

SECTION 17

17. CONTRACT STANDING ORDERS AND PROCUREMENT RULES

17.1 INTRODUCTION

- 17.1.1 Procurement is the process by which the Council manages the acquisition of all its Goods, Services and Works. It includes the identification of need, consideration of options, the actual procurement process and the subsequent management and review of the contracts.
- 17.1.2 These Contract Standing Orders and Procurement Rules provide a corporate framework for the procurement of all Goods, Services and Works for the Council. The Rules are designed to ensure that the Council obtains value for money and the required level of quality and performance in all contracts let and that all procurement activity is conducted with openness, probity and accountability.
- 17.1.3 In all its procurements the Council must comply with the EU Treaty based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality and these rules are designed to ensure compliance with the same.

17.2 DEFINITIONS AND INTERPRETATIONS

- 17.2.1. In these Rules the following definitions apply:
- **Authorised Officers** means the holder for the time being of any post named in the Scheme of Delegation as having delegated powers and duties in respect of the procurement concerned.
 - **Chief Officer** means any officer in the following categories of officer, Chief Executive, Corporate Director and Head of Department.
 - **Contract** means any form of agreement (including, without limitation, official purchase orders) for the supply of Goods, provision of Services or carrying out of Works.
 - **Contractor** means any contractor, supplier or provider with whom the Council enters into a Contract for the carrying out of works, provision of services or the supply of goods
 - **Framework Agreement** means an agreement with one or more Contractors, the purpose of which is to establish the terms (in particular with regard to price and quantity) governing a contract or contracts to be awarded during the period for which the framework agreement applies.
 - **Goods** covers all the goods, supplies, substances and materials that the Council purchases, hires or otherwise obtains.
 - **Grant and Grants** a sum of money paid or to be paid by the Council to a third party, and in respect of which the Council does not require the grantee to provide the Council with any services, goods or carry out any works for the Council's direct benefit. The Grant may be conditional (i.e. obligation to spend the Grant in a particular manner, to account for that spend and repay the Grant if

- the Grant conditions are breached).
- **ITT** means an invitation to submit a Tender.
 - **Procurement** means the process by which the Council manages the acquisition of all its goods, services and works. It includes the identification of need, consideration of options, the actual procurement process and the subsequent management and review of the contracts.
 - **Procurement Manager** means the Council's Procurement Manager or any officers under his/her supervision or management who are given delegated powers to carry out any of the obligations, duties or activities required to be performed by him/her under these Rules or to act in his/her absence.
 - **Procurement Process** means the procurement process spans the whole life cycle, from identification of needs, options appraisal, supplier selection, award and contract management through to the end of a contract or the end of the useful life of the asset, or disposal of the asset.
 - **Rules** means these Contract Standing Orders and Procurement Rules.
 - **Services** includes all services, which the Council purchases or otherwise obtains including advice, specialist consultancy work, agency, staff, etc.
 - **Negotiated Procedure** whereby the Council has negotiated the terms of the Contract with one or more providers, Contractors or suppliers selected by it.
 - **Regulations** means the Public Contracts Regulations 2006 and any amendment or re-enactment thereof.
 - **Tenderer/Tenderers**. Individual, individuals, partnerships, companies or other bodies invited to submit quotes/tenders, prices for providing the Council with services, supplying goods or carrying out works.
 - **Treaty Principles** means the principles referred to in paragraph 17.1.3 above.
 - **Variant Bid** means an offer/bid which contains variants on the requirements specified by the Council in its procurement documentation.
 - **Variation and Variations** means any alterations to a contract, including additions, omissions, substitutions, alterations or changes of any other nature.
 - **Works** includes all works of new construction and repairs in respect of physical assets (buildings, roads, etc.) including all those activities constituting works for the purposes of the Regulations.
 - **Written** means in writing or in a "written" electronic form.

17.2.2 All values referred to in these Rules are exclusive of V. A. T.

17.2.3 Any dispute regarding interpretation of these Rules shall be referred to the Monitoring Officer for resolution.

17.2.4 These Rules shall be read in conjunction with the Council's Constitution as

a whole and in particular the Council's Financial Procedure Rules, which must be complied with.

- 17.2.5 The Procurement Manager shall undertake a formal review of these Rules at least every two years.

