

PART C7**CONTRACT PROCEDURE RULES****1. Introduction**

- 1.1 These Rules shall be applied in the procurement of goods, works and services for the Council in the interests of openness, integrity and accountability in the spending of public monies.

2. Compliance

- 2.1 All employees of the Council and organisations for which the Council is the accountable body shall comply with these Rules, the Financial Procedure Rules and the Corporate Procurement Strategy and all chief officers shall ensure compliance within their area of responsibility. A failure to comply with these Rules, the Financial Procedure Rules or the Corporate Procurement Strategy may result in disciplinary action.
- 2.2 Where reference is made within these rules to the Responsible Chief Officer it refers to the individual who is accountable for the relevant service area. Within the Council this will ordinarily be the City Manager or Director, within a school it is likely to be the Head Teacher.
- 2.3 The decision of the Town Clerk will be final in an matter concerning the interpretation of these Rules.
- 2.4 Officers undertaking procurement activity shall ensure that:
- 2.4.1 A contract made by or on behalf of the Council for works, goods or services complies with these Rules, the Council's Financial Procedure Rules and the Corporate Procurement Strategy.
- 2.4.2 All contracts with a potential value greater than £50,000 must be tendered in conjunction with the Category Manager within the Town Clerk's service, using such electronic tender system and process as may be approved by the Town Clerk from time to time, unless otherwise agreed by the Town Clerk.
- 2.4.3 The procurement by the Council of any works, goods or services complies with applicable European Union public procurement legislation and where any conflict with these Rules arises, the legislation shall take precedence over these Rules. In estimating any relevant value for the purposes of the legislation, full account shall be taken of the provisions in these Rules governing

aggregation of the value of a number of separate contracts.

2.4.4 In applying these Rules officers must have regard to the duty to secure Best Value under the Local Government Act 1999 and guidance issued thereunder. Current guidance indicates that “authorities should consider overall value, including economic, environmental and social value, when reviewing service provision. Social value is about seeking to maximise the additional benefit that can be created by procuring or commissioning goods and services, above and beyond the benefit of merely the goods and services themselves”. The Procurement Manager has produced guidance upon the application of environmental and social value which complements these Rules to which regard must be had.

2.4.5 In applying these Rules Budget Managers must consider the potential to make contracts accessible to small and medium contractors, in accordance with policy and guidance.

3. Responsibilities of Responsible Chief Officers

3.1 In procuring works, goods and/or services Responsible Chief Officers shall always:-

- (a) achieve Best Value for public money spent;
- (b) show no undue favour to any Contractor, nor discriminate against any contractor;
- (c) conduct tendering and price-testing in accordance with the highest standards of propriety and proper practice (including respecting the confidentiality of commercial information);
- (d) do nothing that contravenes EU or domestic law;
- (e) ensure that before entering into any Contract:-
 - (i) there is adequate approved budgetary provision;
 - (ii) an authority from an Executive decision maker or officer exercising delegated powers is in place.
- (f) ensure that a purchase order on approved standard terms, or such other terms as may be approved by the Town Clerk’s service, is issued by the Budget Manager for any contract with a value below £50,000;
- (g) ensure that there are in place effective mechanisms for the submission of invoices in relation to contracts which they are responsible for letting;
- (h) ensure that all contracts where the contract value exceeds £50,000 are procured through the Town Clerk’s service and stored in accordance with the approved document management policies and retained in electronic form within the Council’s electronic tendering system.

3.2 Responsible Chief Officers will ensure that prior to procuring goods or

services their staff:

- (a) take into account the requirements of Best Value including the potential for the contract to deliver social and environmental benefits;
- (b) ascertain whether the subject matter of the contract falls within the scope of an in-house service or contractual arrangement that is already in place;
- (c) define the objectives of the procurement;
- (d) estimate the contract value and record how the estimate was arrived at;
- (e) consider the human resources implications of the procurement, in particular the implications of the Transfer of Undertakings (Protection of Employment) Regulations;
- (f) obtain and keep a record of any dispensation from compliance with these Rules;
- (g) assess the risks associated with the procurement and determine how they will be managed;
- (h) seek advice, where appropriate, upon the procurement process and what procurement method is most likely to achieve the purchasing objectives;
- (i) prepare a draft specification taking into account any European or British Standards that may need to be referred to
- (j) identify and obtain any approvals that may be required

3.3 For the purposes of these Rules, the estimated value of a contract shall be the estimated value net of VAT.

3.4 Contracts must not be artificially divided to keep them below any threshold which may apply.

3.5 Where a Contract spans more than one accounting period then for the purposes of these Rules the aggregate value of the Contract shall be taken to be the Contract Value.

4. **Procurement Responsibilities**

4.1 **Executive Members** are responsible for ensuring that procurement activity and contracts let within their portfolio follows the requirements set out within these Rules.

4.2 The **Overview and Scrutiny Commission** with responsibility for Procurement is responsible for overseeing the effective management of these rules and such procedures and guidance as may be introduced to support these rules from time to time. The relevant Scrutiny Commission is responsible for undertaking appropriate scrutiny and review of decisions taken, or due to be taken, by the Executive. Overview and Scrutiny Management Committee receives and considers any request for call in of a qualifying executive decision.

- 4.3 The **Town Clerk** is responsible for ensuring that there are in place effective procedures for the management of the Council's procurement activity, the storage and retention of contractual documentation and the conduct of any management of the Community Right to Challenge.
- 4.4 **Budget Managers** are responsible for ensuring that the requirements set out in paragraph 3.2 of these rules are or have been met in relation to contracts funded from within their budget and there is in place an appropriate authority for such procurement activity as they initiate.
- 4.5 The **Procurement Manager** is responsible for:
- 4.5.1 Ensuring that the procurement of contracts for public works, goods and services with a value in excess of £50,000 comply with these Contract Procedure Rules, the Council's Financial Regulations, the Officer Code of Conduct and with all UK and EU binding legal requirements and acts as the Town Clerk's deputy in relation to the application of the Community Right to Challenge.
 - 4.5.2 Ensuring the publication of a Forward Plan of procurement activity identified by Procurement Category Managers with a value in excess of £50,000.
 - 4.5.3 Ensuring that there is adequate and appropriate guidance available upon the process of procurement.
 - 4.5.4 Ensuring that on such electronic filing system as may be operated to comply with these Rules from time to time, an electronic Contract File is retained in respect of each procurement exercise for a contract with a value exceeding £50,000 which includes:
 - (i) The identity of the Category Manager managing the procurement process
 - (ii) The rationale for the procurement route taken
 - (iii) A copy of the specification
 - (iv) Where required, the risk register
 - (v) A record in written form of any dispensation from these Rules and the reason for it.
 - (vi) Copies of all tenders or quotations
 - (vii) A copy of the evaluation process and reasons for the decisions as to acceptance or rejection of every tender or quotation
 - (viii) A copy of any debrief request and the response thereto
 - (ix) The award letter
 - (x) The copy of the final contract
 - (xi) The monitoring arrangements for management of the contract including the details of the Budget Manager

- responsible for on-going contract management
- (xii) A copy of any extension to the contract granted in accordance with these Rules

4.6 Each procurement Category Manager is responsible for:

- 4.6.1 Planning the procurement activity within the category of supply for which the manager is responsible and producing a forward plan of procurement activity for the category;
- 4.6.2 Managing the procurement process and complying with any statutory time limits in relation to each procurement process.
- 4.6.3 In addition in relation to a contract with a value in excess of £50,000, a procurement strategy for that procurement has been prepared and that:
- a) Legal, financial and technical advice is taken;[
 - b) The potential to secure social and environmental value through the procurement has been considered
 - c) instructions are issued for the preparation of requisite legal documentation a risk register is in place
- 4.6.4 That procurement processes are followed which adequately test whether tendering contractors and sub-contractors with design responsibility or specialist input as are intended to be used for a contract:
- a) have the technical capability to deliver the contract:
 - b) have the financial and resource capacity (taking into account contract value and risk) to perform the contract
- 4.6.5 Any agents, consultants, and contractual partners acting on the Council's behalf are required to follow a process equivalent to these Rules.
- 4.6.6 These Rules, the Financial Procedure Rules and any Codes of Practice are complied with.
- 4.6.7 A debrief is offered to all tenderers whether successful or not, to assist them in preparing future bids.

