

CAMBRIDGE CITY COUNCIL

REPORT OF: DIRECTOR OF FINANCE

TO: Civic Affairs

27/6/2007

WARDS: None directly affected

**AMENDMENTS TO CONSTITUTION - REVISION OF CONTRACT PROCEDURE
RULES AND ASSOCIATED DELEGATIONS**

1 INTRODUCTION

- 1.1 This report concerns proposed revisions to the Contract Procedure Rules (Part 4G of the Constitution) and consequent changes to the officer delegations within the Financial Regulations (Part 4F).

2. RECOMMENDATIONS

- 2.1 To agree the changes to the Constitution in Part 4G, Contract Procedure Rules, as shown in appendix 1 to this report.
- 2.2 To agree the changes to Section 9.3 of the Constitution, General Delegations, as shown in appendix 2 to this report.

3. BACKGROUND

- 3.1 There have been four drivers leading to this proposed revision to the Contract Procedure Rules ("the Rules"). These are:
- The coming into effect of the new Public Contracts Regulations 2006 and other guidance from the European Commission;
 - The publication of recommended model Rules by CIPFA
 - The implementation of new methods of contracting by the Council to make greater use of collaborative opportunities within the County, Region and nationally.
 - Revisions to the Project Assessment procedure
- 3.2 The new Public Contracts Regulations, which came into effect on 1 January 2006, consolidated three sets of Works, Supplies and Services regulations and introduced a new contracting procedure, Competitive Dialogue, to largely replace the Negotiated Procedure. These changes need to be reflected in the Council's Rules. Recent guidance issued by the European Commission in the form of an Interpretative Communication has strongly recommended that more public contracts be publicly advertised to open up opportunities for non-UK organisations where this is appropriate.

- 3.3 The publication of new model Rules by CIPFA, very largely based on the Rules developed by Cambridgeshire County Council, was opportune as the County Procurement Group (a meeting of all the Procurement Managers within the County) had begun an initiative to align Rules within each authority more closely to make collaborative working easier. The new Rules, at Rule 6.3, provides that contracts entered into through collaboration with other local authorities or public bodies, where a competitive process has been followed that complies with the equivalent to this Council's Rules of the leading organisation, will be deemed to comply with the Council's Rules. This will greatly facilitate the use of collaborative contracts without the need for requests for complex waivers to shoe horn external rules into the Council's format.
- 3.4 In recent years the Council has made much greater use of non-traditional methods of procurement and has implemented partnering arrangements (the Decent Homes contract for example); entered into various collaborative procurements (the Courier Service contract for example) and made much greater use of pre-existing framework agreements such as those provided by the Eastern Shires Purchasing Organisation (ESPO) and the Office of Government Commerce (OGC).
- 3.5 Finance, together with Procurement, have revised the approach to the Project Appraisal procedure to ensure consideration of procurement issues, identification of key risks associated with the project and to facilitate improved monitoring of the progress and delivery of projects over time. The revised procedure has been the subject of detailed consultation with the Asset Management Group.
- 3.6 These changes in the Council's approach to entering into contracts, although capable of being accommodated within the existing Rules, require the changes proposed in the new draft Rules to make the processes more transparent, efficient and easier to use. The opportunity has also been taken to update the various financial thresholds within the Rules.

4. KEY CHANGES TO THE EXISTING RULES

- 4.1 The proposed Rules are intended as a complete substitution for the existing rules.
- 4.2 The main change is one of style. It is intended that the new Rules are in a more usable format with a Brief Guide at the beginning, more explanation of the reason for requirements and, it is hoped, a more logical and easier to read layout.
- 4.3 The financial thresholds have been revised as set out in Rule 4.1. The main revisions are:
- Increasing the previous £50,000 limit, above which tenders are to be open to public advertisement, to £75,000;
 - Distinguishing between supplies/services contracts and works contract (which are customarily of a higher value) to permit the use of the Council's Approved List for such works;
 - In order to accommodate the requirement for more public advertisement of contracts, the imposition of a limit on the use of the Approved List so

that Works contracts in excess of £500,000 must routinely be subject to public advertisement.

4.4 Specific provision is now made in Rules 6 and 7 for collaboration and the use of purchasing consortia and framework agreements.

4.5 Finally a much expanded definitions section is provided.

5. **CHANGES TO THE PROJECT APPRAISAL PROCEDURE**

5.1 A standard format for the appraisal of new capital and revenue schemes has been in use within the Council for many years but various issues with the content of the appraisal document and the way it was being used prompted a review during 2006. The review was undertaken by the Council's Asset Management Group as, although initially intended to be suitable for use for both revenue and capital projects, in practice, the main application of the process was for capital projects only.

5.2 The revised project appraisal document and procedure has been designed specifically for the appraisal of capital projects and has sought to address two areas of consideration that were previously omitted, namely procurement proposals/issues and the early consideration of key risks associated with a project. In addition, the new procedure has been designed to facilitate improved monitoring of the financial approval status and delivery of projects.

5.3 The various financial thresholds for completion of project appraisals and approvals required, will be set to align with those contained within the new Contract Procedure Rules and revised General Delegations (subject to their adoption).

6. **CHANGES TO THE GENERAL DELEGATIONS**

6.1 Changes to the scheme of General Delegations are proposed as follows:

(a) To remove the requirement for a project appraisal to be completed for new revenue projects.

(b) To reduce the value above which a project appraisal is required to be completed for capital projects, from £25,000 to £15,000. This is in line with the Council's de-minimus level for capital expenditure.

(c) To increase to £75,000 the level above which project appraisals must be submitted for consideration by the appropriate scrutiny committee prior to submission to the relevant Executive Member for approval. This is in line with the proposed value above which tenders are for supplies and services are to be open to public advertisement.

(d) To increase, from £5,000 to £15,000, the maximum value of bids, which the appropriate lead officer may approve, to be met from approved capital programme funding.

6.2 Other changes proposed include the removal of references to Priority Development Programmes (all of which have now ended), updating the list of

capital programme remits established by the Council and removal of reference to the Efficiency Provision, which has been wound up.

- 6.3 Appendix 2 sets out the proposed changes to General Delegations in detail. Two versions are included – the first showing original text struck through with new text inserted and the second showing the resulting revised wording.

7. **CONSULTATIONS**

- 7.1 The draft Rules have been the subject of extensive consultation with the Procurement Best Practice Group, the Procurement Efficiency Team (representing potential users of the Rules), Internal Audit and Legal Services.

- 7.2 The Asset Management Group has been actively involved in the review of the capital project appraisal procedure and has been consulted on the resulting procedures, appraisal pro-forma and associated guidance.

8. **CONCLUSIONS**

- 8.1 This is a comprehensive and coordinated set of recommendations to update the Council's approach to contracting. The new Rules and delegations will be publicised within the Council by means of:

- Publication on the intranet
- Publication in booklet format
- Training course(s)
- Presentation to DMTs
- Departmental workshops as required

9. **IMPLICATIONS**

(a) **Financial Implications**

There are no financial implications other than those identified above

(b) **Staffing Implications** (if not covered in Consultations Section)

None

(c) **Equal Opportunities Implications**

None

(d) **Environmental Implications**

None

(e) **Community Safety**

None

BACKGROUND PAPERS: The following are the background papers that were used in the preparation of this report:

CIPFA Contract Procedure Rules published in association with the Local Government Task Force 2006.

To inspect these documents contact Deborah Quincey on extension 7400

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DEFINITIONS

A BRIEF GUIDE TO THE CONTRACT PROCEDURE RULES

Terms appearing in the definition section are italicised and capitalised.

These Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act and referred to as the Rules) apply to all purchases over £2500 and are intended to promote good purchasing practice, public accountability and to deter corruption.

The Rules are mandatory for all *Officers* and, in any case, following the Rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

For the purposes of these Rules, where there is a requirement for a communication to be in writing, this shall include e-mail and fax transmissions as well as hard copy – except for the return of tenders, estimates or quotations.

Officers responsible for purchasing or disposal must comply with these Rules. The Rules lay down minimum requirements and a more thorough procedure may be appropriate for a particular *Contract*. In summary *Officers* must:

- Follow the Rules if you purchase goods or services or order building works.
- Take all necessary legal, financial and professional advice.
- Declare any personal financial interests in a *Contract*. Corruption is a criminal offence.
- Conduct any *Best Value* review and appraise the purchasing need.
- Check whether there is a *Corporate Contract* or *Central Purchasing Body* contract that you can make use of before undergoing a competitive process.
- Normally allow at least 4 weeks for submission of written bids (not to be submitted by fax or e-mail).
- Keep all tendering documents confidential.
- Complete a written *Contract* and/or a Council purchase order before the services, supply or works begin.
- Identify a *Contract Manager* with responsibility for ensuring that the *Contract* delivers as intended for all *Contracts* over £75,000.
- Keep records of dealings with suppliers.
- Assess each *Contract* over £75,000 on completion to see how well it met the purchasing need and *Value for Money* requirements.