17.3 COMPLIANCE WITH THESE RULES

- 17.3.1 These Rules must be followed when dealing with any Council Procurement except for those Procurements and other matters referred to in Rule 17.4.

- 17.3.2 Every Procurement undertaken by the Council or any other party on its behalf must comply with

- (a) all relevant statutory provisions;
- (b) all applicable European Union procurement directive and the Regulations;
- (c) the Treaty Principles apply to all the Council's procurements (even when the procurement is not subject to European Union procurement directives and the Regulations that implement them in the U.K);
- (d) the Council's Constitution;
- (e) the Council's strategic objective and policies including the Corporate Procurement Strategy.
- (f) the Council's Sustainable Procurement Policy; and
- (g) the guidance in the Procurement Handbook.

- 17.3.3. The Procurement Manager may from time to time issue procurement guidance. Chief Officers must ensure that employees in their Service are aware of such guidance and should ensure compliance.

- 17.3.4 Any failure by an officer to comply with any provision of these Rules may result in disciplinary action.

17.4 EXCEPTIONS TO THE RULES

- 17.4.1 These Rules do not apply to :-

- (a) the acquisition or disposal of land;
- (b) contracts of employment which make an individual a direct employee of the Council;
- (c) use of the Council's in-house services;
- (d) award of Grants (Grants are not regulated by public procurement law as they are not public contracts. However, they are regulated by the rules on state aid and by general public law controls relating to

fiduciary duty and proper spending of public money as well as specific conditions which may include procurement requirements);

- (e) individual orders placed under contracts which provide for orders to be placed against agreed schedules of rates, or under a measured term contract or under a Framework Agreement, provided that such contracts or Framework Agreement have been let by the Council in accordance with these Rules;
- (f) individual orders placed under Office of Government Commerce and or Value Wales let Framework Agreement or other public sector Framework Agreement where the Council is permitted to place orders under such agreements;
- (g) contracts for services entered into in pursuance of powers under the National Health Services and Community Care Act 1990 and the Children Act 1989 for the benefit of an individual;
- (h) instructions and briefings issued by or on behalf of the Monitoring Officer to Counsel. The Monitoring Officer will make arrangements to ensure that a record is kept of all such instructions or briefs together with a record of Counsel's fee;
- (i) Goods, Services and Works procured by another public body on behalf of or for the joint benefit of the Council and other parties (i.e. a collaborative procurement arrangement such as contracts awarded via the Welsh Purchasing Consortium etc.) and provided that in such case, the other public body's procurement/contract rules, all EU and UK procurement law requirements, and the fundamental principles of the EC Treaty have been complied with. The advice of the Procurement Manager must be sought before placing reliance on any such arrangement. When placing reliance on the exemptions stated above, the Authorised Officer should ensure that the best possible value for money is obtained for the Council.
- (j) Individual "De-minimus" contracts within the Council's public transport support budget up to an aggregated maximum of 40% of that budget.

17.5 COUNCIL-WIDE FRAMEWORK ARRANGEMENTS

- 17.5.1 Where available, use must be made of the Council's existing corporate purchasing and Framework Agreements let in accordance with these Rules, unless in exceptional circumstances the Procurement Manager has agreed otherwise. The Corporate Procurement Unit maintains a register of such agreements and can provide advice on their use.

17.6 ESTIMATING THE CONTRACT VALUE

- 17.6.1 No works or requirements for goods or services may be artificially split to avoid compliance with EU procurement law or these Rules.
- 17.6.2 The estimated value of a Contract/procurement exercise shall be the value of the total consideration, net of value added tax, which the Council expects to

be payable under the Contract.

