

Appendix 3

	Version control
<u>Document and date</u>	Draft contract procedure rules (the Rules) draft 4
<u>Author</u>	Nichola Ellard
<u>Purpose</u>	For distribution and final comments from members

CONTRACT PROCEDURE RULES

1. AUTHORITY AND APPLICATION

- 1.1 A Council procurement can only be carried out if properly authorised. Part # of the Constitution sets out delegations to officers. If the procurement is outside the these delegations, formal member-level authority must be obtained.
- 1.2 When appropriate authority has been given, procurement may be delegated in line with the scheme of delegation in Part [3]. Delegated officers may then place orders within approved budgets and in line with these Contract Procedure Rules (the 'Rules').
- 1.3 The **Overriding Principles** below are the key principles to apply to any procurement and relevant contract.
- 1.4 A relevant contract is any arrangement made by, or on behalf of, the Council for the carrying out of works, supplies, goods, materials or services. A Relevant contract does not include:
 - 1.4.1 A contract of employment which makes an individual a direct employee of the authority
 - 1.4.2 An agreement regarding the acquisition, disposal, or transfer of land (to which the Financial Procedure Rules apply) or:
 - 1.4.3 Payment of grants to third parties or the granting of security (to which the Financial Procedure Rules apply).
- 1.5 The Council has a Contracts Procedure Guidance Document (the 'Guidance') which sets out further officer guidance. The Guidance is updated from time to time.
- 1.6 Councillors and officers who have an interest in a contract, or other procurement decision, under the Members Code of Conduct for Councillors or Employee Code of Conduct or under the general law, **must** comply with the relevant code and the law. The Codes are at Part 5 of the Constitution.
- 1.7 Where there is an interest which prevents participation, officers and Councillors **must** not take part in the tender process except to the extent permitted by the Regulatory and Local Government Law Manager. Procedures relating to bribery, corruption and counter fraud are contained at [insert reference] of the Constitution.

2. OVERRIDING PRICIPLES

- 2.1 All procurement procedures must:
 - 2.1.1 realise value for money by achieving the optimum combination of minimum whole life costs, and highest quality of outcome

- 2.1.2 achieve the highest standards of integrity
 - 2.1.3 be followed in accordance with legal assistance and procurement expertise as directed by the Regulatory and Local Government Law Manager.
 - 2.1.4 operate transparently (subject to any requirement for confidentiality)
 - 2.1.5 ensure fair and equal treatment of suppliers
 - 2.1.6 comply with all legal requirements, Council priorities and policies
 - 2.1.7 ensure that non-commercial considerations do not influence any contracting decision except in the case of principle 2.2 or on ethical grounds
- 2.2 In relation to each Procurement the Council must
- 2.2.1 consider how what is proposed to be procured may improve the economic, social and environmental well-being of the Borough and how the Council may act with a view to securing that improvement in conducting the process of procurement
 - 2.2.2 where appropriate seek legally binding assurances that local labour will be used
 - 2.2.3 ensure compliance by the supplier to relevant health and safety good practice and legislation in relation to the supplier's work force and business
 - 2.2.4 when there will be a TUPE transfer of Council staff take steps to ensure that those staff are expressly given the right to join and participate in a trade union
 - 2.2.5 consider whether to undertake any community consultation on the procurement proposals.
- 2.3 All contracts must be in writing as directed by the Regulatory and Local Government Law Manager and entered into **prior to** the commencement of the undertaking or the delivery of the goods or the performance of the services.
- 2.4 Clarification, interpretation and direction on the proper application of these principles to the Council's business shall be finally determined by the Regulatory and Local Government Law Manager in writing within 2 days of a written request.

3. **OFFICER RESPONSIBILITIES**

- 3.1 Officers must comply with these Rules and must ensure compliance by any agents, consultants and contractual partners where they are procuring

on the Council's behalf or the Council are funding the procurement in whole or in part.

- 3.2 Service Managers may delegate the task of complying with these Rules but not the responsibility for compliance. Failure to comply with any of the provisions of these Rules and/or the Council's Constitution insofar as it relates to contracts or failure to obtain and/or follow legal requirements may be brought to the attention of the Regulatory and Local Government Law Manager or the Chief Executive. Non-compliance may be considered to be misconduct or an issue of competence and an investigation may be called for by the Regulatory and Local Government Law Manager.

