

Wolverhampton City Council

OPEN DECISION ITEM

To: **STANDARDS COMMITTEE**

Date **13 JANUARY 2011**

Originating Service Group(s) **CUSTOMER & SHARED SERVICES / OFFICE OF THE CHIEF EXECUTIVE**

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Title/Subject Matter **REVISION OF THE CONSTITUTION 2010/2011 – CONTRACT PROCEDURE RULES**

RECOMMENDATION

That the proposed amendments to the Contract Procedure Rules, as detailed in this report, be endorsed for approval at full Council on 2 February 2011.

1.0 PURPOSE OF REPORT

1.1 To note the outcome of a review of the Contract Procedure Rules in the May 2010 edition of the Council's Constitution and to endorse the revised draft for approval by full Council on 2 February 2011.

2.0 BACKGROUND

2.1 The Constitution Review Group, comprising the officers that co-ordinate the review of the Constitution on an ongoing basis, has met four times since the last annual review of the Constitution which was approved by Annual Council on 19 May 2010.

2.2 The Group has recently reviewed the Contract Procedure Rules in the Constitution. The outcome of this review is detailed below.

2.3 The current version of the Contract Procedure Rules rightly places emphasis on ensuring that the legal rules relating to public procurement are not broken however it is frequently criticised for not providing easy to follow guidance on precisely how to carry out effective and efficient procurement on behalf of the Council.

2.4 With this in mind, rather than making minor changes to the existing Contract Procedure Rules, a review of best practice in other authorities has been undertaken in order to find examples in use elsewhere that strike the right balance. This review has identified that the North West Centre of Procurement Excellence commissioned a firm of lawyers with expertise in public procurement, Eversheds LLP, to produce a model set of Contract Procedure Rules which are now used by authorities across the North West of England. It is Eversheds' model document that has formed the core of the proposed update to the Council's Contract Procedure Rules.

2.5 The changes that are being made are intended to:

- Remove scope for ambiguity or inconsistency
- Clearly define responsibilities
- Reflect the improved working practices and procedures that have already been implemented over the past years and allow for the introduction of modern procurement techniques such as e-tendering
- Enhance controls.

2.6 The draft version of the updated Contract Procedure Rules has been circulated to Officers with an involvement in procurement for comment & input and has been reviewed by the Special Advisory Group and Audit Committee to reach the version attached to this report.

3. RECOMMENDED CHANGES TO THE CONTRACT PROCEDURE RULES

3.1 The main changes are summarised below and the reasons for them. Appendix 1 provides a comparison between the current and revised versions (insofar as this is possible given the differences in format between the two documents).

3.1.1 Process Changes

The current Contract Procedure Rules specify five classes of contract, each with different procedures. The new Contract Procedure Rules specify four classes – removing the Class III Chief Officer Tendering procedure. This will be replaced by the introduction of a new e-tendering system over the next 12 months will allow

quotes to be obtained quickly using the system which also offers the benefit of a full audit trail which is been lacking under the current Class I and II procedures.

The use of the e-tendering system will also ensure greater standardisation of tendering and contract documents and a more effective audit trail of the processes followed to ensure that the procurement rules are complied with.

3.1.2 **Award of Contracts**

The current Contract Procedure Rules require all contract awards over £50,000 to be reported to Cabinet Panel (Resources). This is very much out of step with current practice in other Councils and it is proposed that this is raised to £100,000 in order to make the decision making process more responsive for lower level contracts.

3.1.3 **Guidance**

Members are asked to note that operational procurement guidance notes will also be issued to officers which will cover the detailed procedural matters that are currently included within Contract Procedure Rules. This is more consistent with the approach taken by other authorities and will allow these operational procedures to be updated more frequently to ensure that they provide more effective guidance to officers carrying out procurements on behalf of the Council.

4. **FINANCIAL IMPLICATIONS**

- 4.1 There are no direct financial implications arising from this report, although the amendments to the Constitution will strengthen the Council's governance arrangements. The ultimate aim of this is to improve the Council's ability to secure the best possible outcomes from available resources, and to be able to demonstrate that it has done so.
[DM/30122010/P]

5. **LEGAL IMPLICATIONS**

- 5.1 The Council is required by section 37 of the Local Government Act 2000 to have a Constitution which is kept up to date and which contains a copy of the Authority's standing orders relating to meetings and contracts, a copy of the Authority's Member's Code of Conduct and any other such information as the Secretary of State may direct.
[FD/30122010/O]

6. **ENVIRONMENTAL IMPLICATIONS**

- 6.1 There are no direct environmental implications arising from this report however the Contract Procedure Rules and the associated guidance provide a framework for ensuring that goods and services are sourced in a responsible and sustainable manner.

Schedule Of Background Papers

File GP 30/21 held in Legal Services.

Reports to Council Standards Committee and Special Advisory Group regarding the Constitution 2000-2010.

CONTRACTS PROCEDURE RULES

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Section A

1. Introduction

- 1.1 These rules are the Council's procedure rules for buying for the Council ("the Rules"). They do not apply to internal purchases or service provision, only where you need to buy something from outside the Council.
- 1.2 They are the rules by which we spend money on the supplies, services and works we need to deliver our services. The Rules are part of the Council's Constitution and have been produced as part of our approach to the way we buy things.
- 1.3 The difference between supplies, works and services is explained in the Glossary of Terms at the end of the Rules.
- 1.4 The Rules apply to any arrangement that results in a payment being made by the Council as well as to some types of contracts where a service is being provided for the Council which results in some income being generated for the Council.
- 1.5 The Rules also apply to the disposal of surplus goods and to concession contracts.
- 1.6 The Rules do not cover grants which the Council may receive or make (unless the grant is part of a contract for services).
- 1.7 The Rules do not apply to the purchasing of property but there is a separate section that details the Council's procedures in this area.
- 1.8 If you are in any doubt about whether the Rules apply, you ***must*** always check with the Corporate Procurement Manager.
- 1.9 The Council's need to obtain value for money is very important. It means that we must always consider how each procurement is consistent with the Council's duty to secure continuous improvement in what we do having regard to economy, efficiency and effectiveness. We therefore need to question whether we should be buying anything at all and if we do, whether we can do it best ourselves, or jointly, or rely on someone else to get better value.
- 1.10 Government and EU public procurement policy require that the Council must permit, and be seen to be permitting, freedom of opportunity to trade with the Council and to be open and transparent about how we do things.
- 1.11 If we fail in this duty, a supplier or contractor may have cause for a complaint against us and in the worse case may be able to claim damages.
- 1.12 The most important principles are transparency, openness and fair competition. Whenever we are buying things for the Council we must always act to promote competition.
- 1.13 Our Rules have three main purposes:
 - to comply with the obligations that govern the spending of public money such as the EU procurement regime;
 - to obtain Value for Money in the way we spend money, so that we may in turn offer better and more cost effective services to the public; and
 - to protect people who follow the Rules.

1.14 The Rules are:

- written in plain English; and
- reflect the fact that some of our spending is carried out by front-line services so the Rules help decisions to be made by the right people at the right level in the Council.

1.15 This document contains rules and refers to guidance. The Rules should be read alongside the Council's Procurement Guidance.

1.16 In these Rules certain sections are marked in bold, underlined and with an "*" symbol. These sections are compulsory and must always be followed whatever you are buying for the Council. Where there is no "*" the Rules should be regarded as best practice and should be followed wherever possible (otherwise you may need permission not to follow them).

2. Context

2.1 The Corporate Procurement Manager is responsible for keeping the Rules under review and monitoring compliance.

2.2 The European Union sets down (through a Treaty) what the obligations are on us at the Council when we are buying things. The key principle is to ensure that everyone in the marketplace who could provide the goods, supplies, works or services to the Council is able to do so if they wish.

2.3 Our Rules also need to be flexible for the future. We all now need to think about, for example, e - auctions, e - tendering, Dynamic Purchasing Systems or setting up a framework. Increasingly Councils are collaborating through joint procurements (i.e. buying the things you need with another department or another Council or Councils and sometimes other public bodies).

2.4 If you are buying larger or costly goods, works or services, the Rules for higher value orders and contracts are more strict than for those of lower value. This is so that the benefits of a more thorough, complex process are not outweighed by cost relative to the value of the supplies, services or works in question.

2.5 At the highest end of the value scale, we ***must*** follow full EU Public Procurement Directives, requiring us to observe certain additional procedures. In these cases you ***must*** consult with the Corporate Procurement Manager before you start buying what you need.

3. Compliance with Contract Procedure Rules

3.1 Every contract ***must*** comply with these Rules unless Cabinet Panel (Resources) or the Council has given specific or general dispensation to depart from the Rules.

3.2 For all Class 3 and 4 contracts where dispensation is required a report ***must*** be prepared specify the nature of the dispensation and the circumstances under which the departure has been justified and ***must*** be presented to a meeting the Cabinet Panel (Resources) or Council.

3.3 Any significant failure to comply with the requirements of these Rules ***must*** be:

- (a) notified to the Chief Executive, Chief Financial Officer, Monitoring Officer, Head of Audit and Corporate Procurement Manager;
- (b) presented to the Cabinet Panel (Resources) as soon as possible and identify the circumstances.

- 3.4 These Rules **must** also apply where consultants or partner organisations have been instructed to invite tenders on behalf of the Council for any contract.
- 3.5 Failure to comply with the Contracts Procedure Rules may lead to disciplinary action in the case of officers, or investigation by the Monitoring Officer and/or the Standards Committee in the case of members.
- 3.6 It is the responsibility of Chief Officers to ensure that all staff reporting to them, directly or indirectly, are aware of and comply with the Contracts Procedure Rules.

B Requirements for All Contracts

1. The Competitive Process

- 1.1 EU law and Government policy says that we ***must*** always make sure that we are offering the opportunity to provide supplies works or services to the Council to the whole market to ensure competition. The assumption is that the Council will ensure that it achieves value for money by carrying out a competitive tendering exercise.
- 1.2 If your contract is a very high value one (i.e with a value of more than the relevant threshold) then you ***must*** follow the section on Class 4 High Value Procurements.
- 1.3 The value of a contract means the estimated total monetary value over its full duration, including any extension options (**not the annual value**).
- 1.4 Where the duration of a contract is indeterminate, this should be taken to be the estimated value of the contract over a period of four years. Contracts should not be artificially split to avoid the values.
- 1.5 The thresholds at which the different rules apply are summarised in the Contracts Procedures Summary.

2. Who Can Buy Things?

- 2.1 A Chief Officer should ensure that procurement is undertaken by their procurement professionals or, where departments or functions have no specialist capability, by authorised persons who can demonstrate skills and knowledge appropriate to the task.
- 2.2 Each Chief Officer ***must*** keep a list of authorised persons who can enter into Class 2,3 and 4 contracts on his/her behalf, specifying a maximum financial limit for each transaction against each name.
- 2.3 The list ***must*** be copied to the Corporate Procurement Manager.
- 2.4 Before starting a procurement process, we need to make sure that we have carefully identified the need and fully assessed the options for satisfying it. Before you start, you ***must*** consider:
 - what is important to the Council in this procurement? Do you just need the supplies, works or services? Or are there other things you want to bring about (for example, improved environmental performance or job creation). In certain cases the procurement regime could help achieve these objectives but you ***must*** consult with the Corporate Procurement Manager;
 - does a corporate contract already exist for the supplies, works or services being considered? The use of corporate contracts has the advantage of ensuring VFM, standard terms and conditions are used and compliance with EU procurement regulations are fully addressed.
 - can you buy what you need with another department or another Council? If you think you could save the Council money or **achieve other advantages** if you bought what you need with someone else, consider if there is an existing framework arrangement or contract which you can use. This framework or contract could be one already set up by the Council, another Council, a joint purchasing body (Black Country Purchasing Consortium or ESPO) or run centrally by Government (such as Buying Solutions or Catalist).

- alternatively, there may be some kind of recognised purchasing consortia in place whereby members of the consortia may utilise the purchasing arrangements in order to procure goods and/or services. Note that where there is a consortia in place, you do not have to comply with these Rules, however, strictly only the goods and/or services that are the subject matter of the consortia arrangements may be procured. Where the goods and/or services are outside the scope of the consortia arrangements you must utilise some other method of procurement in accordance with this Rules. The Corporate Procurement Manager can advise you further on this; and
- will you or your partners be buying the same thing more than once? If so, it might be better to create a framework agreement so you can set up suppliers to provide you with the supplies, works or services you need when you need them. Again, could you set up a framework with other departments or Councils or is there already a joint purchasing organisation which could supply your needs?

2.5 **If following consideration of alternative buying solutions, a joint procurement or other form of collaborative procurement is to be used with another Council, the conduct of the procurement should be on terms no less rigorous than the requirements of these Rules for any Council procurement. The Corporate Procurement Manager of the lead authority *must* certify in writing to all participating Councils and organisations that no less rigorous a process has been undertaken, prior to the contract start date.**

2.6 Should you decide that the goods and/or services are likely to be required in the future by the Council, it may be that the best way in which to buy the goods and/or services is by setting up a framework agreement. There are many types of contracts which will be suited to a framework arrangements and it is important that you see the Corporate Procurement Manager before commencing the procurement to ensure that the type of contract being used is most suitable.

2.7 For major, specialist, higher value or important contracts for example, those which involve the transfer of Council employees to a contractor under a PFI or PPP arrangement, Chief Officers *must* following consultation with the Corporate Procurement Manager:

- seek a decision from the Cabinet Panel (Resources) as to whether tenders are to be invited under the Chief Officer's recommended contract strategy;
- once tenders have been evaluated, *must* seek a further decision from the Cabinet Panel (Resources) as to whether a contract is to be awarded and to whom; and

2.8 Chief Officers *must* always consult with the Corporate Procurement Manager to consider if Members should be involved in decisions during the tender process, for example by determining the contract award criteria. This will be more relevant for big purchases and procurements including a PFI project.

3. Defining the Need

3.1 As a minimum, you *must* clearly and carefully specify the supplies, services or works to be supplied, the agreed programme for delivery and the terms for payment together with all other terms and conditions that are agreed. You also need to ensure that you will have the funds in the budget to pay for them.

3.2 This means you *must* decide in advance of the competitive process the size, scope, and specification of the supplies, service or works required. If you are buying with someone else, you *must* decide this scope with your partners first.

3.3 *You should always consider the Procurement Guidance and you ***must*** refer to and abide by any other Council policies which could apply to what you want to buy. If in doubt, you ***must*** check with the Corporate Procurement Manager.*

4. Aggregation

4.1 You ***must*** never split the value of contracts.

4.2 Wherever possible, the Council should make its purchases in the form of a single large contract in preference to a series of smaller contracts.

4.3 You ***must*** calculate the value of the separate contracts of the same type over a short period together for the purpose of determining if the value of the contract falls within the threshold. (See also 1.3 and 1.4 above).

5. Contract Strategy

5.1 Once the need is determined, you ***must*** determine a contract strategy by which the supplies, works or services will be acquired.

5.2 This means taking a step back from the traditional procurement process and assessing the options particularly to the provision of services.

5.3 To obtain value for money, you ***must*** consider options for the delivery of supplies, works or services. The options for supplies, works or services are:

- not buying the supplies, having the works done or providing the services at all;
- providing the goods, works or services ourselves (for example, by taking surplus supplies from another department or using their staff);
- getting someone else to provide the ongoing supplies, works or service ("outsourcing"/ provision by the private, voluntary, "third" sectors or another local authority or public body);
- providing the supplies, works or services in partnership with someone else (with the private, voluntary, "third" sectors or another local authority or public body);
- by commissioning jointly with another Council; and / or
- shared service delivery with another Council ie by delegating our functions to another Council, setting up a Joint Committee or setting up a new company to deliver the services for us or with other authorities jointly.

6. Conditions of Contract

6.1 All transactions ***must*** use an appropriate model form of contract approved by the Corporate Procurement Manager or a form determined by the Chief Legal Officer.

6.2 For all contracts for services estimated at a value over £25,000 where the services are of an unusual or complex nature, including PFIs or PPPs, the Head of Legal Services ***must*** be consulted to produce a suitable set of conditions of contract (with external advisors if necessary) before inviting tenders.

6.3 Where a contract is considered to be of a strategically important or politically sensitive nature or where the extended **limitation period** would be of value, the contract ***must*** be in writing and executed under seal following .

6.4 The Corporate Procurement Manager ***must***:

- keep a record or list of all model sets of conditions of contract that gives details of when the conditions were last updated, who is responsible for their updating and contact references;
- review all current conditions of contract, at least every 2 years, or when new legislation is introduced;
- monitor and review conditions of contract issued by other organisations from time to time;
- keep a record of all framework arrangements and joint working arrangements with other departments Councils and other organisations and update this record on a regular basis and no less than twice per year;
- maintain the Council's records set out in the relevant section on the intranet;
- ensure that information is circulated to and appropriate access for Chief Officers is given to Catalyst, local or joint framework arrangements and call-off contracts or any similar or replacement scheme.

7. Payment Terms

- 7.1 All contracts for the supply of goods or services ***must*** be subject to the Council's standard payment terms – **monthly in arrears**. Any contracts which require special financing arrangements these ***must*** be agreed by the Chief Financial Officer.
- 7.2 Where a contract provides for payments to be made by instalments following the delivery of services or completion of work, a cost plan ***must*** be prepared for such contracts and payments monitored against that plan.

8. Parent Company Guarantees

- 8.1 The person buying for the Council ***must*** consult the Corporate Procurement Manager on all tenders where the total value exceeds £100,000 to determine if a bond, parent company guarantee or other security is required.

C Contract Procedures Summary

1. Processes to be Used

Class 1 Contracts - Low-value transactions	£0 - £5,000	At least one written quotation *must* be obtained from a supplier before a formal purchase order is issued. The purchase order *must* contain the standard form of terms and conditions of contract between the Council and the supplier.
Class 2 Contracts- Intermediate-value transactions	£5,001 - £50,000	At least three written quotations *must* be invited before a purchase order or contract is entered into, specifying the supplies, services or works and setting out prices, terms and conditions of contract and terms of payment.
Class 3 Contracts - Tender procedures for high value transactions (not over the EU thresholds)	£50,001 – EU threshold	A formal tender process *must* be conducted in the manner outlined in the requirements for Class 3 Contracts.
Class 4 - Procedures governed by the EU Directives	Over EU threshold	A formal tender process *must* be conducted in compliance with Public Contracts Regulations 2006.

2. EU Thresholds

The thresholds are:-

	Euro	£
Public Supplies and Services Contracts	193,000	156,442
Works Contracts	4,845,000	3,927,260

These thresholds apply from 1 January 2010 to 31 December 2011.

3. Procedure for Letting Contracts

- 3.1 Provided expenditure is in respect of matters within budget and is equal to or less than budget estimates.

- (a) A Chief Officer has authority to enter into all Class 1 contracts without reference to the Executive.
- (b) A Chief Officer has authority to enter into all Class 2 contracts provided the quotation procedure is followed without reference to the Executive.
- (c) A Chief Officer has authority to enter into all Class 3 contracts below £100,000 provided the tender procedure is followed without reference to the Executive. Class 3 contracts above £100,000 shall only be entered into provided the Cabinet Panel (Resources) have approved the award of such contract.
- (d) Class 4 contracts shall only be entered into provided:
 - (i) the tendering procedure and EU procurement procedure, where applicable, is followed in relation to such contracts;
 - (ii) the Cabinet Panel (Resources) have approved the award of such contract.

D Class 1 Contracts - Low-Value Transactions

- 1.1 For contracts valued at or below £5,000 at least one written quotation ***must*** be obtained from a supplier before a formal purchase order is issued specifying the supplies, services or works and setting out prices and terms of payment unless a framework already exists. If a framework already exists then you ***must*** follow the procedure set out in that framework.
- 1.2 Your purchase order ***must*** contain the standard form of terms and conditions of contract between the Council and the supplier. A quotation and a purchase order will create a legally binding contract. The purchase order is used to formalise the terms of the contract.
- 1.3 Emailed quotations are acceptable in these cases but copies ***must*** be retained on the relevant file. The file should also evidence that the quotation provides Value for Money.