- 17.6.3 In determining the value of the total consideration, which the Council expects to pay, the Council shall, where relevant, take account of :-
- (a) any form of option
 - (b) the term/period of the proposed Contract
 - (c) any rights to renew the Contract/extend the Contract period
 - (d) any price, payment, premium, fees, commission, interest or other form of remuneration payable under the proposed Contract or in respect of the proposed procurement.
- 17.6.4 In determining the value of any Contract for the hire of Goods, if the term of the Contract is indefinite or uncertain at the time the Contract is entered into, then the value shall be taken as equating to the value of the monthly consideration multiplied by 48.
- 17.6.5 In determining the value of any Contract for the provision of Services or carrying out of Works, if the term of the Contract is indefinite or uncertain at the time the Contract is entered into then the value shall be taken as equating to the value of the monthly consideration multiplied by 48.
- 17.6.6 Where the Council has requirements over a period of time for Goods and Services where the contracts have similar characteristics and the Goods and Services are of the same type, and enters into a series of contracts or a contract which is renewable, then the estimated value shall be calculated by the total spend on such matters over the last 12 months or projected estimated spend for next 12 months, which ever is the greater. In estimating this value the advice of the Procurement Manager must be sought and regard had to provisions of Regulation 8 of the Regulations.
- 17.6.7 For Framework Agreements, or similar, without a known annual expenditure but with duration exceeding one year, the number of years duration will be multiplied by the likely annual expenditure and must be determined in consultation with the Procurement Manager. The maximum period now permitted under the EU Procurement Rules for Framework Agreements is 4 years.

17.7 CONTRACTS UNDER £50,000 (Quotations)

- 17.7.1 Where possible, goods, services and works must be obtained via existing corporate Framework Arrangements, standing lists or consortia arrangements.
- 17.7.2 Where there are no existing approved arrangements, the following number of quotations must be sought and evidenced in accordance with Rules 17.7.3 or 17.7.4.
- (a) Up to £5,000 require only one quotation;
 - (b) Between £5,000 and £50,000 require three quotations.
- 17.7.3 For Procurements up to £5,000 the quotation obtained must be in writing in order that best value and the integrity of the process can be demonstrated. This information must be retained by the Service.
- 17.7.4 For Procurements of £5,000 to £50,000 records will be kept detailing which Contractors were selected to quote, to whom the Contract was awarded and the reasons for so doing (lowest price or offer which represents best value to the Council and why), so that best value and the integrity of the process can be demonstrated. The confidentiality of quotes will be maintained until the contract has been awarded. This information must be retained by the Service. It is important to appreciate that Contractors must be informed of how their quotations will be evaluated and this information should be set out when Contractors are asked to quote.
- 17.7.5 Where similar goods, services and works are regularly required, and arrangements described in Rule 17.5 are not available, consideration must be given to awarding a framework arrangement and the advice of the Procurement Manager must be obtained.
- 17.7.6 Where goods, services or works are regularly procured from a single particular supplier under this Rule and the aggregated value of those contract exceed £50,000 in any financial year, the matter must be reported by the Head of Department to the Procurement Manager who will undertake a review of the arrangements with regard to ensuring compliance with these Rules and the Councils Policies and Strategies.

17.8 CONTRACTS VALUED ABOVE £50,000 (TENDERS)

- 17.8.1 For procurements with an estimated value of more than £50,000 at least three written tenders must be invited.
- 17.8.2 For the rules as to: Pre-qualification, Invitation to Tender, Receipt of Tenders, Custody and Opening of Tenders, Tender Evaluation, Post Tender Negotiation, Evaluation Team, Risk and Awarding Contracts, see rules 17.12 to 17.25.
- 17.8.3 The Corporate Procurement Unit shall maintain a Corporate Contract Register which will record to whom contracts are awarded and the

procurement route following in each case. The Authorised Officer must provide the Corporate Procurement Manager with all required information to facilitate this.

17.8.4 All tenders must receive a tender reference number by the Corporate Procurement Unit.

17.9 CONTRACTS TO WHICH THE EUROPEAN UNION PROCUREMENT DIRECTIVES APPLY

17.9.1 In the case of procurements that fall to be dealt with under the European Union procurement directives and the Regulations:-

- (a) tenders will be invited in accordance with the requirements of the said directives and Regulations for the time being in force; and
- (b) such directives and Regulations will take precedence over these Rules;
- (c) such directives and Regulations include requirements which are over and above the requirements set out in these Rules.

17.9.2 Advice and guidance on whether a particular procurement is subject to the EU procurement directives can be obtained from the Procurement Manager and Monitoring Officer.

17.9.3 The current thresholds, as at 1st January, 2014 are :-

Services £172,514

Supplies £172,514

Works £4,332,012

The thresholds change every two years and are due to change again on the 1st January, 2016.