The *Director of Finance* and the *Head of Legal and Democratic Services* shall have the power to make amendments from time to time to these Rules.

Section1: Scope of the Contract Procedure Rules

1 BASIC PRINCIPLES

All purchasing and disposal procedures must:

- achieve *Best Value* for the public money spent;
- be consistent with the highest standards of integrity;
- ensure fairness and transparency in awarding public *Contracts*;
- comply with all legal requirements;
- ensure that *Non-Commercial Considerations* do not influence any *Contracting Decision*;
- support the Council's corporate and departmental aims and activities as set out in the *Medium Term Objectives*; and
- comply with the Council's *Constitution and Procurement Strategy*.

2 OFFICER RESPONSIBILITIES

2.1 *Officers*

2.1.1 *Officers* responsible for purchasing or disposal must, and ensure that any *Agents, Consultants* or *Contractors* acting on their behalf also comply with:

- these Rules;
- the *Financial Regulations*;
- the *Officer Code of Conduct*;
- all UK and European binding legal requirements
- any guidance issued by the Legal or Procurement Sections
- the Buying Green Guide
- the Project Management Guidelines.

2.1.2 Before starting any procurement *Officers* must:

- check whether a *Corporate Contract* or *Central Purchasing Body* contract exists before seeking to let another *Contract*;

- where a suitable *Corporate Contract* exists this must be used for contracts of all value unless there is an auditable reason not to use it which has been agreed by the *Strategic Procurement Adviser*;
- notify the *Strategic Procurement Adviser* in advance of all procurements over an *Estimated Contract Value* of £30,000;
- keep the records required by Rule 10;
- ensure that all necessary permissions and authorities have been obtained and that the necessary budgetary provision has been secured;
- take all necessary legal, financial and professional advice;

2.1.3 When any employee either of the Council or of a service provider may be affected by any transfer arrangement, *Officers*, must ensure that the Transfer of Undertakings (Protection of Employment) (*TUPE*) issues are considered and obtain legal advice before proceeding with inviting *Tenders* or *Quotations*.

2.2 Directors

Directors must:

- ensure that their staff comply with Rule 2.1
- arrange for the safe keeping on Council premises of all *Contracts* completed by signature, rather than by the Council's seal (see Rules 22.2 and 22.3)
- notify the Strategic Procurement Adviser of all completed *Contracts* over £30,000 for entry in the *Contracts Register*.

3 RELEVANT CONTRACTS

3.1 All *Relevant Contracts* must comply with these Rules. A *Relevant Contract* is any arrangement made by or on behalf of the Council for the carrying out of works or for the supply of goods, materials or services where the *Estimated Contract Value* exceeds £2,500 in money or money's worth. These include arrangements for:

- the supply or disposal of goods
- the hire or rental or lease of goods or equipment
- the delivery of services, including but not limited to those related to:
 - the recruitment of staff eg Recruitment Consultant
 - land and property transactions eg Estate Agent

- financial and consultancy services

3.2 *Relevant Contracts* do not include:

- Concession contracts
- Contracts of employment which make an individual a direct employee of the Council; or
- Agreements regarding the acquisition, disposal or transfer of land (for which the *Financial Regulations* and/or the *Code for the Disposal of Land* shall apply).
- *Contracts* that can properly be regarded as *Grants* or *Service Level Agreements*.
- *Contracts* which are exempt from the application of these Rules under Rule 5.1 or for which a waiver of all or part of the Rules has been granted in accordance with the provisions of Rule 5.2

4 FINANCIAL THRESHOLDS

4.1 All *Relevant Contracts* must be subject to competition unless there is an exemption or waiver under Rule 5. The competition requirements are as follows:

£2,500 to £10,000	One oral <i>Quotation</i> confirmed in writing (a catalogue or published price or an e-mail is acceptable for the purposes of this requirement only).
£10,001 to £30,000	Three written <i>Quotations</i> responding to an appropriate <i>Specification</i> .
£30,001 to £75,000	A formal <i>Invitation to Tender</i> including a <i>Specification</i> and, normally, conditions of <i>Contract</i> to at least four <i>Candidates</i> selected from the <i>Approved List</i> or by the relevant Head of Service or <i>Director</i> but <u>without</u> an <i>Advertisement</i> .
Services and Supplies £75,001 to £EU Threshold	A formal <i>Invitation to Tender</i> including a <i>Specification</i> and conditions of <i>Contract</i> to at least four <i>Candidates</i> after <i>Advertisement</i> .
Works £75,001 to £500,000	A formal <i>Invitation to Tender</i> including a <i>Specification</i> and conditions of <i>Contract</i> to at least four <i>Candidates</i> after <i>Advertisement</i> or from the <i>Approved List</i> .

Works £500,001 up to EU Threshold

A formal *Invitation to Tender* including a *Specification* and conditions of *Contract* to at least four *Candidates* after *Advertisement*. The *Approved List* may not be used.

EU Threshold and above

In accordance with the relevant *EU Procedure*.

4.2 The *EU Thresholds* as at 1 January 06 to 31 December 07 are:

- Services and Supplies = £144,459 and above
- Works = £3,611,474 and above

Changes will be notified to Directors from time to time by the Strategic Procurement Adviser.

5 EXEMPTIONS AND WAIVERS

5.1 Exemptions

5.1.1 **No** exemption can be used if the *EU Procedures* apply except where the *Officer* has agreed with the Head of Legal and Democratic Services that the *EU Procedures* do not require competition.

5.1.2 An exemption allows an *Officer* to negotiate directly with one or more suppliers and to award a *Relevant Contract* rather than in accordance with Rules 4, 11 and Section 3 of these Rules.

5.1.3 All exemptions and the reasons for them must be recorded using the *Exemption Notification Form*. Exemptions shall be signed by the *Officer* and counter-signed by the *Director* and recorded with the Head of Internal Audit.

5.1.4 Any exemptions granted for more than one year must be reviewed annually and either reconfirmed or amended in writing or withdrawn. The outcome of any renewal or amendment of an exemption must be recorded with the Head of Internal Audit.

5.1.5 Exemptions from the requirements of Rules 4, 11 and Section 3 of these Rules apply where the *Director* is satisfied that any of the following apply. The proposed *Relevant Contract*:

(a) is for the supply of goods, materials or equipment that are *Proprietary Articles* or are sold or supplied only at a fixed price and no reasonably satisfactory alternative is available or, where the *Contract* exceeds £75,000, the relevant *Executive Councillor* confirms in writing that s/he is satisfied there would be no genuine competition.

(b) is an extension of an existing *Contract* that has been let in accordance with these Rules (or the former Contract Procedure Rules) and the total period of this and any previous extension will not together exceed 2 years. The approval of the *Executive Councillor* must be obtained if the extension will add 20% or more to the original total *Contract* value.

(c) relates to supplies, services or works which are available only from a limited number of firms or individuals (in which case a reasonable number of these shall be invited to *Tender* or *Quote*) or from only one specialist firm or individual.

(d) following *Advertisement* within the previous 6 months, it has not been possible to secure a satisfactory or any *Tender* or *Quotation* for the purchase or supply of goods, services or works.

(e) relates to the hiring of performance artists save that the Council's existing rules about the selection of artists must be complied with.

(f) relates to the engagement of barristers or specialist legal or technical advisers.

(g) relates to goods, services or works which are necessary to enable any part of the Council to carry out work or to perform services which it has won after a competitive tendering process and the Director of Finance is satisfied that the price payable under the proposed *Contract* is the most economically advantageous obtainable in the circumstances and is within the relevant budget available.

(h) relates to goods services or works which are urgently required as a consequence of an emergency or other unforeseen event or circumstance.

5.2 **Waivers**

5.2.1 The requirements of these Rules may be waived or modified subject to the following restrictions:

5.2.2 For *Contracts* with an *Estimated Contract Value* of £75,000 and under the written approval of the Director of Finance and the Head of Legal and Democratic Services following consideration of justification from the relevant *Director* is required;

5.2.3 For *Contracts* with an *Estimated Contract Value* of over £75,000 but below the relevant *EU Threshold* or where the *EU Procedures* do not require competition, the written approval of the relevant *Executive Councillor* following consideration of justification from the relevant *Director* which has been previously approved by the Director of Finance and the Head of Legal and Democratic Services is required.