E Class 2 Contracts- Intermediate-Value Transactions

- 1.1 For contracts valued over £5,000 but at or below £50,000, at least three written quotations ***must*** be invited before a purchase order or contract is issued, specifying the supplies, services or works and setting out prices, terms and conditions of contract and terms of payment.
- 1.2 Emailed quotations are acceptable in these cases but copies ***must*** be retained on the relevant file.
- 1.3 If only one quotation is received you ***must*** to seek some more quotations or obtain an **exemption** from the Rules in accordance with section I. Receipt of two comparable quotations will be sufficient.
- 1.4 Wherever possible the suppliers invited to provide the quotation should be found from the Council's e-tendering system or www.finditinwolverhampton.co.uk

2. Receiving and Opening Quotes

- 2.1 Every response to an invitation to quote should be delivered:
 - no later than the time specified for submission of quotes in the invitation to quote (and addressed to the person at the place specified in the invitation to quote);
 - on hard copy with CD ROM (if required), or via the Council's e-tendering system; and
 - with no labelling or other markings on the packet that identifies the supplier.

3. Evaluating Quotes

- 3.1 Where written quotations are invited for contracts valued at or below £50,000 then the bidder submitting the lowest price compliant bid ***must*** be awarded any resulting contract, unless alternative pre-determined criteria are detailed in the document used to invite bids awarded on that basis.

4. Awarding Contracts and Audit Trails

- 4.1 The results of the quotation evaluation process ***must*** be recorded in writing.
- 4.2 A contract ***must*** only be awarded and signed by a person authorised to do so, who ***must*** ensure that the appropriate budget holder has the funds in place to sustain the contract prior to award.
- 4.3 Chief Officers should ensure that proper records of all procurement activity are retained in electronic or hard-copy format as appropriate.
- 4.4 For all transactions valued at or over £25,000, brief details ***must*** be passed to the Corporate Procurement Manager.

F Class 3 Contracts - Tender Procedures for High Value Transactions (not over the EU thresholds)

- 1.1 For transactions valued at over £50,000 a formal tender process ***must*** be conducted in the manner outlined below.
- 1.2 For all transactions valued above £50,000, prior approval of the proposed tender process ***must*** be sought from the Corporate Procurement Manager.
- 1.3 Where tenders are to be invited for a high value contract (but not over EU procurement thresholds) the procedure to be followed ***must*** be determined prior to advertising and ***must*** be one of the following:
 - open tender (all interested contractors submit a tender in response to an advertisement);
 - restricted procedure (expressions of interest from interested contractors in response to an advertisement, with a selection of those contractors being invited to submit a tender);
 - where a Framework arrangement (including approved lists) exists in respect of the subject matter, tenders shall be invited using the Framework arrangement from capable contractors having regard to the principles of Value for Money.

2. Receiving and Opening Tenders

- 2.1 Every response to an invitation to tender for a transaction valued over £50,000 should be delivered:
 - no later than the time specified for submission of tenders in the invitation to tender and addressed to:
Wolverhampton City Council
Customer and Shared Services
Legal Services (Reception 23)
2nd Floor
Civic Centre
St Peters Square
Wolverhampton WV1 1RG;
 - on hard copy with CD ROM (if required), or via the Council's e-tendering system; and
 - with no labelling or other markings on the packet that identifies the tenderer.
- 2.2 Where the tenders are being sought using the Council's e-tendering system the requirements of the system for openness and transparency must be complied with.
- 2.3 The opened tenders ***must*** be recorded on a list of tenders invited.

3. Evaluating Tenders

- 3.1 For contracts valued over £50,000 a more complex Value for Money tender evaluation procedure based on the identification of the Most Economically Advantageous Tender ("MEAT") ***must*** be used. There are some situations, however, where MEAT will not be an appropriate method of evaluation - usually where the only discerning factor between products and/or solutions will be that of price (e.g. where you are buying stationery or other standard items). It is unlikely that providers for Services or Works could be selected on price alone as these will often require more subjective evaluation

techniques. While criteria for evaluation is at the discretion of the Council care needs to be taken that using a lowest price method of evaluation rather than using MEAT is appropriate for the procurement.

3.2 This evaluation involves scoring tenders objectively by a panel of three or more officers and/or independent experts using criteria which ***must***:

- be pre-determined and listed in the invitation to tender documentation in order of importance;
- be strictly observed at all times throughout the tender process;
- reflect the principles of Value for Money;
- include price;
- consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance, energy use, decommissioning and disposal should be taken into account;
- be capable of objective assessment;
- be weighted according to their respective importance;
- include, where applicable, the quality of the tenderers' proposals to accept a transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE); and
- avoid discrimination or perceived discrimination on the basis of nationality, or other cause contrary to any of the Council's policies.

3.3 Where this evaluation methodology is used, any resulting contract ***must*** be awarded to the tenderer which submits the most economically advantageous tender, i.e. the tender that achieves the highest score in the objective assessment.

4. Awarding Contracts and Audit Trails

4.1 For Class 3 contracts under £100,000 the results of the tender evaluation process ***must*** be recorded in writing.

4.2 For Class 3 contracts over £100,000 the results of the tender evaluation process ***must*** be recorded in writing and ***must*** be reported to a meeting the Cabinet Panel (Resources) for acceptance, this will ensure that correct process has been followed and the budget holder has the funds in place to sustain the contract prior to award.

4.3 A contract ***must*** only be awarded and signed by the Chief Legal Officer.

4.4 Chief Officers should ensure that proper records of all procurement activity are retained in electronic or hard-copy format as appropriate.

4.5 For all Class 3 contracts brief details of the contract awarded ***must*** be passed to the Corporate Procurement Manager.

G Class 4 - Procedures above the EU Threshold or Governed by the Public Contracts Regulations 2006

1.1 Contract values above which procedures governed by the EU Directives apply are currently (2010-12):

For supplies and services (including goods and consultancy services):	£156,442
For works:	£3,927,260

1.2 Please note that these thresholds are amended bi-annually in January and you ***must*** refer to the Corporate Procurement Manager to check the latest thresholds.

1.3 If the contract has a value over this threshold you ***must*** consider whether you ***must*** procure under the Public Contracts Regulations 2006.

1.4 The Regulations contain provisions relating to submitting of notices and other documents electronically.

1.5 The contract ***must*** be tendered under the Open, Restricted, Competitive Dialogue (for particularly complex contracts) or, in exceptional circumstances, the Negotiated procedure.

1.6 The EU Directives and UK Regulations are very long and only the principal requirements can be given here. If in doubt, refer to the Guidelines and advice should be sought from the Corporate Procurement Manager.

1.7 For each contract, except where indicated below, a Contract Notice ***must*** be published in the Supplement to the Official Journal of the European Union (OJEU). Advertisements published additional to this:

- ***must*** not appear in any form before a Contract Notice is transmitted to OJEU; and
- ***must*** not contain any information additional to that contained in the Contract Notice in OJEU.

1.8 All Contract Notices regarding contracts which name Wolverhampton City Council must be authorised by the Corporate Procurement Manager prior to publication.

1.9 Minimum timescales relating to tender procedures governed by the EU Directives and these ***must*** always be followed.

1.10 Where a Prior Information Notice (PIN) announcing a forthcoming Contract Notice has been sent to OJEU between 52 and 365 days before the Contract Notice is sent, reduced timescales may apply.

1.11 Advice ***must*** be sought from the Corporate Procurement Manager at the earliest opportunity before commencing a tender process governed by EU Directives particularly when considering the use of either the Competitive Dialogue or the Negotiated Procedure.

2. Use of the Competitive Dialogue Procedure Governed by EU Directives

1.1 Under EU Directives, the Competitive Dialogue Procedure may be used for contracts valued at or over EU thresholds in certain circumstances where:

- we wish to award a particularly complex contract and think that the use of the open or restricted procedures will not allow the award of that contract; or
- the contract is for a service and the precise nature of the service required cannot be clearly specified or accurately priced (e.g. some PFI or PPP contracts, bespoke software applications, insurance services, intellectual and artistic services).

2.2 The Negotiated Procedure should not now be used (except in very specific circumstances) for the procurement of particularly complex projects.

2.3 If in doubt, you ***must*** contact the Corporate Procurement Manager.

3. Receiving and Opening Tenders

3.1 Every response to an invitation to tender for a transaction valued over the EU threshold should be delivered:

- no later than the time specified for submission of tenders in the invitation to tender and addressed to:

Wolverhampton City Council
Customer and Shared Services
Legal Services (Reception 23)
2nd Floor
Civic Centre
St Peters Square
Wolverhampton WV1 1RG;

- by hard copy(ies) with CD ROM (if required), or via the Council's e-tendering system; and
- with no labelling or other markings on the packet that identifies the tenderer.

3.2 Where the tenders are being sought using the Council's e-tendering system the requirements of the system for openness and transparency must be complied with.

3.3 The opened tenders ***must*** be recorded on a list of tenders invited.

4. Evaluating Tenders

4.1 For all contracts governed by EU Directives, a more complex Value for Money tender evaluation procedure based on the identification of the Most Economically Advantageous Tender ("MEAT") ***must*** be used. There are some situations, however, where MEAT will not be an appropriate method of evaluation - usually where the only discerning factor between products and/or solutions will be that of price (e.g. where you are buying stationery or other standard items). It is unlikely that providers for Services or Works could be selected on price alone as these will often require more subjective evaluation techniques. While criteria for evaluation is at the discretion of the Council care needs to be taken that using a lowest price method of evaluation rather than using MEAT is appropriate for the procurement.

4.2 This evaluation involves scoring tenders objectively by a panel of three or more officers and/or independent experts using criteria which ***must***:

- be pre-determined and listed in the invitation to tender documentation in order of importance;
- be strictly observed at all times throughout the tender process;
- reflect the principles of Value for Money;

- include price;
 - consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance, energy use, decommissioning and disposal should be taken into account;
 - be capable of objective assessment;
 - be weighted according to their respective importance;
 - include, where applicable, the quality of the tenderers' proposals to accept a transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE); and
 - avoid discrimination or perceived discrimination on the basis of nationality, or other cause contrary to any of the Council's policies.
- 4.3 Where this evaluation methodology is used, any resulting contract ***must*** be awarded to the tenderer which submits the most economically advantageous tender, i.e. the tender that achieves the highest score in the objective assessment.

5. Awarding Contracts and Audit Trails

- 5.1 The results of the tender evaluation process ***must*** be recorded in writing and ***must*** be reported to a meeting the Cabinet Panel (Resources) for acceptance, this will ensure that correct process has been followed and the budget holder has the funds in place to sustain the contract prior to award.
- 5.2 A contract ***must*** only be awarded and signed by the Chief Legal Officer.
- 5.3 Chief Officers should ensure that proper records of all procurement activity are retained in electronic or hard-copy format as appropriate.
- 5.4 For all Class 4 contracts brief details of the contract ***must*** be passed to the Corporate Procurement Manager.

6. Standstill Period

- 6.1 For **all** contracts with a total contract value in excess of £150,000 or tendered under EU Directives, a ten-day minimum 'standstill period' ***must*** be observed between the decision to accept the contract and contract conclusion. Once the decision to award a contract is made, each tenderer ***must*** be notified in writing on the outcome of the tender process. This notification ***must*** include:
- Award Criteria
 - Name of successful tenderer
 - Summary of reasons for decision:
 - Characteristics and relative advantages of successful bid
 - Successful tenderers score
 - Own score
 - Precise statement of standstill period
- 6.2 There ***must*** be a minimum of 10 calendar days between the despatch of this notification and the conclusion of the contract. Special rules apply where a tenderer requests a debrief on the tender process. Even if a tenderer asks for a debrief outside of the standstill period we are still obliged to provide this.
- 6.3 In this instance, advice ***must*** be sought from the Corporate Procurement Manager at the earliest opportunity.

7. Contract Award Notice

- 6.1 All contracts awarded above the EU thresholds, whether Part A or Part B Services, **must** be announced by means of a Contract Award Notice in OJEU transmitted no later than 48 calendar days after the date of award.

H Special Contract Types

1. Framework Agreements

- 1.1 Framework agreements for supplies and services ***must*** be used where they exist and provide value for money, regardless of value.
- 1.2 Framework agreements are agreements with suppliers for the provision of supplies, works or services on agreed terms for a specific period for estimated quantities against which orders may be placed if and when required during the contract period. They offer benefits of bulk-buying, improved service and reduced administration costs over the period of the arrangement.
- 1.3 A framework agreement may have the option for you to hold a “mini - competition” with all of the suppliers on the framework when you come to buy for the Council.
- 1.4 You ***must*** investigate whether call-off contracts or frameworks are relevant in your own case as you could get better value for the Council by using an existing framework let by a “contracting authority”; other Council, Consortium (BCPC, ESPO, YPO etc.) or central government agency Buying Solutions and that you can properly use them.
- 1.5 If there is not a framework already in place (or if one does not exist with partners which you can use) then you ***must*** consider if it would be better value to set up a framework. This is likely where you are going to need to buy the same or similar things again in the future. Guidance on how to set up a framework is in the Procurement Guidance and you should liaise with the Corporate Procurement Manager.
- 1.6 Citywide arrangements for routine supplies and services and department-specific contracts, e.g. “block contracts” placed by Social Services with care providers, “term contracts” for property maintenance (such as gas servicing) and “term tenders” for highways maintenance would fall into this definition.

2. Consultancy Contracts

- 2.1 Contracts for the supply of Consultancy services are fully covered by the Contracts Procedure Rules and these ***must*** be followed in the appointment of all consultants, failure to do so may result in disciplinary action being taken. If you have a query as to whether or not a potential appointment comes within the ambit of the Rules contact either the Chief Legal Officer or Corporate Procurement Manager.
- 2.2 For clarity a table highlighting the differences between Consultants and Interim Managers is included at the end of this section.
- 2.3 You ***must*** ensure the following are complied with: -
 - Any consultancy contracts where the total contract value is over the EU threshold (presently £156,442) are subject to EU Procurement Rules and therefore you will need to consult with the Corporate Procurement Manager before any procurement process is undertaken.
 - Where any extension to an existing contract is required the requirements of the Contracts Procedure Rules ***must*** be complied with. If you are in doubt contact the Corporate Procurement Manager.
 - Where a consultancy contract initially below the EU threshold (presently £156,442) and not subject to an EU procurement process is extended and the value now exceeds the threshold a notice must be placed in the Official Journal of

European Union. Therefore you will need to seek advice from the Corporate Procurement Manager who will administer the appropriate process.

- 2.4 Full details of the proposed contracts for all management consultants will need to be forwarded to the Chief Legal Officer in order that proper contract documentation can be drawn up and executed on behalf of the Council.

WHAT'S THE DIFFERENCE BETWEEN AN INTERIM MANAGER & A MANAGEMENT CONSULTANT?

However closely they work with the client - management consultants are ultimately responsible & accountable to the consultancy company that supplies them or themselves if self employed. An Interim Manager becomes a full member of the management team within the council occupying a vacant post in the establishment for the duration of the contract.

Consultants work in a rather more advisory capacity with staff, whereas Interim Managers take line responsibility.

An Interim Manager is involved in the day to day running of the business, making decisions, effecting change, managing staff etc, whilst a consultant will get involved in planning and advising the management team.

Contracts for Interim Managers are not subject to EU Procurement Regulations but if the contract is for above the EU threshold (presently £140,000) a contract award notice must be published.

3. Concession Contracts

- 3.1 A Concession Contract is used where the Council wishes to engage a party to provide a service within the Council area, consideration for which is in the form of the party ("the concessionaire") being given a right to charge the public for the services being provided.
- 3.2 The EU procurement rules do not apply to public works concessions for which the estimated value is under the relevant EU threshold and there are a number of exemptions where a public works concession contract is proposed.
- 3.3 Where the concessionaire intends to sub-contract the performance of services the concessionaire may in certain circumstances fall within the scope of the EU procurement rules. In all cases, where the concessionaire is procuring goods and/or services as a part of the concession contract, any procurement should be carried out in accordance with these Rules.
- 3.4 Advice from the Corporate Procurement Manager ***must*** be sought before engaging in any procurement relating to a concession contract.

I Exemptions, Extensions and Variations

1. Exemptions from the Rules

- 1.1 Exemptions from these Rules ***must*** be obtained in advance in accordance with the following procedure.
- 1.2 An exemption cannot be given for an EU procurement (for more information see Class 4).
- 1.3 For Class 1 and Class 2 contracts an exemption may be agreed by the relevant Service Group Director following the consideration of a written report by the Head of Audit and the Corporate Procurement Manager that the exemption is justified because:
 - the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of the Rules is justifiable; or
 - the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
 - there are other circumstances which are genuinely exceptional.
- 1.4 A record of the decision approving an exemption and the reasons for it ***must*** be kept and an entry made in the appropriate register.
- 1.5 For Class 3 contracts an exemption may only be agreed following the submission of a report requesting a dispensation from following the rules by the Cabinet Panel (Resources) and it has approved the award of such contract.
- 1.6 You ***must*** follow the Procurement Guidance if you do not follow the Rules. If you do not follow the Guidance and enter into a contract on behalf of the Council this could be a disciplinary offence.
- 1.7 Individual placements for permanent Residential and/or Nursing Care for either Children or Adults are expressly excluded from the Competition Requirements of these Rules. Appropriate contracts must be put in place and agreed by the Chief Legal Officer to ensure that the Council's position is protected.

2. Transfers of Contracts

- 2.1 In appropriate circumstances the Council may agree to transfer a contract.
- 2.2 This decision ***must*** be taken by the Cabinet Panel (Resources) for contracts of a value in excess of £250,000 (two hundred and fifty thousand), and by the relevant Service Group Director for contracts of a value up to £250,000 (two hundred and fifty thousand).
- 2.3 The Corporate Procurement Manager ***must*** hold a complete record of all exemptions and transfers and submit a quarterly report to the relevant Executive/Committee meeting.

3. Conflicts of Interest

- 3.1 Any interest which may affect the award of a contract under these Rules ***must*** be declared. Every officer entitled to buy supplies services or works ***must*** make a written declaration of interests and update it immediately when an interest changes.

- 3.2 The Monitoring Officer ***must*** either certify such interests as being acceptable or take any necessary action in respect of potential conflicts of interest and the officer should take no part in the award of a contract by the Council.
- 3.3 No gifts or hospitality should be accepted from any tenderers to any contract being let by the Council and to do so is a disciplinary offence. You ***must*** inform the Corporate Procurement Manager if you are dealing with a contract for the Council and have been offered such a gift or hospitality.

4. Variations and Extensions

- 4.1 Subject to any statutory restrictions and compliance with these Rules, a Chief Officer may authorise the following extensions and variations to an existing Class 1 or 2 contract either:
- an extension for a particular period provided for within the terms and conditions of the contract (but subject to satisfactory outcomes of contract monitoring); or
 - a single extension of the contract by up to nine months, or half the contract term (whichever is less); and
 - any other variation, and if relevant a consequent change in price, determined in accordance with the contract terms.
- 4.2 In any other circumstances the Chief Officers may vary or extend a contract providing that to do so is consistent with the provisions of Financial Regulations.
- 4.3 For contracts where the contract sum together with the extension exceeds the Class 3 limit an extension may be agreed by the relevant Service Group Director following the consideration of a written report by the Head of Audit and the Corporate Procurement Manager that the extension is justified.
- 4.4 Contracts procured under the EU Regulations ***must*** not be extended or varied without consulting the Corporate Procurement Manager and the Guidance.

J Disposal of Surplus Goods

- 1.1 Chief Officers are responsible for the disposal of their own surplus goods.
- 1.2 The same competitive process for buying supplies, services and works ***must*** also be applied to the disposal of surplus goods.
- 1.3 In principle:
 - competitive bids need not be invited if the goods are valued at or below £5,000 but you can do so if you wish;
 - if the estimated value of the goods is greater than £5,000 and at or below £50,000 then a minimum of three bids ***must*** be invited; and
 - if the estimated value of the goods is greater than £50,000 then a minimum of four sealed bids ***must*** be invited.
- 1.4 If you are in any doubt, professional advice ***must*** be sought when making valuations.
- 1.5 For higher value items, you can consider sale by auction instead of sealed bids, but care should be taken to evaluate the full cost of the process and the commission payable.
- 1.6 The highest value unconditional bid received should usually be accepted unless, in the view of the Corporate Procurement Manager, a conditional bid offers better value to the Council.

K General Procedure for Land Contracts

- 1.1 These Rules apply only to the requirements to fix values for disposals and acquisitions of land and interests in land. All values for disposal and acquisition of land and interests in land ***must*** be fixed in order to secure the highest value in relation to disposal of land or any interest in land or the lowest value in relation to the acquisition of land or any interest in land.
- 1.2 The advice of the Head of Property Services ***must*** be sought for all land transactions. Whenever such advice is obtained it ***must*** be followed unless the Council determine otherwise and in any such case the reason therefore shall be recorded in the minutes of the appropriate Cabinet Panel (Resources).