17.9.4 The Corporate Procurement Unit is responsible for collation and submission of statistical returns in accordance with Regulation 40 of the Regulations and will make the necessary arrangements for information to be collected annually. Heads of Service shall comply with these arrangements.

17.10 CONSULTANTS

17.10.1 Any consultants used by the Council shall be appointed in accordance with these Rules. Where the Council uses Consultants to act on its behalf in relation to any procurement, then the relevant Head of Service shall ensure that the consultants carry out any procurement in accordance with these contract standing orders. No consultant shall make a decision on whether to award a contract or to whom a contract should be awarded. The relevant Head of Service shall ensure that the consultant's performance is monitored.

17.11 NOMINATED AND NAMED SUB-CONTRACTORS

17.11.1 If a sub-contractor, supplier or sub-consultant is to be nominated or named to a main contractor, quotations or tenders must be invited in accordance with these Standing Orders and the terms of the invitation shall be compatible with the main contract.

17.12 PRE QUALIFICATION (Applies to all)

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

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

17.12.2 Any procurements subject to the Regulations shall comply with the appropriate Regulations.

17.12.3 All Pre Qualification processes shall comply with the EU treaty principles referred to in 17.1.3. above and any requirements as to Pre Qualification must be formulated so as to avoid breaching those principles.

17.12.4 All time limits for Pre Qualification processes shall be such as are reasonable having regard to the subject matter of the contract, the value of the contract and the Treaty Principles.

17.13 THE INVITATION TO TENDER

17.13.1 These requirements apply to all invitations to Tender irrespective of value.

17.13.2 The invitation to tender must include details of the Council's requirements for the particular contract including :

- (a) a specification of the Services, Goods or Works being procured and instructions on whether any variants are permissible;

- (b) the procurement timetable including the tender return date and time, which shall allow a reasonable period for the applicants to prepare their tenders;
- (c) the Council's terms and conditions of contract;
- (d) the evaluation criteria including attached weightings;
- (e) the Form of Tender
- (f) pricing mechanism and instructions for completion;
- (g) whether the Council is of the view that TUPE will apply;
- (h) form and content of method statements to be provided;
- (i) rules for submitting of tenders;
- (j) tender reference
- (k) any further information which will inform or assist Tenderers in preparing tenders.

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

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

17.13.4 All time limits for Tendering Processes shall be such as are reasonable having regard to the subject matter of the contract, the value of the contract and the Treaty Principles.

17.14. TENDERING PROCEDURE (OPEN PROCEDURE)

- 17.14.1 In the case of procurements not governed by the Regulations the Council will publish a notice on the Council and Sell to Wales web site and, where appropriate having regard to the requirements of these Rules, at least one of the following – the local press, and any appropriate national press and/or trade journals in order to target the appropriate market for the particular contract. The extent and nature of the publication shall be proportional to the value and subject matter of the Procurement and regard shall be had to the Treaty Principles.
- 17.14.2 The advertisement shall contain details of the proposed contract and specify a time limit within which interested parties may express an interest in tendering for the contract. After the expiry of the deadline date for expressions of interest, the Council shall send any party expressing an interest on ITT. The ITT shall specify the return date for tenders.
- 17.14.3 All Tenderers expressing an interest are invited to tender. In the case of procurements with an estimated value above £50,000 where fewer than three Tenderers have expressed an interest the Authorised Officer must, in consultation with the Procurement Manager, determine whether there is sufficient interest to demonstrate genuine competition before deciding to continue the Procurement.

17.15 TENDERING PROCEDURE (RESTRICTED PROCEDURE)

- 17.15.1 In the case of Procurements not governed by the Regulations, the Council publishes a notice in accordance with Rule 17.14.1 above except that the notice shall state that a Restricted Procedure is being used.
- 17.15.2 Only those Tenderers selected by the Council are invited to tender. Tenderers shall be only selected on the basis of the published Pre-Qualification criteria comply with Rule 17.12.
- 17.15.3 At least 3 Tenderers must be selected to tender. In the case of procurements with an estimated value above £50,000 where fewer than three Tenderers have expressed an interest or are competent to be invited to tender, the Authorised Officer must, in consultation with the Procurement Manager, determine whether there is sufficient interest to demonstrate genuine competition before deciding to continue the Procurement.