4. **WAIVERS**

- 4.1 Except where the Public Contracts Regulations 2006 apply and having regard to European law and subject always to legal comment from the Regulatory and Local Government Law Manager a waiver may be granted to allow a contract to be placed by direct negotiation with one or more suppliers rather than in accordance with Rule 9. A waiver can only ever be granted in advance and only ever in accordance with EU law. An application for a Waiver **must** be made by Service Managers in accordance with the Guidance and on the form prescribed by the Guidance. Every Waiver **must** be recorded on a master register to be maintained by the Regulatory and Local Government Law Manager. A waiver may not be granted more than twice.

- 4.2 A Waiver can only be granted for one or more of the following circumstances:-

- 4.2.1 for works, supplies or services which are either patented or of such special character that it has not been possible to obtain competitive prices in spite of advertising
- 4.2.2 the work to be executed or the goods or materials to be supplied consist of repairs to, or parts for, existing machinery or equipment, where such repairs or parts are specific to that machinery or equipment or upgrades to existing software packages
- 4.2.3 the work or services to be executed or the goods or materials to be supplied constitute a valid extension of an existing contract provided that:
- (a) the original contract was procured through a best value exercise
 - (b) the original contract permitted such an extension
 - (c) there is budget approval for the extension in place

- (d) the extension does not exceed the anticipated value of the original contract
- 4.2.4 the purchase is of supplies purchased or sold in a public market or auction
- 4.2.5 for the execution of works or services or the purchase of supplies involving specialist or unique knowledge or skills
- 4.2.6 with an organisation already engaged by the Council for a similar and related procurement and where there is significant benefit to extending the contract to cover this additional requirement, without exposing the Council to unacceptable risk
- 4.2.7 for the purchase of a work of art or museum specimen, or to meet the specific requirements of an arts or cultural event which cannot be procured competitively due to the nature of the requirement
- 4.2.8 in relation to time-limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and **where the grant conditions allow this**
- 4.3 If works, supplies or services are urgently needed for the immediate protection of life or property or to maintain the immediate functioning of a public service for which the Council is responsible such that an exemption/variation is necessary two Service Managers or a Service Manager and a Council Solicitor may together approve the exemption on the basis of unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services. They **must** also prepare a written report for the Chief Executive and Regulatory and Local Government Law Manager explaining these reasons within 7 days after granting the exemption.

5. **PARTNERING ARRANGEMENTS, JOINT PROCUREMENTS AND PROCUREMENT PAID FOR BY GRANT**

- 5.1 All partnering agreements and arrangements, collaboration projects and joint ventures with third parties (whether with private or publicly funded providers), must be subject to appropriate contractual arrangements approved by the Regulatory and Local Government Law Manager.
- 5.2 Partnering arrangements are established for varying reasons and can take many different forms. It is important to ensure that the reasons for entering into a partnership are clear and remain under review. Appropriate accounting and audit arrangements must be put in place and the Council's policy guidance on partnerships and work for outside bodies should be followed.

- 5.3 The Regulatory and Local Government Law Manager **must** be consulted where purchases are proposed using arrangements with another local authority, government department, health authority, primary care trust, statutory undertaker or public service purchasing consortium.
- 5.4 Partners must formally acknowledge (in writing) and accept their respective roles and responsibilities within the partnership before the project commences and after assessing the risks and resources required to undertake the relevant tasks and roles.
- 5.5 Where any procurement exercise is undertaken for which European Regional Development Funds or other grant shall be claimed it is imperative that in addition to these Rules the conditions of grant relating to procurement of goods and services are followed. Where there is any conflict between these Rules and the rules or conditions imposed by the funding body, the stricter requirement **must** be followed.

6. **RECORDS**

- 6.1 The Public Contracts Regulations 2006 require contracting authorities to maintain the following comprehensive records of procurement activities:
 - 6.1.1 contract details including value and how the value is broken down and calculated
 - 6.1.2 selection decision
 - 6.1.3 justification for use of the selected procedure
 - 6.1.4 names of bidding organisations, both successful and unsuccessful
 - 6.1.5 reasons for selection, criteria, weighting and scores
 - 6.1.6 reasons for abandoning a procedure
- 6.2 The outcome of any competitive procurement process **must** be recorded in a report and be kept by the Procurement Unit.