2. Low and Intermediate-value Property transactions

- 2.1 The Head of Property Services is responsible for the following property transactions:
 - Agreement of rent reviews up to £50,000 pa
 - Agreement of compensation following Compulsory Purchase of land.
 - The grant or taking of annual wayleaves.
 - Disposal of land/property by licence/lease of up to 25 years and at an annual rent up to £50,000.
 - Acquisition of property by licence/lease up to 25 years and annual rent up to £50,000, subject to agreed service requirement and provision in the budget.
 - Minor disposals by freehold sale or long lease at a premium, easement, dedication, release of covenants or other legal interest up to a value of £50,000.
 - Disposal of freehold sale, long lease, easement, dedication, release of covenants or other legal interest for a capital sum at a value not exceeding £150,000 where principle of disposal has been previously agreed by Cabinet.
 - Sales of freehold reversion under Leasehold Reform Act 1967.
 - Acquisition of property in accordance with agreed policy and subject to provision in budget.
 - Surrender of leases for Estate Management needs or where financial difficulty is demonstrated.
 - Variations to lease covenants/clauses, settling of rent above £50,000 pa under rent reviews, licence/lease renewals in excess of 7 years and variations to existing agreements where financial difficulty is demonstrated.

3. Higher-value Property transactions

- 3.1 All other property acquisitions and disposals ***must*** be recorded in writing and ***must*** be reported to a meeting the Cabinet Panel (Resources) for acceptance including:
 - Acquisition and disposal of property by licence/lease up to 25 years and at an annual rent of £50,001 up to £100,000.

- Disposal of property by freehold sale, long lease, easement, dedication, release of covenants or other legal interest for a capital sum from a value of £150,001 up to a value of £350,000, where principle of disposal has previously been agreed by the Cabinet Panel (Resources).

L Selection of Tenderers for Works Contracts below the EU Threshold

- 1.1 For works, construction and civil engineering related contracts below EU level generally there will be no advertisement and firms will be invited to tender from those registered on Constructionline. However where contract is highly specialised or there may be a limited number of suppliers that can carry out the work required an advertisement maybe placed and a tendering exercise undertaken.

2. Health and Safety

- 2.1 As part of the Council's wider commitment to promoting recognised health & safety standards in the construction industry we support the use of the Contractors Health and Safety Scheme (CHAS).
- 2.2 The CHAS assessment scheme provides a clear, fair, and transparent process for use in health and safety pre-qualification.

3. The Selection Process

- 3.1 Firms ***must*** be registered with Constructionline for the work category required and are shown on Constructionline as being CHAS Accredited to be considered.
- 3.2 Firms must have a Constructionline Contract Value of at least estimated value of the contract or the annual value for a term contract.
- 3.3 A policy of rotation of firms invited to tender for projects operates on a scheme by scheme basis.
- 3.4 The minimum number of firms invited to tender will be 6. This criterion applies provided there are a sufficient number of firms in the particular category, if not then all firms will be asked to tender.
- 3.5 Each tender list will be formed on the basis of:
- 2 firms based on previous good performance on contracts of similar scope and value
 - 2 firms selected based on concerns relevant to the scheme e.g. the size of firm, economic drivers, sustainability etc.
 - The remainder selected at random from the Constructionline list as being able to work on the contract as detailed above.
- 3.6 All firms in the relevant category may be invited to respond to a questionnaire so that a tender list can be drawn up entirely on the basis of selection based on the marking of replies to the questionnaire.

Glossary

Council - means the Council, the Executive, a Standing Body or person(s) acting in accordance with authority delegated by the Council.

Contract - means any agreement between the Council and a third party for the provision of any goods, materials, services or works for whatever value. All contract documentation shall be worded and in such form so as to protect the Council's interests, in accordance with advice from the Chief Legal Officer and standard contract documentation.

Contract price in relation to all contracts - means the aggregated cost (including fees) for the whole of the period of the contract. Where a Chief Officer knows that a similar service, supply or type of work is to be ordered during a twelve month period, this should be taken into account and used for the purposes of the estimated contract price.

Any transaction for the supply or disposal of goods or materials; provision of services or the execution of works which forms part of a larger transaction shall not be regarded as a separate contract but shall be included in the calculation of the contract price.

Chief Officer— is a Director or Chief Officer who has been delegated (specifically or generally) to deal with any matter in accordance with a scheme of delegations made by the Director.

Budget - means Revenue Budgets, Capital Budgets and other spending programmes approved by the Council.

Term Contract - is a contract for the continuous or periodic execution of works or the supply of goods or services over a defined period of time.

A **public supply contract** is a contract:

For the purchase of "goods" ("Goods" do not include land "or the product of an activity" but does include installation), or

The hire of "goods" with or without the sitting or installation of those "goods".

A **public works contract** is a contract:

For the carrying out of a "work" or works, under which the authority engages a person to procure a work "by any means" (A further more detailed definition is included in the Guidance).

A "**work**" is defined as including:

Building and civil engineering work

Construction of office blocks, hospitals or other buildings;

Civil engineering construction of roads, bridges, railways;

Installation work of, for example, heating and electric equipment;

Completion work such as tiling and papering;

Maintenance of buildings.

The following activities may also be regarded as a **works contract**:

A contract where an authority engages a provider to act as agent for the authority in letting contracts.

An agreement where a developer constructs a building on its own land (according to an authority's needs) and undertakes to transfer the land and structure to the authority upon completion or at a later date.

A **public services contract** is one under which the authority "engages a person to provide services". The Services Regulation divides services into two categories: "Part A services" and "Part B services"

Part A services are listed in Part A of Schedule I to the Services Regulations. Contracts for Part A services are subject to the Regulations, including tendering procedural rules, specifications, pre-qualifications, etc.

"Part B services" are subject only to limited provisions - rules on technical specifications, contract award notices and submission of statistical reports. Part B services are all those services set out in Part B of Schedule I to the services Regulation. In addition they include all those services that fall outside of Part A.

Where a contract involves both Part A and Part B services, its classification is determined by the service that has the greatest value of the contracts. See the Guidance for detailed lists of Part A and Part B services

Open Procedure

This means an advert will be placed in OJEU and the relevant press and trade journals. The tender will be open to anyone who expresses an interest.

Restricted Procedure

This means an advert will be placed in OJEU the relevant press and trade journals.

Organisations which express an interest will be required to complete a Pre-Qualification Questionnaire (PQQ). The Council will evaluate the PQQs and produce a shortlist of suitable organisations which will then be invited to tender.

Competitive Dialogue Procedure

This is used when the Council is unable to provide a precise specification and where there is scope to negotiate about what services they can provide. The purpose of this procedure is to negotiate on the specification of the project and not on the price.

An advert is placed in the relevant trade journals, press and where appropriate in the Official Journal of the European Union (OJEU). The advert contains details of the scheme and instructions for downloading the tender documents and Pre-Qualification Questionnaire (PQQ).

Organisations will then submit a completed tender and PQQ via the website or submit a hard copy in the envelope provided.

Regardless of whether it is submitted electronically or in paper format, the tender and PQQ must be submitted before the deadline.

Electronic Procurement

This means procurement using the internet including e-tendering on-line e-auctions and buying portals. You can take advantage of reduced minimum time periods when you procure your contract under the EU procurement regime and submit your documents electronically.

Catalist

This means the online catalogue which is run by HM Government and provides a framework buying tool for local authorities and others in the public sector. The website address is <http://online.ogcbuyingsolutions.gov.uk/>

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INTRODUCTION**CONTRACTS PROCEDURE RULES****CURRENT VERSION****1. Why have Contracts Procedure Rules?**

1.1 *The Local Authority as a body using public resources must set and follow the highest possible standards of financial control and stewardship. The Council's Contracts Procedure Rules and Financial Procedure Rules give Members and staff procedures to follow which ensure the Council's expected standards are met in terms of managing public money and assets. In addition, staff can feel confident that they will have no difficulty in explaining their actions to Auditors, Members, Senior Managers, or the public, if they have followed Procedure Rules.*

2. What are Contracts Procedure Rules?

2.1 *The Rules set procedures to ensure value for money is obtained, statutory requirements are met in terms of UK and EU law, and the Council's affairs are managed prudently and properly controlled.*

2.2 *A key requirement is to enter into more formal tendering requirements as expenditure increases:-*

Supply/Disposal of Goods, Materials, Services, Works Contract Price		
<i>Class I</i>	<i>£0 - £5,000</i>	<i>Chief Officer to arrange directly. No formal written competitive quotations are necessary, but due regard shall be had to the</i>

A INTRODUCTION**CONTRACTS PROCEDURE RULES****REVISED VERSION****1. Introduction**

- 1.1 These rules are the Council's procedure rules for buying for the Council ("the Rules"). They do not apply to internal purchases or service provision, only where you need to buy something from outside the Council.
- 1.2 They are the rules by which we spend money on the supplies, services and works we need to deliver our services. The Rules are part of the Council's Constitution and have been produced as part of our approach to the way we buy things.
- 1.3 The difference between supplies, works and services is explained in the Glossary of Terms at the end of the Rules.
- 1.4 The Rules apply to any arrangement that results in a payment being made by the Council as well as to some types of contracts where a service is being provided for the Council which results in some income being generated for the Council.
- 1.5 The Rules also apply to the disposal of surplus goods and to concession contracts.
- 1.6 The Rules do not cover grants which the Council may receive or make (unless the grant is part of a contract for services).
- 1.7 The Rules do not apply to the purchasing of property but there is a separate section that details the Council's procedures in this area.

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CONTRACTS PROCEDURE RULES

CONTRACTS PROCEDURE RULES

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		<i>desirability of securing competition by verbal inquiry and written confirmation, where appropriate. File notes to be kept to indicate action taken.</i>
<i>Class II</i>	<i>£5,001 - £30,000</i>	<i>Chief Officer to obtain at least three written quotations.</i>
<i>Class III</i>	<i>£30,001 - £50,000</i>	<i>Chief Officer tendering procedure to apply.</i>
<i>Class IV/V</i>	<i>Over £50,000</i>	<i>Cabinet Panel tendering procedure to apply, together with appropriate EU procurement directives where they apply.</i>

2.3 In cases where a supplementary estimate or virement is above the level prescribed in Financial Procedure Rules there must be a report to the Cabinet Panel (Resources) and, if required by the Chief Financial Officer a report to Council. Orders should not be broken down to make two or more orders a lower class thereby avoiding the more onerous requirements of a higher class.

2.4 Council wide contracts (such as those arranged by the Corporate Procurement Unit) should be used where available for supply of materials, goods, services and execution of works as the requirements of these Rules will have already been addressed. The use of central contracts has the advantage of ensuring value for money, standard terms and conditions are used and compliance with EU procurement regulations are fully addressed. If a Chief Officer believes the

- 1.8 If you are in any doubt about whether the Rules apply, you must always check with the Corporate Procurement Manager.
- 1.9 The Council's need to obtain value for money is very important. It means that we must always consider how each procurement is consistent with the Council's duty to secure continuous improvement in what we do having regard to economy, efficiency and effectiveness. We therefore need to question whether we should be buying anything at all and if we do, whether we can do it best ourselves, or jointly, or rely on someone else to get better value.
- 1.10 Government and EU public procurement policy require that the Council must permit, and be seen to be permitting, freedom of opportunity to trade with the Council and to be open and transparent about how we do things.
- 1.11 If we fail in this duty, a supplier or contractor may have cause for a complaint against us and in the worse case may be able to claim damages.
- 1.12 The most important principles are transparency, openness and fair competition. Whenever we are buying things for the Council we must always act to promote competition.
- 1.13 Our Rules have three main purposes:
- to comply with the obligations that govern the spending of public money such as the EU procurement regime;

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<p><i>supply of goods and services can be obtained on better terms outside the central contract, the Chief Officer should document the reasons and agree the alternative purchase with the Chief Legal Officer. In addition to the cost issues, other matters will need considering such as an EU procurement requirement, contract conditions and post delivery maintenance.</i></p> <p>2.5 Where is the Authority to Incur Expenditure? <i>Authority to the Executive and Officers to incur expenditure is set out in Financial Procedure Rules which in summary are: Subject to the point that follows and the expenditure is provided for within an approved budget (Revenue, Capital and other spending programmes), the Executive, Standing Bodies and Chief Officers are authorised to incur any expenditure in accordance with the procedures set out in these Rules. Notwithstanding that provision for the expenditure on materials/goods services/ works, has been included in a budget, capital or other major spending programme approved under Financial Procedure Rules, the following will require specific approval of the Cabinet before any expenditure is incurred or the Council is committed to a contract:-</i></p> <p><i>(a) Individual capital schemes not identified specifically, but included in a general provision that is approved as part of a capital programme.</i></p> <p><i>(b) Any non-routine expenditure on repairs and maintenance, furniture, equipment, minor improvements exceeding £30,000.</i></p> <p><i>(c) Grants to any outside body, organisation or individual, unless determined by an officer under a scheme or delegation.</i></p> <p><i>2.6 For the purposes of clarification, the following matters are regarded as ones where competitive quotation/tendering is not</i></p>	<ul style="list-style-type: none"> • to obtain Value for Money in the way we spend money, so that we may in turn offer better and more cost effective services to the public; and • to protect people who follow the Rules. <p>1.14 The Rules are:</p> <ul style="list-style-type: none"> ▪ written in plain English; and ▪ reflect the fact that some of our spending is carried out by front-line services so the Rules help decisions to be made by the right people at the right level in the Council. <p>1.15 This document contains rules and refers to guidance. The Rules should be read alongside the Council’s Procurement Guidance.</p> <p>1.16 In these Rules certain sections are marked in bold, underlined and with an “*” symbol. These sections are compulsory and must always be followed whatever you are buying for the Council. Where there is no “*” the Rules should be regarded as best practice and should be followed wherever possible (otherwise you may need permission not to follow them).</p> <p>2. Context</p> <p>2.1 The Corporate Procurement Manager is responsible for keeping the Rules under review and monitoring compliance.</p> <p>2.2 The European Union sets down (through a Treaty) what</p>

INTRODUCTION	A INTRODUCTION
<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION</p>
<p><i>appropriate and subject to the proviso relating to budgetary provision, a Chief Officer is authorised to incur expenditure in relation thereto without reference to the Executive or Council:-</i></p> <p><i>(a) Rates, Taxes and Insurances.</i></p> <p><i>(b) Salaries, Wages and Allowances of employees and ex-employees (subject to approvals of Cabinet Panel (Resources)).</i></p> <p><i>(c) Loan charges on approved capital expenditure.</i></p> <p><i>(d) Grants to individuals, organisations and outside bodies in accordance with the scheme of delegation approved by the Council.</i></p> <p><i>(e) Such other matters up to such amounts as may be specifically approved by the Council</i></p> <p><i>2.7 There may be exceptional circumstances when Contracts Procedure Rules or Financial Procedure Rules do not cover a situation. Where this is the case, the Chief Legal Officer and Chief Financial Officer should be consulted and Cabinet authority sought to not follow the Rules.</i></p>	<p>the obligations are on us at the Council when we are buying things. The key principle is to ensure that everyone in the marketplace who could provide the goods, supplies, works or services to the Council is able to do so if they wish.</p> <p>2.3 Our Rules also need to be flexible for the future. We all now need to think about, for example, e - auctions, e - tendering, Dynamic Purchasing Systems or setting up a framework. Increasingly Councils are collaborating through joint procurements (i.e. buying the things you need with another department or another Council or Councils and sometimes other public bodies).</p> <p>2.4 If you are buying larger or costly goods, works or services, the Rules for higher value orders and contracts are more strict than for those of lower value. This is so that the benefits of a more thorough, complex process are not outweighed by cost relative to the value of the supplies, services or works in question.</p> <p>2.5 At the highest end of the value scale, we *must* follow full EU Public Procurement Directives, requiring us to observe certain additional procedures. In these cases you *must* consult with the Corporate Procurement Manager before you start buying what you need.</p> <p>3. Compliance with Contract Procedure Rules</p> <p>3.1 Every contract *must* comply with these Rules unless Cabinet Panel (Resources) or the Council has given specific or general dispensation to depart from the Rules.</p> <p>3.2 For all Class 3 and 4 contracts where dispensation is</p>

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	<p>required a report *must* be prepared specify the nature of the dispensation and the circumstances under which the departure has been justified and *must* be presented to a meeting the Cabinet Panel (Resources) or Council.</p> <p>3.3 Any significant failure to comply with the requirements of these Rules *must* be:</p> <ul style="list-style-type: none"> (a) notified to the Chief Executive, Chief Financial Officer, Monitoring Officer, Head of Audit and Corporate Procurement Manager; (b) presented to the Cabinet Panel (Resources) as soon as possible and identify the circumstances. <p>3.4 These Rules *must* also apply where consultants or partner organisations have been instructed to invite tenders on behalf of the Council for any contract.</p> <p>3.5 Failure to comply with the Contracts Procedure Rules may lead to disciplinary action in the case of officers, or investigation by the Monitoring Officer and/or the Standards Committee in the case of members.</p> <p>3.6 It is the responsibility of Chief Officers to ensure that all staff reporting to them, directly or indirectly, are aware of and comply with the Contracts Procedure Rules.</p>

A PROVISIONS APPLICABLE TO ALL CONTRACTS FOR GOODS, MATERIALS, SERVICES, WORKS AND LAND	B Requirements for All Contracts
CONTRACTS PROCEDURE RULES CURRENT VERSION	CONTRACTS PROCEDURE RULES REVISED VERSION
<p>1. Definitions</p> <p>1.1 Council - means the Council, the Executive, a Standing Body or person(s) acting in accordance with authority delegated by the Council.</p> <p>1.2 Contract - means any agreement between the Council and a third party for the provision of any goods, materials, services or works for whatever value.</p> <p>All contract documentation shall be worded and in such form so as to protect the Council's interests, in accordance with advice from the Chief Legal Officer and standard contract documentation.</p> <p>1.3 Contract price in relation to all contracts - means the aggregated cost (including fees) for the whole of the period of the contract. Where a Chief Officer knows that a similar service, supply or type of work is to be ordered during a twelve month period, this should be taken into account and used for the purposes of the estimated contract price.</p> <p>1.4 Any transaction for the supply or disposal of goods or materials; provision of services or the execution of works which forms part of a larger transaction shall not be regarded as a separate contract but shall be included in the calculation of the contract price.</p> <p>1.5 Chief Officer and appropriate Chief Officer – means a Director personally or any subordinate officer who has been delegated (specifically or generally) to deal with any matter in accordance with a scheme of delegations made by the</p>	<p>1. The Competitive Process</p> <p>1.1 EU law and Government policy says that we *must* always make sure that we are offering the opportunity to provide supplies works or services to the Council to the whole market to ensure competition. The assumption is that the Council will ensure that it achieves value for money by carrying out a competitive tendering exercise.</p> <p>1.2 If your contract is a very high value one (i.e with a value of more than the relevant threshold) then you *must* follow the section on Class 4 High Value Procurements.</p> <p>1.3 The value of a contract means the estimated total monetary value over its full duration, including any extension options (not the annual value).</p> <p>1.4 Where the duration of a contract is indeterminate, this should be taken to be the estimated value of the contract over a period of four years. Contracts should not be artificially split to avoid the values.</p> <p>1.5 The thresholds at which the different rules apply are summarised in the Contracts Procedures Summary.</p> <p>2. Who Can Buy Things?</p> <p>2.1 Chief Officer should ensure that procurement is undertaken by their procurement professionals or, where</p>

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<p><i>Director and subject to the Director for Customer and Shared Services raising no objections.</i></p> <p><i>1.6 Budget - means Revenue Budgets, Capital Budgets and other spending programmes approved by the Council.</i></p> <p><i>1.7 Central Contract - means a contract for the supply of goods and services registered with the Chief Legal Officer as one which is appropriate for meeting the requirements of one or more Service Groups.</i></p> <p><i>1.8 Standing List - means the Standing List maintained by the Chief Legal Officer relating to contractors for the execution of works, the Procurement Plan maintained by the Chief Legal Officer, together with any other statutory list of contractors approved by the Council for the selection of tenderers.</i></p> <p><i>1.9 Term Contract - means a contract for the continuous or periodic execution of works or the supply of goods or services over a defined period of time.</i></p> <p><i>1.10 Named Persons - means, for the purposes of Sections E and F any firm or individual identified as being suitable to carry out or tender for a contract otherwise than by public advertisement or selection from a standing list of selected tenderers.</i></p> <p>2. Compliance with Contract Procedure Rules</p> <p><i>2.1 Every contract shall comply with these Rules unless Cabinet Panel (Resources) or the Council has given specific or general dispensation to depart therefrom.</i></p> <p><i>2.2 A record of any such departure for all Class III, IV and V contracts shall be included in the minutes of the Cabinet</i></p>	<p>departments or functions have no specialist capability, by authorised persons who can demonstrate skills and knowledge appropriate to the task.</p> <p>2.2 Each Chief Officer *must* keep a list of authorised persons who can buy things on his/her behalf, specifying a maximum financial limit for each transaction against each name.</p> <p>2.3 The list *must* be copied to the Corporate Procurement Manager.</p> <p>2.4 Before starting a procurement process, we need to make sure that we have carefully identified the need and fully assessed the options for satisfying it. Before you start, you *must* consider:</p> <ul style="list-style-type: none"> • what is important to the Council in this procurement? Do you just need the supplies, works or services? Or are there other things you want to bring about (for example, improved environmental performance or job creation). In certain cases the procurement regime could help achieve these objectives but you *must* consult with the Corporate Procurement Manager; • can you buy what you need with another department or another Council? If you think you could save the Council money or achieve other advantages if you bought what you need with someone else, consider if there is an existing framework arrangement or contract which you can use. This framework or contract could be one already set up by the Council,