17.16 TENDERING PROCEDURE (NEGOTIATED PROCEDURE)

- 17.16.1 In the case of Procurements not governed by the Regulations the Council publishes a notice in accordance with 17.14.1 above except that the notice shall state that a Negotiated Procedure is being used.
- 17.16.2 Only those Tenderers selected by the Council are invited to negotiate. Tenderers shall only be selected on the basis of the published Pre-Qualification criteria complying with paragraph 17.12 of these Rules.
- 17.16.3 At least 3 tenderers must be invited to tender. In the case of procurements

with an estimated value above £50,000 where fewer than three tenderers have expressed an interest or are competent to be invited to tender, the Authorised Officer must, in consultation with the Procurement Manager, determine whether there is sufficient interest to demonstrate genuine competition before deciding to continue the Procurement.

- 17.16.4 In the case of procurements with an estimated value above £50,000 at least two officers, at least one of whom shall be a Head of Service or Senior Manager shall be present at all times during the negotiations.
- 17.16.5 The Council shall keep proper records of all negotiations and these shall be signed as such by all participants.
- 17.16.6 At all times during the negotiations, the Council shall apply the Treaty Principles.
- 17.16.7 The Negotiated Procedure shall only be used in the following circumstances:
- (a) in the event that the procedure leading to the award of a contract by the Council using the Open Procedure, the Restricted Procedure or the Competitive Dialogue Procedure was discontinued because of irregular tenders; or unacceptable tenders but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered in the negotiated procedure;
 - (b) exceptionally, and in consultation with the Procurement Manager when the nature of the work or works to be carried out, the goods to be purchased or hired or the services to be provided under the contract or the risks attaching to them are such as not to permit prior overall pricing;
 - (c) in the case of a services contract, when the nature of the services to be provided, in particular in the case of financial services and intellectual services, such as services involving the design of work or works, is such that specifications cannot be established with sufficient precision to permit the award of the contract using the Open Procedure or the Restricted Procedure; or
 - (d) in the case of a works, when the work or works are to be carried out under the contract solely for the purpose of research, testing or development but not with the aim of ensuring profitability or to recover research and development costs.
- 17.16.8 In the case of Procurements not governed by the Regulations the Council may negotiate a contract directly with a single contractor only in the following circumstances and, excepting the urgency provisions in (c) below, in the case of procurements with an estimated value above £50,000 the procedure may only be applied after prior written consultation with the Council Procurement Manager.
- (a) in the absence of tenders, suitable tenders or applications in response to an invitation to tender by the Council using the Open or

- the Restricted Procedure but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered in the Negotiated Procedure;
- (b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular Contractor;
 - (c) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by, and not attributable to, the Council and there is insufficient time to invite tenders (in such event the Procurement Manager shall be advised of the use of the procedure as soon as reasonably practicable in all procurements with an estimated value above £50,000.00);
 - (d) in the case of a supply contract :
 - (i) when the goods to be purchased or hired under the contract are to be manufactured solely for the purpose of research, experiment, study or development but not when the goods are to be purchased or hired with the aim of ensuring profitability or to recover research and development costs;
 - (ii) when the goods to be purchased or hired under the contract are required by the Council as a partial replacement for, or in addition to, existing goods or an installation and when to obtain the goods from a supplier other than the supplier which supplied the existing goods or the installation would oblige the Council to acquire goods having different technical characteristics which would result in :
 - incompatibility between the existing goods or the installation and the goods to be purchased or hired under the contract; or
 - disproportionate technical difficulties in the operation and maintenance of the existing goods or the installation;
 - (e) for the purchase or hire of goods quoted and purchased on a commodity market;
 - (f) to take advantage of particularly advantageous terms for the purchase of goods in a closing down sale brought about because a supplier is subject to insolvency.
 - (g) in the case of a services contract, when the rules of a design contest require the contract to be awarded to the successful contestant or to one of the successful contestants, provided that all successful contestants are invited to negotiate the contract.

17.17 EXTENSIONS TO CONTRACTS

17.17.1 In the case of Procurements not governed by the Regulations the Council may use the Negotiated Procedure in 17.16.8 above to negotiate a Contract extension directly with a single contractor only in the following circumstances and subject to the following conditions:

Condition 1

Where the value of the initial contract or the aggregated estimated value of the contract and any extension will be above £50,000.00 the decision must be taken in consultation with the Council's Procurement Manger.

