

CONSTITUTION COMMITTEE:

17 October 2008

REPORT OF THE MONITORING OFFICER

AGENDA ITEM: 2

Contract Standing Orders and Procurement Rules

Reason for this Report

The Council is required to have contract standing orders that govern the way it lets contracts. The Contract Standing orders form part of the Council's Constitution. This report recommends the approval of the attached Contract Standing Orders and Procurement Rules, which have been updated to reflect developments in procurement law and practice.

Background

Issues

1. The Committee's approved Terms of Reference are:

To review the Council's Constitution, and to recommend to Council and/or Executive any changes, except that the Committee will have authority (subject to the Monitoring Officer's advice) to make the following changes on behalf of the Council:-

- (a) Drafting improvements to enhance clarity and remove minor anomalies.
 - (b) Updating to reflect legislative changes and matters of record.
 - (c) Amendments to the Financial, Contracts and Land Procedure Rules (subject to the advice of the S.151 Officer being sought).
- 2** Public procurement is the process by which public sector organisations, such as the Council, acquires goods, services and works from third parties. It ranges from routine items (such as the purchase of stationery) to complex projects and high level spend (such as in adult social care - the recent learning disability tender exercise).
- 3** For procurements to be effective as a business tool for the Council then it is important that the procurement process addresses (and the attached Rules cover) all stages of the procurement process, from identification of

needs, consideration of options, the actual procurement process, contract award, and subsequent management and review of the contract.

- 4 The Contract Standing Orders and procurement Rules (the Rules) attached to this report have been updated to :-
 - a. reflect the provisions of The Public Contracts Regulations 2006, which serve to implement in England, Wales and Northern Ireland, Directive 2004/18/EC of the European Parliament and Council of 31.3.04 on the co-ordination of procedures for the award of public works contracts, public supply contracts and public services contracts. Commonly referred to as the European procurement rules
 - b. provide key concepts and principles of good procurement practice to assist officers who dealing with the council's various procurements
 - c. reflect the Council's procurement strategy
 - d. reflect developments in procurement law and practice, and
 - e. to address issues of sustainability, e procurement and use of framework and collaborative purchase arrangements.
- 5 It should be noted that the Rules make provision for the use of In House service provision where the same exists. See Rule 4.
- 6 If the Council determines to approve the attached Rules then it will be necessary for the Council's Scheme of Delegations to be amended to reflect the new Rules. It is recommended that the City and County Solicitor be authorised to make such consequential amendments.

Legal Implications

Pursuant to legislation the Council must make standing orders with respect to the making by it (or on its behalf) of contracts for the supply of goods or materials or for the execution of works.

Such standing orders must include provision for securing competition for such contracts and for regulating the manner in which tenders are invited. The standing orders may exempt from any such provision contracts for a price below that specified in standing orders and may authorise the authority to exempt any contract from any such provision when the authority are satisfied that the exemption is justified by special circumstances.

The standing orders must include provision for securing that certain contracts must be in writing (namely any contract which is of or above a value specified, or is of a description specified in the standing). The function of specifying a value or a description of contracts for these purposes must be discharged by the authority itself.

The standing orders must also include provision for securing that any contract which is required to be in writing: (1) is made under the authority's seal and attested by at least one officer of the authority or (2) is signed by at least two officers of the authority

Financial Implications

Every local authority shall make arrangements for the proper administration of their financial and contracting affairs. The attached rules are designed to facilitate the same.

Recommendations

The Constitution Committee recommends to Council that:-

1 the attached Contract Standing Orders and Procurement Rules form part of the Council's Constitution and replace the existing Contract Procedure Rules, and

2 The City and County Solicitor be authorised to make such amendments to the Council's Scheme of Delegations as are required to facilitate the implementation of the Rules

Kate Berry
City and County Solicitor

Dated: 01.10.08

CARDIFF COUNCIL

Contract Standing Orders and Procurement Rules

June 2008

Contract Standing Orders and Procurement Rules

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1. Introduction

- 1.1 Procurement is the process by which the Council manages the acquisition of all its Goods, Services and Works. It includes the identification of need, consideration of options, the actual procurement process and the subsequent management and review of the contracts.
- 1.2 The Council spends in the region of £270 million per annum on the external procurement of Goods, Services and Works. It is important that the Council strategically manages this spend both to ensure that it maximises value for money through its economies of scale and achieves the vision for Procurement as contained within the Councils' Corporate Procurement Strategy, which is:
- 'To deliver value for money for all procured Goods, Works and Services through smarter, sustainable procurement which is strategically managed and maximises opportunities for sustainability, collaboration, partnering and exploitation of technology to support the aims and objectives of Cardiff Council and wider Welsh Assembly Government agenda'*
- 1.3 These Contract Standing Orders and Procurement Rules provide a corporate framework for the procurement of all Goods, Services and Works for the Council. The Rules are designed to ensure that the Council obtains value for money and the required level of quality and performance in all contracts let and that all procurement activity is conducted with openness, probity and accountability.
- 1.4 In all its procurements the Council must comply with the EU Treaty based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality and these rules are designed to ensure compliance with the same.