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<p><i>Panel (Resources) or Council and shall specify the nature of the dispensation and the circumstances under which the departure has been justified.</i></p> <p><i>2.3 Any significant failure to comply with the requirements of these Rules shall be:</i></p> <p><i>(a) notified to the Chief Executive, Director for Customer and Shared Services and Chief Legal Officer;</i></p> <p><i>(b) reported to the Cabinet Panel (Resources) as soon as possible and any such report shall identify the circumstances thereof.</i></p> <p><i>2.4 These Rules shall be subject to any relevant directives of the European Union for the time being in force in the United Kingdom.</i></p> <p><i>2.5 These Rules shall apply where consultants have been instructed to invite tenders on behalf of the Council for any contract.</i></p> <p><i>2.6 In respect of Class III and IV Contracts, the preferred tender procedure is by way of tender selection from a standing list of tenderers maintained by the Council. Where this procedure is not used, the reasons shall be formally recorded.</i></p> <p>3. Nominated Sub-Contractors</p> <p><i>3.1 This Rule shall have effect where a sub-contractor is to be nominated by the Council to a main contractor.</i></p> <p><i>3.2 The terms of any tender or quotation by such a nominated sub-contractor shall require an undertaking by that sub-contractor to the Council that the sub-contractor will indemnify</i></p>	<p>another Council, a joint purchasing body (Black Country Purchasing Consortium or ESPO) or run centrally by Government (such as Buying Solutions or Catalist).</p> <ul style="list-style-type: none"> • alternatively, there may be some kind of recognised purchasing consortia in place whereby members of the consortia may utilise the purchasing arrangements in order to procure goods and/or services. Note that where there is a consortia in place, you do not have to comply with these Rules, however, strictly only the goods and/or services that are the subject matter of the consortia arrangements may be procured. Where the goods and/or services are outside the scope of the consortia arrangements you must utilise some other method of procurement in accordance with these Rules. The Corporate Procurement Manager can advise you further on this; and • will you or your partners be buying the same thing more than once? If so, it might be better to create a framework agreement so you can set up suppliers to provide you with the supplies, works or services you need when you need them. Again, could you set up a framework with other departments or Councils or is there already a joint purchasing organisation which could supply your needs? <p>2.5 If following consideration of alternative buying solutions, a joint procurement or other form of collaborative procurement is to be used with</p>

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<p><i>the main contractor against their own obligations under the main contract.</i></p> <p><i>3.3 The provisions of these Rules as they relate to contracts shall also relate to nominated sub-contracts. Where a nomination to the main contractor is made by the Council this shall be the sub-contractor whose tender or quotation has been accepted in accordance with the provisions of Parts D, E or F of these Rules.</i></p> <p>4. Cancellation of Contracts in Case of Corruption Etc</p> <p><i>4.1 There shall be inserted in every contract a clause empowering the Council to cancel the contract and recover from the contractor the amount of any loss resulting from such cancellation if:</i></p> <p><i>(a) the contractor has offered, given, or agreed to give any gift consideration or inducement of any kind to any person to influence the obtaining of any contract or the definition of any of its terms;</i></p> <p><i>(b) the contractor employs or engages any person who has offered, given or agreed to give any gift consideration or inducement as is defined in (a) above whether or not such action is known to the contractor;</i></p> <p><i>(c) the contractor or any person employed by him or acting on his behalf shall have committed an offence under the Prevention of Corruption Acts 1889-1916 or shall have given any fee or reward the receipt of which is an offence under Sections 117(2) and 117(3) of the Local Government Act 1972.</i></p>	<p>another Council, the conduct of the procurement should be on terms no less rigorous than the requirements of these Rules for any Council procurement. The Corporate Procurement Manager of the lead authority *must* certify in writing to all participating Councils and organisations that no less rigorous a process has been undertaken, prior to the contract start date.</p> <p>2.6 Should you decide that the goods and/or services are likely to be required in the future by the Council, it may be that the best way in which to buy the goods and/or services is by setting up a framework agreement. There are many types of contracts which will be suited to a framework arrangements and it is important that you see the Corporate Procurement Manager before commencing the procurement to ensure that the type of contract being used is most suitable.</p> <p>2.7 For major, specialist, higher value or important contracts for example, those which involve the transfer of Council employees to a contractor under a PFI or PPP arrangement, Chief Officers *must* following consultation with the Corporate Procurement Manager:</p> <ul style="list-style-type: none"> • seek a decision from the Cabinet Panel (Resources) as to whether tenders are to be invited under the Chief Officer's recommended contract strategy; • once tenders have been evaluated, *must* seek a further decision from the Cabinet Panel (Resources) as to whether a contract is to be awarded and to

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<p>5. Interests of Members and Officers in Contracts</p> <p><i>5.1 Every member of the Council shall be entitled to inspect a book which shall be kept by the Chief Legal Officer and shall be available during office hours, recording particulars of any notice given by an Officer of a pecuniary interest in a contract.</i></p> <p><i>5.2 Every member of the Council shall declare any personal or prejudicial interest in any contract in accordance with the provisions of the Local Government Act 2000 and any Regulations issued thereunder.</i></p> <p><i>5.3 No member of the Council shall enter into any contract on behalf of the Council.</i></p> <p>6. Contracts Relating to Land and Property</p> <p><i>6.1 All disposals, acquisitions, leases, licences, agreements and other matters and things relating to land or property shall be construed as contracts for the purposes of these Rules and shall hereafter be referred to as land contracts.</i></p> <p><i>6.2 These Rules shall apply to all land contracts as they apply to all contracts except where they have been expressly varied.</i></p> <p><i>6.3 Section C of these Rules shall apply specifically to all land contracts.</i></p> <p><i>6.4 The appropriate Chief Officer shall, as early as practicable, advise the Director for Customer and Shared Services and the Chief Legal Officer of his/her intention to enter into a lease relating to land or property with a term of three years or more, or a renewal of an existing lease where</i></p>	<p>whom; and</p> <p>2.8 Chief Officers *must* always consult with the Corporate Procurement Manager to consider if Members should be involved in decisions during the tender process, for example by determining the contract award criteria. This will be more relevant for big purchases and procurements including a PFI project.</p> <p>3. Defining the Need</p> <p>3.1 As a minimum, you *must* clearly and carefully specify the supplies, services or works to be supplied, the agreed programme for delivery and the terms for payment together with all other terms and conditions that are agreed. You also need to ensure that you will have the funds in the budget to pay for them.</p> <p>3.2 This means you *must* decide in advance of the competitive process the size, scope, and specification of the supplies, service or works required. If you are buying with someone else, you *must* decide this scope with your partners first.</p> <p>3.3 <i>You should always consider the Procurement Guidance and you *must* refer to and abide by any other Council policies which could apply to what you want to buy. If in doubt, you *must* check with the Corporate Procurement Manager.</i></p>

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<p><i>the term of that lease taken together with the term already expired will exceed three years, and shall comply with any guidance given by the Director for Customer and Shared Services and the Chief Legal Officer.</i></p> <p>7. Use of Central Contracts <i>7.1 Before seeking quotations or inviting tenders in respect of any contract, a Chief Officer must establish whether a Central Contract exists which meets their requirement. If a Central Contract does exist then it must be used unless the appropriate Chief Officer in consultation with the Chief Legal Officer considers that there are specific advantages to be obtained by negotiating alternative arrangements. In such instances, the contract will be negotiated by the Corporate Procurement Unit.</i> <i>7.2 Council has granted a scheme of delegated authority to award contracts for the supply of goods and services, subject to the agreement of the Director for Resources and Support and the Chief Legal Officer. This relates only to contracts negotiated by the Corporate Procurement Unit up to a maximum value of £90,000 and all such contracts must be reported to the next available meeting of the Cabinet Panel (Resources). All other contracts are subject to the Rules governing tendering procedures (Sections E and F).</i> <i>7.3 The appropriate Chief Officer shall advise the Director for Customer and Shared Services and the Chief Legal Officer, as early as is practicable, of his/her intention to invite tenders for:-</i></p>	<p>4. Aggregation</p> <p>4.1 You *must* never split the value of contracts.</p> <p>4.2 Wherever possible, the Council should make its purchases in the form of a single large contract in preference to a series of smaller contracts.</p> <p>4.3 You *must* calculate the value of the separate contracts of the same type over a short period together for the purpose of determining if the value of the contract falls within the threshold. (See also 1.3 and 1.4 above).</p> <p>5. Contract Strategy</p> <p>5.1 Once the need is determined, you *must* determine a contract strategy by which the supplies, works or services will be acquired.</p> <p>5.2 This means taking a step back from the traditional procurement process and assessing the options particularly to the provision of services.</p> <p>5.3 To obtain value for money, you *must* consider options for the delivery of supplies, works or services. The options for supplies, works or services are:</p> <ul style="list-style-type: none"> • not buying the supplies, having the works done or providing the services at all; • providing the goods, works or services ourselves (for

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<p><i>(a) contracts which are estimated to exceed £20,000 in value involving the lease or rental of equipment, plant or vehicles;</i> <i>(b) any other contracts which are estimated to exceed £50,000 in value for the supply of goods, materials and services;</i> <i>and shall comply with any guidance given by the Director for Customer and Shared Services and the Chief Legal Officer.</i></p> <p>8. Secondary Contracts <i>8.1 Where contracts are being let for the supply of goods or materials which are essential to maintain services the appropriate Chief Officer in consultation with the Director for Customer and Shared Services shall consider whether it would be in the best interests of the Council to award the contract to two or more contractors in order to ensure continuity of supply.</i></p>	<p>example, by taking surplus supplies from another department or using their staff);</p> <ul style="list-style-type: none"> • getting someone else to provide the ongoing supplies, works or service ("outsourcing"/ provision by the private, voluntary, "third" sectors or another local authority or public body); • providing the supplies, works or services in partnership with someone else (with the private, voluntary, "third" sectors or another local authority or public body); • by commissioning jointly with another Council; and / or • shared service delivery with another Council ie by delegating our functions to another Council, setting up a Joint Committee or setting up a new company to deliver the services for us or with other authorities jointly. <p>6. Conditions of Contract</p> <p>6.1 All transactions *must* use an appropriate model form of contract approved by the Corporate Procurement Manager or a form determined by the Chief Legal Officer.</p> <p>6.2 For all contracts for services estimated at a value over £25,000 where the services are of an unusual or complex nature, including PFIs or PPPs, the Head of Legal Services *must* be consulted to produce a suitable set of</p>

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	<p>conditions of contract (with external advisors if necessary) before inviting tenders.</p> <p>6.3 Where a contract is considered to be of a strategically important or politically sensitive nature or where the extended limitation period would be of value, the contract *must* be in writing and executed under seal.</p> <p>6.4 The Corporate Procurement Manager *must*:</p> <ul style="list-style-type: none"> • keep a record or list of all model sets of conditions of contract that gives details of when the conditions were last updated, who is responsible for their updating and contact references; • review all current conditions of contract, at least every 2 years, or when new legislation is introduced; • monitor and review conditions of contract issued by other organisations from time to time; • keep a record of all framework arrangements and joint working arrangements with other departments Councils and other organisations and update this record on a regular basis and no less than twice per year; • maintain the Council's records set out in the relevant section on the intranet; • ensure that information is circulated to and appropriate access for Chief Officers is given to

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	<p>Catalist, local or joint framework arrangements and call-off contracts or any similar or replacement scheme.</p> <p>7. Parent Company Guarantees</p> <p>7.1 The person buying for the Council <u>must</u> consult the Corporate Procurement Manager on all tenders where the total value exceeds £100,000 to determine if a bond, parent company guarantee or other security is required.</p>

B. GENERAL PROCEDURE FOR CONTRACTS OF DIFFERENT VALUES		C Contract Procedures Summary													
<i>CONTRACTS PROCEDURE RULES</i>		CONTRACTS PROCEDURE RULES													
<i>CURRENT VERSION</i>		REVISED VERSION													
<p><i>The procedure set out below identifies the formalities necessary to enter into the different values of contracts that are specified. Reference is made to quotation and tendering procedure specified elsewhere in these Rules; these procedures should be applied where appropriate.</i></p> <p>SUPPLY/DISPOSAL OF GOODS, MATERIALS, SERVICES, WORKS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 20%; text-align: center;">Contract Price</th> <th style="width: 70%;">Procedure</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Class 1</td> <td style="text-align: center;">£0- £5,000</td> <td> <p><i>(a) Chief Officer to arrange directly.</i></p> <p><i>(b) No formal written competitive quotations are necessary unless specifically directed by the Director for Customer and Shared Services for particular classes of expenditure but due regard shall be had to the desirability of securing competition by verbal inquiry and written confirmation where appropriate.</i></p> <p><i>(c) Except for petty cash disbursements all contracts within Class 1 to be placed by official order under the signature of the Chief Officer.</i></p> <p><i>(d) Official order books with copy orders retained for 3 years for</i></p> </td> </tr> </tbody> </table>			Contract Price	Procedure	Class 1	£0- £5,000	<p><i>(a) Chief Officer to arrange directly.</i></p> <p><i>(b) No formal written competitive quotations are necessary unless specifically directed by the Director for Customer and Shared Services for particular classes of expenditure but due regard shall be had to the desirability of securing competition by verbal inquiry and written confirmation where appropriate.</i></p> <p><i>(c) Except for petty cash disbursements all contracts within Class 1 to be placed by official order under the signature of the Chief Officer.</i></p> <p><i>(d) Official order books with copy orders retained for 3 years for</i></p>	<p>1. Processes to be Used</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 25%; vertical-align: top;"> <p>Class 1 Contracts - Low-value transactions</p> </td> <td style="width: 20%; vertical-align: top; text-align: center;"> <p>£0 - £5,000</p> </td> <td style="width: 55%; vertical-align: top;"> <p>At least one written quotation *must* be obtained from a supplier before a formal purchase order is issued.</p> <p>The purchase order *must* contain the standard form of terms and conditions of contract between the Council and the supplier.</p> </td> </tr> <tr> <td style="vertical-align: top;"> <p>Class 2 Contracts- Intermediate- value transactions</p> </td> <td style="vertical-align: top; text-align: center;"> <p>£5,001 - £50,000</p> </td> <td style="vertical-align: top;"> <p>At least three written quotations *must* be invited before a purchase order or contract is entered into, specifying the supplies, services or works and setting out prices, terms and conditions of contract</p> </td> </tr> </tbody> </table>		<p>Class 1 Contracts - Low-value transactions</p>	<p>£0 - £5,000</p>	<p>At least one written quotation *must* be obtained from a supplier before a formal purchase order is issued.</p> <p>The purchase order *must* contain the standard form of terms and conditions of contract between the Council and the supplier.</p>	<p>Class 2 Contracts- Intermediate- value transactions</p>	<p>£5,001 - £50,000</p>	<p>At least three written quotations *must* be invited before a purchase order or contract is entered into, specifying the supplies, services or works and setting out prices, terms and conditions of contract</p>
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B. GENERAL PROCEDURE FOR CONTRACTS OF DIFFERENT VALUES

C Contract Procedures Summary

CONTRACTS PROCEDURE RULES

CONTRACTS PROCEDURE RULES

CURRENT VERSION

REVISED VERSION

		<i>inspection in a readily accessible form agreed with the Director for Customer and Shared Services. (e) Periodic competitive quotations to be obtained as directed by the Director for Customer and Shared Services.</i>
<i>Class II</i>	<i>£5,001 - £30,000</i>	<i>Chief Officer to obtain at least three written quotations (see quotation procedure).</i>
<i>Class III</i>	<i>£30,001 - £50,000</i>	<i>Chief Officer to obtain at least three written tenders (Rules - Part E).</i>
<i>Class IV</i>	<i>Over £50,000</i>	<i>Tendering procedure to apply (Rules – Part F).</i>
<i>Class V</i>		<i>Tendering and EU procurement procedures to apply. (Rules – Part F).</i>

NOTE: Class V contracts must comply with all the provisions applying to Class IV contracts in addition to the special requirements relating to the EU procurement directives (Standing Order F).

Provided that

- (a) So far as the Council's Direct Service Organisation is concerned the limits set out above for Classes II, III and IV may be exceeded on the grounds of efficiently meeting specific contractual obligations or to take advantage of specific opportunities not normally available, provided
- (i) the consent of the Cabinet Panel (Resources) is first obtained;

		and terms of payment.
Class 3 Contracts - Tender procedures for high value transactions (not over the EU thresholds)	£50,001 – EU threshold	A formal tender process *must* be conducted in the manner outlined in the requirements for Class 3 Contracts.
Class 4 - Procedures governed by the EU Directives	Over EU threshold	A formal tender process *must* be conducted in compliance with Public Contracts Regulations 2006.