6. COLLABORATIVE PROCUREMENT ARRANGEMENTS/USE OF PURCHASING CONSORTIA

- 6.1 In order to secure *Value for Money* the Council may enter into collaborative procurement arrangements. The *Officer* must consult the Strategic Procurement Adviser and Head of Legal and Democratic Services where a purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or *Central Purchasing Body*.
- 6.2 All purchases from the Eastern Shires Purchasing Organisation (“ESPO”) or other *Central Purchasing Body* are deemed to comply with these Rules and no exemption is required. However, *Officers* must confirm that, for purchases above the *EU Thresholds*, the relevant *Central Purchasing Body* has satisfied the requirements of the *EU Procedures* by letting their *Contracts* in accordance with such procedures on behalf of the Council and other purchasing local authorities.
- 6.3 Any *Contracts* entered into through collaboration with other local authorities or public bodies where a competitive process has been followed that complies with the equivalent of these Rules of the leading organisation (but does not necessarily comply with these Rules) will be deemed to comply with these Rules and no exemption is required.
- 6.4 Advice must be sought from the Head of Legal and Democratic Services and the Strategic Procurement Adviser prior to participation in any collaborative exercise.
- 6.5 Collaborative procurement arrangements are subject to all UK and EU procurement legislation. If in doubt, *Officers* must get advice from the Head of Legal and Democratic Services and the Strategic Procurement Adviser.
- 6.6 The use of e-procurement technology does not negate the requirement to comply with all elements of these Rules, particularly those relating to *Value for Money* and competition.

7. FRAMEWORK AGREEMENTS

- 7.1 The term of a *Framework Agreement* shall not exceed 4 years without the written consent of the Head of Legal and Democratic Services.
- 7.2 A *Framework Agreement* may be completed with one organisation. However, where the *Framework Agreement* is concluded with several organisations, there must be at least three in number.
- 7.3 *Contracts* based on *Framework Agreements* may be awarded either:
- By application of the terms laid down in the *Framework Agreement* without reopening competition; or

- Where the terms are laid down in the *Framework Agreement* are not precise enough or complete for the particular call-off, by holding a mini-competition in accordance with the procedure laid out in 7.4 below.

7.4 Any mini-competitions entered into must be carried out as follows:

7.4.1 inviting the organisations within the *Framework Agreement* that are capable of executing the subject of the *Contract* to submit written *Quotations/Tenders*

7.4.2 fixing a time limit which is sufficiently long to allow *Quotations/Tenders* for each specific *Contract* to be submitted;

-7.4.3 awarding each *Contract* to the tenderer who has submitted the best *Quotation/Tender* on the basis of the *Award Criteria* set out in the *Framework Agreement*.

SECTION 2: COMMON REQUIREMENTS

8. STEPS PRIOR TO PURCHASE

- 8.1 The *Officer* must appraise any decision to make a purchase in a way that matches its complexity and value by:
- taking into account the requirements from any relevant *Best Value Review*
 - appraising the need for the expenditure and the priority of the purchase
 - defining the objectives of the purchase (having first consulted users) and relating it to the achievement of the *Medium Term Objectives*
 - assessing the risks associated with the purchase and how to manage them
 - considering what procurement method is most likely to achieve the purchasing objective, including internal or external sourcing, partnering, collaboration or use of a purchasing consortium.
- 8.2 For *Relevant Contracts* where the *Total Estimated Contract Value* is over £30,000 setting out the above requirements/details in writing.

9. GETTING MEMBER APPROVAL

- 9.1 The *Officer* must confirm in advance of the procurement that:
- There is Member or delegated approval for the expenditure
 - If the decision to purchase is a *Key Decision*, all appropriate steps have been taken to comply with the requirements of Rule 9.4.
- 9.2 The *Officer* must ensure that budgetary provision is available to cover the *Estimated Contract Value*.
- 9.3 If the *Estimated Contract Value* is between **£75,000 and £244,999** the proposal must:
- be published in the *Forward Plan* as a *Non-Key Decision* and;
 - a *Project Appraisal and Procurement report* (for *Capital* items) or a *Procurement Approval report* (for non-*Capital* items) made to the appropriate *Executive Councillor* to obtain his/her authority for carrying out and completing the procurement;

- The report and recommendation may be the subject of pre-scrutiny by the relevant *Scrutiny Committee*.

9.4 If the *Estimated Contract Value* is **£250,000** or more the proposal must:

- be published in the *Forward Plan* as a *Key Decision* and;
- a *Project Appraisal and Procurement Report* (for *Capital* items) or a *Procurement Approval Report* (for non-*Capital* items) made to the appropriate *Executive Councillor* to obtain his/her authority for the carrying out and completion of the procurement acting on the advice of the relevant *Scrutiny Committee*.

10. RECORD KEEPING

10.1 Where the *Estimated Contract Value* is £30,000 or less the *Officer* must keep the following records:

- *Request for Quotation and Quotations*;
- Any exemptions or waivers and the reasons for them
- The reason or reasons if the lowest price is not accepted
-
- - of Copies of any communications with the successful *Contractor* or unsuccessful *Candidates*.

10.2 Where the *Estimated Contract Value* is more than £30,000, the *Officer* must record:

- Copies of any approvals or consents (including Executive Member decisions)
- Details of approved budgetary provision
- The method used for obtaining the tenders ;
- Written records of any communications with *Candidates*
- Any *Contracting Decision* and the reasons for it
- Any exemption or waiver and the reasons for it as notified to the Head of Internal Audit
- The *Award Criteria* in descending order of importance
- *Tender* documents sent to and received from *Candidates*
- *Evaluation of tenders*

- Clarifications and any post-tender negotiation including minutes of any meetings and all correspondence;
 - The *Contract Documents*
 - Post-Contract monitoring
 - Written records of communications with the successful *Contractor* throughout the period of the *Contract*.
- 10.3 Records required by this Rule must be kept for six years after the end of the *Contract* or twelve years for *Contracts* under seal.
- 10.4 Written documents relating to unsuccessful *Candidates* may be microfilmed or electronically scanned or stored after 12 months from the award of *Contract*, provided there is no dispute about the award.

11 ADVERTISING AND THE APPROVED LIST

11.1 Identifying and Assessing Potential *Candidates*

11.1.1 *Officers* shall ensure that where proposed *Contracts* (irrespective of value) might be of interest to potential *Candidates* located in other member states of the EU, a sufficiently accessible *Advertisement* is published. Generally the greater the interest to potential *Candidates* the wider the coverage of the *Advertisement* should be. *Advertisements* may be placed:

- The Council's website (mandatory for all *Contracts* of a *Total Estimated Contract Value* of over £75,000)
- The Official Journal of the European Union (mandatory for all *Contracts* to which the *EU Procedures* apply).
- Portal websites specifically created for *Contracts* eg Supply2gov.net
- National journals
-

11.1.2 *Officers* are responsible for ensuring that all *Candidates* for a *Relevant Contract* are suitably assessed. The assessment process shall establish that the potential *Candidates* have sound:

- Economic and financial standing (through a financial check completed by the Finance Department)
- Technical ability and capacity

to fulfil the requirements of the Council.

11.1.3 The assessment process referred to in 11.1.2 above shall be achieved in respect of proposed *Contracts* by selecting firms where applicable in accordance with the provisions of Rule 4 from:

- The *Approved List* of providers, maintained by the Council or on its behalf, and compiled following responses to a public *Advertisement*, or
- Shortlists prepared following an assessment of the expressions of interest in a particular *Contract* submitted in response to a public *Advertisement*.

11.1.4 Public *Advertisements* issued in respect of Rule 11.1.3 above shall reflect the potential degree of interest from *Candidates* located within other member states of the EU.

11.2 Approved List

11.2.1 The *Approved List* may not be used:

- For any *Contract* where any *EU Procedure* applies
- For any *Works* contract where the *Total Estimated Contract Value* is more than £500,000
- For any *Services or Supplies* contract where the *Total Estimated Contract Value* is more than £75,000
-

11.2.1

11.2.2 Subject to 11.2.1 above, the *Approved List* should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise.

11.2.3 The *Director* of Finance shall maintain the *Approved List*.

11.2.4 The *Approved List* must be drawn up after an *Advertisement* inviting applications for inclusion on the List. The *Advertisement* must be placed to secure wide publicity among relevant suppliers. Persons may be entered on the List between the initial list and the re-*Advertisement* provided that the requirements of Rule 11.2.5 are met.

11.2.5 No person may be entered on the *Approved List* until there has been adequate investigation into both their financial and technical ability to perform the class of *Contract* appropriate to the List.