Condition 2

Where the value of the initial contract or the aggregated estimated value of the contract and any extensions will be above £100,000, the decision must be taken in consultation with the Head of Finance and Monitoring Officer.

(i) in the case of a works contract or a services contract -

when the Council wants a Contractor which has entered into a works contract or a services contract with the Council to carry out additional work or works or provide additional services which were not included in the project initially considered or in the original works contract or services contract but which through unforeseen circumstances have becomes necessary, and such work, works or services :

- cannot for technical or economic reasons be carried out or provided separately from those under the original contract without major inconvenience to the Council; or
- can be carried out or provided separately from those under the original contract but are strictly necessary to the later stages of the performance of that contract; and

provided that the aggregate value of the consideration to be given under contracts for the additional work, works or services shall not exceed 50 per cent of the value of the consideration payable under the original contract.

(ii) when the Council wants a Contractor which has entered into a works contract or a services contract with the Council to carry out new work or works or provide new services which are a repetition of the work or works carried out or the services provided under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into on condition that:

- the published notice relating to the original contract stated that a works contract or a services contract for the new work, works or services which would be a repetition of the work or works carried out or the services provided under the original contract may be awarded using the negotiated procedure in accordance with Rule 17.16.8
- in determining the estimated value of the original contract for the

purposes of paragraph 17.6, the Council took into account the value of the consideration which is expected to be payable for the new work, works or services; and

- the procedure for the award of the new contract is commenced within 3 years of the original contract being entered into.

17.18 TENDERING PROCEDURE (COMPETITIVE DIALOGUE)

- 17.18.1 In particular complex contracts where the Council is not able to either :
- (i) define the technical means of satisfying its needs or objectives, or
 - (ii) specify either the legal or financial make-up of a project or both and consider that neither the open restricted or negotiated procedure will allow the award of the contract, the competitive dialogue procedure may be used.
- 17.18.2 The Council publishes a notice. Only those tenderers selected by the Council are invited to be part of the competitive dialogue process. Tenders are selected on the basis of the criteria set out in the Contract Notice. The notice shall state that the competitive dialogue procedure is being used.
- 17.18.3 A minimum of three tenderers should be invited to take part in the competitive dialogue process following publication of the Notice. Where fewer than three tenderers have expressed an interest or are competent to be invited to tender the Authorised Officer must, in consultation with the Procurement Manager, determine whether there is sufficient interest to demonstrate genuine competition before deciding to continue the procurement.
- 17.18.4 At least two officers, at least one of whom shall be a Head of Service or Senior Manager shall be present at all times during the competitive dialogue process.
- 17.18.5 The Council shall keep proper records of all discussions and these shall be signed as such by all participants.
- 17.18.6 At all times during the competitive dialogue process, the Council shall consider and implement the principles of fairness, confidentiality, non-discrimination, equal treatment and transparency.
- 17.18.7 The competitive process of dialogue procedure will not be used for contract with an estimated value of below the EU thresholds.

17.19 RECEIPT, CUSTODY AND OPENING OF TENDERS

- 17.19.1 Invitations to tender must clearly set out the latest tender return date and time.
- 17.19.2 All tenders must be returned using the official envelope or official returns labels and the exterior of the envelope may not be marked in any way which

identifies the tenderer.

- 17.19.3 Tenders with an estimated value below £50,000 (if received by post in the official envelope or using the official tender return label) will be returned to the Head of Service. Tenders will be opened in the presence of two employees designated by the Head of Service of the relevant service area as the case may be. Both employees must be independent to the letting of the Contract. When opened, all tenders will be recorded in a tender register and the tenders and register will be initialled and dated by designated officers present at the time. A copy of such record shall be sent to the Procurement Manager.
- 17.19.4 Tenders with an estimated value above £50,000 must be addressed to the Monitoring Officer by post enclosed in the official envelope or using the official tender return label provided by the Council. The Monitoring Officer will be responsible for the receipt, custody and opening of such tenders. Tenders for the same procurement will be opened consecutively at the same session in the presence of two employees designated for the purpose. One employee will be nominated by the Monitoring Officer and the other employee will be nominated by the relevant Head of Service. Both employees must be independent to the letting of the Contract. When opened, all tenders will be recorded in a tender register and the tenders and register will be initialled and dated by designated employees present at the time. The opened tenders will then be sent to the evaluation officer.
- 17.19.5 Tenders received after the date and time for receipt of tenders will not be accepted.