2. EU Thresholds

The thresholds are:-

	Euro	£
Public Supplies and Services Contracts	193,000	156,442
Works Contracts	4,845,000	3,927,260

B. GENERAL PROCEDURE FOR CONTRACTS OF DIFFERENT VALUES	C Contract Procedures Summary
CONTRACTS PROCEDURE RULES CURRENT VERSION	CONTRACTS PROCEDURE RULES REVISED VERSION
<p><i>(ii) none of the limits shall exceed £200,000 in any event.</i></p> <p><i>(b) In addition to the separate requirements for each Class, each Chief Officer must keep a contracts register, in a form prescribed by the Director for Customer and Shared Services, recording all Class II, III, IV and V contracts placed.</i></p> <p>1. Procedure for Letting Contracts</p> <p><i>1.1 Provided expenditure is in respect of matters within budget and is equal to or less than budget estimates.</i></p> <p><i>(a) A Chief Officer has authority to enter into all Class I contracts without reference to the Executive, subject to the use of contractors from the standing list or Procurement Plan, where appropriate. Contractors for the supply of goods and services and the execution of works shall be selected from the standing lists of selected tenderers for the defined categories, unless this is not possible due to lack of suitable persons or firms prepared to quote.</i></p> <p><i>(b) A Chief Officer has authority to enter into all Class II contracts provided the quotation procedure is followed (see quotation procedure) without reference to the Executive.</i></p> <p><i>(c) A Chief Officer has authority to enter into all Class III contracts provided Chief Officer tender procedure (Section E) is followed without reference to the Executive.</i></p> <p><i>(d) Class IV and V contracts shall only be entered into provided</i></p> <p><i>(i) the tendering procedure and EU procurement procedure, where applicable, is followed in relation to such contracts (Section F);</i></p> <p><i>(ii) the Cabinet Panel (Resources) have approved the terms of such contract.</i></p>	<p>These thresholds apply from 1 January 2010 to 31 December 2011.</p> <p>3. Procedure for Letting Contracts</p> <p>3.1 Provided expenditure is in respect of matters within budget and is equal to or less than budget estimates.</p> <p>(a) A Chief Officer has authority to enter into all Class 1 contracts without reference to the Executive.</p> <p>(b) A Chief Officer has authority to enter into all Class 2 contracts provided the quotation procedure is followed without reference to the Executive.</p> <p>(c) A Chief Officer has authority to enter into all Class 3 contracts below £100,000 provided the tender procedure is followed without reference to the Executive. Class 3 contracts above £100,000 shall only be entered into provided the Cabinet Panel (Resources) have approved the award of such contract.</p> <p>(d) Class 4 contracts shall only be entered into provided:</p> <p>(i) the tendering procedure and EU procurement procedure, where applicable, is followed in relation to such contracts;</p> <p>(ii) the Cabinet Panel (Resources) have approved the award of such contract.</p>

C. GENERAL PROCEDURE FOR LAND CONTRACTS	K General Procedure for Land Contracts
CONTRACTS PROCEDURE RULES CURRENT VERSION	CONTRACTS PROCEDURE RULES REVISED VERSION
<p><i>1.1 These Rules apply only to the requirements to fix values for disposals and acquisitions of land and interests in land. All values for disposal and acquisition of land and interests in land shall be fixed in order to secure the highest value in relation to disposal of land or any interest in land or the lowest value in relation to the acquisition of land or any interest in land.</i></p> <p><i>1.2 Wherever appropriate the advice of the District Valuer must be sought. Whenever such advice is obtained it must be followed unless the Council determine otherwise and in any such case the reason therefore shall be recorded in the minutes of the appropriate Cabinet Panel (Resources).</i></p> <p><i>2. The scheme of delegation for property transactions approved by the Council in June 2004 is:</i></p> <p>Director for Customer and Shared Services <i>Disposal of land by leases/lettings up to 7 years and annual rent up to £45,000. Reported to Cabinet Panel (Resources) for information.</i></p> <p>Chief Financial Officer in consultation with a nominated Cabinet member (Green decisions) <i>(i) Disposal of property by licence/lease of more than 7 years and up to 25 years and at an annual rent up to £50,000.</i> <i>(ii) Acquisition of property by licence/lease up to 25 years and annual rent up to £50,000, subject to agreed service requirement and provision in the budget.</i> <i>(iii) Minor disposals by freehold sale or long lease at a</i></p>	<p>1.1 These Rules apply only to the requirements to fix values for disposals and acquisitions of land and interests in land. All values for disposal and acquisition of land and interests in land *must* be fixed in order to secure the highest value in relation to disposal of land or any interest in land or the lowest value in relation to the acquisition of land or any interest in land.</p> <p>1.2 The advice of the Head of Property Services *must* be sought for all land transactions. Whenever such advice is obtained it *must* be followed unless the Council determine otherwise and in any such case the reason therefore shall be recorded in the minutes of the appropriate Cabinet Panel (Resources).</p> <p>2. Low and Intermediate-value Property transactions</p> <p>2.1 The Head of Property Services is responsible for the following property transactions:</p> <ul style="list-style-type: none"> • Agreement of rent reviews up to £50,000 pa • Agreement of compensation following Compulsory Purchase of land. • The grant or taking of annual wayleaves. • Disposal of land/property by licence/lease of up to 25 years and at an annual rent up to £50,000. • Acquisition of property by licence/lease up to 25 years and annual rent up to £50,000, subject to agreed service requirement and provision in the

C. GENERAL PROCEDURE FOR LAND CONTRACTS	K General Procedure for Land Contracts
<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION</p>
<p><i>premium, easement, wayleave, dedication, release of covenants or other legal interest up to a value of £30,000.</i></p> <p><i>(iv) Disposal of freehold sale, long lease, easement, wayleave, dedication, release of covenants or other legal interest for a capital sum at a value not exceeding £125,000 where principle of disposal has been previously agreed by Cabinet.</i></p> <p><i>(v) Sales of freehold reversion under Leasehold Reform Act 1967.</i></p> <p><i>(vi) Acquisition of property in accordance with agreed policy and subject to provision in budget.</i></p> <p><i>(vii) Surrender of leases for Estate Management needs or where financial difficulty is demonstrated.</i></p> <p><i>(viii) Variations to lease covenants/clauses, setting of rentals under rent reviews, licence/lease renewals and existing agreements where financial difficulty is demonstrated. Reported to Cabinet Panel (Resources) for information.</i></p> <p>Chief Financial Officer in consultation with a nominated Cabinet Member (Green decisions) unless referred to Cabinet Panel (Resources)</p> <p><i>(i) Acquisition and disposal of property by licence/lease up to 25 years and at an annual rent of £50,001 up to £100,000.</i></p> <p><i>(ii) Disposal of property by freehold sale, long lease, easement, wayleave, dedication, release of covenants or other legal interest for a capital sum from a value of £125,001 up to a value of £300,000, where principle of disposal has previously been agreed by the Cabinet Panel (Resources).</i></p>	<p>budget.</p> <ul style="list-style-type: none"> • Minor disposals by freehold sale or long lease at a premium, easement, dedication, release of covenants or other legal interest up to a value of £50,000. • Disposal of freehold sale, long lease, easement, dedication, release of covenants or other legal interest for a capital sum at a value not exceeding £150,000 where principle of disposal has been previously agreed by Cabinet. • Sales of freehold reversion under Leasehold Reform Act 1967. • Acquisition of property in accordance with agreed policy and subject to provision in budget. • Surrender of leases for Estate Management needs or where financial difficulty is demonstrated. • Variations to lease covenants/clauses, settling of rent above £50,000 pa under rent reviews, licence/lease renewals in excess of 7 years and variations to existing agreements where financial difficulty is demonstrated. <p>3. Higher-value Property transactions</p> <p>3.1 All other property acquisitions and disposals *must* be recorded in writing and *must* be reported to a</p>

C. GENERAL PROCEDURE FOR LAND CONTRACTS	K General Procedure for Land Contracts
<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION</p>
<p>Cabinet Panel (Resources) (Amber decisions subject to call in) <i>All other property acquisitions and disposals.</i></p> <p>Council consideration <i>Only those transactions:</i> <i>(i) referred by the Scrutiny Board as a result of the call-in mechanism; or</i> <i>(ii) which are not in accordance with the Budget and Policy Framework.</i></p>	<p>meeting the Cabinet Panel (Resources) for acceptance including:</p> <ul style="list-style-type: none"> • Acquisition and disposal of property by licence/lease up to 25 years and at an annual rent of £50,001 up to £100,000. • Disposal of property by freehold sale, long lease, easement, dedication, release of covenants or other legal interest for a capital sum from a value of £150,001 up to a value of £350,000, where principle of disposal has previously been agreed by the Cabinet Panel (Resources).

D. QUOTATION PROCEDURE	D Class 1 Contracts - Low-Value Transactions
<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION</p>
<p>1.1 <i>The requirement to obtain written quotations applies in relation to Class II contracts and periodically as directed by Director for Customer and Shared Services to certain Class I contracts. It is the primary responsibility of the Chief Officer seeking the goods and materials or services to ensure that value for money is obtained. The advice of the Director for Customer and Shared Services and the Chief Legal Officer shall be sought where there is any doubt.</i></p> <p>1.2 <i>Where written quotations are necessary the Chief Officer shall obtain at least three such quotations. These shall be obtained from the contractors on a standing list of selected tenderers, where one exists, unless</i></p> <p><i>(a) this is not possible owing to the lack of suitable persons or firms prepared to quote; or</i></p> <p><i>(b) the subject matter of the contract falls within one of the exemptions in these Rules (Part H); or</i></p> <p><i>(c) the subject matter of the contract is the subject of a negotiated agreement in accordance with these Rules (Part G).</i></p> <p>1.3 <i>The Chief Officer shall record all quotations received and, where fewer than three, the reasons why three quotations were not obtained. The form and content of such records are detailed in the procedural guide set out at Appendix 1.</i></p> <p>1.4 <i>The Chief Officer shall only accept the quotation which in his/her opinion is in the best interest of the Council. Where this is not the lowest, the reasons shall be recorded.</i></p> <p>1.5 <i>Contracts for similar goods, services or works shall not</i></p>	<p>1.1 For contracts valued at or below £5,000 at least one written quotation *must* be obtained from a supplier before a formal purchase order is issued specifying the supplies, services or works and setting out prices and terms of payment unless a framework already exists. If a framework already exists then you *must* follow the procedure set out in that framework.</p> <p>1.2 Your purchase order *must* contain the standard form of terms and conditions of contract between the Council and the supplier. A quotation and a purchase order will create a legally binding contract. The purchase order is used to formalise the terms of the contract.</p> <p>1.3 E-mailed quotations are acceptable in these cases but copies *must* be retained on the relevant file. The file should also evidence that the quotation provides Value for Money.</p>

D. QUOTATION PROCEDURE	D Class 1 Contracts - Low-Value Transactions
<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION</p>
<p><i>be artificially divided into smaller units to avoid the need to obtain competitive quotations.</i></p>	

E. TENDERING PROCEDURE CLASS III CONTRACTS (CHIEF OFFICERS)	E Class 2 Contracts- Intermediate-Value Transactions
CONTRACTS PROCEDURE RULES CURRENT VERSION	CONTRACTS PROCEDURE RULES REVISED VERSION (Now Class 2 Quotation Process)
<p>1. Procedure 1.1 <i>Subject to any overriding statutory enactment this tender procedure applies in relation to all Class III contracts.</i> 1.2 <i>The tender procedure shall involve either</i> (a) <i>public advertisement; or</i> (b) <i>invitation to tender from a standing list of selected tenderers; or</i> (c) <i>invitation to tender from named persons.</i></p> <p>2. Public Advertisement 2.1 <i>Where a Chief Officer proceeds to tender by way of public advertisement then not less than 10 days public notice shall be given in one or more newspapers or journals circulating among such persons who undertake such contracts indicating the nature of the contract and inviting tenders for its execution. The notice shall state the last date by which contractors should record their interest.</i> 2.2 <i>After the expiration of the period specified in the public notice, invitation to tender for the contract shall be sent to at least four of the persons who have applied for permission to tender. The reasons for rejecting any applicant shall be for valid commercial reasons only, in accordance with the Code of Practice for Debriefing Unsuccessful Tenderers, and shall be formally recorded.</i> 2.3 <i>If fewer than four such contractors have applied and the Chief Officer with the agreement of the Director for Customer and Shared Services considers it appropriate, all such contractors shall be invited to tender.</i></p>	<p>1.1 For contracts valued over £5,000 but at or below £50,000, at least three written quotations *must* be invited before a purchase order or contract is issued, specifying the supplies, services or works and setting out prices, terms and conditions of contract and terms of payment.</p> <p>1.2 Emailed quotations are acceptable in these cases but copies *must* be retained on the relevant file.</p> <p>1.3 If only one quotation is received you *must* to seek some more quotations or obtain an exemption from the Rules in accordance with section I. Receipt of two comparable quotations will be sufficient.</p> <p>1.4 Wherever possible the suppliers invited to provide the quotation should be found from the Council's e-tendering system or www.finditinwolveerhampton.co.uk</p> <p>2. Receiving and Opening Quotes</p> <p>2.1 Every response to an invitation to quote should be delivered:</p> <ul style="list-style-type: none"> • no later than the time specified for submission of quotes in the invitation to quote (and addressed to the person at the place specified in the invitation to quote); • on hard copy with CD ROM (if required), or via the Council's e-tendering system; and

E. TENDERING PROCEDURE CLASS III CONTRACTS (CHIEF OFFICERS)	E Class 2 Contracts- Intermediate-Value Transactions
<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION <i>(Now Class 2 Quotation Process)</i></p>
<p>3. Standing Lists of Selected Tenderers</p> <p>3.1 Composition of the List</p> <p><i>A Standing List of contractors (the List) shall be maintained by the Council. The List shall be maintained in respect of works of construction, civil engineering work and other related work of a specialist nature.</i></p> <p><i>The List shall contain:</i></p> <p><i>(a) The names of all contractors who are included on the list.</i></p> <p><i>(b) The categories of work for which the contractors are approved.</i></p> <p><i>(c) The maximum value (£) of work for which the contractors are approved, per contract in accordance with the assessment made by the Chief Legal Officer supported by the Director for Customer and Shared Services.</i></p> <p><i>(d) The contractors' assessed financial notation levels, i.e the maximum value (£) of all work which can be permitted to be outstanding at any one time, as determined by the assessment of the Chief Legal Officer supported by the Director for Customer and Shared Services.</i></p> <p><i>(e) Any other qualification or restriction which may be imposed by the Chief Legal Officer supported by the Director for Customer and Shared Services.</i></p> <p>3.2 Compilation and Maintenance of the List</p> <p><i>(a) At specified periods notices inviting applicants for inclusion on the List shall be published in one or more local newspapers circulating in the area, and one or more newspapers or journals circulating among persons who</i></p>	<ul style="list-style-type: none"> • with no labelling or other markings on the packet that identifies the supplier. <p>3. Evaluating Quotes</p> <p>3.1 Where written quotations are invited for contracts valued at or below £50,000 then the bidder submitting the lowest price compliant bid *must* be awarded any resulting contract, unless alternative pre-determined criteria are detailed in the document used to invite bids awarded on that basis.</p> <p>4. Awarding Contracts and Audit Trails</p> <p>4.1 The results of the quotation evaluation process *must* be recorded in writing.</p> <p>4.2 A contract *must* only be awarded and signed by a person authorised to do so, who *must* ensure that the appropriate budget holder has the funds in place to sustain the contract prior to award.</p> <p>4.3 Chief Officers should ensure that proper records of all procurement activity are retained in electronic or hard-copy format as appropriate.</p> <p>For all transactions valued at or over £25,000, brief details *must* be passed to the Corporate Procurement Manager.</p>

E. TENDERING PROCEDURE CLASS III CONTRACTS (CHIEF OFFICERS)	E Class 2 Contracts- Intermediate-Value Transactions
<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION <i>(Now Class 2 Quotation Process)</i></p>
<p><i>undertake such contracts.</i></p> <p><i>(b) Assessment procedures will consider:</i></p> <p><i>(i) Technical competence.</i></p> <p><i>(ii) Financial stability (including provision of adequate insurance cover).</i></p> <p><i>(iii) Health and safety policies and procedures, including specialist procedures where appropriate in areas which involve hazardous materials, (e.g. asbestos).</i></p> <p><i>(iv) Compliance with the Race Relations Act 1976 and as far as possible, the Commission for Racial Equality's Code of Practice for Employment.</i></p> <p><i>(v) Any other issues deemed appropriate by the Council.</i></p> <p><i>(c) The Council shall determine whether or not contractors shall be included on the List based upon the assessment procedure referred to above.</i></p> <p><i>(d) An annual report shall be compiled which shall review the use of the List.</i></p> <p><i>(e) The List shall be reviewed and amended as required at not less than three yearly intervals.</i></p> <p><i>(f) Financial notation levels shall be reviewed every twelve months.</i></p> <p>3.3 Use of the List</p> <p><i>(a) A Chief Officer shall select from a standing list of selected tenderers at least four contractors to be invited to tender selected in accordance with this procedure. Where there are fewer than four on the list the invitations to tender shall be sent to all such contractors provided that in the opinion of the Chief Officer and the Chief Legal Officer it is reasonable to do so.</i></p>	

E. TENDERING PROCEDURE CLASS III CONTRACTS (CHIEF OFFICERS)	E Class 2 Contracts- Intermediate-Value Transactions
<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION <i>(Now Class 2 Quotation Process)</i></p>
<p><i>(b) Companies operating Council contracts who have been selected from the List, shall comply with the requirements as set out in the relevant contract documentation and, where appropriate, the Council's procedure for assessing contractors. Breaches of these will be dealt with in accordance with a code of practice established by the Council and may result in the Council taking any, or any combination of, the following actions against a contractor:</i></p> <ul style="list-style-type: none"> <i>- Instructing a contractor to cease work on a site.</i> <i>- Suspension of a contractor from the List.</i> <i>- Claiming monies from a contractor in respect of faulty work carried out, and/or the additional costs of remedying faulty work, and/or carrying out the necessary work to complete the relevant contract.</i> <p>(c) Sub-Contractors <i>The List comprises main contractors and nominated subcontractors, and the relevant assessment procedures shall not apply to any other sub-contractors who may subsequently be employed by a main contractor on a particular contract. Sub-Contractors will however, be expected to perform to the same standards and conditions as a main contractor, selected from the Standing List and failure to do so may result in action being taken against the appropriate main contractor as detailed in (b) above.</i></p> <p>(d) Rotation of Contractors <i>The Council shall ensure that there is a fair system for the rotational selection of contractors on the List, for the purpose of compiling lists of companies to be invited to tender.</i></p> <p>(e) Suspensions/Removal from Standing List</p>	

E. TENDERING PROCEDURE CLASS III CONTRACTS (CHIEF OFFICERS)	E Class 2 Contracts- Intermediate-Value Transactions
<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION <i>(Now Class 2 Quotation Process)</i></p>
<p><i>Contractors who have been suspended or removed from the List on grounds of Health and Safety shall not be employed by a main contractor to carry out work as a sub-contractor on any Council contract for the duration of the period of suspension.</i></p> <p>4. Invitation to Tender to Named Persons</p> <p><i>4.1 A Chief Officer shall not invite tenders from named persons unless</i></p> <p><i>(a) no appropriate tenderers are available from a standing list maintained in accordance with 3 above and</i></p> <p><i>(b) at least three such persons are invited to tender.</i></p> <p><i>4.2 A Chief Officer shall not accept a tender pursuant to such invitation unless</i></p> <p><i>(a) not less than two such tenders are received or</i></p> <p><i>(b) the prior approval of the Director for Customer and Shared Services has been obtained.</i></p> <p>5. Submission of Tenders</p> <p><i>5.1 Every notice of invitation to tender shall state that no tender will be received except in a plain sealed envelope bearing the words "Tender for returnable not later than 3.00 pm on " followed by the subject to which it relates. No name or mark indicating the sender shall appear on the envelope. The tender must be submitted to the Director for Customer and Shared Services before the date and time specified in the invitation to tender as being the last date and time for receipt of tenders.</i></p> <p><i>5.2 Envelopes submitted in accordance with Rule 5.1 shall</i></p>	

E. TENDERING PROCEDURE CLASS III CONTRACTS (CHIEF OFFICERS)	E Class 2 Contracts- Intermediate-Value Transactions
<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION <i>(Now Class 2 Quotation Process)</i></p>
<p><i>remain in the custody of the Director for Customer and Shared Services until the time appointed for their opening.</i></p> <p><i>5.3 All tender envelopes received shall be endorsed with the date and time of receipt.</i></p> <p><i>5.4 No tender shall be considered which arrives after the closing date and time for receipt of tenders. Late tenders which do not fall to be considered shall be opened on their receipt and returned to the tenderer who shall be advised why the tender was not considered.</i></p> <p>6. Opening and Registration of Tenders</p> <p><i>6.1 Tenders submitted in accordance with Rule 5 shall be opened in the presence of</i></p> <ul style="list-style-type: none"> <i>(i) the appropriate Chief Officer or representative and</i> <i>(ii) the Director for Customer and Shared Services or representative</i> <p><i>6.2 The tenders shall be initialled and dated immediately by the parties present at their opening.</i></p> <p><i>6.3 The Director for Customer and Shared Services shall at the time the tenders are opened record in a book kept for that purpose:-</i></p> <ul style="list-style-type: none"> <i>(i) the nature of the goods or materials to be supplied or the work to be executed or the services to be supplied;</i> <i>(ii) the name of each person by or on whose behalf the tender was submitted;</i> <i>(iii) the date and time of receipt of each tender recorded on the envelope;</i> <i>(iv) the date and time of opening the tenders;</i> <i>(v) the names of all persons present at the opening of the</i> 	

E. TENDERING PROCEDURE CLASS III CONTRACTS (CHIEF OFFICERS)	E Class 2 Contracts- Intermediate-Value Transactions
<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION <i>(Now Class 2 Quotation Process)</i></p>
<p><i>tenders;</i> <i>(vi) the tender figure (if practicable).</i></p> <p>7. Acceptance of Tenders <i>7.1 Subject to 4.2 above a Chief Officer is authorised to accept the lowest tender.</i> <i>7.2 Where a Chief Officer wishes to accept a tender other than the lowest he/she shall first obtain the consent of the Director for Customer and Shared Services and record the reasons for not accepting the lowest tender.</i> <i>7.3 Each contract for which a tender has been invited shall be executed by the Chief Legal Officer.</i></p> <p>8. Commencement of Contract <i>No work, goods or services included within a contract for which a tender has been invited shall be commenced or supplied until the contract has been executed and all tender documents and contracts shall include a clause to this effect. Provided that action in advance of a formal contract may be authorised in appropriate cases with the agreement of the Chief Legal Officer.</i></p> <p>9. Security for due Performance of Contracts for the Execution of Work and/or Provision of Services <i>9.1 No security for due performance of Class III contracts for the execution of works or provision of services shall be required unless:</i> <i>(a) the Council has directed otherwise;</i> <i>(b) the Chief Legal Officer in consultation with the</i></p>	