7. **FRAMEWORK AGREEMENTS**

- 7.1 Framework agreements are agreements between the Council and three or more suppliers for the provision of goods, works or services on agreed terms for a specific period and for estimated quantities, against which orders may be placed if and when required during the contract period. They enable the Council to contract (or “call-off”) from the range of goods, works or services set out in the framework.
- 7.2 Where framework agreements are on behalf of several organisations (including the Council), contracts may be made by the Council in one of two ways:

7.2.1 where the terms of the agreement are sufficiently precise to cover the particular call-off, by applying the terms laid down in the framework agreement without reopening competition or

7.2.2 where the terms laid down in the framework agreement are not precise or complete enough for the particular call-off, by holding a further competition in accordance with the following:

- (a) inviting the relevant organisations within the framework agreement to submit bids, with an appropriate time limit for responses, taking into account factors such as the complexity of the subject of the contract
- (b) awarding the contract to the bidder who has submitted the best bid on the basis of the relevant award criteria set out in the framework agreement.

8. COMPETITION AND TENDERING

8.1 Where the estimated total value for a purchase is within the values in the first, column of the table below, the tendering procedure in the second column **must** be followed.

Contracts for the supply of goods and services	
Up to £1,000	Quotations to be sought if deemed appropriate by the Service Manager or their nominee
£1001 to £10,000	Quotations must be obtained from more than one supplier
£10,001 to £50,000	Three written competitive quotations must first be obtained
£50,000 to £70,000	Three tenders must be invited and the invitations should be placed on source Derbyshire or similar website
£70,000 to the EU threshold in force	Five tenders must be invited
Above the EU threshold	Comply with the Public Contracts Regulations in force
Contracts for Works	
Up to £1,000	Quotations to be sought if deemed appropriate by the Service Manager or his nominee

£1001 to £100,000	Quotations must be obtained from more than one supplier
£100,001 to £450,000	Three written competitive quotations must first be obtained
£450,000 to the EU threshold	Three tenders must be invited invitations should be placed on source Derbyshire or similar website
Above EU threshold	Comply with the Public Contracts Regulations in force

- 8.2 An officer must not enter into separate contracts nor select a method of calculating the total value in order to minimise the application of the Rules.
- 8.3 For procurement of less than £25,000 a local supplier should be used where appropriate. Where a local supplier is not used the reason must be recorded in writing.
- 8.4 The Council will maintain information on the types of procurements and relevant contracts it is due to let on its website and information relevant to doing business with the Council. The Council will maintain a list of all contracts entered into over the value of [£10,000].

9. **EVALUATION CRITERIA AND STANDARDS**

- 9.1 In any procurement the bid which is successful should:
- 9.1.1 offer the lowest price or
- 9.1.2 offer the most economically advantageous balance between quality and price
- in the latter case, the Council will use criteria linked to the subject matter of the contract to determine that an offer is the most economically advantageous, for example: price, service, quality, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, safety, after-sales service, technical assistance, delivery date, delivery period and period of completion.
- 9.2 Issues that are important to the Council in terms of meeting its corporate objectives must be used to evaluate bids. The criteria could include, for example
- sustainability considerations,
 - support for the local economy,
 - use of sub-contractors

- bidder's compliance with relevant health and safety legislation from time to time in force
- bidder's approaches to continuous improvement, setting targets for service improvement, or future savings.

All criteria must relate to the subject matter of the contract, be in line with the Council's corporate objectives and must be objectively quantifiable and non-discriminatory.

- 9.3 The procurement documentation should clearly explain to bidding organisations the basis of how the decision will be made, making clear how the evaluation criteria specified will be applied, the weightings to be attached to each of the high-level criteria, how the high-level criteria are divided into any sub-criteria and the weightings attached to each of those sub-criteria.
- 9.4 Relevant British, EU and International standards which apply to the subject matter of the contract and which are necessary to properly describe the required quality must be included with the contract.