11.2.6 Where an *Officer* wishes to use the *Approved List* s/he shall draw up a list of criteria for short listing, which shall be agreed with the Head of Service.

- 11.2.7 The *Approved List* must be re-advertised at least every five years. On *re-Advertisement*, a copy of the *Advertisement* must be sent to people on the list, inviting them to reapply.
- 11.2.8 The *Approved List* shall be maintained in an open, fair and transparent manner and shall be open to public inspection.
- 11.2.9 A register of pre-qualified *Contractors* maintained by or on behalf of central government (eg Constructionline) will be deemed to be the *Approved List* for the purpose of these Rules and shall not be subject to the requirements of Rules 11.2.5 to 11.2.8 above.

SECTION 3: CONDUCTING PURCHASES AND DISPOSALS

12 CALCULATING THE ESTIMATED CONTRACT VALUE

12.1. The *Officer* must calculate the *Estimated Contract Value* for a single purchase or disposal as follows:

(a) where the proposed *Contract* is for a one-off purchase or task, by taking the estimated price for the purchase of those items or the completion of that task;

(b) where the proposed *Contract* is for a fixed period, by taking the total price (excluding VAT) to be paid or which might be paid (or received if a *Concession Contract*) during the whole period;

(c) where a *Contract* is of an uncertain duration (eg a “rolling” *Contract*) by multiplying the estimated monthly payment by 48;

(d) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;

(e) sub-paragraph 12.1(d) does not apply to *Contracts* let by *Discrete Operational Units* and the value of purchases made by such units may be excluded for the purposes of calculations under 12.1(d);

(f) for feasibility studies, the value of the scheme or *Contracts* which may be awarded as a result;

(g) for *Nominated Suppliers and Sub-Contractors*, the value of that part of the main *Contract* to be fulfilled by the *Nominated Supplier or Sub-Contractor*.

11.2 An *Officer* must not enter into separate *Contracts* nor select a method of calculating the *Estimated Contract Value* in order to minimise the application of these Rules.

13 COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

13.1 Purchasing – Competition Requirements

13.1.1 Where no approved alternative procurement method is appropriate (ie purchasing from a *Central Purchasing Body* or from a *Corporate Contract*) and the *Estimated Contract Value* for a purchase is within the first column below, the *Award Procedure* in the second column must be

followed. Short-listing must be done by the persons specified in the third column.

Contract Type	Estimated Contract Value	Award Procedure	Shortlisting
All small/medium contracts	£2,500 to £10,000	One oral <i>Quotation</i> confirmed in writing	<i>Officer</i>
	£10,001 - £30,000	Three <i>Quotations</i> confirmed in writing	<i>Officer and Line Manager</i>
	£30,001 - £75,000	<i>Invitation to Tender</i> to at least four <i>Candidates</i> – selected from an <i>Approved List</i> or by the Head of Service - <i>Advertisement</i> not necessary	<i>Officer and Line Manager and one other (with advice from Finance Department, Corporate Health and Safety Adviser and HR Business Partner if appropriate).</i>
Large Services and Supplies Contracts	£75,001 to <i>EU Threshold</i>	<i>Invitation to Tender</i> to at least four <i>Candidates</i> following <i>Advertisement</i>	<i>Officer, Line Manager, Head of Service and one other (with advice from Finance Department, Corporate Health and Safety Adviser and HR Business Partner if appropriate).</i>
	<i>EU Threshold and above</i>	<i>EU Procedure</i>	Consult the Strategic Procurement Adviser
Large Works Contracts	£75,001 to £500,000	<i>Invitation to Tender</i> to at least four <i>Candidates</i> following <i>Advertisement</i> or selected from the <i>Approved List</i>	<i>Officer, Line Manager, Head of Service, one other, Health and Safety Adviser (with advice from Finance Department if appropriate).</i>
	£500,001 up to <i>EU Threshold</i>	<i>Invitation to Tender</i> to at least four <i>Candidates</i> following <i>Advertisement</i>	<i>Officer, Line Manager, Head of Service, Finance Department and one other, Health and Safety Adviser.</i>
	Works EU Threshold and	<i>EU Procedure</i>	Consult the Strategic

	above		Procurement Adviser
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13.1.2 Where the *EU Procedure* applies the *Officer* shall consult the *Strategic Procurement Adviser* to determine the most appropriate method of conducting the purchase.

13.1.3 Where it can be demonstrated that there are insufficient suitably qualified *Candidates* to meet the competition requirements, all suitably qualified *Candidates* must be invited.

13.2 Assets for Disposal

Assets for disposal must be sent to public auction except where better *Value for Money* is likely to be obtained by inviting *Quotations* and *Tenders* (these may be invited by advertising on the Council's Internet or Intranet sites). In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be agreed with the relevant Director and the disposal recorded with the Head of Internal Audit in writing.

13.3 Providing Services to External Purchasers

Subject to the approved *Delegations* and the Financial Regulations, the Head of Legal and Democratic Services and the Strategic Procurement Adviser must be consulted where *Contracts* to work for organisations other than the Authority are contemplated.

13.4 Partnership Arrangements

Partnership arrangements are subject to all UK and EU procurement legislation and must follow these Rules. If in doubt, *Officers* must get advice from the Head of Legal and Democratic Services and the Strategic Procurement Adviser.

14. PRE-TENDER MARKET RESEARCH AND CONSULTATION

14.1 The *Officer* responsible for the purchase:

- May consult potential suppliers prior to the issue of the *Invitation to Tender* in general terms about the nature, level and standard of the supply, *Contract* packaging and other relevant matters **provided** this does not prejudice any potential *Candidate*; but
- **Must not** seek or accept technical advice about the preparation of a *Specification*, an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them if this may prejudice the equal treatment of all potential *Candidates* or distort competition; and
- Should seek advice from the Strategic Procurement Adviser.

15 STANDARDS AND AWARD CRITERIA

- 15.1 The *Officer* responsible for the purchase must require all Candidates to ascertain and comply with the relevant British, European or international standards that apply to the subject matter of the *Contract*. The *Strategic Procurement Adviser* must be consulted if it is intended to use any other than European standards.
- 15.2 The *Officer* must define *Award Criteria* that are appropriate to the purchase and designed to secure equality of treatment and an outcome giving *Value for Money* for the Council. The basic criteria shall be:
- “lowest price” where payment is to be made by the Council; or
 - “highest price” if payment is to be received by the Council (eg for a disposal); or
 - “most economically advantageous offer”, where considerations other than price eg “quality” also apply .

If the last criterion is used, it must be further defined by reference to sub-criteria, which may only refer to considerations relevant to the subject matter of the *Contract*. These may include:

- price
- service standards (including equality issues where appropriate)
- quality of goods
- operating costs
- technical merit
- previous experience of supplier
- delivery date
- cost effectiveness
- environmental considerations where directly relevant to the subject matter of the *Contract*
- aesthetic and functional characteristics
- safety
- after-sales services
- technical assistance

and any other relevant matters.

- 15.3 *Award Criteria* must **not** include
- *Non-commercial considerations*
 - matters which discriminate against suppliers from the *European Economic Area* or signatories to the *Government Procurement Agreement*

16 OBTAINING QUOTATIONS

- 16.1 The *Request for a Quotation* must contain enough detailed information about the Council’s requirements to enable a competitive price to be obtained. This will usually be in the form of a *Specification*.

The *Request for a Quotation* must state that the Council is not bound to accept any *Quotation*.

16.2 The relevant Head of Service shall, in each case, keep a record of:

- all those *Candidates* requested to provide a *Quotation*; and
- the checks carried out to confirm the financial soundness (for the value of the *Contract*) of any potential *Candidates*; and
- the reasons why those *Candidates* were selected to provide a *Quotation*; and
- the basis on which a particular *Quotation* was accepted ie the most economically advantageous offer to the Council or the lowest price.

16.3 All organisations invited to submit a *Quotation* must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

16.4 All Requests for *Quotations* where the contract value is £30,000 and under shall be subject to the *Council's Standard Terms and Conditions* unless other terms and conditions have been approved by the relevant Head of Service. The *Council's Standard Terms and Conditions* must be included with all *Requests for Quotations* and the final *Contract* shall be subject to those terms and conditions.

16.5 All Requests for *Quotations* where the contract value is more than £30,000 must include a set of *Contract* conditions approved by the Head of Legal and Democratic Services.

17 INVITATIONS TO TENDER

17.1 The *Invitation to Tender* shall state that no *Tender* will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*. No *Tender* delivered in contravention of this clause shall be considered.