E. TENDERING PROCEDURE CLASS III CONTRACTS (CHIEF OFFICERS)	E Class 2 Contracts- Intermediate-Value Transactions
<p><i>CONTRACTS PROCEDURE RULES</i></p> <p><i>CURRENT VERSION</i></p>	<p>CONTRACTS PROCEDURE RULES</p> <p>REVISED VERSION <i>(Now Class 2 Quotation Process)</i></p>
<p><i>appropriate Chief Officer so requires.</i></p> <p><i>9.2 Where security for the due performance of a contract is required it shall relate to the costs, inconvenience and problems the Council would incur in the event of non-performance by the contractor of all or part of the contract. The value of such security shall be a sum equal to at least 10% of the contract price for the whole period of the contract except as hereinafter provided. For term contracts with a contract period exceeding one year and less than two years the security shall be a sum equal to at least 10% of the estimated average annual value of the contract. For term contracts with a contract period of two years or more the security shall be a sum equal to at least 15% of the estimated average annual value of the contract. All securities shall be by way of</i></p> <p><i>(a) a deposit with the Council or its Bankers;</i></p> <p><i>(b) a banking or agreed insurance company guarantee.</i></p> <p><i>9.3 If the Chief Legal Officer so requires, the performance bond shall be waived in favour of a parent company guarantee.</i></p>	

F (1) TENDERING PROCEDURE CLASS IV CONTRACTS	F Class 3 Contracts - Tender Procedures for High Value Transactions (not over the EU thresholds)
CONTRACTS PROCEDURE RULES CURRENT VERSION	CONTRACTS PROCEDURE RULES REVISED VERSION (NOW CLASS 3 TENDER PROCESS)
<p>1. Procedure</p> <p>1.1 <i>This procedure applies in relation to all Class IV contracts. When any overriding statutory enactment and the relevant directives of the European Union for the time being in force in the United Kingdom apply, the procedures identified for Class V contracts must be followed.</i></p> <p>1.2 <i>The tender procedure shall involve either</i></p> <p>(a) <i>public advertisement; or</i></p> <p>(b) <i>invitation to tender from a standing list of selected tenderers; or</i></p> <p>(c) <i>invitation to tender from named persons.</i></p> <p>1.3 <i>Whenever a report is submitted to the Cabinet Panel (Resources) recommending that a contract be let by way of tender the report shall contain a recommendation of the proposed tendering procedure.</i></p> <p>2. Public Advertisement</p> <p>2.1 <i>Where a recommendation to proceed to tender by way of public advertisement is approved then the procedure set out in Rule E.2 shall apply.</i></p> <p>3. Standing List of Selected Tenderers</p> <p>3.1 Composition of a List</p> <p><i>Standing lists of contractors shall be maintained by the Council. These lists shall contain:</i></p> <p>(a) <i>the names of all contractors who are included on the list;</i></p> <p>(b) <i>whether such contractors are approved for contracts for all or only some of the specified categories, values or amounts</i></p>	<p>1.1 For transactions valued at over £50,000 a formal tender process *must* be conducted in the manner outlined below.</p> <p>1.2 For all transactions valued above £50,000, prior approval of the proposed tender process *must* be sought from the Corporate Procurement Manager.</p> <p>1.3 Where tenders are to be invited for a high value contract (but not over EU procurement thresholds) the procedure to be followed *must* be determined prior to advertising and *must* be one of the following:</p> <ul style="list-style-type: none"> • open tender (all interested contractors submit a tender in response to an advertisement); • restricted procedure (expressions of interest from interested contractors in response to an advertisement, with a selection of those contractors being invited to submit a tender); • where a Framework arrangement (including approved lists) exists in respect of the subject matter, tenders shall be invited using the Framework arrangement from capable contractors having regard to the principles of Value for Money. <p>2. Receiving and Opening Tenders</p> <p>2.1 Every response to an invitation to tender for a transaction valued over £50,000 should be delivered:</p>

F (1) TENDERING PROCEDURE CLASS IV CONTRACTS

F Class 3 Contracts - Tender Procedures for High Value Transactions (not over the EU thresholds)

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(NOW CLASS 3 TENDER PROCESS)**

and if so which.

3.2 Compilation and Maintenance of Lists

The procedure set out in Rule E shall apply.

3.3 Use of Lists

(a) Where a recommendation is made to proceed to tender by way of selection from a standing list of selected tenderers the invitation to tender shall be sent to the appropriate number of contractors as set out below.

The reasons for not including any applicant on a standing list shall be for valid commercial reasons only, in accordance with the Code of Practice for Debriefing Unsuccessful Tenderers, and shall be formally recorded.

(b) Size of Contract Number of Tenderers

At least 4 but no more than:-

Up to £100,000	5
£100,001 - £500,000	6
£500,001 - £2 Million	8
£2 Million up	6

4. Invitation to Tender to Named Persons

4.1 Where a recommendation to proceed to tender by way of invitation to a named person or persons is agreed by the Cabinet Panel (Resources) the appropriate Chief Officer shall proceed to invite tenders.

5. Submission of Tenders

The procedure set out in Rule E5 shall apply.

6. Opening and Registration of Tenders

- no later than the time specified for submission of tenders in the invitation to tender and addressed to:

Wolverhampton City Council
Customer and Shared Services
Legal Services (Reception 23)
2nd Floor
Civic Centre
St Peters Square
Wolverhampton WV1 1RG;

- on hard copy with CD ROM (if required), or via the Council's e-tendering system; and
- with no labelling or other markings on the packet that identifies the tenderer.

2.2 Where the tenders are being sought using the Council's e-tendering system the requirements of the system for openness and transparency must be complied with.

2.3 The opened tenders ***must*** be recorded on a list of tenders invited.

3. Evaluating Tenders

3.1 For contracts valued over £50,000 a more complex Value for Money tender evaluation procedure based on the identification of the Most Economically Advantageous Tender ("MEAT") ***must*** be used. There are some situations, however, where MEAT will not be an appropriate method of evaluation - usually where the only discerning factor between products and/or solutions will be that of price (e.g. where you are buying stationery

F (1) TENDERING PROCEDURE CLASS IV CONTRACTS	F Class 3 Contracts - Tender Procedures for High Value Transactions (not over the EU thresholds)
CONTRACTS PROCEDURE RULES CURRENT VERSION	CONTRACTS PROCEDURE RULES REVISED VERSION (NOW CLASS 3 TENDER PROCESS)
<p>6.1 Tenders submitted in accordance with Rule F5 shall be opened in the presence of</p> <p>(a) a member of the Executive or the Mayor</p> <p>(b) and the Director for Customer and Shared Services or representative</p> <p>6.2 The procedure for registration of tenders set out in Rule E6 shall apply</p> <p>7. Acceptance of Tenders</p> <p>7.1 The results of all Class IV tenders shall be reported to the Cabinet Panel (Resources) for acceptance.</p> <p>7.2 Each contract for which a tender has been invited shall be executed by the Chief Legal Officer. The appropriate Chief Officer may however notify contractors in writing that their tenders have been recommended for acceptance by the Council provided that such notification is in a form approved by the Chief Legal Officer.</p> <p>8. Commencement of Contract</p> <p>The procedure set out in Rule E8 shall apply.</p> <p>9. Security for Due Performance of Contracts for the Execution of Works or Provision of Services</p> <p>9.1 Security for due performance of Class IV contracts for the execution of works or provision of services shall be required unless the Cabinet Panel (Resources) on the recommendation of the appropriate Chief Officer and the Director for Customer and Shared Services agrees otherwise.</p> <p>9.2 Where security for the due performance of a contract is required the provisions of Rules E9.2 and E9.3 shall apply.</p>	<p>or other standard items). It is unlikely that providers for Services or Works could be selected on price alone as these will often require more subjective evaluation techniques. While criteria for evaluation is at the discretion of the Council care needs to be taken that using a lowest price method of evaluation rather than using MEAT is appropriate for the procurement.</p> <p>3.2 This evaluation involves scoring tenders objectively by a panel of three or more officers and/or independent experts using criteria which *must*:</p> <ul style="list-style-type: none"> • be pre-determined and listed in the invitation to tender documentation in order of importance; • be strictly observed at all times throughout the tender process; • reflect the principles of Value for Money; • include price; • consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal should be taken into account; • be capable of objective assessment; • be weighted according to their respective importance; • include, where applicable, the quality of the tenderers' proposals to accept a transfer of staff under the

F (1) TENDERING PROCEDURE CLASS IV CONTRACTS	F Class 3 Contracts - Tender Procedures for High Value Transactions (not over the EU thresholds)
<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION (NOW CLASS 3 TENDER PROCESS)</p>
	<p>Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE); and</p> <ul style="list-style-type: none"> • avoid discrimination or perceived discrimination on the basis of nationality, or other cause contrary to any of the Council's policies. <p>3.3 Where this evaluation methodology is used, any resulting contract *must* be awarded to the tenderer which submits the most economically advantageous tender, i.e. the tender that achieves the highest score in the objective assessment.</p> <p>4. Awarding Contracts and Audit Trails</p> <p>4.1 The results of the tender evaluation process *must* be recorded in writing.</p> <p>4.2 For Class 3 contracts over £100,000 the results of the tender evaluation process *must* be recorded in writing and *must* be reported to a meeting the Cabinet Panel (Resources) for acceptance, this will ensure that correct process has been followed and the budget holder has the funds in place to sustain the contract prior to award.</p> <p>4.3 A contract *must* only be awarded and signed by the Chief Legal Officer.</p> <p>4.4 Chief Officers should ensure that proper records of all procurement activity are retained in electronic or hard-copy format as appropriate.</p> <p>4.5 For all Class 3 contracts brief details of the contract</p>

F (1) TENDERING PROCEDURE CLASS IV CONTRACTS	F Class 3 Contracts - Tender Procedures for High Value Transactions (not over the EU thresholds)
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	<p>awarded *must* be passed to the Corporate Procurement Manager.</p>

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1. Procedure

1.1 This procedure applies in relation to all Class V contracts which are subject to the provisions of one of the following European Union Directives.

The thresholds are:-

	Euro	£
Public Supplies and Services Contracts	211,000	144,371
Works Contracts	5,278,000	3,611,319

These thresholds apply from 31 January 2006.

1.2 The tender procedure shall involve the mandatory advertisement of such tenders within the Official Journal of the European Communities (OJEU).

Tenders may also be invited from a standing list of selected tenderers provided that such a list is compiled in accordance with the provision of the relevant directive(s).

1.3 Whenever a report is submitted to the Cabinet Panel (Resources) recommending that a contract be let by way of tender the report shall contain a recommendation of the proposed tendering procedure.

1.4 Each of the directives provides for three main tendering procedures:

(i) **Open Procedure** - Whereby all interested tenderers may submit bids.

(ii) **Restricted Procedure**- Whereby only selected tenderers

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1.1 Contract values above which procedures governed by the EU Directives apply are currently (2010-12):

For supplies and services (including goods and consultancy services):	£156,442
For works:	£3,927,260

1.2 Please note that these thresholds are amended bi-annually in January and you ***must*** refer to the Corporate Procurement Manager to check the latest thresholds.

1.3 If the contract has a value over this threshold you ***must*** consider whether you ***must*** procure under the Public Contracts Regulations 2006.

1.4 The Regulations contain provisions relating to submitting of notices and other documents electronically.

1.5 The contract ***must*** be tendered under the Open, Restricted, Competitive Dialogue (for particularly complex contracts) or, in exceptional circumstances, the Negotiated procedure.

1.6 The EU Directives and UK Regulations are very long and only the principal requirements can be given here. If in doubt, refer to the Guidelines and advice should be sought from the Corporate Procurement Manager.

<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION</p>
<p><i>may submit bids.</i></p> <p><i>(iii) Negotiated Procedure- Whereby the contracting authority negotiates terms with one or more selected contractors.</i></p> <p><i>1.5 The tendering procedure chosen must comply strictly with the provisions of the relevant directive(s). Due to the complexity of these provisions and the penalties for non-compliance, Chief Officers must obtain advice from the Chief Legal Officer before commencing any tendering process for any Class V contract.</i></p> <p>2. Codes of Practice</p> <p><i>2.1 Detailed Codes of Practice have been produced and approved for each directive. Copies of these are available on request from the Chief Legal Officer.</i></p> <p>3. Submission of Tenders</p> <p><i>3.1 All tenders shall be submitted in accordance with the Rules detailed in Section F (1) (Class IV Contracts).</i></p> <p>4. Acceptance of Tenders</p> <p><i>4.1 The acceptance of tenders shall be in accordance with the Rules detailed in Section F (1) (Class IV Contracts).</i></p>	<p>1.7 For each contract, except where indicated below, a Contract Notice *must* be published in the Supplement to the Official Journal of the European Union (OJEU). Advertisements published additional to this:</p> <ul style="list-style-type: none"> • *must* not appear in any form before a Contract Notice is transmitted to OJEU; and • *must* not contain any information additional to that contained in the Contract Notice in OJEU. <p>1.8 All Contract Notices regarding contracts which name Wolverhampton City Council must be authorised by the Corporate Procurement Manager prior to publication.</p> <p>1.9 Minimum timescales relating to tender procedures governed by the EU Directives and these *must* always be followed.</p> <p>1.10 Where a Prior Information Notice (PIN) announcing a forthcoming Contract Notice has been sent to OJEU between 52 and 365 days before the Contract Notice is sent, reduced timescales may apply.</p> <p>1.11 Advice *must* be sought from the Corporate Procurement Manager at the earliest opportunity before commencing a tender process governed by EU Directives particularly when considering the use of either the Competitive Dialogue or the Negotiated Procedure.</p> <p>2. Use of the Competitive Dialogue Procedure</p>

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Governed by EU Directives

1.1 Under EU Directives, the Competitive Dialogue Procedure may be used for contracts valued at or over EU thresholds in certain circumstances where:

- we wish to award a particularly complex contract and think that the use of the open or restricted procedures will not allow the award of that contract; or
- the contract is for a service and the precise nature of the service required cannot be clearly specified or accurately priced (e.g. some PFI or PPP contracts, bespoke software applications, insurance services, intellectual and artistic services).

2.2 The Negotiated Procedure should not now be used (except in very specific circumstances) for the procurement of particularly complex projects.

2.3 If in doubt, you ***must*** contact the Corporate Procurement Manager.

3. Receiving and Opening Tenders

3.1 Every response to an invitation to tender for a transaction valued over the EU threshold should be delivered:

- no later than the time specified for submission of

<p style="text-align: center;"><i>CONTRACTS PROCEDURE RULES</i></p> <p style="text-align: center;"><i>CURRENT VERSION</i></p>	<p style="text-align: center;">CONTRACTS PROCEDURE RULES</p> <p style="text-align: center;">REVISED VERSION</p>
	<p>tenders in the invitation to tender and addressed to: Wolverhampton City Council Customer and Shared Services Legal Services (Reception 23) 2nd Floor Civic Centre St Peters Square Wolverhampton WV1 1RG;</p> <ul style="list-style-type: none"> • by hard copy(ies) with CD ROM (if required), or via the Council's e-tendering system; and • with no labelling or other markings on the packet that identifies the tenderer. <p>3.2 Where the tenders are being sought using the Council's e-tendering system the requirements of the system for openness and transparency must be complied with.</p> <p>3.3 The opened tenders *must* be recorded on a list of tenders invited.</p> <p>4. Evaluating Tenders</p> <p>4.1 For all contracts governed by EU Directives, a more complex Value for Money tender evaluation procedure based on the identification of the Most Economically Advantageous Tender ("MEAT") *must* be used. There are some situations, however, where MEAT will not be an appropriate method of evaluation - usually where the only discerning factor between products and/or solutions will be that of price (e.g. where you are buying stationery</p>

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	<p>or other standard items). It is unlikely that providers for Services or Works could be selected on price alone as these will often require more subjective evaluation techniques. While criteria for evaluation is at the discretion of the Council care needs to be taken that using a lowest price method of evaluation rather than using MEAT is appropriate for the procurement.</p> <p>4.2 This evaluation involves scoring tenders objectively by a panel of three or more officers and/or independent experts using criteria which *must*:</p> <ul style="list-style-type: none"> • be pre-determined and listed in the invitation to tender documentation in order of importance; • be strictly observed at all times throughout the tender process; • reflect the principles of Value for Money; • include price; • consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal should be taken into account; • be capable of objective assessment; • be weighted according to their respective importance; • include, where applicable, the quality of the

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tenderers' proposals to accept a transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE); and

- avoid discrimination or perceived discrimination on the basis of nationality, or other cause contrary to any of the Council's policies.

4.3 Where this evaluation methodology is used, any resulting contract ***must*** be awarded to the tenderer which submits the most economically advantageous tender, i.e. the tender that achieves the highest score in the objective assessment.

5. Awarding Contracts and Audit Trails

5.1 The results of the tender evaluation process ***must*** be recorded in writing and ***must*** be reported to a meeting the Cabinet Panel (Resources) for acceptance, this will ensure that correct process has been followed and the budget holder has the funds in place to sustain the contract prior to award.

5.2 A contract ***must*** only be awarded and signed by the Chief Legal Officer.

5.3 Chief Officers should ensure that proper records of all procurement activity are retained in electronic or hard-copy format as appropriate.

5.4 For all transactions valued at or over £25,000, brief details ***must*** be passed to the Corporate Procurement

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	<p>Manager.</p> <p>6. Standstill Period</p> <p>6.1 For all contracts with a total contract value in excess of £150,000 or tendered under EU Directives, a ten-day minimum 'standstill period' *must* be observed between the decision to accept the contract and contract conclusion. Once the decision to award a contract is made, each tenderer *must* be notified in writing on the outcome of the tender process. This notification *must* include:</p> <ul style="list-style-type: none"> ▪ Award Criteria ▪ Name of successful tenderer ▪ Summary of reasons for decision: <ul style="list-style-type: none"> ▪ Characteristics and relative advantages of successful bid ▪ Successful tenderers score ▪ Own score ▪ Precise statement of standstill period <p>6.2 There *must* be a minimum of 10 calendar days between the despatch of this notification and the conclusion of the contract. Special rules apply where a tenderer requests a debrief on the tender process. Even if a tenderer asks for a debrief outside of the standstill period we are still obliged to provide this.</p> <p>6.3 In this instance, advice *must* be sought from the Corporate Procurement Manager at the earliest</p>

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	<p>opportunity.</p> <p>7. Contract Award Notice</p> <p>6.1 All contracts awarded above the EU thresholds, whether Part A or Part B Services, <i>must</i> be announced by means of a Contract Award Notice in OJEU transmitted no later than 48 calendar days after the date of award.</p>

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1. Framework Agreements

- 1.1 Framework agreements for supplies and services ***must*** be used where they exist and provide value for money, regardless of value.
- 1.2 Framework agreements are agreements with suppliers for the provision of supplies, works or services on agreed terms for a specific period for estimated quantities against which orders may be placed if and when required during the contract period. They offer benefits of bulk-buying, improved service and reduced administration costs over the period of the arrangement.
- 1.3 A framework agreement may have the option for you to hold a "mini - competition" with all of the suppliers on the framework when you come to buy for the Council.
- 1.4 You ***must*** investigate whether call-off contracts or frameworks are relevant in your own case as you could get better value for the Council by using an existing framework let by a "contracting authority"; other Council, Consortium (BCPC, ESPO, YPO etc.) or central government agency Buying Solutions and that you can properly use them.
- 1.5 If there is not a framework already in place (or if one does not exist with partners which you can use) then you ***must*** consider if it would be better value to set up a framework. This is likely where you are going to need to buy the same or similar things again in the future. Guidance on how to set up a framework is in the

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Procurement Guidance and you should liaise with the Corporate Procurement Manager.

- 1.6 Citywide arrangements for routine supplies and services and department-specific contracts, e.g. "block contracts" placed by Social Services with care providers, property maintenance (such as gas servicing) and "term tenders" for highways maintenance would fall into this definition.

2. Consultancy Contracts

- 2.1 Contracts for the supply of Consultancy services are fully covered by the Contracts Procedure Rules and these ***must*** be followed in the appointment of all consultants, failure to do so may result in disciplinary action being taken. If you have a query as to whether or not a potential appointment comes within the ambit of the Rules contact either the Chief Legal Officer or Corporate Procurement Manager.

- 2.2 For clarity a table highlighting the differences between Consultants and Interim Managers is included at the end of this section.

- 2.3 You ***must*** ensure the following are complied with: -

- Any consultancy contracts where the total contract value is over the EU threshold (presently £140,000) are subject to EU Procurement Rules and therefore you will need to consult with the Corporate Procurement Manager before any procurement process is undertaken.
- Where any extension to an existing contract is

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required the requirements of the Contracts Procedure Rules ***must*** be complied with. If you are in doubt contact the Corporate Procurement Manager.

- Where a consultancy contract initially below the EU threshold (presently £140,000) and not subject to an EU procurement process is extended and the value now exceeds the threshold a notice must be placed in the Official Journal of European Union. Therefore you will need to seek advice from the Corporate Procurement Manager who will administer the appropriate process.