5. Corporate Purchasing Arrangements

- 5.1 Where a recurring pattern of purchases for like works, supplies or services is identified, Category Managers are expected to consider:
- (a) Whether the works, supplies or services are or are capable of being

delivered effectively and efficiently by the Council itself;

- (b) Whether a nationally or regionally negotiated contract exists which is appropriate to use for the procurement activity;
- (c) Whether letting one or more Corporate Framework Contracts or arrangements will provide Best Value taking into account among other things invoicing and other administration costs.
- (d) Whether letting such a contract through a consortia of which the Council is a member (or could become a member) will achieve procurement efficiencies.
- (e) Whether to request the Town Clerk to establish an Approved List for a category of work.

5.2 Where aggregate annual spend in a given category of supply or service exceeds EU Procurement levels a Framework Contract must be tendered in accordance with EU Procurement Rules for a maximum duration of four years.

5.3 Where central purchasing arrangements exist or are established there shall be a presumption in favour of using those arrangements.

6. **Declarations of Interest**

6.1 Chief Officers shall ensure that officers involved in the procurement process are familiar with the Code of Conduct for officers.

6.2 Any officer involved in the procurement process who has any financial or non financial interests which could conflict with the Council's interests in relation to a procurement process or contract shall complete an annual declaration of interests, and provide a copy to his/her chief officer annually in compliance with the Code of Conduct Procedure which will be retained on the individual's personnel file. The Town Clerk shall keep a central register of completed staff declarations of interest which will be available for inspection.

6.3 In any procurement process where a potential conflict of interests exists, an officer with a potential conflict, shall bring that conflict to the attention of the responsible Chief Officer who shall either certify the interest as acceptable or take any necessary action.

7. **Representatives of the Community**

7.1 In compliance with Best Value Guidance before initiating a procurement process and drawing up a specification for a procurement process, the Budget Manager and Category Manager must consider the need to consult those who use or are likely to use services provided by the authority, and those appearing to the authority to have an interest in any area within which the authority carries out functions, including local voluntary and community organisations and small businesses.

- 7.2 Service users may offer advice to the Category Manager where appropriate, however, they will have no decision making role. All decisions shall be taken strictly within the appropriate scheme of delegation.
- 7.3 Where confidential information is shared with a service user, the Category Manager shall ensure that a written undertaking is given to treat such information as confidential.

8. **Council Approved List**

- 8.1 The Procurement Manager will maintain the Council's Approved List of suppliers. The List may be used for selection as an alternative to advertisement where the Total Value is less than the European Union threshold. The Town Clerk will ensure that the List:
- 8.1.1 Relates to categories of work where there is an expected future demand.
- 8.1.2 Contains the names and addresses of all contractors who meet the List criteria.
- 8.1.3 Is reviewed annually through the Council's electronic tendering system in respect of all matters recorded to ensure approval criteria standards are met.

9. **Pre-Tender / Quotation Enquiries**

- 9.1 Enquiries of potential contractors in advance of the initiation of a procurement exercise may be undertaken to prepare the marketplace for a tender, and/or to assist the Council to better understand what the market is able to provide to meet the outcome that the Council is trying to achieve.
- 9.2 However, when making enquiries of contractors before tender or quotation:
- 9.2.1 No information shall be disclosed to one contractor which is not then disclosed to all those of which enquiries are made or which are subsequently invited to tender or submit a quotation.
- 9.2.2 No contractor shall be led to believe that the information they offer will necessarily lead to them being invited to tender or submit a quotation, or be awarded the contract.
- 9.2.3 Taking detailed technical advice on the preparation of the Specification, Invitation to Tender or Quotation from a potential supplier, must be avoided as this may prejudice the equal treatment of all potential Contractors or distort competition.
- 9.2.4 A written record, including notes of any telephone conversations

and/or meetings held, and the responses and the names of all individuals spoken to or present shall be kept by on the Contract File.

10. **Pre-Tender and Quotation**

10.1 The Category Manager, prior to submitting a notice to the official journal of the European Union, inviting expressions of interest or any other form of bid, shall:

10.1.1 Ensure there is a formal approval for the acquisition, purchase or disposal of goods, services or works (“the Contract”) and the evaluation criteria from the body authorised to give that approval under the Constitution.

10.1.2 Ensure that there is an estimate of the whole life cost of the Contract, including maintenance and on-going costs;

10.1.3 Ensure that there is finance in the budget to cover the likely expenditure on the Contract.

10.1.4 Take into account the outcome of any Scrutiny Commission review.

10.1.5 Ensure that there is clarity upon the desired outcomes or outputs from the Contract.

10.1.6 Assess the risks associated with the Contract and how to manage them.

10.1.7 Ensure that an appropriate specification for the Contract has been prepared.

10.1.8 Ensure that the award criteria for the competition have been determined.

10.1.9 Consult the Legal Service Commercial Team on the appropriate form of agreement for the Contract.

10.2 The Category Manager shall liaise with the Budget Manager and Legal Services Commercial Team to:

10.2.1 Consider what procurement method is most likely to achieve the contracting objectives.

10.2.2 Clarify the award criteria, including a price/quality split as appropriate, taking into account such policies as the Council may adopt from time to time.

Ensure that prior information notices, where required and if appropriate for the European Union procurement procedures, have been published.

10.2.3 Check whether there is an appropriate framework contract for the goods, services or works, or if an approved list has been established.

10.2.4 Establish the market position and whether the goods, works or services the Council wishes to purchase are available, and within what price range.

10.2.5 Prepare tender documentation, price estimates and contracts.

11. **Dispensations from the requirement for a competitive procurement process**

11.1 No dispensations may be granted:

11.1.1 Where it would be in breach of European Union or domestic law:

11.1.2 From any requirement to declare an interest under rule 6 or the provisions concerning representatives of the community under rule 7 of these Rules.

11.2 If a dispensation is required to relax the requirements in relation to seeking quotations or tendering, the Budget Manager shall seek the approval of the Town Clerk (or such other officer as may be delegated by the Town Clerk from time to time) by submitting a completed dispensation request including, where applicable, the information identified at Appendix 1, together with all background documents including market testing and any declined quotations through such electronic system as is in operation from time to time.

11.3 Where the Total Value of the contract exceeds £50,000 a decision notice is required to be submitted for publication in addition to completion of the information identified at Appendix 1.

