and all instances must be reported to the appropriate decision making body (*see "Exceptions" under paragraph 5 above*).

18.4 Officers must not attempt to play one supplier off against another.

18.5 Whenever negotiations are authorised in line with this Rule such negotiations shall be conducted in accordance with a procedure under the responsibility of the Corporate Procurement Manager.

18.6 For renegotiations and/or contract extensions, this is acceptable if the specification is the same as current circumstances and is subject to the same value limits for approval and reporting as post tender negotiations. In addition the market must be tested to ensure competitive rates are being obtained.

19. Bonds and parent company guarantees

19.1 The purpose of a bond or parent company guarantee is to enable the Council to complete a contract if the contractor becomes insolvent or is in such serious breach of contract that the contract has to be terminated. The surety for a bond (usually a bank or insurance company) will charge the contractor a fee, usually a percentage of the bond amount. The contractor will not absorb this cost in his price, but will increase his price to allow for the cost of the bond. The invitation to tender should allow the contractor to state his price for providing a bond. It is not usual for a parent company to charge a fee for a parent company guarantee but if it does so, the fee will be payable by the Council in the same way as a bond.

- 19.2 For every contract of £144,000 or more in value, the Director in conjunction with the Corporate Procurement Manager must decide, taking appropriate advice, whether to require the contractor to provide a bond or parent company guarantee and, if a bond is required, the amount of the bond.
- 19.3 Unless agreed otherwise by the Director of Corporate Resources, the amount of the bond shall be not less than ten per cent of the contract value.
- 19.4 All bonds and parent company guarantees must be in a form approved by the Solicitor to the Council. The form of the bond and parent company guarantee must be included in the invitation to tender documentation.
- 19.5 The surety for a bond must be approved by a Corporate Director.

20. Form of Contract

- 20.1 The Solicitor will decide whether a contract for £144,000 or more in value is to be executed as a deed under the seal of the Council or under hand as a simple contract. As a general rule, works contracts, and high value contracts (over £1 million in value) will be executed as deeds under the Council's seal.
- 20.2 All contracts made as deeds must be made under the Council's Common Seal, witnessed in accordance with Standing Order 30 of the Council's Rules of Procedure (Standing Orders) by the Chief Executive or such other person appointed by the Council.¹
- 20.3 Simple contracts of £144,000 or more in value must be signed for and on behalf of the Council by two officers of the Council, one of whom must be the Director whose directorate is responsible for the contract.
- 20.4 Simple contracts of between £50,000 and £143,999 in value must be signed for and on behalf of the Council by the Corporate Procurement Manager or an authorised deputy (as will simple contracts of less than £50,000 in value)

21. Contract administration and management

- 21.1 The Corporate Procurement Manager shall arrange for publication of a contract award notice, if appropriate, and shall keep a register of the notified information, which shall be available for inspection by appointment by any

¹ The Solicitor to the Council and the Strategic Directors are currently authorised under Standing Order 30.

member of the Council, internal and external auditors and any member of the public.

- 21.2 The Corporate Procurement Manager shall be responsible for ensuring that a procedure on “Contract Administration and Management” is made available to all users of the procurement service.

22. Prevention of corruption

- 22.1 If an officer of the Council has a pecuniary interest, in a contract or proposed contract, he/she must in accordance with Section 117 of the Local Government Act 1974 and as required by Standing Order 25 of the Council’s Rules of Procedure (Standing Orders) register the interest with the Chief Executive and declare it at any meeting at which the officer is present and the contract is discussed and thereafter leave the room and take no further part in the discussion.

- 22.2 If an officer of the Council has a personal or non pecuniary interest in a contract or proposed contract he/she must declare that interest to their Director as required by the Council’s Code of Conduct for Employees.

- 22.3 If a member of the Council has a personal interest in a contract as defined in the Members Code of Conduct, the member must take such action as is required by that Code.

- 22.4 A contract must be terminated immediately, and any losses to the Council arising from the termination recovered from the contractor, if the contractor, or anyone acting on his behalf

- offers or gives or agrees to give any member or officer of the Council any gift, benefit or consideration of any kind or value as an inducement or reward with regard to the contract;
- commits any offence under the Prevention of Corruption Acts 1889 to 1916 or section 117 of the Local Government Act 1972.

A declaration to this effect must be contained in all invitations to tender or quote.

- 22.5 The attention of officers is drawn to the Council’s Code of Conduct and Disciplinary Rules and Procedures and the Code of Conduct for Employees. Non-compliance with these Rules for Contracts constitutes grounds for disciplinary action.

22.6 All of the requirements in 22.1 to 22.5 above will apply to any third party acting on the Council's behalf in a contractual situation e.g. consultants and community representative on evaluation panels

23. Approved List of Contractors

23.1 The Corporate Procurement Manager shall be responsible for compiling, as appropriate, approved lists of all persons capable of performing contracts of particular types, with an indication of the maximum value of work, which they might undertake.

23.2 Such lists and any amendments to them shall be approved by Cabinet, provided that any decision making body may recommend amendments to any appropriate list, generally or for a particular contract.

23.3 The Corporate Procurement Manager shall be responsible for ensuring that a procedure for managing all aspects of the Approved List system is in place and followed in order to provide access to Council contracts by the business community. Specific arrangements can be included for social enterprise organisations, small and medium businesses, and the black and minority ethnic business community, without breaching public procurement rules or the Council's legal requirement to obtain best, overall value for money for the Council's charge payers.

24. Freedom Of Information Act

24.1 The Council's "Freedom of Information Act Policy" states that, as far as *Public Sector Contracts* are concerned:

1.59 When entering into contracts the Council will refuse to include contractual terms that purport to restrict the disclosure of information held by the Council and relating to the contract beyond the restrictions permitted by the Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, the Council will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

1.60 When entering into contracts with non-public authority contractors, the Council may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, the Council will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Council will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information which should not be disclosed. The Council will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner. When entering into the above contracts the Council will make it clear that these restrictions apply to sub-contractors also and that the Secretary of State has the powers to designate them as 'public bodies' for the purpose of making them comply with the Act.

1.61 The Council will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellors Department indicates that the exemption provided for in section 41 only applies if information has been obtained by a public authority from another person and the disclosure of the information to the public, otherwise than under the Act, would constitute a breach of confidence actionable by that, or any other person.

1.62 It is for the Council to disclose information pursuant to the Act, and not the non-public authority contractor. The Council will take steps to protect from disclosure by the contractor information that the authority has provided to the contractor (which would clearly be exempt from disclosure under the Act) by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn

as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Council will not impose terms of secrecy on contractors.”

- 24.2 The Corporate Procurement Manager will be responsible for advising on the application of the Freedom of Information Act and contracts, in conjunction with the Council's Corporate Information Governance Manager, where circumstances arise that are not specifically covered by Council policy. He/she will also be responsible for updating procedure following any case law that materially amends or augments Council policy in this area.