- 2.4 Full details of the proposed contracts for all management consultants will need to be forwarded to the Chief Legal Officer in order that proper contract documentation can be drawn up and executed on behalf of the Council.

WHAT'S THE DIFFERENCE BETWEEN AN INTERIM MANAGER & A MANAGEMENT CONSULTANT?

However closely they work with the client - management consultants are ultimately responsible & accountable to the consultancy company that supplies them or themselves if self employed. An Interim Manager becomes a full member of the management team within the council occupying a vacant post in the establishment for the duration of the contract.

Consultants work in a rather more advisory capacity with staff, whereas Interim Managers take line responsibility.

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An Interim Manager is involved in the day to day running of the business, making decisions, effecting change, managing staff etc, whilst a consultant will get involved in planning and advising the management team.

Contracts for Interim Managers are not subject to EU Procurement Regulations but if the contract is for above the EU threshold (presently £140,000) a contract award notice must be published.

3. Concession Contracts

- 3.1 A Concession Contract is used where the Council wishes to engage a party to provide a service within the Council area, consideration for which is in the form of the party ("the concessionaire") being given a right to charge the public for the services being provided.
- 3.2 The EU procurement rules do not apply to public works concessions for which the estimated value is under the relevant EU threshold and there are a number of exemptions where a public works concession contract is proposed.
- 3.3 Where the concessionaire intends to sub-contract the performance of services the concessionaire may in certain circumstances fall within the scope of the EU procurement rules. In all cases, where the concessionaire is procuring goods and/or services as a part of the concession contract, any procurement should be carried out in accordance with these Rules.

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	3.4 Advice from the Corporate Procurement Manager *must* be sought before engaging in any procurement relating to a concession contract.

G. CONTRACT NEGOTIATION

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This part of the Rules identifies when negotiations may be undertaken in relation to any class of contract. They should be read in conjunction with the Council's Code of Practice for Negotiations which is appended to these Rules and which identifies how such negotiations are to be conducted.

1. Class I, II, III, IV and V Contracts

1.1 All contracts may be the subject of negotiation by Chief Officers in accordance with the criteria set out below. Any negotiation must only be entered into where the Chief Officer believes it would be of benefit to the Council. Negotiation may be undertaken in the following circumstances.

(a) For Class I contracts where no competitive quotations are to be obtained.

(b) For all contracts where competitive quotations/tenders have been obtained before the contract is executed.

(c) For all contracts after the contract has been executed - where it is necessary to extend the contract.

(d) For all contracts where the terms provide for variation in pricing during the contract period.

(e) For Class IV and V contracts the financial or other benefits resulting from any negotiations shall be reported to the Cabinet Panel (Resources) before any tender is accepted.

2. Negotiations to Extend Contracts

2.1 Negotiations may be undertaken to extend or vary contracts provided:-

(a) The negotiated extension is not greater than 75% of the

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NOT USED DIRECTLY – SEE I

G. CONTRACT NEGOTIATION

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<p><i>original contract sum.</i></p> <p><i>(b) The appropriate Chief Officer is satisfied that no better terms could be obtained by competitive tendering or that the nature or urgency of the work make it desirable that the same contractor is employed.</i></p> <p><i>(c) For contracts originally within Class II or III where the contract sum together with the extension exceeds the Class IV limit the Cabinet Panel (Resources) shall be advised of the nature of the negotiations and the reason for the recommendation and shall endorse the same.</i></p> <p><i>(d) For contracts originally within Class IV the Cabinet Panel (Resources) is fully advised of the nature of the negotiations and the reason for the recommendation and endorse the same.</i></p> <p><i>(e) Not more than one negotiated extension is permitted for any one contract or series of related contracts.</i></p>	

H. SPECIAL CONSIDERATIONS CONTRACTS PROCEDURE RULES CURRENT VERSION	I Exemptions, Extensions and Variations CONTRACTS PROCEDURE RULES REVISED VERSION
<p>1. General Principles</p> <p><i>1.1 The Council and its officers will always seek value for money in the letting of all its contracts. Price will always be the major consideration and price competition whether by way of competitive quotation or competitive tender will be the primary measure of value for money. In certain circumstances competitive quotations or tenders may not be appropriate and in other circumstances additional factors as well as price ought to be taken into consideration when determining to whom a contract should be awarded. In these circumstances, such quotations shall be reported to the Cabinet Panel (Resources) and in respect of Class III, IV and V contracts and tenders shall be formally recorded.</i></p> <p><i>1.2 The Council's Direct Services Organisation shall be invited to quote and/or tender for any work for which quotations/tenders are necessary and in such circumstances these Rules shall apply to the Direct Services Organisation and any other competitive services provided by in-house suppliers which shall be treated as a separate independent contractor having the capacity to contract with the Council.</i></p> <p><i>1.3 Where applicable the current published price list from the Office of Government Commerce or from Her Majesty's Stationery Office may be used in lieu of one of the quotations/tenders in circumstances where competitive quotations/tenders are required.</i></p> <p>2. Circumstances Where Competitive Quotation/Tendering is not Appropriate</p> <p><i>2.1 In the following circumstances the Executive and Chief</i></p>	<p>1. Exemptions from the Rules</p> <p>1.1 Exemptions from these Rules *must* be obtained in advance in accordance with the following procedure.</p> <p>1.2 An exemption cannot be given for an EU procurement (for more information see Class 4).</p> <p>1.3 For Class 1 and Class 2 contracts an exemption may be agreed by the relevant Service Group Director following the consideration of a written report by the Head of Audit and the Corporate Procurement Manager that the exemption is justified because:</p> <ul style="list-style-type: none"> • the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of the Rules is justifiable; or • the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or • there are other circumstances which are genuinely exceptional. <p>1.4 A record of the decision approving an exemption and the reasons for it *must* be kept and an entry made in the appropriate register.</p> <p>1.5 For Class 3 contracts an exemption may only be agreed following the submission of a report requesting a</p>

Officers are authorised to proceed with the letting of contracts without the necessity to follow quotation/tendering procedure subject to the expenditure limits requiring Executive and Council approval (see Part B).

2.2 The goods or materials are to be purchased or sold at auction, public fair or market.

2.3 The goods or materials or the works or services to be executed are obtainable only from one contractor and no satisfactory alternative is available, or are so urgently required as not to permit the invitation of quotations/tenders.

2.4 The goods, materials or equipment are required to be uniquely compatible with existing goods, materials or equipment and where there is only one supplier. In such circumstances, the reasons shall be formally recorded.

2.5 Where there are fewer than four tenderers known to be in the market for particular goods, materials, works or services. (In these circumstances quotations/tenders shall be invited from all available tenderers).

2.6 Where the work or services to be executed or the goods or materials to be supplied constitute an extension of an existing contract negotiated in accordance with Rule G2.

2.7 Where the execution of works or the purchase of goods or materials is necessary for urgent repairs to buildings or plant to prevent danger to authorised users or to the general public or to prevent rapid and progressive deterioration or to maintain essential services and consent to proceed in this way has been obtained from the Director for Customer and Shared Services in consultation with the appropriate Executive member.

2.8 Where the goods or services to be purchased constitute works of art or museum specimens.

2.9 Where the service to be obtained is from consultants where it is necessary to secure the appropriate level of competence and expertise. In such circumstances, the Code of Practice for the Appointment of Consultants shall be complied with.

dispensation from following the rules by the Cabinet Panel (Resources) and it has approved the award of such contract.

1.6 You ***must*** follow the Procurement Guidance if you do not follow the Rules. If you do not follow the Guidance and enter into a contract on behalf of the Council this could be a disciplinary offence.

1.7 Individual placements for permanent Residential and/or Nursing Care for either Children or Adults are expressly excluded from the Competition Requirements of these Rules. Appropriate contracts must be put in place and agreed by the Chief Legal Officer to ensure that the Council's position is protected.

2. Transfers of Contracts

2.1 In appropriate circumstances the Council may agree to transfer a contract.

2.2 This decision ***must*** be taken by the Cabinet Panel (Resources) for contracts of a value in excess of £250,000 (two hundred and fifty thousand), and by the relevant Service Group Director for contracts of a value up to £250,000 (two hundred and fifty thousand).

2.3 The Corporate Procurement Manager ***must*** hold a complete record of all exemptions and transfers and submit a quarterly report to the relevant Executive/Committee meeting.

3. Conflicts of Interest

3.1 Any interest which may affect the award of a contract under these Rules ***must*** be declared. Every officer entitled to buy supplies services or works ***must*** make a written declaration of interests and update it immediately when an interest changes.

3.2 The Monitoring Officer ***must*** either certify such

2.10 Where quotations/tenders have already been invited on behalf of any consortium, association, or similar body of which the Council is a member provided that the quotations/tenders have been invited in accordance with the method prescribed by such body.

2.11 Such other circumstances as may from time to time be specified by the Council.

3. Consideration of Non Price Factors

3.1 When a quotation/tender other than the lowest if payment is to be made by the Council or the highest if payment is to be received by the Council is recommended for acceptance the report making the recommendation shall specify that fact and the reasons therefor. Where such quotation/tender is accepted the reason for such action shall be recorded.

Examples of such reasons which (subject to any overriding statutory provision) may be taken into consideration (but not by way of limitation) are

(i) the benefit to be derived from locally available labour and materials;

(ii) the professional advice of appropriate officers as to the competence of the tenderers;

(iii) the length of the contract period;

(iv) delivery requirements;

(v) quality and value for money;

provided that any one or more of these or other factors are unlikely to justify acceptance of a contract where the price differential exceeds 10% of the lowest quotation/tender if payment is to be made by the Council or 10% of the highest if payment is to be received by the Council.

4. Equality

4.1 All contractors must provide, on request, a satisfactory response to approved questions on race relations matters as specified by the Secretary of State and provided for under Section 18 of the Local Government Act 1988 and

interests as being acceptable or take any necessary action in respect of potential conflicts of interest and the officer should take no part in the award of a contract by the Council.

3.3 No gifts or hospitality should be accepted from any tenderers to any contract being let by the Council and to do so is a disciplinary offence. You ***must*** inform the Corporate Procurement Manager if you are dealing with a contract for the Council and have been offered such a gift or hospitality.

4. Variations and Extensions

4.1 Subject to any statutory restrictions and compliance with these Rules, a Chief Officer may authorise the following extensions and variations to an existing Class 1 or 2 contract either:

- an extension for a particular period provided for within the terms and conditions of the contract (but subject to satisfactory outcomes of contract monitoring); or
- a single extension of the contract by up to nine months, or half the contract term (whichever is less); and
- any other variation, and if relevant a consequent change in price, determined in accordance with the contract terms.

4.2 In any other circumstances the Chief Officers may vary or extend a contract providing that to do so is consistent with the provisions of Financial Regulations.

4.3 For contracts where the contract sum together with the extension exceeds the Class 3 limit an extension may be agreed by the relevant Service Group Director following the consideration of a written report by the Head of Audit and the Corporate Procurement Manager that the

Regulations issued thereunder.

4.2 In addition, it is a condition of all contracts that such contractors:

(i) comply with the Race Relations Act 1976, Equality Act 2006 and Equality Act 2010 and

(ii) observe, as far as possible, the Commission for Equality and Human Rights Codes of Practice for Employment.

extension is justified.

- 4.4 Contracts procured under the EU Regulations ***must*** not be extended or varied without consulting the Corporate Procurement Manager and the Guidance.

J Disposal of Surplus Goods

<p>CONTRACTS PROCEDURE RULES</p> <p>CURRENT VERSION</p>	<p>CONTRACTS PROCEDURE RULES</p> <p>REVISED VERSION</p>
<p><i>NOT DIRECTLY REFERRED TO</i></p>	<p>1.1 Chief Officers are responsible for the disposal of their own surplus goods.</p> <p>1.2 The same competitive process for buying supplies, services and works *must* also be applied to the disposal of surplus goods.</p> <p>1.3 In principle:</p> <ul style="list-style-type: none">• competitive bids need not be invited if the goods are valued at or below £5,000 but you can do so if you wish;• if the estimated value of the goods is greater than £5,000 and at or below £50,000 then a minimum of three bids *must* be invited; and• if the estimated value of the goods is greater than £50,000 then a minimum of four sealed bids *must* be invited. <p>1.4 If you are in any doubt, professional advice *must* be sought when making valuations.</p> <p>1.5 For higher value items, you can consider sale by auction instead of sealed bids, but care should be taken to evaluate the full cost of the process and the commission payable.</p> <p>1.6 The highest value unconditional bid received should usually be accepted unless, in the view of the Corporate Procurement Manager, a conditional bid offers better value to the Council.</p>

APPENDIX 1 QUOTATIONS FOR CLASS II CONTRACTS

<p align="center"><i>CONTRACTS PROCEDURE RULES</i></p> <p align="center"><i>CURRENT VERSION</i></p>	<p align="center">CONTRACTS PROCEDURE RULES</p> <p align="center">REVISED VERSION</p>
<p>1. Quotation Forms <i>The recommended official document upon which quotations may be submitted is the Council's Official "Request for Quotation" form. These forms are kept by the Corporate Procurement Unit and are issued upon request to Chief Officers. The forms are pre-numbered sequentially and Chief Officers will sign for and be responsible for the safekeeping of all forms issued to them.</i></p> <p>2. Obtaining of Quotations <i>All Class I and Class II contracts up to a total value of £10,000 may be processed by the Chief Officer concerned. Any quotation for goods or services over £10,000 in value must be passed or agreed with the Corporate Procurement Unit for processing on behalf of the Chief Officer concerned. The only exception to this shall be for quotations for maintenance work and minor works (repairs etc), which may be processed by the Chief Officer concerned.</i></p> <p>3. Currency of Quotations <i>No quotation shall remain in force for longer than a period of twelve months from date of acceptance. At the end of any twelve month period quotations must be obtained for a further period not to exceed twelve months.</i></p> <p>4. Recording of Quotations</p>	<p align="center">SEE SECTION E</p>

APPENDIX 1 QUOTATIONS FOR CLASS II CONTRACTS

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<p><i>The procedure to be followed in respect of all Class II quotations is as follows:-</i></p> <p><i>(a) Each Chief Officer shall maintain a permanent register or file to record all quotations despatched and returned.</i></p> <p><i>(b) Where possible, the register should be maintained by an officer other than the officer responsible for awarding the contract. Where this is not possible, the entries in the register or file should be verified and initiated by a second officer.</i></p> <p><i>The register(s) should contain the following information:-</i></p> <p><i>(c) A brief description of the supplies, services, works etc for which quotations are being sought.</i></p> <p><i>(d) The names of the suppliers from whom written quotations are being sought, the date of despatch and closing date for return. Where fewer than three quotations have been requested, the reasons should also be recorded in the register.</i></p> <p><i>(e) When quotations are received, the date received and amount of the quotation should be recorded in the register.</i></p> <p><i>(f) The quotations received should be stamped with the date of receipt.</i></p> <p><i>(g) The quotations should be retained until the closing date and thereafter, where possible, the technical/supplies officer should collect the returned quotations and verify, date and initial the entry in the register to acknowledge receipt.</i></p> <p><i>(h) After the closing date, where a firm has not returned a quotation, "no quotation received" should be entered in</i></p>	

APPENDIX 1 QUOTATIONS FOR CLASS II CONTRACTS

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<p><i>the register, and the supplies/technical officer informed accordingly. The officer maintaining the record should certify the record sheet at the conclusion of the process.</i></p> <p>5. Acceptance of Quotations</p> <p><i>(a) The successful and rejected quotations should be annotated accordingly. Where a lower offer is not accepted a brief, explanatory note should be entered in the quotation summary form against the item(s) concerned.</i></p> <p><i>(b) The rules for negotiation (Section G) of the Council's Contracts Procedure Rules apply to quotations as does the rule of officers not becoming involved in "Dutch Auction" situations.</i></p> <p><i>(c) The accepted quotation should also be cross referenced to the appropriate official order to the successful supplier, and all suppliers who submitted a quotation may be informed whether they have been successful or not.</i></p> <p><i>(d) The quotation request form sent to the suppliers contain the Council's Conditions of Purchase. However, the quotations received from suppliers may contain their Conditions of Sale. Chief Officers should therefore ensure that the order(s) to the successful supplier(s) are in every case affixed to a copy of the Council's Conditions of Purchase before they are posted to the supplier. If any Chief Officer is uncertain about any terms or conditions that a supplier seeks to impose, they are advised to consult the Corporate Procurement Unit before accepting them.</i></p>	

APPENDIX 1 QUOTATIONS FOR CLASS II CONTRACTS

<p><i>CONTRACTS PROCEDURE RULES</i></p> <p><i>CURRENT VERSION</i></p>	<p>CONTRACTS PROCEDURE RULES</p> <p>REVISED VERSION</p>
<p><i>(e) The register sheets should be retained for a period of three years after the date of the last entry thereon. The written quotations should also be retained for the current year plus one on a permanent file, where possible in the same physical location as the relevant orders.</i></p> <p><i>(f) These records should be made available for inspection by Internal Audit as and when requested as part of their normal routine examination of financial records and systems.</i></p>	

APPENDIX 2 CODE OF PRACTICE FOR NEGOTIATIONS

<p align="center">CONTRACTS PROCEDURE RULES</p> <p align="center">CURRENT VERSION</p>	<p align="center">CONTRACTS PROCEDURE RULES</p> <p align="center">REVISED VERSION</p>
<p>1. General Provisions Applicable to All Negotiations</p> <p><i>1.1 This code of practice shall apply where a contract for the supply of goods, materials or services (including Building and Civil Engineering construction contracts – see section 3), is to be let using post-tender negotiation. This also applies to the award of contracts under the Local Government Act 1988 and to Council DSO and DLO contracts.</i></p> <p><i>1.2 This code of practice should be read in conjunction with Section G of the Council’s Contracts Procedure Rules. It is not intended to inhibit normal dialogues between the Council and its contractors on day to day matters that arise as contracts progress. The code is limited to those occasions that would result in an extension or variation of a contract or tender.</i></p> <p><i>1.3 It is inherent to any negotiations undertaken on behalf of the Council, whether in connection with a construction contract or a supply contract, that the officer(s) appointed to conduct the negotiations shall be responsible and shall be seen to be so. In respect of Class III and IV contracts (excluding circumstances described in 3.2 below) at least two officers of the Council must be present at a formal meeting convened specifically for the purpose of finalising the contract.</i></p> <p><i>1.4 Negotiations for supply contracts may take place after receipt of formal tenders or quotations and prior to the award of a contract. The term post-tender negotiation is used in this code to refer to such negotiations. Negotiations may also take place post-contract where the</i></p>	<p>WITHIN GUIDANCE</p>

APPENDIX 2 CODE OF PRACTICE FOR NEGOTIATIONS

<p align="center">CONTRACTS PROCEDURE RULES</p> <p align="center">CURRENT VERSION</p>	<p align="center">CONTRACTS PROCEDURE RULES</p> <p align="center">REVISED VERSION</p>
<p><i>terms of the contract provide for variations such a price reviews on non-fixed price contracts.</i></p> <p><i>1.5 Discussions with tenderers concerning clarification of the Council's requirements may be held after tenders have been despatched but not yet returned. In such instances the same rules as for post tender negotiations shall apply. It is essential however, that officer(s) restrict themselves to answering any queries concerning specifications, terms and conditions etc. and under no circumstances divulge any information which would place any tenderer at an unfair advantage.</i></p> <p><i>1.6 It is not anticipated that post-tender negotiations will be a regular occurrence. They should be used selectively and only when there is a genuine reason to approach tenderers. Circumstances in which post tender negotiations may be considered are outlined in paragraph 1.7 of this code.</i></p> <p><i>1.7 Selective use of post-tender negotiations may be considered in the following circumstances:-</i></p> <p><i>(a) Where the tender evaluation does not result in a clear advantage to the Council from any one tenderer.</i></p> <p><i>(b) Where it is considered advantageous to the Council to split the contract requirements between two or more tenderers.</i></p> <p><i>(c) For multi-item tenders where it is proposed to offer a contract to the lowest tenderer overall, but prices for certain items appear high in relation to other tenders.</i></p> <p><i>(d) Where prices appear excessive in relation to the previous contract or known market prices.</i></p> <p><i>(e) Where the lowest tender exceeds the budget</i></p>	