11.4 If approval is not granted the Budget Manager must not issue any formal order or contract. The Town Clerk shall be consulted as to the most appropriate procurement process and the final decision will be made by the Responsible Chief Officer.

11.5 Subject to the grant of a dispensation being in compliance with EU Procurement law, dispensations from the need for a competitive procurement process may be granted where:

11.5.1 Only one contractor is able to carry out the work or service or to supply the goods for technical or artistic reasons or because of exclusive rights or that goods are required as a partial replacement for

or addition to existing goods or installations and obtaining them from another contractor would result in incompatibility or disproportionate technical difficulties in operation or maintenance provided that continued use represents best value for the Council.

- 11.5.2 The time limits required for tendering cannot be met for reasons of extreme urgency and the reasons were unforeseen and unattributable to the Council, subject to the method adopted for the letting of the contract, representing best value for the Council. This ground for dispensation cannot be applied to contracts above the EU threshold.
 - 11.5.3 Additional works or services are required which, through unforeseen circumstances, were not included in the original contract and which either are strictly necessary for the completion of the contract or, for technical or economic reasons, cannot be carried out separately and where the original contract was not let in accordance with European Procurement rules the revised value of the contract does not exceed European Procurement limits. Where the original contract was let in compliance with European Procurement rules, such additional works or services must not exceed 50 per cent of the value of the original contract.
 - 11.5.4 New works or services are required which are a repetition of works or services carried out under the original contract provided they are required within 3 years of the conclusion of the original contract and the contract notice stated that a new contract might be awarded by negotiation.
 - 11.5.5 Goods are required as a partial replacement for or an addition to existing goods or installations and obtaining them from another contractor would result in incompatibility or disproportionate technical difficulties in operation or maintenance provided that continued use represents best value for the Council;
 - 11.5.6 Such fixed term EU exemptions as may be implemented into UK law from time to time in relation to contracting with public service mutual organisations.
- 11.6 The following forms of contract are not required to be let in accordance with the formal procurement procedures set out within these rules but remain subject to the requirement to deliver Best Value:
- 11.6.1 Contracts let as a consequence of a competition under which the rules of a design contest require the contract to be awarded to one of the successful candidates.
 - 11.6.2 Contracts for the engagement of counsel.

- 11.6.3 Contracts for the employment of staff, but excluding agency or consultancy staff.
- 11.6.4 Money market transactions.
- 11.6.5 Contracts for theatrical productions.
- 11.6.6 Contracts for the commissioning and acquisition of artefacts, paintings, photo graphs or sculptures.
- 11.6.7 Contracts for the sale or other disposal of land or the acquisition of land and buildings unless such transaction involves the engagement of a person to procure by any means the carrying out for the contracting authority of a Public Works Contract or to deliver output requirements of the Council by way of services. In relation to the disposal of land the Council must follow a process that ensures that best consideration is realized through the disposal save where the General Disposal Consent applies¹.
- 11.6.8 Contracts entered into by the Council pursuant to the “in-house” company exemption.
- 11.6.9 Such other procurements that are compliant with EU and National Procurement law and which deliver Best Value.

12. **Reserved Contracts**

- 12.1 The Council may reserve to Qualifying Organisations the right to participate in procedures for the award of reservable public contracts.
- 12.2 Reservable public contracts are restricted to contracts with a maximum duration of 3 years that are exclusively for one or more of the following services:

75121000-0	Administrative educational services
75122000-7	Administrative healthcare services
75123000-4	Administrative housing services
79622000-0	Supply services of domestic help personnel
79624000-4	Supply services of nursing personnel
79625000-1	Supply services of medical personnel
80420000-4	E-learning services
80430000-7	Adult-education services at university level
80511000-9	Staff training services
80520000-5	Training facilities
80590000-6	Tutorial services
98133000-4	Services furnished by social membership

¹ General Disposal Consent (England) 2003; SI06/03

	organisations
98133110-8	Services provided by youth associations
85000000-9	Health and social work services
85100000-0	Health services
85110000-3	Hospital and related services
85111000-0	Hospital services
85111100-1	Surgical hospital services
85111200-2	Medical hospital services
85111300-3	Gynaecological hospital services
85111310-6	In vitro fertilisation services
85111320-9	Obstetrical hospital services
85111400-4	Rehabilitation hospital services
85111500-5	Psychiatric hospital services
85111600-6	Orthotic services
85111700-7	Oxygen-therapy services
85111800-8	Pathology services
85111810-1	Blood analysis services
85111820-4	Bacteriological analysis services
85111900-9	Hospital dialysis services
85112000-7	Hospital support services
85112100-8	Hospital-bedding services
85112200-9	Outpatient care services
85120000-6	Medical practice and related services
85121000-3	Medical practice services
85121100-4	General-practitioner services
85121200-5	Medical specialist services
85121210-8	Gynaecologic or obstetric services
	Nephrology or nervous system specialist services
85121220-1	Cardiology services or pulmonary specialists services
85121230-4	Cardiology services
85121231-1	Pulmonary specialists services
85121232-8	ENT or audiologist services
85121240-7	Gastroenterologist and geriatric services
85121250-0	Gastroenterologist services
85121251-7	Geriatric services
85121252-4	Psychiatrist or psychologist services
85121270-6	Home for the psychologically disturbed services
85121271-3	Ophthalmologist, dermatology or orthopaedics services
85121280-9	Ophthalmologist services
85121281-6	Dermatology services
85121282-3	Orthopaedic services
85121283-0	Paediatric or urologist services
85121290-2	Paediatric services
85121291-9	Urologist services
85121292-6	Surgical specialist services
85130000-9	Dental practice and related services
85131000-6	Dental-practice services
85131100-7	Orthodontic services
85131110-0	Orthodontic-surgery services

85140000-2	Miscellaneous health services
85141000-9	Services provided by medical personnel
85141100-0	Services provided by midwives
85141200-1	Services provided by nurses
85141210-4	Home medical treatment services
85141211-1	Dialysis home medical treatment services
85141220-7	Advisory services provided by nurses
85142000-6	Paramedical services
85142100-7	Physiotherapy services
85142200-8	Homeopathic services
85142300-9	Hygiene services
85142400-0	Home delivery of incontinence products
85143000-3	Ambulance services
85144000-0	Residential health facilities services
85144100-1	Residential nursing care services
85145000-7	Services provided by medical laboratories
85146000-4	Services provided by blood banks
85146100-5	Services provided by sperm banks
85146200-6	Services provided by transplant organ banks
85147000-1	Company health services
85148000-8	Medical analysis services
85149000-5	Pharmacy services
85150000-5	Medical imaging services
85160000-8	Optician services
85170000-1	Acupuncture and chiropractor services
85171000-8	Acupuncture services
85172000-5	Chiropractor services
85200000-1	Veterinary services
85210000-3	Domestic animal nurseries
85300000-2	Social work and related services
85310000-5	Social work services
85311000-2	Social work services with accommodation
85311100-3	Welfare services for the elderly
85311200-4	Welfare services for the handicapped
85311300-5	Welfare services for children and young people
85312000-9	Social work services without accommodation
85312100-0	Daycare services
85312110-3	Child daycare services
85312120-6	Daycare services for handicapped children and young people
85312200-1	Homedelivery of provisions
85312300-2	Guidance and counselling services
85312310-5	Guidance services
85312320-8	Counselling services
85312330-1	Family-planning services
85312400-3	Welfare services not delivered through residential institutions
85312500-4	Rehabilitation services
85312510-7	Vocational rehabilitation services
85320000-8	Social services
85321000-5	Administrative social services

85322000-2	Community action programme
85323000-9	Community health services
92500000-6	Library, archives, museums and other cultural services
92600000-7	Sporting services

12.3 A Qualifying Organisation means an organisation which fulfils all of the following conditions:

12.3.1 its objective is the pursuit of a public service mission linked to the delivery of services referred to in paragraph 12.2 above.