17.2 All *Invitations to Tender* shall include the following:

- (a) A *Specification* that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
- (b) A requirement for *Candidates* to declare that the *Tender* content, price or any other figure or particulars concerning the *Tender* have not been disclosed by the *Candidate* to any other party (except where such a disclosure is made in confidence for a necessary purpose).

(c) A requirement for Candidates to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and non-collusion.

(d) Notification that Tenders are submitted to the Council on the basis that they are compiled at the Candidate's expense.

(e) A description of the *Award Procedure* and, unless defined in a prior *Advertisement*, a definition of the *Award Criteria* in objective terms and any weightings to be applied or, if this is not possible, in descending order of importance.

(f) A notification that no Tender will be considered unless it is enclosed in a sealed envelope or container which bears the word "Tender" followed by the subject to which it relates, but no other name or mark indicating the sender.

(g) A stipulation that Tenders may not be submitted by fax or other electronic means.

(h) The method by which any arithmetical errors discovered in the submitted Tenders is to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa.

17.3 All Invitations to Tender must specify the goods, services or works that are required, together with the terms and conditions of *Contract* that will apply.

17.4 The *Invitation to Tender* must state that the Council is not bound to accept the lowest or any Tender.

17.5 All *Candidates* invited to Tender must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

18 SHORT LISTING

18.1 Any short listing must have regard to the financial and technical standards relevant to the *Contract* and the *Award Criteria*. Special rules apply in respect of the *EU Procedure*.

18.2 The *Officers* responsible for short listing are specified in Rule 13.1.1

18.3 Where the *Approved List* is used, short listing may be done by the *Officer* in accordance with the short listing criteria drawn up when the list of *Candidates* from the *Approved List* was compiled. However, where the *EU Procedure* applies, the *Approved List* may be not used.

19 SUBMISSION, RECEIPT AND OPENING OF TENDERS

19.1 *Candidates* must be given adequate time in which to prepare and submit a proper *Tender* or *Quotation* consistent with the urgency and

complexity of the requirement. At least 20 *Working Days* must be allowed for submission of a *Tender*. The *EU Procedure* lays down specific time periods for each stage of a tendering procedure which must be complied with.

- 19.2 All Tenders must be returned to the *Director* of Customer and Democratic Services at [the Guildhall Reception at the Guildhall Cambridge CB2 3QJ] who shall take the documents for safe keeping until they are opened.
- 19.3 The *Officer* or *Officers* responsible for the safe keeping of documents must not disclose the names of *Candidates*.
- 19.4 Receipt of Tenders must be:
- Date stamped
 - A record of the time of receipt marked on the tender envelope
 - Initialed by the receiving *Officer*
 - Stored safely to guard against amendment of its contents
 - Logged immediately in the Tender Record Book.
- 19.5 The Director of Customer and Democratic Services must ensure that all Tenders are opened at the same time when the period for submission has ended. The *Officer* or his/her representative must be present at the Tender opening process together with one representative of the Director of Customer And Democratic Services (who cannot be the *Officer*).
- 19.6 Upon opening, the tenderers name, date and time opened and a summary of the main terms (ie the tender sum or statement explaining why a fixed sum is not shown) of the opened Tenders must be entered in the Tender Record Book kept by the Director of Customer and Democratic Services and the entry initialed by the attending *Officers*.
- 19.7 If there is an error in a Tender or supporting information the *Candidate* must be invited to confirm or withdraw the bid as it stands. **However**, where the error relates to the tendered total as calculated from the tendered rates and variable quantities, an amended Tender price may be requested to accord with the rates given by the Tenderer.

20 CLARIFICATION PROCEDURES AND POST TENDER NEGOTIATION

- 20.1 The *Officer* is permitted to provide clarification of an *Invitation to Tender* to potential or actual *Candidates* so long as that clarification is provided to all *Candidates* at the same time.
- 20.2 The *Officer* may seek clarification of a Tender from one or all *Candidate* in writing or at a meeting so long as notes of that meeting are taken and agreed with all parties.

- 20.3 *Post – tender negotiation* may only be undertaken in exceptional circumstances and must be regarded as the exception rather than the rule.
- 20.4 *Post tender negotiations* must not be used in any *EU Procedure* except for the Negotiated Procedure.
- 20.5 Subject to the prohibition in respect of an Open or Restricted *EU Procedure* in 20.4 above only the following Invitations to Tender may include provision for post-tender negotiations:
- The procurement of services in respect of which the Council has no or limited experience in placing *Contracts* and with the prior written approval of the Strategic Procurement Adviser.
 - For any supply of goods or services or works where the leading bid is above budget and price reduction measures may be necessary.

and negotiations must be conducted by a team of at least two officers (including the *Officer*) one of whom must be from a department independent to that leading the negotiations.

- 20.6 Where post-tender negotiations result in a fundamental change to the *Specification* or *Contract* terms the *Contract* may not be awarded but must be re-tendered.

21 Evaluation and Award of Contract and Debriefing of Candidates

- 21.1 Apart from the de-briefing of *Candidates* referred to in Regulation 21.7 below, confidentiality of *Quotations*, *Tenders* and the identity of *Candidates* must be preserved at all times and information about one *Candidate's* response must not be given to another *Candidate*.
- 21.2 If a Freedom of Information Request is received asking for information about a current tendering process, the Head of Legal and Democratic Services must be consulted.
- 21.3 Tenders must be evaluated in accordance with the published evaluation/*Award Criteria*.
- 21.4 A Tender that exceeds the *Estimated Contract Value* may only be accepted by the relevant *Director* if it is within 15% or less of the original estimate and approval to the further expenditure is obtained from the *Director* of Finance.
- 21.5 If a Tender exceeds the *Estimated Contract Value* by more than 15% then either:
- A further tender exercise shall be carried out; or
 - The relevant *Director* must get the permission of the relevant *Executive Councillor* and the *Director* of Finance to accept the Tender.

- 21.6 In the case of a *Concession Contract* the Rules in Procedure Rules 214 and 21.5 apply if the Tender received is less than the *Estimated Contract Value* by 15% or more.
- 21.6 The *Officer* must inform all *Candidates* in writing of the Council's intention to award the *Contract* to the successful *Candidate*.
- 21.7 Where the Total *Contract Value* is more than £30,000 , the *Officer* must provide unsuccessful *Candidates* with a period of at least 10 days in which to challenge the decision before the *Officer* awards the *Contract*.
- 21.8 If the decision is challenged by an unsuccessful *Candidate* then the *Officer* shall not award the *Contract* and shall immediately seek the advice of the Head of Legal and Democratic Services.
- 21.9 Where the Total *Contract Value* is more than £75,000, the *Officer* shall debrief all those *Candidates* who submitted a bid about the characteristics and relative advantages of the successful bid. No information, other than the following, should be given without the advice of the Head of Legal and Democratic Services:
- How the *Award Criteria* were applied
 - The prices or range of prices submitted without attributing them to a particular *Candidate*.
 - The names of *Candidates* where there were three or more *Candidates*
- 21.10 If a *Candidate* requests in writing reasons for a *Contracting Decision*, the *Officer* must comply with the Council's corporate response standard and in any event must give the reason in writing within 15 days of the request.
- 21.11 The *Officer* may also give the debriefing information at 21.9 above to *Candidates* who were not selected in a pre-tender short listing process if so requested.

SECTION 4:

CONTRACT AND OTHER FORMALITIES

22. CONTRACT DOCUMENTS

22.1 Contract Conditions

22.1.1 A Council Purchase Order must be used for all purchases.

22.1.2 All *Contracts* of £2500 and above shall clearly specify:

- What is to be supplied (ie the works, materials, services, matters or things to be provided, had or done);
- What is to be paid and when;
- The time or times within which the *Contract* is to be performed;
- The provisions for the Council to terminate the *Contract*;
- That they are subject to the *Council's Standard Terms and Conditions* unless the Head of Legal and Democratic Services approves an alternative.

22.1.3 In addition, every *Contract* of more than £30,000 must state clearly:

- That the *Contract* is subject to the law as to the prevention of corruption (Rule23.3);
- That the *Contractor* may not assign or sub-*Contract* without the Council's prior written consent
- Appropriate insurance requirements
- Appropriate health and safety requirements;
- The Council's Data protection requirements;
- The Council's Non-discrimination requirements;
- Appropriate environmental requirements
- The Council's Freedom of Information Act requirements;
-
- Audit access and monitoring requirements;
- The requirement to cooperate with internal and external Ombudsman enquiries/investigations;

22.1.4 The advice of the Head of Legal and Democratic Services must be sought for the following *Contracts*:

- Those involving leasing arrangements (when the advice of the Finance Department must also be sought);
- Where it is proposed to use the *Candidate's* own terms and conditions;
- Where the *Estimated Contract Value* is more than £75,000;
- Those potentially involving the transfer of staff into or out of the Council or between external *Contractors*;
- Those that are complex in any other way.