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<p><i>allowance.</i></p> <p><i>(f) Where competitive quotation/tendering is not appropriate (see Contracts Procedure Rules Part H) but where nevertheless negotiation may be advantageous.</i></p> <p><i>(g) Where the specification, terms or conditions of contract require clarification, or detailed technical evaluation.</i></p> <p><i>(h) Where an abnormally low tender has been submitted.</i></p> <p><i>1.8 Before entering into negotiations officers must ensure they have approval to do so from their Chief Officer.</i></p> <p>2. Procedures to be Adopted in All Negotiations</p> <p><i>2.1 Unless there are good reasons, for example, needing to verify stated performance of tendered equipment at a tenderer’s premises, all negotiations shall be held on Council premises. A written record shall be kept by the relevant Chief Officer of any reason for holding such negotiations away from Council premises.</i></p> <p><i>2.2 All tenderers involved shall, as far as is possible, be interviewed on the same day with the same negotiating team of Council officers.</i></p> <p><i>2.3 For the protection of individual officers, no officer shall be left alone with the tenderer’s representatives at any stage of the negotiation. It is important that officers enter and leave the negotiating room together.</i></p> <p><i>2.4 Unless it is not possible, all negotiations should take place in a room other than the officer’s normal workstation. This is important in order to avoid tenderer’s representatives having sight of any documentation concerning other tenderer’s prices etc., and in any event, it is more professional practice than attempting to negotiate</i></p>	

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<p><i>within a working office environment.</i></p> <p><i>2.5 All negotiations must be undertaken in an open and fair manner and there must be a genuine reason for negotiating with a tenderer.</i></p> <p><i>2.6 If applicable, officers from other Service Groups should be invited to participate in the negotiations. However, it is essential that only one officer leads the negotiations and the other team member(s) adopt a discreet and supportive role. It is also essential that each negotiation is pre-planned in terms of the role of each team member, the questions to be asked and the limits of officer's authority.</i></p> <p><i>2.7 A written record of all negotiations held with each tenderer must be kept and this should include the following information:-</i></p> <ul style="list-style-type: none"> <i>Date, time and venue of interview</i> <i>Name(s) of all officers present</i> <i>Name(s) of tenderer's representatives present</i> <i>Purpose of negotiations</i> <i>Points discussed</i> <i>Agreements reached</i> <i>Further action required.</i> <p><i>The agreed outcome and any amendments to a tender or contract shall be confirmed in writing.</i></p> <p><i>2.8 All information supplied by a tenderer shall be strictly confidential and must not under any circumstances whatsoever, be disclosed to competitors.</i></p> <p><i>2.9 All tenderers will normally only be interviewed once. In exceptional cases, for example, technical complexity, it may be necessary to recall a tenderer for a further interview. Under no circumstances are 'Dutch Auctions' to</i></p>	

APPENDIX 2 CODE OF PRACTICE FOR NEGOTIATIONS

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<p><i>be entered into by Officers.</i></p> <p><i>2.10 The time spent on negotiations should not outweigh the likely benefits.</i></p> <p><i>Minor points of clarification and obvious errors (e.g. mathematical error) should not require a meeting and can usually be resolved by telephone. It is important, however, that all such amendments are confirmed in writing.</i></p> <p><i>2.11 Thorough pre-tender planning and preparation will often mitigate the need for post-tender negotiations. This may include pre-tender discussions with prospective tenderers to examine specifications, terms and conditions and suppliers' suggestions for obtaining better value for money.</i></p> <p><i>2.12 After negotiations have been concluded, a Chief Officer shall not commit to placing a contract until the negotiated terms have been confirmed in writing and in the case of Class IV contracts, Cabinet Panel (Resources) has given approval to accept the offer.</i></p> <p><i>2.13 Whether one or more tenderers are approached will depend on the specific circumstances of each case. A written justification for the eventual selection shall be kept with the tender evaluation papers. As a general rule, all tenderers who meet the specification and are sufficiently competitive, should be considered.</i></p> <p><i>2.14 If during the course of a contract negotiation it becomes necessary to carry out alternations to a specification for whatever reason, then all tenderers must be given an equal opportunity to bid for the revised specification.</i></p> <p><i>Usually a tender in excess of the specification required</i></p>	

APPENDIX 2 CODE OF PRACTICE FOR NEGOTIATIONS

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<p><i>should not be considered, unless it is competitive with the other tenders received.</i></p> <p><i>2.15 Officers must be prepared to de-brief unsuccessful tenderers when requested as this is a requirement of the Local Government Act 1988, and the European Union Directives. This should be carried out in accordance with the ‘Code of Practice for De-Briefing Unsuccessful Tenderers’, appended to these Rules.</i></p> <p><i>2.16 Any major tender revisions will usually necessitate a re-tender exercise.</i></p> <p><i>The advice of the Corporate Procurement Unit should be sought in such situations, and Chief Officers must follow any advice given regarding procedures.</i></p> <p>3. Construction Contracts (Building and Civil Engineering)</p> <p><i>3.1 Negotiations on construction projects should satisfy the criteria laid down in the Barnwell Report on ‘The Placing and Management of Contracts for Building and Civil Engineering Work’ paragraph 3.22 “.....; the public client, however is obliged to demonstrate that some positive advantage will accrue to the public by the elimination of competition and that this is not showing undue favouritism, overlooking the merits of other qualified contractors, or failing to take advantage of market conditions at a given time”.</i></p> <p><i>3.2 In contracts using (competitive) single-stage selective tendering procedures no negotiations prior to reporting tenders to the Cabinet Panel (Resources) will be necessary, except where the lowest tender exceeds the</i></p>	

APPENDIX 2 CODE OF PRACTICE FOR NEGOTIATIONS

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<p><i>budget. In this case negotiations may be appropriate to identify those areas where savings might be made to bring the lowest tender within the finance available when both the original tender and proposed reductions shall be reported. Where other forms of tender procedures are used negotiations will often form part of the process to obtain a tender.</i></p> <p><i>3.3 Procedures for post contract negotiations (i.e. those arising after the contract has been entered into) should be governed by the rules set out in the particular contract employed.</i></p> <p><i>3.4 In any cases of doubt the advice of the Director for Customer and Shared Services should be sought.</i></p> <p>4. Negotiations – General</p> <p><i>4.1 Negotiations, particularly post tender, are a hazardous area of operation for Council officers, as they involve revision of prices, specifications etc. tendered under the sealed bid procedure. If officers are in any doubt about any aspect of this procedure, the advice of the Corporate Procurement Unit should be sought.</i></p> <p><i>4.2 Officers of the Council must at all times endeavour to protect both themselves and the Council against any accusations of improper behaviour as a result of post-tender negotiations.</i></p> <p><i>4.3 Officers are reminded that they have a duty to advise members on the provisions of this Code, where members are involved in the contract negotiation process.</i></p>	

APPENDIX 3 CODE OF PRACTICE FOR DEBRIEFING UNSUCCESSFUL TENDERERS	
<i>CONTRACTS PROCEDURE RULES</i>	CONTRACTS PROCEDURE RULES
<i>CURRENT VERSION</i>	REVISED VERSION
<p>1. General Provisions</p> <p><i>1.1 The Local Government Act 1988 and the European Union Directives impose requirements on local authorities for debriefing unsuccessful tenderers.</i></p> <p><i>1.2 The debriefing of tenderers is not a practice which is likely to bring benefits in the short term as the contract placed is unlikely to be affected. However, there are rewards in the longer term. Proper, well-planned debriefing can enhance the Council's image and increase the potential for better value for money on future contracts.</i></p> <p>2. Procedures to be Followed When Debriefing</p> <p><i>2.1 The debriefing process should be used after contracts have been awarded, upon the request of any tenderer for that contract, whose tender has been unsuccessful.</i></p> <p><i>2.2 The debriefing process should be used:-</i></p> <p><i>(a) To foster good buyer/seller relationships.</i></p> <p><i>(b) To encourage competition by identifying the potential supplier's areas of weakness, thereby allowing them to make an improved bid next time round and thus increasing the potential for improving value for money on future contracts. Officers should note however that whilst discussions concerning, for example, quality and delivery are straightforward, care should be exercised in order to ensure that when discussing prices, commercially sensitive information is not divulged.</i></p> <p><i>(c) To establish a reputation for fairness, honesty and ethical behaviour.</i></p> <p><i>(d) To avoid discouraging potential suppliers from bidding for future contracts.</i></p>	<p>WITHIN GUIDANCE</p>

APPENDIX 3 CODE OF PRACTICE FOR DEBRIEFING UNSUCCESSFUL TENDERERS	
CONTRACTS PROCEDURE RULES	CONTRACTS PROCEDURE RULES
CURRENT VERSION	REVISED VERSION
<p>2.3 The legislation mentioned in Section 1.1 of this code requires that the following categories must be debriefed if they request it:-</p> <p>(a) Any applicant who is excluded from an approved list.</p> <p>(b) Any applicant who has asked to be allowed to tender and a decision has been made not to invite that applicant to tender.</p> <p>(c) Any tenderer whose submission is disqualified.</p> <p>(d) Any tenderer whose tender is not accepted.</p> <p>(e) Any existing contractor from whom approval or nomination of selection of sub-contractors is withheld.</p> <p>(f) Any existing contractor who has a contract terminated.</p> <p>2.4 Under no circumstances should debriefing sessions be held prior to the contract being awarded and all unsuccessful applicants being informed of the decision. Tenderers and contractors must never be allowed to assume that the debriefing process can be used to change the Council's decision.</p> <p>2.5 The legislation requires the Council to inform all parties of a contract award/termination decision forthwith. Unsuccessful parties may then ask in writing, within 15 days of the communication informing them of the decision, for a statement of the reasons why the decision was made. The Council is then obliged to reply in writing, stating the reasons, within 15 days of the date of the request from the unsuccessful party. It is emphasised, however, that the response should be restricted to a brief statement of factual reasons why the tender was unsuccessful and this will normally be signed by the relevant Chief Officer. The advice of the Corporate Procurement Unit should be sought if there is any doubt over the content of such letters.</p>	

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<p><i>2.6 In addition to this, a formal meeting may be held to discuss the decision. This is not a mandatory requirement to the Council, however, officers should exercise judgement as to whether this would be beneficial. It is considered that this would not be justifiable in the case of minor value contracts. Chief Officers are responsible for ensuring that adequate notes are kept regarding any such meetings undertaken by their Service Group.</i></p> <p><i>2.7 Due to the sensitivity of debriefing, the process should not be entrusted to junior officers, who are unlikely to possess the experience to debrief successfully. Additionally, any debriefing meeting should be undertaken using the same rules as for post-tender negotiation (i.e. on Council premises, minimum two officers present, written notes to be kept on file etc.).</i></p> <p><i>2.8 To be successful, the debriefing should be pre-planned and the tenderer/supplier should be made to understand the following prior to the debriefing commencing:-</i></p> <p><i>(a) They will be told frankly, honestly (and diplomatically) of perceived weaknesses that influenced the decision.</i></p> <p><i>(b) The purpose of the meeting is to be informative and not to enter into arguments about the contract award decision.</i></p> <p><i>(c) That any perceived weaknesses are those of the tender appraisal team as a whole, and that more than one layer of management (possibly including elected members) has been involved in the decision making, together with any specialists involved.</i></p> <p><i>(d) That only the unsuccessful applicant's tender or application will be discussed. There will be no comparison with others.</i></p> <p><i>Any information to be imparted to an unsuccessful party</i></p>	

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<p><i>should only be given out by one individual. If more than one person is involved, information given out over the telephone or during a casual visit, may become distorted or incomplete. Debriefing in this manner is to be discouraged.</i></p> <p><i>2.9 All tenders must contain a standard or specification below which a contractor or tenderer will be unacceptable. These standards must be set before analysing applications or tenders in order to avoid any bias, or allegations of bias in the decisions making process. A record must be kept of assessment criteria used and tenderer's scores against these, in order to assist in the audit trail. The specifications or assessment criteria may not be changed during evaluation.</i></p> <p><i>2.10 Whilst every briefing will be unique, and different reasons will be given to each unsuccessful tenderer, any reasons for an application being unsuccessful must be:-</i></p> <ul style="list-style-type: none"> <i>(a) Arriven at and given in good faith.</i> <i>(b) Only communicated to the party concerned.</i> <i>(c) Truthful.</i> <i>(d) Valid commercial reasons.</i> <i>(e) Not deliberately malicious.</i> <i>(f) Not anti-competitive.</i> <i>(g) Supported by working papers and/or factual evidence.</i> <p><i>2.11 The list below details some of the acceptable reasons for rejecting applications/tenders. However, this list is not exhaustive and other reasons may be used provided that they are supportable within the framework of the legislation.</i></p> <p>Reasons for not selecting tenders or refusing applications to be placed on approved lists</p> <ul style="list-style-type: none"> * Cost * Unacceptable production/construction schedules * Design deficiencies 	

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<ul style="list-style-type: none"> * <i>Whole life operating costs</i> * <i>Unacceptable delivery dates</i> * <i>Unacceptable seller's terms and conditions</i> * <i>No after sales support (where specified)</i> * <i>Not working within industry Codes of Practice (if specified)</i> * <i>Not to specification</i> * <i>Unable to provide up to date audited accounts (if requested prior to tender)</i> * <i>Unable to provide technical manuals/data/operators' handbooks etc. (where requested as part of specification)</i> * <i>Unwilling to provide factory/manufacturing inspection visits (where requested as part of specification)</i> * <i>No performance bond (where applicable)</i> * <i>No parent company guarantee (where applicable)</i> * <i>Bankruptcy</i> * <i>Unsatisfactory financial position</i> <p><i>2.12 Officers should note that tenderers may only be evaluated against the written tender specification and that no further evaluation criteria may be introduced after the receipt of tenders. Officers are strongly advised to exercise caution in this area and seek the guidance of the Corporate Procurement Unit.</i></p> <p>3. General Points</p> <p><i>3.1 The debriefing process is particularly sensitive and potentially hazardous for Council officers. If an officer is in any doubt as to how to proceed, the advice of the Corporate Procurement Unit should be sought.</i></p> <p><i>3.2 Officers should ensure that at all times they protect both themselves and the Council from any accusations of improper behaviour whilst undertaking supplier debriefing</i></p>	

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<p><i>procedures. This Code of Practice, if followed, will help ensure that this is the case.</i></p> <p><i>3.3 Officers are reminded that they have a duty to advise members on all aspects of this Code of Practice, where members are involved in the debriefing process.</i></p>	

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1. Introduction

1.1 *This Code of Practice must be used whenever it is proposed to appoint a management consultant to undertake work on behalf of the Council. This Code of Practice does not include the appointment of Counsel or Solicitors, where advice must be sought from the Chief Legal Officer, before proceeding.*

1.2 *Every contract shall comply with the Council's Contracts Procedure Rules and Financial Procedure Rules and these are subject to any relevant directives of the European Union for the time being in force in the United Kingdom.*

1.3 *Consultants shall only be appointed with the approval of the Chief Executive.*

1.4 *The cost of using consultants must be justified by the benefits to be derived from the assignment. In particular, Chief Officers shall be clear in their minds as to the additional value to be gained from the use of consultants, over and above the use of in-house resources.*

2. Preparation for Consultancy Assignment**2.1 Objectives**

The Chief Officer shall define the objectives of the assignment, determine and mark out clearly the scope and timescale of the exercise. The objectives shall be specific and ways of testing if such objectives were achieved - qualitatively and financially - shall be considered.

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*CONTRACTS PROCEDURE RULES**CURRENT VERSION***2.2 Terms of Reference**

The Chief Officer shall draw up the terms of reference of the assignment covering the basis of contract between the consultants and the Council, essential background information and any specific information to be included in the proposal.

2.3 Involvement with the Consultancy

The Chief Officer shall determine the management and control of the work. Members and officers who need to be involved with the task shall be resolved at an early stage and their availability ascertained.

3. Appointment of Consultants**3.1 Shortlist**

(a) The Chief Officer shall draw up a shortlist of consultants to be invited to submit proposals, taking into consideration the consultants' expertise, experience, resources and their understanding of local government culture and the emphasis on service delivery.

(b) The shortlist shall reflect the size of the work. Three firms will usually be adequate, but there should be up to six for large projects. What constitutes a large project in monetary terms will vary according to the nature of the work.

(c) In special cases only one firm may be invited to submit a proposal - for example where the work to be done is a continuation of an earlier assignment completed by the firm or where the firm is in an unparalleled position amongst consultants in the particular area of work or where there are simply no

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alternatives.

3.2 Proposals

(a) The Chief Officer shall provide to the consultants some guidance as to the level of details and be specific as to the essential information the proposals shall contain.

(b) Any proposal from a consultant must include a CV of the person(s) to undertake the work. Any previous association or relationship of such persons with the Council officer or Service Group commissioning the work must be declared.

(c) Where appropriate, the Chief Officer shall require the consultants to visit relevant sites and meet with key officers in order to gain a proper understanding of the Service Group's needs.

3.3 Evaluation of Proposals

(a) All proposals must be properly evaluated against pre-set criteria and compliance with the terms of reference verified.

(b) The relative strengths and weaknesses of proposals shall be analysed, and the level of service being offered appraised against difference in price.

(c) Where appropriate, the Chief Officer may enter into negotiation with the consultants so as to improve the quality of any proposals, insofar as the tendering procedures are not undermined and the fee quoted not increased.

(d) At the final presentation/interview the Chief Officer shall ensure that the chosen firms have a thorough understanding of the Service Group's expectations as to

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format, timetable and focus. All outstanding matters must be clarified at this stage.
(e) The terms and conditions of any contract documentation should be approved by the Chief Legal Officer prior to the contract being awarded.

4. Working with Consultants

4.1 All Council information provided to the consultants must be authorised by an officer at an appropriate level. The Chief Officer shall require the consultants to respect confidentiality of sensitive Council matters.

4.2 Consultants' reports shall be examined bearing the following in mind:

- * Factual authenticity*
- * Balance of argument and conclusions*
- * Realism of recommendations (practicability and cost effectiveness)*
- * Implementation schedule (timing and sequence)*

5. Using the Results of the Assignment

5.1 The Chief Officer shall arrange a post-completion meeting with the consultants to ensure that the recommendations and ways of effecting them are fully understood by staff charged with implementation. All other outstanding matters shall also be concluded at this meeting.

5.2 The Chief Officer shall ascertain the financial implications of the implementation of recommendations and identify possible sources of funding.

5.3 The implementation programme shall be

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subsequently monitored by the Executive to check on how it has progressed and to verify if the intended benefits have materialised. All lessons learnt shall be suitably documented.

6. Project Evaluation on Completion

6.1 Service Groups should undertake an evaluation of all but very short consultancy projects. Completed project evaluation forms should be lodged in the contract file and in the Central Register of Consultancy Projects maintained by the Chief Executive.

7. Central Register of Consultancy Projects

7.1 The Chief Executive maintains a Central Register of Consultancy Projects.

The following information is to be provided to the Chief Executive as and when they become available during the consultancy process:

- * Client Service Group*
- * Brief description of the project*
- * Name and address of the Consultancy firm appointed*
- * Estimated cost*
- * True cost when determined*
- * Project evaluation report*

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<p>GENERAL ASSESSMENT INFORMATION</p> <p><i>The following information is required in respect of funding of all voluntary organisations and outside bodies. This information must be received and evaluated before any funding is given in accordance with any scheme of delegation approved by Council.</i></p> <ol style="list-style-type: none"> <i>1. Objectives of the organisation and body.</i> <i>2. Nature of the organisation or body (e.g. trust, company, community group etc).</i> <i>3. Management arrangements (how are the affairs of the organisation and body controlled and managed).</i> <i>4. Financial details (current and following financial years):-</i> <ol style="list-style-type: none"> <i>(a) Gross revenue expenditure.</i> <i>(b) Analysis of funding sources.</i> <i>(c) Capital expenditure with funding details.</i> <i>(d) Last independently audited accounts.</i> <p><i>(Note: Accounts should be prepared in accordance with any statutory requirements which apply to the organisation (e.g. under legislation applying to charitable bodies or companies or bodies receiving assistance from local authorities) and any policy requirement of the Council).</i></p> <i>(e) Details of any bids outstanding or to be made for funding, from Council and external sources.</i> <i>5. Links to other organisations and bodies in terms of management control, financial or other joint arrangements with financial implications.</i> <i>6. Specific details relating to the funding being sought.</i> <p><i>This information should be reported to and considered by the Cabinet/Cabinet Panel which has authority to approve</i></p>	<p>NOT APPLICABLE TO CPR</p>

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<p><i>the funding applied for.</i></p> <p><i>If the information received under 4 above indicates the organisation or body is receiving or is likely to receive in excess of £5,000 from the Council in any one year, the application should be reported to the Cabinet/Cabinet Panel for approval.</i></p> <p><i>(Note: In addition, reports may also be required to meet specific Cabinet requirements or the funding regime currently in operation).</i></p>	