12.3.2 profits are re-invested with a view to achieving the organisations objective, and any distribution of profits is based on participatory considerations;

12.3.3 the structures of management or ownership are (or will be, if and when it performs the contract)

12.3.3.1 based on employee ownership or participatory principles, or

12.3.3.2 require the active participation of employees, users or stakeholders; and

12.3.3.3 the organisation has not been awarded, pursuant to this regulation, a contract for the services concerned within the past 3 years.

13. **Grounds for Exclusion**

13.1 A tenderer will be excluded from inclusion in a tender process where one of the mandatory grounds for exclusion of a tenderers applies (terrorism, financing of terrorism, people trafficking, non-payment of tax or social security following a final and binding decision of a court or tribunal).

13.2 A tenderer may be excluded from inclusion in a tender process following consultation with the Town Clerk if one of the discretionary grounds for exclusion apply (violation of environmental, social or labour law, unresolvable conflict of interest, unresolvable distortion of competition due to suppliers prior involvement in preparation of procurement process, sufficiently plausible indications of collusion, non-payment of tax or social security, significant or persistent deficiencies in performance of a prior public contract or seeking undue influence or confidential information or negligently providing misleading information)

14. **Contracts valued at less than £50,000**

14.1 A contract or purchase made where the estimated value is:

- 14.1.1 For orders less than £5,000 the Budget Manager must ensure that the purchase represents Best Value.
 - 14.1.2 £5,001 but less than £25,000 may be made after obtaining three written quotations, the receipt of which shall be documented.
 - 14.1.3 For contracts with a value between £25,001 to £50,000 the contract is required to be advertised through Contracts Finder unless the contractor will be selected from a closed group of suppliers².
- 14.2 The Budget Manager shall be satisfied that the quotation accepted represents value for money. In the event that the requisite number of quotations cannot be obtained or it is not feasible or practicable to do so then the Budget Manager may seek approval from the Town Clerk to dispense with the requirement to obtain a number of quotations. Approval should be sought by completing the form at Appendix 1 and submitting it to the Town Clerk.
- 14.3 In all cases the Budget Manager shall record:
- 14.3.1 Contractors approached.
 - 14.3.2 Contractor responses (including a willingness to quote).
 - 14.3.3 Details of any quotations provided.
 - 14.3.4 The subject matter of the quotation.
 - 14.3.5 The name of the contractor.
 - 14.3.6 The date and time of the quote.
 - 14.3.7 The price offered and other relevant trading items.
 - 14.3.8 The name of the Budget Manager.
 - 14.3.9 The contractor offering the most favourable quotation and the reasons why that quotation was accepted.
 - 14.3.10 The risks associated with taking or omitting to take a particular course of action.

² Contracts Finder has been established by the Cabinet Office for the advertising of all public contracts with a value in excess of £25,000.

15. Contracts valued at more than £50,000

15.1 Budget Managers must ensure that the decision making requirements within the Constitution in relation to “key decisions” are met in relation to any procurement process that exceeds the threshold at which a decision is treated as a “key decision”, noting that:

15.1.1 Contracts must not be artificially divided to reduce their value below the threshold for “key decisions” or EU Procurement;

15.1.2 Contracts must be advertised on Contracts Finder in addition to any other advertising unless the contractor will be selected from a closed group of suppliers.

15.1.3 Framework contracts should be tendered for regular repeat procurement activity.

15.2 Procedures for Contracts with a value between £50,001 and EU Procurement Levels

15.2.1 Any Contract with a value between £50,001 and EU Procurement levels shall be procured upon an **Invitation to Tender** in accordance with the Approved List or Restricted Procedure unless the appropriate Responsible Chief Officer following consultation with the Category Manager, determines that tenders for a Contract are to be obtained by open competition on the basis that the approved list or restricted list procedure would be inappropriate for the particular Contract.

15.3 Approved List Procedure

15.3.1 The Approved List procedure shall be used where the Town Clerk has determined that a list shall be kept of persons to be invited to tender for Contracts for the supply of goods and/or services of specified categories.

15.3.2 The list shall:-

- (a) be compiled and maintained by the Procurement Manager or in such other manner as the Town Clerk may approve
- (b) contain the names of all Contractors who are approved for inclusion in Invitations to Tender under the Approved List Procedure ; and
- (c) indicate whether the Contractors whose names are included in it are approved for Contracts for all or only some of the specified values, amounts or categories in that list.

15.3.3 At least four weeks before the list is first compiled public notice inviting applications for inclusion on the list shall be published via the Council's website and/or Electronic Contract Management System. Thereafter the list may be compiled and maintained in such manner as the Town Clerk may approve.

15.3.4 Where an invitation to tender for a Contract is limited to Contractors whose names appear on the list, invitations to tender shall be sent to:-

- (a) not less than four Contractors selected in a manner that ensures open and fair competition amongst those approved for a Contract of the relevant category or value; or
- (b) where fewer than four Contractors are approved for a Contract of the relevant category and value, all those Contractors.

15.4 Light Touch Regime (Schedule 3 Services)

15.4.1 Where goods or services are proposed for procurement which fall within Schedule 3 of the Public Contracts Regulations 2015 and have an estimated contract value below £589,148 the obligation to procure such contract in compliance with EU Procurement Rules does not apply.

15.4.2 Where goods or services are proposed for procurement which fall within Schedule 3 of the Public Contracts Regulations 2015 (as amended from time to time) and have an estimated contract value above £589,148 the Category Manager shall ensure that procurement is undertaken in accord with a procurement process which complies with the obligations of transparency and equal treatment.

15.4.3 Schedule 3 of the Public Contracts Regulations 2015 includes, Health, social and related services, administrative social, educational, healthcare and cultural services, compulsory social security services, Benefit Services, other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services, religious services, hotel and restaurant services, legal services (save where excluded by regulation 10), government services, provision of services to the community, prison related services, investigation and security services and postal services.

15.4.4 In undertaking a procurement process through the Light Touch Regime, consideration should be given to taking into account:

- 15.4.4.1 the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;
- 15.4.4.2 the specific needs of different categories of users, including disadvantaged and vulnerable groups;
- 15.4.4.3 the involvement and empowerment of users;
- 15.4.4.4 Innovation.
- 15.4.4.5 If EU procurement legislation applies, any advertisements, timescales and procedures must be in accordance with the requisite EU timescales.