10. **INVITATION TO TENDER/REQUEST FOR QUOTATION**

- 10.1 The Invitation to Tender shall state that no tender will be considered unless it is received by the date and time stipulated. No tender delivered in contravention of this Rule 10 shall be considered.
- 10.2 Every Invitation to Tender shall include all of the following:
- 10.2.1 a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers
 - 10.2.2 the terms and conditions of contract that will apply
 - 10.2.3 a requirement for candidates to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the candidate to any other party (except where such disclosure is made in confidence for a necessary purpose)
 - 10.2.4 a requirement for candidates to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion
 - 10.2.5 a requirement for candidates to confirm that tenders submitted to the Council are compiled at the candidates own expense
 - 10.2.6 a description of the award procedure and, unless defined in a prior advertisement, a definition of the award criteria in objective terms and if possible in descending order of importance

- 10.2.7 the method by which arithmetical errors discovered in the submitted tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa
- 10.3 The Invitation to Tender or Requests for Quotation must state that the Council is not bound to accept any tender or quotation.
- 10.4 All candidates invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information **must** be given on the same basis.

11. **SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS**

- 11.1 Bidding organisations must be given an adequate period in which to prepare and submit a proper quotation or tender, consistent with the complexity of the contract requirements. Where the Public Contract Regulations 2006 apply, Part 3 of the Regulations lays down specific minimum time periods for tenders.
- 11.2 Each tender must contain:
 - 11.2.1 an undertaking signed by the tenderer that to the best of their knowledge and belief they have complied with all the relevant provisions of the Health and Safety at Work Act 1974 and regulations made under it
 - 11.2.2 a statement that the tenderer will comply with all current relevant British Standard Specification or Code of Practice or equivalent European Union or international standards offering guarantees of safety, reliability and fitness for purpose
 - 11.2.3 a statement by the tenderer that they will not try to obtain or receive by whatever means any information which gives or is intended to give the tenderer or another party any unfair advantage over any other tenderer (including the Council's own workforce) in relation to the tendering for and award of any works/services contract
 - 11.2.4 a statement that the Council shall not be liable for expenses incurred in the preparation of tenders; nor shall the Council be bound to accept the lowest or any tenders submitted; nor shall the Council have to give reasons for the rejection of any tender and shall have reserved to them the right to invite fresh tenders should they consider that course desirable.
- 11.3 In the event that 'hard copy' tenders are to be accepted these must be submitted, sealed, in the envelope provided with the procurement documents and addressed to the Procurement Manager without any mark revealing the bidding organisation's identity.

- 11.4 All hard copy tenders will be held by the Council until the tender opening date/time has been reached. Receipt of each tender must be
- 11.4.1 date stamped;
 - 11.4.2 initialled by the receiving officer or the Regulatory and Local Government Law Manager; and
 - 11.4.3 logged immediately upon receipt in the tender register.
 - 11.4.4 in the event that hard copy quotations are to be accepted these must be submitted in a plain envelope marked 'Quotation for....' followed by a description of the goods, works or services being procured.

12. **CLARIFICATION PROCEDURES AND POST TENDER NEGOTIATIONS**

- 12.1 Providing clarification of an Invitation to Tender to potential or actual candidates or seeking clarification of a tender whether in writing or by way of a meeting is permitted. However, any such clarification must not involve changes to the basic features of the bidding organisation's submission.
- 12.2 Post tender negotiation means negotiations with any tenderer after submission of a tender and before the award of the contract with a view to obtaining an adjustment in price, delivery or content. Post tender negotiation must not be conducted in an OJEU procedure. Where post tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.
- 12.3 If post tender clarification is necessary after a single stage tender or after the second stage of a two stage tender, then such clarification shall only be undertaken with the tenderer who has previously been identified as submitting the best tender. Tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the tender documents. Officers appointed by the Regulatory and Local Government Law Manager to carry out post tender negotiations should ensure that there are recorded minutes of all meetings and that both parties agree actions in writing.
- 12.4 Any post tender negotiation must only be conducted in accordance with guidance given by the Regulatory and Local Government Law Manager.
- 12.5 The Regulatory and Local Government Law Manager and the Procurement Unit **must** be consulted:
- 12.5.1 wherever it is proposed to enter into post tender negotiation
 - 12.5.2 about whether negotiation should be carried out with all tenderers.