17.20 ELECTRONIC TENDERING

- 17.20.1 With the agreement of the Procurement Manager, the tender process including invitation and receipt of tenders may be conducted electronically and the provisions of Rules 17.14 to 17.19 may be modified to facilitate this, provided that the electronic system used is approved by the Audit and Risk Manager.

17.21 TENDER EVALUATION

- 17.21.1 Tenders shall be evaluated in accordance with the evaluation criteria and weightings set out in the invitation to tender. All contracts, except contracts where lowest price was predetermined to be the appropriate criteria, shall be awarded on the basis of the offer which represents best value for money to the Council (most economically advantageous tender) having regard to the evaluation criteria and weightings set. The evaluation criteria and weightings must be predetermined and listed in the invitation to tender documentation. In addition, the criteria and weightings shall be strictly observed (and remain unchanged) at all times throughout the contract award procedure. Guidance and assistance on relevant evaluation criteria can be obtained from Corporate Procurement Unit and Legal Unit.
- 17.21.2 If, after the tenders have been opened and examined, an error in

computation of the tender is detected, the Tenderer will be given details of the error and the opportunity to confirm the tender submission as corrected, or withdraw their tender.

- 17.21.3 At all times during any such or clarification process the Council shall consider and comply with the EU Treaty based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality, principles which apply to all the Council's Procurements.

17.22 EVALUATION TEAM

For each Contract with an estimated value above £50,000, the Authorised Officer shall form an evaluation team ('Evaluation Team') with responsibility for evaluating tenders. Written records of the evaluation must be kept.

17.23 RISK

- 17.23.1 For Procurements with an estimated above £50,000, the Authorised Officers shall carry out a risk assessment at the outset and thereafter maintain and update the same throughout the Procurement Process. The decision maker must be informed of any risks identified.
- 17.23.2 For Procurements with an estimated value of £50,000 or above, the Evaluation Team shall consider whether a performance bond and/or a parent company guarantee (if applicable) will be required from the preferred Supplier and where such a requirement arises ensure that it is included as a requirement of the procurement process.
- 17.23.3 For all Procurements the Authorised Officer shall consider the appropriate type (employee liability, public liability, professional indemnity, etc.) and level of insurance required for each contract and ensure that it is included as a requirement of the procurement process.

17.24 APPROVED LIST

- 17.24.1 Approved Lists can only be used where recurrent contracts of a similar type are likely but where such contracts need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. Approved Lists cannot be used for contracts where the estimated value is above £50,000
- 17.24.2 No supplier may be entered on an Approved List until there has been an adequate investigation, having regard to Rule 17.12 into both their financial and their technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list.
- 17.24.3 Approved Lists must be drawn up after an advertisement inviting applications for inclusion on the list. The advertisement must be placed to secure the widest publicity among relevant suppliers. Persons may be entered on a list between the initial advertisement and re-advertisement provided the requirements of Rule 17.24.2 are complied with.

- 17.24.4 Approved lists of suppliers to Services shall be maintained in an open, fair and transparent manner and must be made available to the public on the Council's website. Any request by an economic operator to be included on the list can be accommodated provided that they meet the requirements of Rule 17.24.2
- 17.24.5 The list must be reviewed at least annually and re-advertised at least every three years. On re advertisement, a copy of the advertisement must be sent to each person on the list, inviting them to reapply. Review means:
- (i) the reassessment of the financial and technical ability and performance of those persons on the list, unless such matters will be investigated each time bids are invited from that list
 - (ii) the deletion, with notice, of those persons no longer qualified, with a written record kept justifying the deletion.