15.5 Restricted Procedure

- 15.5.1 The restricted procedure may be used where the proposed Contract does not fall within one of the specified categories for the approved list procedure.
- 15.5.2 Where this procedure applies, the invitation to tender is to be issued to Contractors selected from those submitting a compliant response to a Pre-Qualification Questionnaire prepared in accordance with the prescribed model issued by Crown Commercial Services.
- 15.5.3 Public notice shall be published through the Council's Electronic tendering system. The advertisement must include the following information:
 - (a) what the contract involves
 - (b) an invitation to interested suppliers to register their interest
 - (c) that when they register they must provide evidence of
 - (i) their technical ability
 - (ii) their financial position
 - (iii) their equalities policy
 - (iv) their health and safety policy
 - (v) their environmental policy, and
 - (vi) any other information that is identified as necessary
 - (d) that a shortlist will be drawn up and only contractors or suppliers on the shortlist will be invited to tender: and
 - (e) the timescales involved and the name and address of the Category Manager, so that they can register their interest and return the information.
 - (f) any document produced or referred to determine elements of the procurement

- (g) the technical specifications
 - (h) the descriptive document;
 - (i) the proposed conditions of contract;
 - (k) formats for the presentation of documents by candidates and tenderers;
 - (l) generally applicable obligations.
- 15.5.4 After the expiration of the period specified in the public notice and shortlisting, the contractors who are proposed to be Invited to Tender shall be reported to the appropriate Responsible Chief Officer for selection and approval.
- 15.5.5 Invitations To Tender including the Award Criteria for the Contract sent to not less than **three** Contractors (save that all Contractors who have provided the information required under rule **13.3.3(c)** will be invited to tender where fewer than four respond).
- 15.5.6 If EU procurement legislation applies, any advertisements, timescales and procedures must be in accordance with the requisite EU timescales and the number of Contractors invited to tender in accordance with rule **13.3.5** is increased to **five**.
- 15.6 Open Procedure without shortlisting
- 15.6.1 The open tender procedure allows all contractors who are interested in tendering for a contract to submit a tender. The procedure may be used where a Responsible Chief Officer in consultation with the Category Manager has decided that other forms of tendering for the Contract are unlikely to give rise to adequate competition.
- 15.6.2 Where this procedure applies an advertisement must be published through the Council's electronic tendering system including the following information:
- (a) what the contract involves
 - (b) an invitation to providers to request tender documents any document produced or referred to determine elements of the procurement
 - (c) that an Invitation to Tender is available when they register which they should complete in full and return to the Council to consider the technical specifications
 - (d) the descriptive document;
 - (e) the proposed conditions of contract;
 - (f) formats for the presentation of documents by candidates and tenderers;
 - (g) generally applicable obligations.
 - (h) the latest date and time by which tenderers must return

- their completed tender, questionnaire and other documents
- (i) the name and address of the **Category Manager** so that they can register their interest and obtain the tender

15.6.3 An Invitation to Tender and must be sent to everyone who shows an interest. The Invitation to Tender must set out the Award Criteria for the contract.

15.6.4 If EU procurement legislation applies, any advertisements, timescales and procedures must be in accordance with the requisite EU timescales.

15.7 Competitive Procedure with Negotiation

15.7.1 The Competitive Procedure with Negotiation may be used to undertake procurement where it is considered that the inclusion of the opportunity for negotiation in the procurement process will assist in ensuring the achievement of Best Value;

15.7.2 Where this procedure applies, the invitation to tender is to be issued to Contractors selected from those submitting a compliant response to a Pre-Qualification Questionnaire prepared in accordance with the prescribed model issued by Crown Commercial Services.

15.7.3 Public notice shall be published through the Council's Electronic tendering system in the form identified for the Restricted Procedure.

15.7.4 After the expiration of the period specified in the public notice and shortlisting, the contractors who are proposed to be Invited to Tender shall be reported to the appropriate Responsible Chief Officer for selection and approval.

15.7.5 Invitations To submit an Initial Tender including the Award Criteria for the Contract will be sent to not less than **three** Contractors.

15.7.6 Initial Tenders will be reviewed by the evaluation team to ensure that they meet the minimum requirements;

15.7.7 Subsequently, negotiations with participating tenderers may take place and further interim proposals be requested subject to the stipulation that:

- a candidate submitting a bid within the competition must be treated equally with, and be provided with the same information and required to submit tenders within the same timescales as any other candidate;

- information provided by candidates within the competition is treated as confidential and must not be disclosed to third parties, save with the agreement of the candidate concerned

15.7.8 At the final tender stage best and final offers on the proposed contract must be invited from those tenderers who have submitted an Initial Tender and have not formally withdrawn from the process;

15.7.9 If EU procurement legislation applies, any advertisements, timescales and procedures must be in accordance with the requisite EU timescales.

15.8 Competitive Dialogue

15.8.1 Competitive Dialogue may be used to undertake procurement where the Council is not able to define the technical means capable of satisfying its needs or objectives, or the legal or financial make up of the project, and consequently it is not possible to determine the final specification and form of contract in advance of initiating the procurement process, consequently the Council needs to discuss all or any aspect of these and the proposed solutions to its requirements with contractors to design a feasible fit-for-purpose solution.

Stage 1 (The pre-tender stage):

- (i) The contract notice is published setting out the needs and requirements of the Council, which can be defined in a descriptive document
- (ii) candidates for the tender are selected on the basis of capability and capacity;
- (iii) a candidate submitting a bid within the competition must be treated equally with, and be provided with the same information as, any other candidate;
- (iv) information provided by candidates within the competition is treated as confidential and must not be disclosed to third parties, save with the agreement of the candidate concerned;

Stage 2 (Outline Solution):

- (v) a minimum of three candidates must be selected to participate in dialogue at Stage 2 unless less than three candidates meet the selection criteria, in which case all qualifying candidates must be invited to participate;

- (vi) the evaluation team may enter into structured dialogue with those invited to participate with reference to bidders' Outline Solutions to the Council's needs and requirements to:
 - a. establish the principal terms for the proposed contract
 - b. ensure that those who are retained within the dialogue have identified one or more solutions capable of meeting the authority's requirements
- (vii) the evaluation team must evaluate the Outline Solutions against the pre-determined Award Criteria to establish that the criteria are met and that candidates can be invited to proceed, failing which they or may be de-selected from further participation,

Stage 3 (The final tender stage):

- (viii) at the final tender stage best and final offers on the proposed contract must be invited from those tenderers who have submitted an Outline Solution and have not formally withdrawn or been excluded from the dialogue,
- (ix) Tenders may be clarified provided that this does not involve changes to the basic features of the tender, distort competition or have a discriminatory effect;
- (x) The participant identified as having submitted the most economically advantageous tender is identified (the preferred bidder);
- (xi) subsequent dialogue with the preferred bidder will only be permissible if it does not impose any substantial new requirement, or have the effect of modifying substantial aspects of the tender,

15.9 Innovation Partnership Procedure

- 15.9.1 The Innovation Partnership Procedure may be used for the purpose of commissioning research, development or the purchase of an innovative product, works or service, the need for which cannot be met by buying something already available on the market;
- 15.9.2 Where this procedure applies, the invitation to tender is to be issued to Contractors selected from those submitting a compliant response to a Pre-Qualification Questionnaire prepared in accordance with the prescribed model issued by Crown Commercial Services.
- 15.9.3 Public notice shall be published through the Council's Electronic

tendering system in the form identified for the Restricted Procedure.