2. Definitions and Interpretations

- 2.1 In these Rules the following definitions apply:

Authorised Officer means the holder for the time being of any post named in the Scheme of Delegations as having delegated powers and duties in respect of the procurement concerned.

Chief Officer means any officer in the following categories of officer, Chief Executive, Corporate Director, Chief Officer and/or, Head of Function.

Contract	means any form of agreement (including, without limitation, official purchase orders) for the supply of Goods, provision of Services or carrying out of Works.
Contractor	means any contractor, supplier or provider with whom the Council enters into a Contract for the carrying out of Works, provision of Services or the supply of Goods.
Framework Agreement	an agreement with one or more Contractors, the purpose of which is to establish the terms (in particular with regard to price and quantity) governing a contract or contracts to be awarded during the period for which the framework agreement applies.
Goods	covers all Goods, supplies, substances and materials that the Council purchases, hires or otherwise obtains.
Grant and Grants	a sum of money paid or to be paid by the Council to a third party, and in respect of which the Council does not require the grantee to provide the Council with any Services, or Goods or carry out any Works for the Council's direct benefit. The Grant may be conditional (i.e. obligation to spend the grant in a particular manner, to account for that spend and repay the grant if the grant conditions are breached).
Procurement	means the process by which the Council manages the acquisition of all its Goods, Services and Works. It includes the identification of need, consideration of options, the actual procurement process and the subsequent management and review of the contracts.
Procurement Guidance Handbooks	means the Guidance Handbooks issued/to be issued from time to time by the Procurement Manager.
Procurement Manager	means the Operational Manager - Corporate Procurement Services or any

officers under his/her supervision or management who are given delegated authority to carry out any of the obligations, duties or activities required to be performed by him/her under these Rules or to act in his/her absence.

Procurement Process	the procurement process spans the whole life cycle, from identification of needs, options appraisal, supplier selection, award, and contract management through to the end of a contract or the end of the useful life of the asset, or disposal of the asset.
Rules	means these Contract Standing Orders and Procurement rules.
Services	includes all Services, which the Council purchases or otherwise obtains including advice, specialist consultancy work, agency staff, etc.
Single tender and reduced number of Tenders	means where these Rules allow, (and for good reason and subject to a proper business case), the Council limits the minimum number of Tenderers to be invited to tender to one or a lesser number than would otherwise normally be required by these Rules given the estimated value of the Contract concerned.
Negotiated procedure	whereby the Council has negotiated the terms of the Contract with one or more providers, Contractors or suppliers selected by it.
Tenderer/ Tenderers	individual, individuals, partnerships, companies or other bodies invited to submit quotes/tenders/prices for providing the Council with Services, supplying Goods or carrying out Works.
Variant Bid	means an offer/bid which contains variants on the requirements specified by the Council in its procurement documentation.

Variations means any alteration to a contract including, additions, omissions, substitutions alterations, or changes of any other nature.

Works includes all works of new construction and repairs in respect of physical assets (buildings, roads, etc.) including all those activities constituting Works for the purposes of the Public Contract Regulations 2006.

- 2.2 All values referred to in these Rules are exclusive of VAT.
- 2.3 Any dispute regarding interpretation of these Rules shall be referred to the City and County Solicitor and City and County Treasurer for resolution.
- 2.4 These rules shall be read in conjunction with the Council's Constitution as a whole and in particular, in respect of Contract payments, the Councils' Financial Procedure Rules, which must be complied with.
- 2.5 The Procurement Manager shall undertake a formal review of these Rules at least every two years.

3 Compliance with these Rules

- 3.1 These Rules must be followed when dealing with any Council Procurement except for those Procurements and other matters referred to in Rule 3.5.
- 3.2 Every procurement undertaken by the Council or any other party on its behalf must comply with:
 - (a) all relevant statutory provisions;
 - (b) all European Union procurement directives and the Regulations that implement them in the UK;
 - (c) the EU Treaty based principles of non discrimination, equal treatment, transparency, mutual recognition and proportionality, which principles apply to all the Council's procurements (even when the procurement is not subject to European Union procurement directives and the Regulations that implement them in the UK);
 - (d) the Council's Constitution; and

- (e) the Council's strategic objectives and policies including the Corporate Procurement Strategy.
- 3.3 The Procurement Manager may from time to time issue procurement guidance. Chief Officers must ensure that employees in their Services Area are aware of such guidance and should encourage compliance.
- 3.4 Any failure by an officer to comply with any provision of these Rules may result in disciplinary action.