17.25 AWARDING CONTRACTS

- 17.25.1 A Contract may only be awarded by an Authorised Officer. The Authorised Officer must ensure, prior to seeking such a decision that sufficient funds are in place to meet all contract payments and if any funding is being obtained from third parties that any conditions attaching to such funding have been complied with.
- 17.25.2 Where the Contract to be awarded has an estimated value of £250,000 or above the relevant Cabinet Member must within 5 working days of the date of award of the contract be advised in writing of the award of the contract such notification to specify the subject matter, parties and value of the contract.
- 17.25.3 The Council shall only award a Contract where it represents best value for money. A Contract shall only be awarded using the pre-determined tender evaluation criteria and weightings. Where a tender is to be evaluated on price only, the Contract must, subject to Rule 17.25.4 below, be awarded to the Tenderer submitting the lowest price.
- 17.25.4 If, in the opinion of the Authorised Officer, a Tender is considered to be abnormally low the Tender may be disregarded but only if:
- (a) the Authorised Officer has requested in writing an explanation of the Tender or of those Parts which it considers contribute to the offer being abnormally low;
 - (b) taken account of the evidence provided in response to a request in writing; and
 - (c) subsequently verified the Tender.
- 17.25.5 Save for exceptional circumstances, no Contractor should be asked to provide any Services, supply any Goods or carry out any Works (including preliminary Works) until the Contract is concluded or the Services, Goods or

Works concerned are covered by a letter of intent. Any decision to the contrary must be made by the Head of Service for the service area concerned and such decision shall contain a full risk assessment as to the possible implications to the Council of the Contractor being allowed to start before the contract terms and conditions have been finalised or a letter of intent issued.

17.25.6 Letters of intent shall only be used in exceptional circumstances, as follows:

- (a) Where a Supplier is required to provide services, supplies or works prior to formal written acceptance by the Council; or
- (b) Where the Council's form of tender does not include a statement that until such time as a formal contract is executed, the Council's written acceptance of a tender shall bind the parties into a contractual relationship.

17.26 NOTIFICATION OF RESULTS AND DE-BRIEFING ALCATEL STANDSTILL PERIOD

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

- (i) The award criteria and weightings
- (ii) The score that the Tenderer obtained against those award criteria and weightings (where relevant)
- (iii) The overall score the winning Tenderer obtained; and
- (iv) The name of the winning Tenderer.

17.26.2 If any additional information is to be disclosed to Tenderers, this must be agreed in advance with the Procurement Manager, taking into account the requirements of any legislation relating to the disclosure of information.

17.26.3 The list of points where de-briefing may be appropriate includes:-

- (i) selection: where the candidate is not selected (short listed) to take part in the tender process;
- (ii) award: where the Tenderer was not awarded the Contract after evaluation of proposals/tender. Such de-briefing should never be conducted before the contract award decision is made and all unsuccessful Tenderers have been formally notified of the same. It should be made clear that the de-briefing process cannot be used to change the choice of a Contractor or to re-open the selection process.
- (iii) if any potential supplier is asked to withdraw or withdraws during the Procurement. De-briefing will only be conducted at the request of the Contractor.

17.26.4 If the award of a Contract is subject to the Regulations there must be a standstill period of a minimum of 10 calendar days between communicating the award decision to all Tenderers and conclusion of the Contract.

17.27 COMPLETION OF CONTRACTS

17.27.1 With the exception of any Contract formed using a purchase order output on a Council electronic purchasing system any Contract with an estimated value above £50,000 must be:-

- (i) in writing;
- (ii) made under the Council's seal.

17.27.2 Contracts of £50,000 and under in value must be made using :

- (i) a purchase order generated by Council electronic purchasing system, or
- (ii) be an official order form produced by the Council, or
- (iii) a written Contract.

17.28 CONTRACT MANAGEMENT

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

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

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

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

17.29 **WAIVERS OF CONTRACT PROCEDURE RULES**

- 17.29.1 A waiver may be agreed by the relevant Cabinet Member if he or she is satisfied after considering a written report by the appropriate officer, that the waiver is justified because:-
- (i) 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 Contract Standing Orders is justifiable, or
 - (ii) the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or
 - (iii) it is in the Council's overall interests; or
 - (iv) there are other circumstances which are genuinely exceptional.
- 17.29.2 A record of the decision approving a waiver and the reason for it must be kept and an entry made in the appropriate register.
- 17.29.3 There is no power to provide a waiver in respect of the requirements of the Regulations.