- 15.9.4 After the expiration of the period specified in the public notice and shortlisting, the contractors who are proposed to be Invited to Tender shall be reported to the appropriate Responsible Chief Officer for selection and approval.
- 15.9.5 Invitations To submit an Initial Tender including the Award Criteria for the Contract will be sent to not less than **three** Contractors.
- 15.9.6 Initial Tenders will be reviewed by the evaluation team to ensure that they meet the minimum requirements;
- 15.9.7 Subsequently, negotiations with participating tenderers may take place upon initial tenders as the basis for development of innovative supplies, services, works and their subsequent purchase, subject to the stipulation that:
 - a candidate submitting a bid within the competition must be treated equally with, and be provided with the same information and required to submit tenders within the same timescales as any other candidate;
 - information provided by candidates within the competition is treated as confidential and must not be disclosed to third parties, save with the agreement of the candidate concerned;

CONTRACTS TO WHICH EU PROCUREMENT RULES APPLY

16. Thresholds

16.1 EU threshold values are reviewed on a regular basis, normally every two years. Table 1 identifies when EU Procurement Rules are likely to apply:

Table 1: EU Procurement Thresholds - Valid from 1 January 2016

	Supplies	Services	Works
Public Sector contracting authorities (excluding Central Government)	£164,176 €215,261	£164,176 €215,261	£4,104,394 €5,381,150
Light Touch Regime Services		£589,148 €750,000	

- 16.2 Thresholds are net of Value Added Tax.
- 16.3 Procurement exercises with an estimated contract value within 10% of Threshold levels where EU Procurement Rules apply should also be advertised in the OJEU to avoid OJEU advertising requirements being unintentionally breached.

16.4 **Standards**

If the European Committee for Standardisation (CEN) has issued a relevant standard, all the goods and materials used or supplied, and all the work done under the contract, must be in line with that standard.

16.5 **Common Currency**

A provision should be included in any contractual documentation requiring the contractor to convert prices into GB sterling.

16.6 **Number of Tenderers**

If the contract is expected to exceed EU limits, a minimum of five contractors or suppliers must be invited to tender save where the adopted procedure provides otherwise. (In cases where fewer than five contractors or suppliers apply and are shortlisted, all contractors or suppliers must be invited to tender.)

- 16.7 If during the course of a competitive tendering exercise, an officer becomes aware that the value of bids received exceeds the EU Thresholds, but bid invitations have not been invited through the OJEU notice procedure advice must be sought from the Town Clerk upon how to proceed.

- 16.8 Where the Council has an aggregated requirement for specified goods or services with an estimated annual value at or greater than the figures provided in Table 1, a Prior Information Notice (PIN) may be placed in the Supplement to the Official Journal of the European Community (OJEU) once annually.

16.9 **EU Procedures**

- 16.9.1 All contracts with a value in excess of EU limits shall be let in accordance with a procurement method which is acceptable within EU law. An existing contract which has terminated cannot be extended where the effect of such extension would be to take its value above the threshold at which EU Procurement Procedures apply.
- 16.9.2 Consideration shall be given to breaking down a contract into lots in any tender for a contract with a value in excess of EU Limits, and shall be let broken down into lots unless there is a justification for not so doing. Where a contract is not let in lots the EU notice shall

include the reasons for not so doing.

- 16.9.3 Acceptable methods of procurement are:
- (a) the Restricted Procedure
 - (b) the Competitive Procedure with Negotiation
 - (b) the Open Procedure
 - (c) Competitive Dialogue: subject to the agreement of the Town Clerk, the authority may use the Competitive Dialogue procedure to advertise its needs, requirements and Award Criteria rather than a specific contract, to enable the development of solutions for a final contract through dialogue
 - (d) the Innovation Partnership Procedure
 - (e) the Negotiated Procedure, under which purchasing bodies may negotiate the terms of a contract with one or more suppliers of their choice. The Negotiated Procedure must never be used without specific written advice from the Town Clerk confirming that the Town Clerk considers that the procedure applies. Advice upon the potential application of the Negotiated Procedure should be sought where:
 - (i) the open or restricted procedure has produced no tenders
 - (ii) the contract follows a design contest and the rules require it to be awarded to the successful contestant
 - (iii) there is extreme urgency and:
 - (a) the events that have led to extreme urgency were not foreseeable and were not attributable to the contracting authority,
 - (b) the time limits required for open and restricted procedures cannot be met, and
 - (c) the scope of proposed contract is necessary to respond to the immediate emergency.
 - (iv) an open or restricted procedure was discontinued because of irregular tenders.
 - (f) Such alternate procedure as may be agreed by the Town Clerk under the Light Touch Regime where this applies.

16.9.4 Accelerated Procedure

Where urgency makes the normal timescales for procurement using the Restricted Procedure or Negotiated Procedure impractical, subject to:

- the agreement of the Town Clerk and
- publication of the reasons for use of the procedure in the EU notice,

the accelerated procedure may be used and the

timescales for the required EU processes reduced as set out in Table 2 below.

- 16.9.5 Advice must always be taken from the Legal Commercial Team in relation to the advertisement and letting of a **Service Concession**, that is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.

17. Public Advertisement of Tenders

- 17.1 All contracts over £50,000 need public advertisement. In the case of contracts under the European Union procurement threshold notices shall be placed using electronic means coordinated by the Town Clerk. The notice may also be published or signposted as appropriate in newspapers circulating in the locality and appropriate trade journals, or brought to the attention of individual suppliers, once published.
- 17.2 In the case of contracts which require tendering in accordance with EU Procurement law, the Council is required to place a Contract Notice in the Official Journal of the European Union and the timescale for expressions of interest in response to such notices is prescribed.

Advertisement is subject to the following constraints:

- (a) Legal advice must be sought upon the applicable timescales
- (b) Unrestricted full direct access, free of charge to all procurement documents must be provided from the date of publication of the OJEU notice
- (c) the accelerated procedure may only be used with the consent of the Town Clerk

Table 2 sets out the ordinary timescales.

Table 2: Notice of contract compiled and submitted electronically and unrestricted electronic access to all contract documentation provided at tender receipt stage

Minimum no. of calendar days after sending the Contract Notice to OJEU	EU Open Procedure	EU Restricted Procedure	EU Competitive Procedure with Negotiation	EU Accelerated Procedure	EU Innovation Partnership & Competitive Dialogue Procedure	EU Negotiated Procedure
(i) to the closing date for receipt of registrations of interest from electronic contract notice	-	30 days (or 15 days in case of urgency)	30 days	10 days	30 days	30 days
(ii) to the closing date for receipt of tenders	30 days	25 days	25 days, (initial tenders) Final tender submission date agreed with tenderers	10 days	Agreed with tenderers	21 days*
as (ii) above, but where a PIN is published between 35 and 365 days prior to the Contract Notice	15 days	15 days	10 days	N/A		21 days* (i.e. same as above)
Minimum no. of days to allow following decision on contract award before formalising contract	10 days	10 days	10 days	10 days	10 days	10 days
Max. no. of days after contract award in which to send Contract Award Notice	30 days	30 days	30 days	30 days	30 days	30 days

18. Selection of Tenders

18.1 The selection of which companies will be invited to tender will be subject to the value of the contract:

18.1.1 Quotations under £50,000 – the Budget Manager will invite a minimum of three technically competent companies to provide quotations.