22.2 Contract Completion

22.2.1 *Contracts* shall be completed as follows:

Total Value	Method of Completion	Officer completing
£30,000 and below	Signature	Head of Service
£30,001 to £75,000	Signature	<i>Director</i>
more than £75,000	Sealing	Head of Legal and Democratic Services

22.2.2 All *Contracts* must be concluded formally in writing before the supply, service or works begin except in exceptional circumstances and then only with the written consent of the Head of Legal and Democratic Services.

22.2.3 If any payment is to be made in advance of performance of the *Contract*, the relevant *Contract* must be concluded before any such payment is made.

22.2.4 An award letter or letter of intent shall not be used instead of a *Contract* unless in a form approved by the Head of Legal and Democratic Services.

22.2.5 The *Officer* responsible for securing the signature of any *Contract* is responsible for getting written confirmation that the person signing for the other Contracting party is authorised so to do and can bind the Contracting party.

22.3 Sealing

22.3.1 Where each side adding their formal seal completes *Contracts*, the fixing of the Council's seal must be witnessed by or on behalf of the Head of Legal and Democratic Services.

22.3.2 The seal must not be affixed without proper authority.

22.3.3 A *Contract* must be sealed where:

- The Council may wish to sue on the *Contract* more than six years after it ends or where there is no cash payment made; or
- The price paid or received under the *Contract* is a nominal price and does not reflect the value of the goods or services; or
- Where there is any doubt about the authority of the person signing for the other Contracting party; or
- The *Estimated Contract Value* is more than £75,000

unless the Head of Legal and Democratic Services agrees that a signature will be sufficient.

22.4 Bonds and Parent Company Guarantees

22.4.1 A Bond or Parent Company Guarantee is not required only where the *Director* of Finance provides a written exemption from the requirements in 22.4.2 and 22.4.3 below:

22.4.2 A *Parent Company Guarantee* is required where the *Candidate* is a subsidiary of a parent company and:

- the *Estimated Contract Value* is more than £250,000; or
- award is based on the evaluation of the Parent Company; or
- there is some concern about the stability of the *Candidate*.

22.4.3 A *Bond* is required:

- where the *Estimated Contract Value* is more than £500,000; or
- where it is proposed to make stage or other payments in advance of receiving the whole of the deliverable under the *Contract* and there is some concern about the stability of the *Candidate*.

23. PREVENTION OF CORRUPTION

23.1 The *Officer* must comply with the *Officer Code of Conduct* at Part 5B of this *Constitution*.

23.2 The *Officer* must not invite or accept any gift or reward in respect of the award or performance of any *Contract*. It will be for the *Officer* to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Regulation 23.3 below.

23.3 The following clause must be put into every written Council *Contract* (where it is not written it is to be implied):

“The Council may terminate this *Contract* and recover all of its loss if the *Contractor*, its employees or anyone acting on the *Contractor’s* behalf do any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council *Contract* (even if the *Contractor* does not know that this has been done); or
- (b) commits an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or
- (c) commits any fraud in connection with this or any other Council *Contract* whether alone or in conjunction with Council members, *Contractors* or employees.

Any clause limiting the *Contractor’s* liability shall not apply to this clause.”

24 DECLARATION OF INTERESTS

- 24.1 If it comes to the knowledge of a Member or an *Officer* of the Council that a *Contract* in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Director of Customer and Democratic Services.
- 24.2 Such written notice is required irrespective of whether the pecuniary interest is direct or indirect.
- 24.3 A shareholding in a body not exceeding a total nominal value of £1000 or 1% of the nominal value of the issued share capital (whichever is less) is not a pecuniary interest for the purpose of this Rule.
- 24.4 The Chief Executive shall maintain a record of all declarations of interests notified by Members and *Officers*.

SECTION 5:

CONTRACT MANAGEMENT

25. Managing Contracts

25.1 The relevant Head of Service must name a *Contract Manager* for all *Contracts* of more than £75,000. All such *Contracts* must have a named *Contract Manager* for the entirety of the *Contract*.

26. Risk Assessment and Contingency Planning

26.1 A business case must be prepared for all procurements with an *Estimated Contract Value* over the *EU Threshold*. Provision for resources for management of the *Contract*, for its entirety, must be identified in the business case.

26.2 For all *Contracts* of more than £75,000 the *Contract Manager* must:

- Ensure that any risks associated with the procurement that could impact on the relevant service's objectives are recorded in the Council's *Risk Register* ;
-
- For identified risks ensure that the registered contingency measures are in place and documented in the *Risk Register*;
- Undertake appropriate risk assessment in accordance with the corporate *Risk Assessment Guidance*; and
- Ensure critical support, maintenance and business continuity requirements are documented in the *Specification* in order to avoid costly *Post-Tender Negotiations*.

27. Contract Monitoring, Evaluation and Review

27.1 All *Contracts* where the *Estimated Contract Value* is the same as or exceeds the *EU Threshold*, or which are high risk, are to be subject to a formal and documented quarterly review with the *Contractor*.

27.2 During the life of the *Contract* the *Contract Manager* must monitor the *Contractor* in respect of:

- Performance
- Compliance with the *Contract Documents*;
- Cost;
- Any Value for Money requirements;
- User satisfaction and risk management.

The monitoring must be carried out in a way that matches the complexity and value of the *Contract*.

- 27.3 At the end of any *Contract* where the *Estimated Contract Value* is the same as or exceeds the *EU Threshold*, the *Contract Manager* must make a written report to the relevant *Director* evaluating the extent to which the *Contract* has met the purchasing need and the *Contract* objectives as set out in the original Project Appraisal or business case.
- 27.4 If the *Contract* is to be re-let, the *Contract Manager's* report should be available in sufficient time to inform the approach to re-letting any subsequent *Contract*.

SECTION 6:

GENERAL

28 Technical Amendments to these Procedure Rules

The Director of Finance and the Head of Legal and Democratic Services shall have the power to make amendments from time to time to these Rules.

DEFINITIONS

- “Advertisement”* A notice giving details of the procurement published on the Council’s website; the local newspaper and/or a trade journal as required; a non-mandatory notice in the Official Journal of the European Union (OJEU) if desired for below threshold *Contracts* and in OJEU if over the *EU Thresholds*;
- “Agent”* A person or organisation acting on behalf of the Council or on behalf of another organisation.
- “Approved List”* A list drawn up in accordance with Rule 11.2 of these Procedure Rules.
- “Award Criteria”* The criteria by which the successful *Quotation* or *Tender* is to be selected.
- “Award Procedure”* The procedure for awarding a contract as specified in Rules 12, 15 to 21.
- “Best Value”* The duty which Part 1 of the Local Government Act 1999 places on local authorities to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council. Also referred to as “Value for Money”.
- “Bond”* An insurance policy: if the *Contractor* does not do what it has promised to do under a *Contract* with the Council, the Council can claim from the insurer the sum of money specified in the *Bond* (often 10% of the *Contract Value*). A *Bond* is intended to protect the Council against costs arising from the *Contractor’s* failure.
- “Buying Green*
Guide” The Guide to sustainable procurement published by the Council and available on the intranet and internet.
- “Candidate”* Any person who asks or is invited to submit a *Pre-qualification questionnaire*, a *Quotation* or a *Tender*.
- “Capital”* Expenditure that involves acquiring or enhancing fixed assets with a long-term value to the authority, such as land, buildings and major items of plant, equipment or vehicles.
- “Central Purchasing*

<i>Body</i>	Another local authority or <i>Contracting Authority</i> (such as ESPO or the Office of Government Commerce) which acquires supplies and/or services or awards public <i>Contracts</i> or concludes <i>Framework Agreements</i> intended for other local authorities.
<i>“Code for the Disposal of Land”</i>	Part 4H of this Constitution
<i>“Concession</i>	
<i>Contract</i>	A <i>Contract</i> where the payment or part of the payment for the services or works consists of the grant by the Council of the right for the <i>Contractor</i> to exploit the works or services to be carried out.
<i>“Contracting</i>	
<i>Decision</i>	Any of the following decisions: <ul style="list-style-type: none"> • Composition of <i>Approved List</i> • Withdrawal of an <i>Invitation to Tender</i> • Who to invite to submit a <i>Quotation</i> or Tender • Shortlisting • Award of <i>Contract</i> • Any decision to terminate a <i>Contract</i>.
<i>“Constitution”</i>	The constitutional document approved by the Council which: <ol style="list-style-type: none"> (a) Allocates powers and responsibilities within the Council and between it and others; (b) Delegates authority to act to Members and <i>Officers</i> (c) Regulates the behaviour of individuals and groups through rules of procedure, codes and protocols of which these Contract Procedure Rules are a part.
<i>“Contract”</i>	An agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit (usually money).
<i>“Contract</i>	
<i>Documents”</i>	Documents which are a part of the agreement between the Council and the <i>Contractor</i> . Most <i>Contracts</i> will define what the <i>Contract Documents</i> are.