Exceptions to Contract Procedure Rules

- 3.5 These Rules do not apply to:-
 - (i) the acquisition or disposal of land (see Procedural Rules for the Acquisition or Disposal of land);
 - (ii) contracts of employment which make an individual a direct employee of the Council;
 - (iii) use of the Council's in house Services;
 - (iv) Grants. (Grants are not regulated by public procurement law as they are not public contracts, however, they are regulated by the rules on state aid and by general public law controls relating to fiduciary duty and proper spending of public money. Advice should be obtained from the Council's grant officer);
 - (v) to individual orders placed under contracts which provide for orders to be placed against agreed schedules of rates, or under a measured term contract or under a Framework Agreement provided that such contracts or Framework Agreement have been let by the Council in accordance with these Rules. The Procurement Manager must be consulted before any such order is placed;
 - (vi) to individual orders placed under Office of Government Commerce and or Value Wales let Framework Agreements. The use of such Framework Agreements must be approved by the Procurement Manager before any such order is placed;
 - (vii) to contracts for Services entered into in pursuance of powers under the National Health Services and Community Care Act 1990 and the Children Act 1989 for the benefit of an individual;
 - (viii) to instructions and briefings issued by or of behalf of the City and County Solicitor to Counsel. The City and County Solicitor will make arrangements to ensure that a record is kept of all

such instructions or briefs together with a record of Counsel's fee;

- (ix) to Goods, Services and Works procured by another public body on behalf of or for the joint benefit of the Council and other parties (i.e. a collaborative procurement arrangement such as contracts awarded via the Welsh Purchasing Consortium etc) and provided that in such case, the other public bodies Procurement / Contract Rules, all EU and UK procurement law requirements, and the fundamental principles of the EC Treaty have been complied with. The advice of the Procurement Manager must be sought before placing reliance on any such arrangement.

When placing reliance on the exemptions stated above the Authorised Officer should ensure that the best possible value for money is obtained for the Council.

4. In House Services/Council wide framework arrangements

- 4.1 Before any external procurement is considered it is important to ensure that no existing in-house provision exists for the Goods, Services or Works required. In-house Services must be used unless the Chief Officers of the Procuring Services and the In House Services Provider agree otherwise, evidenced in writing.
- 4.2. If it is determined necessary to proceed with an external procurement, then where available, use must be made of the Council's existing corporate purchasing and Framework Agreements let in accordance with these Rules, unless in exceptional circumstances the Procurement Manager has agreed otherwise. Corporate Procurement Services maintain a register of such agreements and can provide advice on their use.
- 4.3 All computer and information technology Goods and materials will be purchased in accordance with specifications as laid down by the City and County Treasurer.

5. Estimating the Contract value

- 5.1 All Procurements (Goods, Services, and Works) above £10,000 will be managed in accordance with the direction of the Procurement Manager and must be referred to him/her to determine in consultation with the relevant Authorised Officer the most appropriate procurement process to be followed.

- 5.2 No Works or requirements for Goods or Services may be artificially split to avoid consulting with the Procurement Manager or avoid compliance with EU procurement law or these Rules.
- 5.3 The estimated value of a contract/procurement exercise shall be the value of the total consideration, net of value added tax, which the Council expects to be payable under the contract.
- 5.4 In determining the value of the total consideration, which the Council expects to pay, the Council shall, where relevant, take account of:-
- (i) any form of option
 - (ii) the term/period of the proposed contract
 - (iii) any rights to renew the contract/extend the contract period
 - (iv) any prize, payment, premium, fees, commission, interest or other form of remuneration payable under the proposed contract or in respect of the proposed procurement
- 5.5 In determining the value of any contract for the hire of Goods if the term of the contract is indefinite or uncertain at the time the contract is entered into then the value shall be taken as equating to the value of the monthly consideration multiplied by 48.
- 5.6 In determining the value of any contract for the provision of Services or carrying out of Works if the term of the contract is indefinite or uncertain at the time the contract is entered into then the value shall be taken as equating to the value of the monthly consideration multiplied by 48.
- 5.7 Where the Council has requirements over a period of time for Goods and Services where the contracts have similar characteristics and the Goods and Services are of the same type, and enters into a series of contracts or a contract which is renewable, then the estimated value shall be calculated by the total spend on such matters over the last 12 months or projected estimated spend for next 12 months which ever is the greater. In estimating this value the advice of the Procurement Manager must be sought and regard had to provisions of Regulation 8 of the Public Contract Regulations 2006.
- 5.8 For Framework Agreements, or similar, without a known annual expenditure but with duration exceeding one year, the number of years duration will be multiplied by the likely annual expenditure and must be determined in consultation with the Procurement Manager. The maximum period now permitted under the EU Procurement Rules for Framework Agreements being 4 years.

6 Contracts under £10,000 / Low Value Procurement (Quotations)

6.1 Where possible, Goods, Services and Works **must** be obtained via existing approved arrangements including:

- (a) In-house Services provision (see Rule 4)
- (b) Established corporate framework agreements and consortia arrangements (see Rule 4).

6.2 Where there are no existing approved arrangements, the following number of quotations must be obtained and evidenced in accordance with rules 6.3 and 6.4:

6.2.1 Up to £2,999.99 require only one quotation

6.2.2 Between £3,000 and £9,999.99 require two quotations unless and in exceptional circumstances the Operational Manager with responsibility for the procurement has authorised that only a single quote be obtained and a written record of such decision is maintained by the service area concerned. A note to such effect must also be recorded on the Council's purchase to pay system (SAP) when the order is placed

Irrespective of value, where the procurement relates to a category classified as approved, quotations should be sought in the first instance from contractors listed in the Council's Corporate Supplier Directory and approved for that category. If it is necessary to use a Contractor who is not approved for the category, then the Contractor must, where practicable, become accredited and recorded as approved for that category on the Corporate Supplier Directory before use.