18.1.2 Where the value of the Contract will exceed £50,000.

18.1.3 unless the value will exceed EU Procurement levels, an Approved list maintained by the Town Clerk may be used for the procurement process.

- 18.1.4 Where the tender value will exceed the European Union procurement threshold – selection of tenders must be in accordance with the Public Contract Regulations in force at the time.

19. Quotation / Tender Invitation

- 19.1 The invitation to tender or submit a quotation must include a specification and where appropriate a bill of quantities or schedule of rates. In preparing specifications the Budget Manager must have regard to any guidance from the Procurement Manager and Legal Services Commercial Team.
- 19.2 The invitation to tender or submit a quotation must state that the Council is not bound to accept any quote or tender.
- 19.3 All contractors invited to tender or quote 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.
- 19.4 The invitation to tender must specify the evaluation criteria and forbid submission of a tender by fax.
- 19.5 Where any prior advertisement has not defined the Award Criteria, invitations to tender must state the Award Criteria in objective terms and if possible in descending order of importance.
- 19.6 The invitation to tender must include a form of tender and instructions to tenderers.
- 19.7 The invitation to tender must include Contract terms and conditions which have the approval of the Town Clerk.

20. Submission, Receipt and Opening of Tenders

- 20.1 The period for a contractor's response.
- 20.1.1 Where contractors are invited to respond they must be given an adequate period in which to prepare and submit a proper quote or tender, consistent with the urgency of the contract requirement. Normally at least four weeks should be allowed for submission of a tender.
- 20.1.2 The European Union procurement procedures lay down specific procurement processes and related time periods which, where the value of the Contract will exceed EU limits, must be followed.
- 20.1.3 All tenders should be administered through the Council's electronic tendering system. All tender submissions should be made electronically through the electronic system unless, for technical

reasons, hard copies are required. In that case, hard copies should be returned to a location specified by the Town Clerk, who is responsible for their safekeeping. Category Managers will ensure that all tenders are opened at the same time when the period of submission has ended and will record receipt of the tenders.

20.1.4 If there appears to be an error in a bid or supporting information, the contractor must be invited to clarify the supporting information and/or confirm or withdraw the bid.

20.1.5 All communications must be in writing and logged on the electronic Contract File.

21. **Post Tender Negotiation**

21.1 Post-tender negotiation may take place where:-

- (a) the tenders received are in excess of the budget provision; or
- (b) the appropriate Responsible Chief Officer, after consultation with the Town Clerk, considers, from an analysis of the tenders received, that Best Value may be obtained for the Council through post-tender negotiation.
- (c) A clause allowing for negotiations/supplementing bids after tenders have been opened was included in the Invitation to Tender
- (d) Such negotiation will not distort competition.

21.2 Any post-tender negotiation may be undertaken with the Tenderer submitting the Preferred Bid exclusively.

21.3 Where any post-tender negotiations are appropriate a written record shall be kept of all negotiations, including notes of all meetings and the names of the individuals present, and placed on the Contract File.

21.4 Where post tender negotiation results in a fundamental change to the specification or Contract terms the contract must not be awarded but re-tendered.

22. **Contract Award**

22.1 The Budget Manager shall ensure that finance is available in the budget and that all necessary approvals have been obtained to authorise the expenditure on the contract. In the event that a request is made to vary a contract which increases the cost to the Council the Budget Manager shall not agree such variation unless finance is available and within the budget to cover the cost of the variation. The Budget Manager shall ensure that evidence of authority to spend, and the budget code to be used, is recorded on the Contract File.

22.2 Contracts must be evaluated and awarded in accordance with the Award

Criteria set out in the original tender or quotation documents and advertisement.

- 22.3 Every contract shall be in writing and bear the signature or other mark of all the parties and will be subject to an official order number.
- 22.4 In relation to any contract requiring compliance with EU directives, a notification of intent to award a contract shall be issued to each supplier who has participated in the award procedure unless that supplier has already been lawfully excluded from the procedure. No contract shall be concluded with the successful supplier prior to expiry of the **mandatory standstill period**. In the event of a challenge being made by an unsuccessful supplier within the mandatory standstill period, advice from the Legal Commercial Team must be taken prior to the contract being awarded.

Form of communication:	Mandatory Standstill Period
Where notification is by facsimile or electronic means:	9 calendar days from the date following the date on which the notification was sent.
Where the notification is by other means:	15 calendar days with effect from the date following the date on which the notification was sent or of a period of 10 calendar days with effect from the date following the date on which the notification was received.

- 22.5 Contracts shall be awarded by the Responsible Chief Officer provided the award is in accordance with these Rules, the Procurement Strategy and Policy and Capital Programme. For each contract awarded a contract administrator will be nominated to monitor the contract performance.
- 22.6 Contracts with a value which commits the Council to spend in excess of £250,000 within a financial year, must be accepted by the Cabinet, Leader, Portfolio Holder or the Area Committee as appropriate and be accompanied by a committee minute or decision record. The minute or decision record shall specify the nature of the goods, works, services or Concession for which the contract has been awarded, the value of the contract, the difference in the tenders and the name of the successful contractor.
- 22.7 Form of Contract:
 - 22.7.1 Each Responsible Chief Officer shall ensure all contracts under £50,000 have an official purchase order and order number in the Council’s approved form.
 - 22.7.2 Contracts between £50,000 and £250,000 must be in writing in a form approved by the Council’s Legal Service.

- 22.7.3 Every Contract over £250,000 as well as being in writing shall also be under the Council's official seal and executed as a Deed.
- 22.7.4 Each Responsible Chief Officer shall ensure that an electronic copy of every contract entered into by them shall be provided to the Corporate Procurement Unit for details and a copy of it to be entered onto the Council's Contract Register.

23. **Debriefing**

- 23.1 The Category Manager shall inform all those contractors who submitted a tender of the characteristics and relative advantages of the successful tender. This should normally include:
 - 23.1.1 How the Award Criteria were applied.
 - 23.1.2 The prices or range of prices submitted, in either case not correlated to contractor names.
 - 23.1.3 The evaluation scoring matrix used, without disclosing the individual contractor names or identities.
 - 23.1.4 The names of contractors where there were three or more contractors involved.
- 23.2 During the debriefing process the confidentiality of quotations, tenders and the identity of contractors must be protected at all times.
- 23.3 An offer of a debriefing must be given to all unsuccessful tenderers if a request is received. A debrief shall take place within 15 clear working days of receipt of a request. An aim of the debrief shall be to assist tenderers to understand the reasons that their bid was unsuccessful to inform future tender submissions.

24. **Contracts Conditions**

- 24.1 Every contract shall state as a minimum:
 - 24.1.1 The works or services (including Concessions) to be performed and/or the goods to be supplied.
 - 24.1.2 The parties to the contract, including any guarantor.
 - 24.1.3 The price and any discounts, or the method by which prices and discounts are to be calculated, and the method and timing of payments.
 - 24.1.4 The time within which the contract is to be carried out.