“ <i>Contract Manager</i> ”	The <i>Officer</i> with responsibility for ensuring that the Council obtains the benefit of the <i>Contract</i> .
“ <i>Corporate Contract</i> ”	A <i>Contract</i> let by the Council that is to be used by all <i>Officers</i> within the Council. <i>Corporate Contracts</i> are listed on the intranet.
“ <i>Contracts Register</i> ”	A central register of the <i>Contracts</i> entered into by the Council, which can be found on the Intranet .
“ <i>Contractor</i> ”	An organisation appointed by the Council to provide it with goods, services or works.
“ <i>Council’s Standard Terms and Conditions</i> ”	The <i>Council’s Standard Terms and Conditions of Contracts</i> for <i>Contracts</i> below £30,000, which can be found on the Intranet.
“ <i>Debrief</i> ”	To provide unsuccessful <i>Candidates</i> with information about their performance in a completed procurement process.
“ <i>Delegations</i> ”	Any power, duty or authority delegated to a Chief Officer by the Council as set out in Section 9 of Part 3 of the <i>Constitution</i>
“ <i>Director</i> ”	or “ <i>Chief Officer</i> ”. The <i>Officers</i> defined in Article 11 para 11.1.2 of Part 2 of the <i>Constitution</i> .
“ <i>Discrete Operational Unit</i> ”	Purchases made by a <i>Discrete Operational Unit</i> are exempt from Rule 12.1(d) if all the following conditions are met: <ul style="list-style-type: none"> • The unit had budgetary and managerial autonomy • The goods or services are for that unit alone • The decision about purchasing has been devolved to that unit • The decision to purchase is taken independently of any other part of the Council.
“ <i>Estimated Contract Value</i> ”	The value of the <i>Contract</i> estimated in accordance with the provisions of Rule 12.

“ <i>EU Procedure</i> ”	The procedure required by the European Union (EU) where the <i>Estimated Contract Value</i> exceeds the relevant <i>EU Threshold</i> .
“ <i>EU Threshold</i> ”	The <i>Contract</i> value at which the EU public procurement directives and Public Contract Rules 2006 must be applied.
“ <i>Executive Councillor</i> ”	One of the seven Councillors which, together with the Leader make up the Executive and which have authority delegated to them to take decisions in respect of their portfolio area.
“ <i>Exemption Notification Form</i> ”	The form to be used when registering use on an exemption under Rule 5.1.3 of these Procedure Rules.
“ <i>Financial Regulations</i> ”	The Rules at Part 4F of the <i>Constitution</i> .
“ <i>Forward Plan</i> ”	The list of all <i>Key Decisions</i> and non- <i>Key Decisions</i> that are to be considered by the <i>Executive Councillor</i> over the following four months.
“ <i>Framework Agreement</i> ”	An agreement between one or more Contracting organisations and one or more <i>Contractors</i> which establishes the terms governing <i>Contracts</i> to be awarded during a set period in particular with regard to price and, if appropriate, quantities.
“ <i>Government Procurement Agreement</i> ”	(GPA). The successor agreement to the General Agreement on Trade and Tariffs. The main signatories, other than those in the EU, are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Lichtenstein and Singapore.
“ <i>Grants</i> ”	A voluntary transfer of money to an organisation in line with the guidance issued by the Head of Legal and Democratic Services.
“ <i>Invitation to</i> ”	

<i>Tender</i>	The document containing the invitation to <i>Candidates</i> to tender for a particular <i>Contract</i> .
<i>“Key Decision”</i>	A decisions made in the exercise of an executive function by any person (including <i>Officers</i>) or body which meets one or more of the conditions set out in Article 12.2.3 of Part 2 of the <i>Constitution</i> .
<i>“Medium Term Objectives”</i>	The objectives for the Council set out in the Annual Statement each year.
<i>“Nominated Suppliers and Sub-Contractors”</i>	Those persons specified in a main contract for the discharge of any part of that contract.
<i>“Non Commercial Considerations”</i>	<p>(a) the terms and conditions of employment by <i>Contractors</i> of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces (“workforce matters”);</p> <p>(b) whether the terms on which <i>Contractors Contract</i> with their sub-contractors constitute, in the case of <i>Contracts</i> with individuals, <i>Contracts</i> for the provision by them as self-employed persons of their services only;</p> <p>(c) any involvement of the business activities or interests of <i>Contractors</i> with irrelevant fields of Government policy (an example of this would be refusing to do business with <i>Contractors</i> who have worked on military nuclear installations in opposition to the government’s defence policy in the area of nuclear armaments);</p> <p>(d) the conduct of <i>Contractors</i> or workers in industrial disputes between them or any involvement of the business activities of <i>Contractors</i> in industrial disputes between other persons (“industrial disputes”);</p> <p>(e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of <i>Contractors</i>;</p>

(f) any political, industrial or sectarian affiliations or interests of *Contractors* or their *Directors*, partners or employees;

(g) financial support or lack of financial support by *Contractors* for any institution to or from which the authority gives or withholds support;

(h) use or non-use by *Contractors* of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.

Workforce matters and industrial disputes, as defined above in paragraphs (a) and (d) of this definition, ceased to be Non-Commercial Considerations to the extent necessary or expedient to comply with *Best Value*; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Rules 2006 (“*TUPE*”) may apply.

“*Non-Key*

Decisions” Any decision to be taken by the *Executive Councillor* that is not a *Key Decision* or a delegated decision.

“*Officer*” The *Officer* designated by the *Director* to deal with the *Contract* in question.

“*Officer Code of*

Conduct” The Code of Conduct at Part 5B of this Constitution.

“*Parent Company*

Guarantee” A *Contract* that binds the parent of a subsidiary company to act in accordance with the provisions of the guaranteed *Contract* in the event that the subsidiary company fails to do what it has promised under the guaranteed *Contract*.

“*Post Tender*

Negotiation” Negotiations with a *Candidate* after submission of a Tender and before award of the *Contract* with a view to obtaining a change to the price, delivery or content submitted.

“*Pre qualification*

questionnaire” A questionnaire sent to *Candidates* which have expressed an interest in tendering for a *Contract*. Sometimes referred to as an application form.

“Procurement

Approval Report” A report to the *Executive Councillor* on the corporate template seeking approval for the undertaking of a procurement.

“Procurement

Strategy” The [Strategy](#) approved by the Council setting out the Council’s approach to procurement and key priorities for the next few years.

“Project” A piece of work with a beginning and an end and with defined resources, budgets and timescales.

“Project Appraisal

and Procurement

Report” A report to the *Executive Councillor* on the corporate template seeking approval for the appraisal, as required by paragraph 9.3.3 of Part 3 of the *Constitution*, of the financial and business case for the *Project* and for any consequent procurement prepared in accordance with any guidance issued by the *Director* of Finance.

“Project Management

Guidelines” The Guidelines published by the Council and published on the intranet

“Project Register” The Council’s *Project Register*

“Proprietary

Articles” Manufactured articles which some person or persons have exclusive rights to make and sell.

“Quotation”/

“Quote” A *Quotation* of price and any other relevant matters obtained without the issue of an *Invitation to Tender*.

“Request for

Quotation” A formal written [Request](#) to a supplier or suppliers for a price for the delivery of defined services, works or supplies in accordance with the *Council’s Standard Terms and Conditions*.

“Relevant Contracts to which these Rules apply.

Contracts

“*Revenue*” Day to day running expenses.

Risk Assessment

“*Guidance*” The guidance as published on the Council's intranet from time to time.

“*Risk Register*” The Council's [Risk Register](#).

Scrutiny

“*Committee*” Committees appointed by the Council whose role and functions are set out in Article 6 of the *Constitution*.

Service Level

“*Agreement SLA*” An agreement, usually within a services contract, in which a certain level of service is agreed. An SLA is therefore NOT a type of service contract, but only a part of a service contract.

“*Specification*” A clear description of the requirements under the *Contract*. The amount of detail will vary according to the value and complexity of the purchase.

“*Tender*” A Candidate's proposal submitted in response to an *Invitation to Tender*

“*TUPE*” Transfer of Undertakings (Protection of Employment) Rules 1981. Rules introduced to ensure the protection of employees where, for example, a business is taken over by another employer. Broadly *TUPE* ensures that the rights of the employees are transferred with the business.