6.3 For procurements up to £2,999.99, the quotation obtained must be in writing in order that best value and the integrity of the process can be demonstrated. This information must be retained by the Services Area.

6.4 For procurements of £3,000 to £9,999.99 records will be kept detailing which Contractors were selected to quote, to whom the contract was awarded and the reasons for so doing (lowest price or offer which represents best value to the Council and why), so that best value and the integrity of the process can be demonstrated. The confidentiality of quotes will be maintained until the contract has been awarded. This information must be retained by the Services Area. It is important to appreciate that Contractors must be informed of how their quotations will be evaluated and this information should be set out when Contractors are asked to quote.

- 6.5 Where Goods, Services or Works are regularly required, and arrangements described in Rule 4 are not available, consideration must be given to awarding a framework arrangement and the advice of the Procurement Manager must be obtained.
- 6.6 All orders must be placed using purchase orders outputs in either electronic or paper form from the Councils electronic procure to pay system (SAP) which contain reference to the Councils Standard Terms and Conditions, unless otherwise agreed with the Procurement Manager.
- 6.7 It is essential that the Goods, Services or Works are procured on the Councils standard Terms and Conditions and not those submitted by the Contractor.
- 6.8 When carrying out any Procurement (even those under £10, 000), regard should be had to the whole of these Rules.

7. Contracts Valued £10,000 and £100,000 inclusive (Tenders)

- 7.1 All procurements (Goods, Services, and Works) £10,000 or above will be managed in accordance with the direction of the Procurement Manager and must be referred to him/her to determine in consultation with the relevant Authorised Officer the most appropriate procurement process to be followed.
- 7.2 For procurements valued from £10,000 to below £100,000, at least three written tenders must be invited. In exceptional circumstances the Operational Manager (or a more senior officer) responsible for the procurement, subject to the agreement of the Procurement Manager, may determine that a reduced number of tenders, including a single tender, may be sought. Any decision to accept a reduced number of tenders must be demonstrably in the best interests of the Council and documented on the Council's prescribed form (i.e. single tender form).
- 7.3 For the rules as to; Pre-qualification, Invitation to Tender, Receipt of Tenders, Custody and Opening of Tenders, Tender Evaluation, Post Tender Negotiation, Evaluation Team, Risk and Awarding Contracts, see rules 10 to 17.
- 7.4 Corporate Procurement Services shall maintain a Corporate Contract Register which will record to whom contracts are awarded and the procurement route followed in each case. The Authorised Officer must provide Corporate Procurement Services with all required information to facilitate this.
- 7.5 Where Goods, Services or Works are regularly required, and arrangements described in Rule 4 are not available, consideration must

be given to awarding a framework arrangement and the advice of the Procurement Manager must be obtained.

- 7.6 All orders (Contracts) must be placed using:- (i) purchase orders output in either electronic or paper form from the Councils electronic purchase to pay system (SAP) which contains reference to the Councils Standard Terms and Conditions, or (ii) using contract terms and conditions approved by the City & County Solicitor (see Rule 23) unless otherwise agreed with the Procurement Manager.
- 7.7 When carrying out any Procurement regard should be had to the whole of these Rules.

8. Contracts over £100,000 (Tenders)

- 8.1 All procurements (Goods, Services, and Works) of £100,000 or above will be managed in accordance with the direction of the Procurement Manager and must be referred to him/her to determine in consultation with the relevant Authorised Officer the most appropriate procurement process to be followed. Regards should be had to the Commission's interpretative communication on contract awards not or not fully subject to the EU public procurement directives.

- 8.2 Subject to those contracts to which the European Union procurement directives and the Regulations that implement them in the UK apply, for procurements valued over £100,000, at least four written tenders must be invited. In exceptional circumstances the Chief Officer (or a more senior officer) responsible for the procurement may, subject to the agreement of the Procurement Manager, determine that a reduced number of tenders including a single tender may be sought.

Any decision to accept a reduced number of tenders must be recorded in writing and such decision must be demonstrably in the best interests of the Council, represent best value and must set out how the matters set out in Rule 3.2 are complied with. Such information must be set out in the Council's prescribed form (i.e the Pre-Tender Report).

- 8.3 For the rules as to; Pre-qualification, Invitation to Tender, Receipt of Tenders, Custody and Opening of Tenders, Tender Evaluation, Post Tender Negotiation, Evaluation Team, Risk and Awarding Contracts, see rules 10 to 17.
- 8.4 Corporate Procurement Services shall maintain a corporate Contract Register which will record to whom contracts are awarded and the procurement route followed in each case. The Authorised Officer must provide Corporate Procurement Services with all required information to facilitate this.

8.5 Where Goods, Services or Works are regularly required, and arrangements described in Rule 4 are not available, consideration must be given to awarding a framework arrangement and the advice of the Procurement Manager must be obtained.