- 24.1.5 That the contractor will not assign the contract without written consent of the Council.
- 24.1.6 That the contractor may pay liquidated damages (where these can be assessed and ascertained) as a pre-estimate of the potential loss sustained by the Council or other damages to the Council should the terms of the contract not be properly carried out, including the method by which such damages will be calculated and the circumstances in which they will be payable.
- 24.1.7 The performance of every contract over £100,000 (except a supply contract) may be required to be adequately secured by either a guarantee or a bond or a deposit of money if the Responsible Chief Officer so decides.
- 24.1.8 Any requirements of the Council in regard to equalities.
- 24.1.9 That the contractor shall adopt safe methods of work and comply with all other requirements of the Health and Safety at Work etc. Act 1974 in order to protect the health and safety of its personnel, the personnel of the Council and all other persons.
- 24.1.10 That appropriate procedures must be in place to ensure that children and vulnerable clients are safeguarded.
- 24.1.11 That the contractor shall comply with data protection and freedom of information requirements if appropriate.
- 24.1.12 That the Council may cancel the contract and recover any loss if the contractor, its employees, agents and sub-contractors offer any reward relating to the contract, commit any offence under the Prevention from Corruption Acts 1889 to 1916, the Bribery Act 2010, the Employment Relations Act 1999 (Blacklists) Regulations 2010 or improperly influence or make any attempt so to influence the award or administration of the contract.
- 24.1.13 Any other terms and conditions specified by the Town Clerk who has a general authority to set standard and particular contract conditions.

25. Contract Specifications

- 25.1 The Category Manager shall ensure the contract specifies as necessary:
 - (a) the tasks required, their volume and frequency
 - (b) the level of input, time and resources required or the outputs required
 - (c) the facilities on-site, health and safety and access arrangements
 - (d) the quality required, testing and inspection methods, standards of performance expected and performance monitoring arrangements

- (e) the duration of any contract and any other details not included elsewhere
- (f) the quality of materials
- (g) reference to relevant Council policies

25.2 Technical specifications shall be defined by reference to relevant European specifications or, where they do not exist, in the following order; to British technical specifications, British standards implementing international standards, other British standards and technical approvals or any other standards. Where an appropriate standard is current at the date of tender, all works, services and supplies shall be at least of equal quality.

25.3 Specifications shall not refer to supplies of a particular make or source unless:

25.3.1 This is justified by the contract requirements.

25.3.2 The contract requirements cannot otherwise be described precisely and intelligibly, provided references are accompanied by the words "or equivalent".

26. **Post Contract Monitoring and Evaluation**

26.1 During the life of the contract the Category Manager must, in accordance with any Council approved guidance, ensure that there are in place, arrangements that will ensure :

26.1.1 Monitoring of contract performance and risk management.

26.1.2 Compliance with specification and contract, including any key performance indicators.

26.1.3 Costs are controlled.

26.1.4 Any best value requirements are observed.

26.1.5 User satisfaction.

26.2 The Budget Manager in consultation with the Category Manager shall maintain under review the extent to which the purchasing need and the contract objectives are being met by a tendered contract. Where the contract is to be re-let, a report on contract performance should be prepared to inform the approach to re-letting the subsequent contract.

27. **Contract variation**

27.1 Contract variation of the original contract sum shall be reported to the Town Clerk.

27.2 No variation may be made unless allowed for in the contract documentation.

27.3 No variation, notwithstanding the application of clauses in conditions of contract, shall be made until the Responsible Chief Officer has identified and approved any additional funding required.

28. Nominating Products, Contractors or Suppliers

28.1 These Rules apply where the Council nominates a sub-contractor or supplier for carrying out works or services or supplying goods or materials that form part of a tender. Sub-contractors or suppliers shall send with the tender an undertaking to work for the main contractor and indemnify them for the sub-contracted works or materials.

29. Technical Amendment

29.1 The Town Clerk has the authority to make technical amendments from time to time to make these Rules consistent with legal requirements, changes in Council structures and personnel and best practice after consultation with the Chief Executive and Resources Director.

30. Definitions

30.1 The following terms in these Rules have the meaning indicated and shall be interpreted accordingly:

‘**Approved List**’ is a list drawn up in accordance with rule 6.

‘**Award Criteria**’ are the criteria by which the successful quotation or tender is selected.

‘**Best Value**’ means the duty placed on local authorities to secure continuous improvement in the way in which services are provided, having regard to a combination of economy, efficiency and effectiveness and as implemented by the Council.

‘**Bond**’ has a similar effect to an insurance policy where a contractor does not do what it has promised under a contract, the Council can claim the sum of money specified in the bond, often 10 per cent of the contract value. A bond is intended to protect the Council against a level of cost arising from a contractor's failure.

“**Budget Manager**” means the officer with delegated responsibility for management of the budget from which it is anticipated that the costs arising from a contract will be funded.

‘**Responsible Chief Officer**’ in these Rules means the Chief Executive, Corporate Directors, City Manager or Head Teacher.

‘Concession’ means a contract whereby a payment is received to permit a service to be provided to the public for a charge.

‘contract’ or **‘sub-contract’** means any agreement for the supply of goods, materials or services, the execution of works and the awarding of concessions.

‘Contractor’ is a supplier of goods, materials, works, services or concessions to the Council.

‘Contract File’ comprises a record of all matters relating to a contract whether in paper or electronic form.

Crown Commercial Services is the Government Agency responsible for leading and providing guidance upon Central Government Procurement activity.

‘Disposal’ the divestment of Council ownership in any asset except land or buildings.

‘European Union contract’ is a contract covered by the Public Supply, Works or Services Contracts Regulations having a Total Value exceeding the European Union procurement threshold.

‘European Union procurement procedure’ is the procedure required by the European Union where the Total Value exceeds the European Union procurement threshold.

‘European Union procurement threshold’ is the contract value at which European Union public procurement directives must be applied as specified in rule 12.

‘Key Decision’ has the meaning assigned to it within the Interpretation provision included in the Articles of the Constitution.

‘Quotation’ means any written response to an invitation to quote which includes the price of goods or services to be supplied.

‘Tender’ means any offer which if accepted is capable of resulting in a contract.

‘Total Value’ is the whole of the value or estimated value (in money or equivalent value) of the contract whether or not it comprises several lots or stages to be paid or received by the Council and calculated as follows:

- (a) Where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period.

- (b) Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months.
- (c) Where the contract is for an uncertain duration by multiplying the monthly payment by 48.
- (d) In the case of feasibility studies it is the value of the scheme or contracts which may be awarded as a result.
- (e) In the case of nominated suppliers and sub-contractors it is the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor.

FILE RECORD DISPENSATION FROM NORMAL COMPETITION REQUIREMENTS UNDER CONTRACT PROCEDURE RULE 11

- *DISPENSATION NOT AVAILABLE FOR EC TENDERS*
- *DECISION RECORD REQUIRED FOR VALUES OVER £50,000*
- *COMPLETE AND SEND TO TOWN CLERK OR HIS NOMINATED DEPUTY FOR APPROVAL*

Contract Description			
Contract Value	£ V.A.T	Contract duration	
Contract Procedure Rules Exemption	Dispensation from (<i>insert relevant rule</i>)		
Reason for Dispensation	<i>(please insert here the business justification from the rule, this must relate to one of the reasons under clause 11 of the Rules)</i>		
List of documents attached	<i>(any relevant documents such as business case, decision records etc.)</i>		
Request By: Officer Signature: Authorisation By Town Clerk (Monitoring Officer) or an officer with delegated authority from the Town Clerk	Date: Date:		
Comments Corporate Procurement			

Please note that signatures must be those of the officer stated and must not be completed on their behalf.

Appendix 2