“*Workforce Matters*” The Council cannot consider matters classed as “non-commercial” considerations as part of the procurement process. However, the restrictiveness of the original definitions was considered too great so from 2001 authorities may consider the following matters **to the extent that they are relevant to the delivery of Best Value** or for the purposes of a *TUPE* transfer:

- How employers treat their staff as regards terms and conditions of employment, arrangements for promotion, transfer or training or other opportunities afforded to their workforce.
- The conduct of suppliers or workers in industrial disputes between them.

“Working Day”

A complete day other than a Saturday, Sunday, or Bank Holiday.

PROPOSED REVISIONS TO GENERAL DELEGATIONS

9.3 General Delegations

9.3.1 The following delegations apply in relation to the powers and duties of all the committees of the Council and each Chief Officer is authorised as follows:

Financial Matters

1. To incur expenditure on any item for which provision is made in the appropriate approved revenue budget provided that:
 - (a) in the case of grants to outside bodies, the approval of the relevant Executive Councillor is obtained for grants over £1,000. (Any grant made under this delegated power must be reported to the next meeting of the relevant scrutiny committee.)
 - ~~(b) in the case of new schemes (ie items of revenue expenditure for which provision is included in a revenue budget for the first time), the approvals required by paragraph 3 below have been obtained;~~
 - (eb) any action taken complies with any relevant legislative provisions; the terms of any relevant agency agreement; and the requirements of the Council's Constitution (or, where necessary under the terms of an agency agreement, the Constitution of another authority).
2. To proceed with all necessary steps to achieve the completion of capital schemes for which provision has been made in the approved Capital Plan or the Housing Programme of Work, provided that the approvals required by paragraph 3 below have been obtained and the requirements of the Constitution and any relevant legislation are complied with.
3. In the case of new capital ~~or revenue~~ schemes the following approvals (together with approval to the necessary budget provision) must be obtained before any scheme may proceed.
 - (a) ~~—~~For schemes where the estimated cost is ~~less than £2515,000 and below~~: once included in the capital plan ~~or revenue budget~~ schemes may proceed without ~~further detailed scrutiny~~ committee consideration, provided that relevant Ward Councillors, have been consulted, where appropriate.

~~(b) (b)~~ For schemes where the estimated total cost is over £2515,000 and up to £75,000: over a capital project appraisal and procurement report pro-forma must be completed and referred to the relevant Executive Councillor for approval. The schemes may then proceed without scrutiny committee consideration, provided relevant Ward Councillors have been consulted, where appropriate.

(c) For schemes where the estimated total cost is over £75,000: a capital project appraisal and procurement report pro-forma must be completed for consideration by the relevant scrutiny committee and referral to the relevant Executive Councillor for approval.

4. The appropriate lead officers are authorised to approve bids of ~~up to~~ £15,000 and below to be met from the following capital programme remits established by the Council:

~~(a) the following Priority Development Programmes established by the Council (subject to consultation with the appropriate Executive Councillor and the Scrutiny Committee spokespersons):~~

- ~~– Health Inequalities~~
- ~~– Older people~~

~~(b) the following capital programme remits established by the Council:~~

- Housing Capital Investment Programme
- ~~– Neighbourhood Fund Programme~~ City Centre Management Programme
- City Centre Partnership
- Sustainable City Programme
- ~~– Safer City Programme~~
- City Lottery Fund Programme
- ~~– Cycleways~~
- Arboricultural Strategy
- Development of Joint Use Facilities
- ~~– Environmental Improvement Programmes~~
- Environmental Improvements – Payments
- Road Safety Schemes – Traffic Calming
- Road Safety Schemes – Crossings
- Environmental Safety Fund
- Public Conveniences
- City Services Vehicle Replacement
- Bus Shelters
- Car Park Infrastructure and Equipment Replacement
- ICT Infrastructure Replacement and Upgrade
- Hobsons Conduit Repair and Refurbishment

provided that the bids meet the agreed remits, objectives and criteria of the programme area concerned.

5. In consultation with the Director of Finance, to use the Repairs, Renewals and Maintenance Provision for the replacement or repair of existing plant, vehicles or equipment (or other asset for which payments have been made into the fund) provided that:
 - (a) the plant, vehicles, equipment (or other asset) concerned has reached the end of its operational life; and
 - (b) the repair or replacement is to a current reasonable specification; and
 - (c) appropriate payments have been made into the Repairs and Renewals provision; and
 - (d) provision has been included in the Capital Plan, in the case of proposals which the Director of Finance regards as falling within the definition of capital expenditure. [In such cases current requirements for the approval of capital expenditure would apply.]
6. In consultation with the Director of Finance, to use the Repairs, Renewals and Maintenance provision for proposals costing ~~up to~~ £15,000 and below, where at least 50% of the cost is for genuine replacement and repair and the remainder (less than 50%) is for some improvement or enhancement.
- ~~7. In consultation with the Director of Finance and the Leader, to use the Efficiency Provision for efficiency measures costing up to £10,000, provided that provision is made in the appropriate budget for repayment of the sum within three years.~~

Changes to paragraph numbering from this point to the end of section 9.3.

PROPOSED REVISIONS TO GENERAL DELEGATIONS

9.3 General Delegations

9.3.1 The following delegations apply in relation to the powers and duties of all the committees of the Council and each Chief Officer is authorised as follows:

Financial Matters

1. To incur expenditure on any item for which provision is made in the appropriate approved revenue budget provided that:
 - (a) in the case of grants to outside bodies, the approval of the relevant Executive Councillor is obtained for grants over £1,000. (Any grant made under this delegated power must be reported to the next meeting of the relevant scrutiny committee.)
 - (b) any action taken complies with any relevant legislative provisions; the terms of any relevant agency agreement; and the requirements of the Council's Constitution (or, where necessary under the terms of an agency agreement, the Constitution of another authority).
2. To proceed with all necessary steps to achieve the completion of capital schemes for which provision has been made in the approved Capital Plan or the Housing Programme of Work, provided that the approvals required by paragraph 3 below have been obtained and the requirements of the Constitution and any relevant legislation are complied with.
3. In the case of new capital schemes the following approvals (together with approval to the necessary budget provision) must be obtained before any scheme may proceed.
 - (a) For schemes where the estimated cost is £15,000 and below: once included in the capital plan schemes may proceed without scrutiny committee consideration, provided that relevant Ward Councillors, have been consulted, where appropriate.
 - (b) For schemes where the estimated total cost is over £15,000 and up to £75,000: a capital project appraisal and procurement report pro-forma must be completed and referred to the relevant Executive Councillor for approval. The schemes may then proceed without scrutiny committee

consideration, provided relevant Ward Councillors have been consulted, where appropriate.

(c) For schemes where the estimated total cost is over £75,000: a capital project appraisal and procurement report pro-forma must be completed for consideration by the relevant scrutiny committee and referral to the relevant Executive Councillor for approval.

4. The appropriate lead officers are authorised to approve bids of £15,000 and below to be met from the following capital programme remits established by the Council:

- Housing Capital Investment Programme
- City Centre Management Programme
- Sustainable City Programme
- Safer City Programme
- Cycleways
- Development of Joint Use Facilities
- Environmental Improvement Programmes
- Road Safety Schemes – Traffic Calming
- Road Safety Schemes – Crossings
- Environmental Safety Fund
- Public Conveniences
- City Services Vehicle Replacement
- Bus Shelters
- Car Park Infrastructure and Equipment Replacement
- ICT Infrastructure Replacement and Upgrade
- Hobsons Conduit Repair and Refurbishment

provided that the bids meet the agreed remits, objectives and criteria of the programme area concerned.

5. In consultation with the Director of Finance, to use the Repairs, Renewals and Maintenance Provision for the replacement or repair of existing plant, vehicles or equipment (or other asset for which payments have been made into the fund) provided that:

- (a) the plant, vehicles, equipment (or other asset) concerned has reached the end of its operational life; and
- (b) the repair or replacement is to a current reasonable specification; and
- (c) appropriate payments have been made into the Repairs and Renewals provision; and
- (d) provision has been included in the Capital Plan, in the case of proposals which the Director of Finance regards as falling within the definition of capital expenditure. [In

such cases current requirements for the approval of capital expenditure would apply.]

6. In consultation with the Director of Finance, to use the Repairs, Renewals and Maintenance provision for proposals costing £15,000 and below, where at least 50% of the cost is for genuine replacement and repair and the remainder (less than 50%) is for some improvement or enhancement.

Changes to paragraph numbering from this point to the end of section 9.3.