8.6 All orders must be placed using (i) purchase orders output in either electronic or paper form from the Councils electronic purchase to pay system (SAP) which contain reference to the Councils Standard Terms and Conditions, unless otherwise agreed with the Procurement Manager or (ii) using contract terms and conditions approved by the City & County Solicitor See Rule23.

9. Procurements to which the European Union procurement directives apply.

9.1 In the case of procurements that fall to be dealt with under the European Union procurement directives and the Regulations that implement them in the UK:-

- (i) the advice of the Procurement Manager and City and County Solicitor must be sought at the outset and at all subsequent stages of the procurement process;
- (ii) tenders will be invited in accordance with the requirements of the said Directives and Regulations for the time being in force; and
- (iii) such directives and Regulations will take precedence over these Rules.

9.2 Advice and guidance on whether a particular procurement is subject to the EU procurement directives can be obtained from the Procurement Manager and City and County Solicitor. The current thresholds, as at 1st Jan 2008 are: -

Services	£139,893
Supplies	£139,893
Works	£3,497,313

The thresholds change every two years and are due to change again on the 1st January 2010.

10. Pre Qualification (Applies to all)

10.1 The Council shall only enter into a contract with a Contractor if it is satisfied as to the Contractor's competences. The criteria for selecting Tenderers may include, but need not be limited to: -

- (a) Technical or professional competence and experience including qualifications;
- (b) Health and Safety;
- (c) Quality including certification by official quality control institutes or agencies of recognised competence and or attesting conformity to quality assurance standards and or measures;
- (d) Financial and economic standing including appropriate insurance provisions;
- (e) Sustainability, including environmental management measures and
- (f) evidence as to whether they are unsuitable on grounds, e.g, of bankruptcy, criminal conviction or failure to pay taxes.

10.2 The Procurement Manager is responsible for the administration and maintenance of the Corporate Supplier Directory that holds certain key information on Contractors.

10.3.1 Subject to the provision of 10.3.2 where the procurement relates to a category classified as approved, quotations should be sought in the first instance from contractors contained within the Council's Corporate Supplier Directory and approved for that category. If it is necessary to use a contractor who is not approved for the category, then the contractor must become accredited and recorded as approved for that category on the Corporate Supplier Directory before use.

10.3.2 All procurements (Goods, Services, and Works) of £100,000 or above will be managed in accordance with the direction of the Procurement Manager. When determining the most appropriate direction to follow, including determining which Tenderers are to be invited to Tender, regard will be had to the Commission's interpretative communication on contract awards not or not fully subject to the EU public procurement directives.

10.4 The Contractor must be assessed prior to commencement of the Works or Services, unless agreed otherwise by the Services Area Chief Officer in consultation with the Procurement Manager.

11. The Invitation to Tender (all procurements above £10k)

11.1 The Invitation to Tender must include details of the Council's requirements for the particular contract including:

- (a) a specification of the Services, Goods or Works being procured and instructions on whether any variants are permissible;
- (b) the procurement timetable including the tender return date and time, which shall allow a reasonable period for the applicants to prepare their tenders;

- (c) the Council's terms and conditions of contract;
- (d) the evaluation criteria including attached weightings;
- (e) the Form of Tender;
- (f) pricing mechanism and instructions for completion;
- (g) whether the Council is of the view that TUPE will apply;
- (h) form and content of method statements to be provided;
- (i) rules for submitting of tenders;
- (j) any further information which will inform or assist Tenderers in preparing tenders.

11.2 Every Tenderer submitting a tender will be required to sign a declaration to the effect that:

- (a) they have not and will not inform any other person of the amount of their tender;
- (b) they have not fixed the amount of any tender in accordance with a price fixing arrangement;
- (c) they accept that the Council is entitled to cancel the contract and to recover from them the amount of any loss resulting from such cancellation if it is discovered that there has been any corrupt or fraudulent act or omission by them which in any way induced the Council to enter into the contract;
- (d) acknowledging that the Council is not bound to accept the lowest or any tender submitted, that the tender exercise may be aborted at any stage during the tender process and that they tender at their own cost and expense.

12. Receipt, Custody and Opening of Tenders (above £10k)

12.1 Invitations to tender must clearly set out the latest tender return date and time.

12.2 Tenders with an estimated value below £100,000 (if received by post in the official envelope or using the official tender return label) will be returned to either the Procurement Manager or the Chief Officer of the relevant Services Area at the discretion of the Procurement Manager. Tenders will be opened in the presence of two employees designated

by the Procurement Manager or the Chief Officer of the relevant Services Area as the case may be. Both employees must be independent to the letting of the contract. When opened, all tenders will be recorded in a tender register and the tenders and register will be initialled and dated by designated officers present at the time. A copy of such record shall be sent to the Procurement Manager.

12.3 Tenders with an estimated value above £100,000 must be addressed to the City and County Solicitor by post enclosed in the official envelope or using the official tender return label provided by the Council. The City and County Solicitor will be responsible for the receipt, custody and opening of such tenders. Tenders for the same procurement will be opened consecutively at the same session in the presence of two employees designated for the purpose. One employee will be nominated by the City and County Solicitor and the other employee will be nominated by the Procurement Manager. Both employees must be independent to the letting of the contract. When opened, all tenders will be recorded in a tender register and the tenders and register will be initialled and dated by designated employees present at the time. The opened tenders will then be sent to the evaluation officer.