13. **EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING OF ORGANISATIONS**

- 13.1 The evaluation of bids must be conducted in accordance with the evaluation criteria set out in the procurement documents provided to bidding organisations.
- 13.2 The arithmetic in compliant tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their tender. Alternatively, if the rates in the tender, rather than the overall price, were stated within the Invitation to Tender as being dominant, an amended tender price may be requested to accord with the rates given by the tenderer.
- 13.3 The Procurement Unit must ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 13.4 The Council is required to notify successful and unsuccessful bidders of the outcome of a procurement process, in writing, in as soon as reasonably possible.
- 13.5 Where procurement has been subject to the Public Contract Regulations 2006, there must be a standstill period of 10 days before a contract can be awarded. This is to allow an unsuccessful bidding organisation an opportunity to challenge the proposed contract award. will need to be included in the procurement timetable before the contract can be awarded and **must** be followed.

14. **NOMINATED SUB CONTRACTS**

- 14.1 The following provision shall have effect where the Council proposes to enter into a contract for the execution of work with a person ('the main contractor') but also proposes the main contractor nominates one or more sub-contractors or suppliers for the execution of work or the supply of goods, materials or services within the main contract.
- 14.2 Tenders for the sub-contract(s) shall be invited in accordance with the relevant provisions of Rule 9 under the direction of the Regulatory and Local Government Law Manager and the Procurement Unit.
- 14.2.1 The terms of the invitation shall require an undertaking by the tenderer that if selected they will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main contract in relation to the work or goods, materials or services in the sub-contract
- 14.2.2 The Service Manager concerned or their authorised representative shall nominate to the main contractor a person whose tender is in their opinion most suitable. Provided that

where the tender is other than the lowest received, the circumstances shall be reported appropriately.

15. CONTRACT DOCUMENTS TO BE IN WRITING AND UNDER THE DIRECTION OF THE REGULATORY AND LOCAL GOVERNMENT LAW MANAGER

- 15.1 All contracts must be concluded formally in writing **before** the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Regulatory and Local Government Law Manager.
- 15.2 An award letter is insufficient: the contract must be on either standard terms and conditions or drafted under the direction of the Regulatory and Local Government Law Manager.
- 15.3 A contract on a supplier's terms or negotiated terms must not be signed unless and until the Regulatory and Local Government Law Manager has confirmed acceptance of the contract terms.
- 15.4 A contract entered into by or on behalf of the Council must: where the contract is in the form of a deed, be made under the Council's seal and attested as required by the Constitution, or:
- 15.4.1 where the contract is in the form of an agreement, either:
- (a) be signed by the Regulatory and Local Government Law Manager or the Chief Executive in the case of a contract with a value of less than £100,000.
 - (b) be signed by an officer of the Council who is a solicitor of five or more years standing, in the case of a contract with a value of less than £50,000 or:
 - (c) be formalised by the sending of an award letter and the subsequent issuing of a purchase order in the case of a contract with a value of less than £25,000 where the contract is for the purchase of goods or works.
- 15.5 A contract must be executed as a Deed where;
- 15.5.1 the Council wishes to enforce the contract for more than six years after it ends
- 15.5.2 the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services
- 15.5.3 there is any doubt about the authority of the person signing for the contracting party
- 15.5.4 the total value is expected to exceed £100,000

- 15.5.5 the Regulatory and Local Government Law Manager so directs.
- 15.6 To ensure the integrity of the procurement process, to manage risk and for the avoidance of doubt where the following applies contracts and the negotiation of them shall be directed and approved by the Regulatory and Local Government Law Manager:
 - 15.6.1 all proposed Invitations to Tender, where they are not in compliance with the Council's standard contract documentation
 - 15.6.2 any proposed Invitations to Tender which are subject to the Public Contracts Regulations 2006, or which are deemed to be of high risk or politically sensitive in nature
 - 15.6.3 any proposed contract where there is any deviation from the contract terms included in the invitation to tender
 - 15.6.4 where it is proposed to make stage payments or other payments in advance of receiving the whole of the subject matter of the contract.

16. **REVIEW AND AMENDMENT OF THESE RULES**

These Rules shall be reviewed and updated on an annual basis as part of the annual review of the Constitution.