12.4 Tenders received after the date and time for receipt of tenders may only be opened and considered with the agreement of the City and County Solicitor and the Procurement Manager. Any such decisions must demonstrate good reason why it is considered appropriate to accept the late tender.

13. Electronic Tendering

13.1 With the Agreement of the Procurement Manager the tender process including invitation and receipt of tenders may be conducted electronically and the provisions of paragraph 11 will not apply. The electronic system used must be approved by the Audit & Risk Manager.

14. Tender Evaluation

14.1 Tenders shall be evaluated in accordance with the evaluation criteria and weightings set out in the Invitation to Tender. All contracts, except contracts where lowest price was predetermined to be the appropriate criteria, shall be awarded on the basis of the offer which represents Best Value for Money to the Council (most economically advantageous tender) having regard to the evaluation criteria and weightings set. The evaluation criteria and weightings must be predetermined and approved by the Procurement Manager and listed in the Invitation to Tender documentation. In addition, the criteria and weightings shall be strictly observed (and remain unchanged) at all times throughout the

contract award procedure. Guidance and assistance on relevant evaluation criteria can be obtained from Corporate Procurement Services and City and County Solicitor.

- 14.2 If, after the tenders have been opened and examined, an error in computation of the tender is detected the Tenderer will be given details of the error and the opportunity to confirm the tender submission as corrected, or withdraw their tender.

15. Post Tender Negotiation

- 15.1 Where the procurement is conducted pursuant to the EU Procurement Directives and UK Regulations that implement them, there are restrictions on the use of post tender negotiation and legal advice must be sought before determining whether any such negotiation would be appropriate.
- 15.2 The Authorised Officer, following consultation with the Procurement Manager and in accordance with any requirements set by the Procurement Manager (re records to be kept) may seek **clarification** from Tenderers in respect of their tenders provided this does not involve discrimination.
- 15.3 Subject always to compliance with these Rules, where procurements are conducted outside the EU Procurement Directives, the Authorised Officer may, after consulting with the Procurement Manager, authorise negotiations if he or she considers that it is in the Council's interest to do so and provided this does not involve discrimination. If post tender negotiations are necessary then such negotiations shall be conducted with all Tenderers, unless the Procurement Manager determines otherwise. Negotiations shall be conducted on behalf of the Council by at least two officers, one of which will be nominated by the Procurement Manager. The City and County Solicitor must be informed of any proposals to carry out negotiations and shall be invited to send a representative to the negotiation meetings. A full written record shall be kept of the results of the negotiations.
- 15.4 At all times during any such negotiation or clarification process the Council shall consider and comply with the EU Treaty based principles of non discrimination, equal treatment, transparency, mutual recognition and proportionality, principles which apply to all the Council's procurements.

16. Evaluation Team

- 16.1. For each contract above the £10,000 threshold, the Authorised Officer shall form an evaluation team ('Evaluation Team') with responsibility for evaluating tenders. Written records of the evaluation must be kept.

- 16.2 Where the contract exceeds the £100,000 threshold, the City and County Solicitor and the City and County Treasurer shall be consulted and where they consider it appropriate, representatives of those officers shall be included on the Evaluation Team. Consideration should also be given to including Services users on the Evaluation Team.

17. Risk

- 17.1 For procurements over £10,000, the Authorised Officers shall carry out a risk assessment at the outset and thereafter maintain and update the same throughout the procurement process. The decision maker must be informed of any risks identified.

18. Awarding Contracts

- 18.1 A contract may only be awarded by an officer with the requisite delegated authority to award contracts in accordance with the Councils' Scheme of Delegations. For all procurements valued at above £10,000 per annum, the decision to award a contract shall be made using the Council's pro forma Contract Award report unless the decision is to be made by a Corporate Director or the Executive, in which case the Council's standard reporting forms for such decisions shall be used. The Authorised Officer must ensure, prior to seeking such a decision that sufficient funds are in place to meet all contract payments and if any funding is being obtained from third parties that any conditions attaching to such funding have been complied with.
- 18.2 The Council shall only award a contract where it represents Best Value for Money. A contract shall only be awarded using the pre-determined tender evaluation criteria and weightings. Where a tender is to be evaluated on price only the contract must be awarded to the Tenderer submitting the lowest price.
- 18.3 Letters of intent shall only be used with the agreement of and in a form approved by the City and County Solicitor. Letters of intent should only be used in exceptional circumstances.
- 18.4 Save for exceptional circumstances no Contractor should be asked to provide any Services, supply any Goods or carry out any Works (including preliminary Works) until the contract is concluded or the Services, Goods or Works concerned are covered by a letter of intent. Any decision to the contrary must be made by the Chief Officer for the Services area concerned and such decision shall contain a full risk assessment as to the possible implications to the Council of the Contractor being allowed to start before the contract terms and

conditions have been finalised or a letter of intent issued .

- 18.5 In the event of the withdrawal of tender after official notification (whether conditional or otherwise) to the Tenderer of the acceptance or proposed acceptance of the tender, no other tender submitted to the Authority by the person so withdrawing will be considered for two years from the date of withdrawal without approval from Procurement Manager.

19. Contract Management

- 19.1 Once the contract has been awarded the Authorised Officer must identify and nominate an individual who will manage the day to day aspects of the contract for its term and if requisite to plan what will happen once the contract comes to an end (plan for any a new procurement exercise required).

- 19.2 The day to day management of the Contract shall include monitoring in respect of :-

- (i) performance
- (ii) compliance with specification and contract terms
- (iii) cost
- (iv) any value for money/best value requirements,
- (v) user satisfaction and
- (vi) risk management.

- 19.3 Where the total value of the contract exceeds £250 000 the Authorised Officer must make a written report to the Chief Officer evaluating the extent to which the contract is meeting the objectives set. This should be done normally when the contract is completed but for term contracts such report should be prepared annually.

20. Notification of Results and Debriefing Alcatel Standstill Period

- 20.1 Once the contract award decision has been made then save for the successful Tenderer all those expressing an interest will receive a standard regret letter containing details of:

- The award criteria and weightings
- The score that the Tenderer obtained against those award criteria and weightings (where relevant)
- The score the winning Tenderer obtained; and
- The name of the winning Tenderer

- 20.2 If any additional information is to be disclosed to Tenderers, this must be agreed in advance with the Procurement Manager, taking into

account the requirements of any legislation relating to the disclosure of information.

20.3 De-briefing is recommended in public purchasing policy guidelines as a means of assisting Tenderers improve their competitive performance.

20.4 For all procurements over £100,000, de-briefing will be conducted by the Authorised Officer with support/input being provided by the Procurement Manager.

20.5 The list of points where debriefing is required or may be appropriate includes:-

20.5.1 selection: where the candidate is not selected (short listed) to take part in the tender process

20.5.2 award: where the tenderer was not awarded the contract after evaluation of proposals/tender. Such debriefing should never be conducted before the contract award decision is made and all unsuccessful Tenderers have been formally notified of the same. It should be made clear that the de-briefing process cannot be used to change the choice of a Contractor or to re-open the selection process.

20.5.3 if any potential supplier is asked to withdraw or withdraws during the procurement.

De-briefing will only be conducted at the request of the Contractor.

20.6 If the award of a contract is subject to the EU Public Sector Procurement Directive, there must be a standstill period of a minimum of 10 calendar days between communicating the award decision to all Tenderers and conclusion of the contract.

21. Contract Award Notice –EU Procurements

21.1 Where a procurement is conducted pursuant to the EU Procurement Directives and UK Regulations that implement them the Council shall publish a contract award notice in the Official Journal of the European Union no later than 48 days after the date of award of the contract.

22. Contract Terms and Conditions

22.1 The Authorised Officer shall ensure that Contracts are entered into on the Council's terms and conditions as approved by the City and County Solicitor, which terms shall be included with each purchase order or Invitation to Tender or Negotiate. Where this is not appropriate and a Contractor has been asked to submit their terms and conditions, those

terms and conditions must be approved by the City and County Solicitor.

23. Completion of Contracts

23.1 With the exceptions of any contract formed using a purchase order output from the Councils electronic procure to pay system (SAP) (which contains reference to the Councils Standard Terms and Conditions) and any contract under £30 000 in value (see Rule 23.3) all contracts entered into by the Council must be:-

- (i) in writing,
- (ii) on terms and conditions approved by the City and County Solicitor, and
- (iii) be made under the Council's seal and attested by at least one employee authorised by the City and County Solicitor or be made under hand and signed by at least two employees authorised by the City and County Solicitor.

23.2 All contracts entered into using the Councils electronic purchase to pay Process (SAP) must, for the avoidance of any doubt , comply with the provisions of these Rules and the Financial Procedure Rules.

23.3 Contracts not exceeding £30,000 in value must be made using :-

- (i) a purchase order output from the Councils electronic purchase to pay system (SAP) (which contains reference to the Councils Standard Terms and Conditions)
- (ii) be on an official order form produced by the Council that contains or refers to the terms and conditions of contract approved by the City and County Solicitor and signed by a duly authorised officer. Chief Officers must maintain a listing of those Officers who have the authority to sign the Authority's official order form, or
- (iii) a contract prepared by the Council's Legal Services and signed or sealed in accordance with the provisions of Rule 23.1.(iii) .

24. Extension of Contract Period / Term - Variation

24.1 The decision to extend the contract period (term) may only be made before the original expiry date, where it is in accordance with the terms and conditions of the original contract and contemplated by the original procurement exercise. To determine which Officer is authorised to

extend contract terms the value of the extended term shall be assessed and the provisions of the table in Rule 25.1.2 shall apply.

24.2 The decision to extend a framework agreement may only be made before the original expiry date, where the extension is in accordance with the terms and conditions of the original contract and contemplated by the original procurement exercise. The Procurement Manager must take all such decisions to extend framework arrangements. The aggregate term of the framework agreement must not exceed 4 years.

24.3 Where the terms of the agreement and or original procurement exercise do not expressly provide for extension then such agreement may only be extended in exceptional circumstances, where legislation permits and best value issues have been addressed. Such decision shall be made by the relevant Corporate Director in consultation with the Monitoring Officer and City and County Treasurer.

25. Variations other than extension of contract Period/ Term

25.1 Works Contracts managed by the Council's in house Design & Construction Services

25.1.1 This rule 24.1 applies where:-

- (i) the Operational Manager (Design & Construction) acts on behalf of an internal client who has approved the design and agreed the budget
- (ii) the contract is within scope,
- (iii) the contract is within the estimated budget,
- (iv) the proposed variation is within the approved budget for the project,
- (v) variations of the type proposed were contemplated at the time the original procurement exercise was carried out and
- (v) the variation is permitted under the terms and conditions of the contract.

25.1.2 Where rule 25.1 applies then decisions to make any variations to the contract shall be made by:-

Operational Manager (Design & Construction) (in consultation with the Client Officer)	Variation (or aggregate value of all variations made to the Contract) of up to £250,000 or 25% of the original contract price (whichever is deemed lower)
Chief Officer (Client)	Variation (or aggregate value of all

	variations made to the Contract) of £250,001 - £500,000
Corporate Director (Client)	Variation (or aggregate value of all variations made to the Contract) of £500,001 - up £1m
Executive Decision	Variations of over £1m

25.1.3 For the avoidance of doubt no variation may be made to a contract to which this rule 25.1 applies if the proposed variation would mean the Works, Services or Goods to be added to the original contract are substantially different in scope or type to those contemplated by the original procurement exercise or would serve to take the contract outside the budget.

25.1.4 The reason this rule 25.1 provides for higher value variations to be authorised by the officers designated (compare with other types of variation) is that the project structure provides for a high level of segregation of duties within the Council, with the project manager reporting to the Operational Manager (Design & Construction) and there being a separate client Services area Authorised Officer.

25.2 Variations - within budget and original contract scope

25.2.1 This rule 25.2 applies where

- (i) the contract is within scope,
- (ii) the proposed variation is within the approved budget for the project,
- (iii) variations of the type proposed were contemplated at the time the original procurement exercise was carried out and
- (iv) the variation is permitted under the terms and conditions of the contract.

25.2.2 Where rule 25.2 applies then decisions to make any variations to the contract shall be made by:

Principal Officer	Variation (or aggregate value of all variations made to the Contract) of up to £30,000 or 20% (whichever is deemed lower)
Operational Manager	Variation (or aggregate value of all variations made to the Contract) £30,001 - £100,000

Chief Officer	Variation (or aggregate value of all variations made to the Contract) £100,001 - £250,000
Corporate Director	Variation (or aggregate value of all variations made to the Contract) £250,001 -£500,000
Executive decision	Variation (or aggregate value of all variations made to the Contract) above £500,001

25.2.3 For the avoidance of doubt no variation may be made to a contract to which this rule 25.2 applies if the proposed variation would mean the Works, Services or Goods to be added to the original contract are substantially different in scope or type to those contemplated by the original procurement exercise or would serve to take the contract outside the budget.

25.3 Whether or not it is a requirement of the contract, every variation (whether having a financial implication or not) will be authorised in writing by the Authorised Officer. The Authorised Office will keep detailed records of any such variation which shall be open to inspection by the City and County Treasurer. The authorisation will be issued before the variation is placed.

25.4 For variations approved by a Principal Officer, the Operational Manager shall monitor at least monthly the overall level of variations approved to gain assurance that they are correct and appropriate.

25.5 As soon as it becomes known or apparent (which ever is the earlier) that the total cost of a scheme including variations will or is likely to exceed the contract sum by more then 5% or £5000 whichever is the greater the financial services Group accountant must be informed for financial monitoring purposes and may inform the authorised officer of any further financial requirements to be complied with. Where the excess sum involves exceeds £50,000 a report must be prepared which must address the reasons for increased cost, an analysis of options considered to reduce cost to budget and the funding options considered to meet any budget shortfall.

25.6 Any variation to the original contract must be in the best interests of the Council and of continued delivery of Services.

26 Termination of Contract

- 26.1 For any contract exceeding £100k in value, early termination shall be approved by the appropriate Chief Officer in consultation with the City and County Solicitor. Contracts of a lesser value may be terminated early (prior to the expiry date) by agreement with the Contractor or in accordance with the termination provisions set out in the contract. Legal advice should be sought as appropriate. The Authorised Officer must inform the Procurement Manager when any contract is terminated and the reasons for the same.

27. Payments of Account

- 27.1 Payments on account will be made only upon certification by the person designated under the contract for that purpose or in any other case by an employee appointed for that purpose or a person engaged under a contract for Services by the Authority under which contract he/she is duly authorised to issue such certificates (together hereafter referred to as 'the appropriate person'). The appropriate person will keep detailed records of any such payment which shall be open to inspection by the City and County Treasurer. The Chief Officer of the relevant Services areas shall make arrangements to retain adequate details relating to all contract payments made to allow for a proper audit of all such payments. All payments made must comply with the process as set out in Financial Procedure Rules.