



CONTRACT PROCEDURE RULES

Date of release: June 2010

KEY MESSAGES:

- Any Officers delegated with responsibility for the procurement of goods, services (including contracts for consultancy) or works for or on behalf of the Council (in accordance with the Scheme of Delegation) are affected by these Rules.
- Before undertaking any competitive tendering process or before placing any Official Orders on behalf of the Council, Officers shall make full use of Corporate Contracts and the Corporate Procurement Unit for other contracts (including Welsh Purchasing Consortium Contracts / established Framework Agreements / other legally available arrangement).
- Details of all Contracts available for use can be obtained from the Council's Procurement Intranet Site or from the Service Director of Procurement.

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SECTION 1	INTRODUCTION
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These Contract Procedure Rules should be read in conjunction with the Council's Financial Procedure Rules and Scheme of Delegation. Where there is a conflict between the Scheme of Delegation, Financial Procedure Rules and Contract Procedure Rules, the provisions of the Scheme of Delegation shall prevail and the determination of the Director of Legal and Democratic Services in consultation with the Group Director of Corporate Services upon such conflict shall be final.

A key requirement of these procedure rules is to ensure competitiveness and the primary method of achieving this is through a competitive process. These Rules set a framework for these processes and aim to strike the right balance between price and quality whilst keeping the cost of contracting to a minimum.

Scope

These Contract Procedure Rules:

- Are applicable to the making by the Council of all Contracts, for the provision, supply, hire or disposal of goods, materials or intellectual products, and for the provision of services, the use of consultants and to Contracts for income.
- Are not applicable to Contracts of service (i.e. employment contracts). Please note however that the procurement of Agency Workers and Consultancy Services does fall within the scope of these Rules.

Functionality

These Contract Procedure Rules:

- Are applicable to the formation of Contracts and to any matters as may arise in the process of managing Contracts, which significantly change, vary or terminate any such Contract during its currency.
- Relate to the extension or renewal of Contracts beyond their initial term.
- Are without prejudice to the need for budget holders to ensure that budgets are not exceeded.
- Are without prejudice to the requirements of UK and EU Legislation governing any Contract in which case those requirements shall be followed (even if they conflict with these rules).

Aims

These Contract Procedure Rules:

- Aim to achieve value for money for the Council in the market by

ensuring provision for securing competition at appropriate levels of expenditure whilst avoiding disproportionate or bureaucratic costs where levels of expenditure are less significant.

- Aim to achieve fullest accountability at all levels whilst ensuring an adequate audit trail by requiring the Directors to record who did what, how and when.
- Aim to ensure that Officers follow proper and fair procedures for the involvement and selection of Contractors.
- Aim to ensure compliance with EU Procurement Directives.
- Aim to ensure that proper Specification is made by Officers which reflect the appropriate and realistic quality requirements for any defined need, and that offers may be judged by objective criteria.
- Aim to ensure that levels of monitoring and training exist to ensure proper compliance and that these rules are regularly reviewed to take account of new circumstances.

Status

These Contract Procedure Rules:

- Are made under Section 135 of the Local Government Act 1972 and all other powers enabling the Council.
- Are applicable to all parts of the Council's activities.
- Are applicable where the Council is acting as agent for another body unless the principal directs otherwise.
- Must be adopted by any external contractors empowered to form Contracts on behalf of the Council and by any person who is not an Officer of the Council engaged to manage a Contract on behalf of the Council.
- Shall apply to the selection of nominated suppliers and nominated Sub-contractors for products covered by prime costs and provisional sums in a main contract.
- Shall be interpreted so far as possible to ensure the Aims set out in these rules are achieved.
- Are not applicable to expenditure between Service Areas, Groups or the use of the Council's trading organisations.

Who is affected by these Procedure Rules?

Any Officers delegated with responsibility for the procurement of goods, services (including contracts for consultancy) or works for or on behalf of the Council in accordance with the Scheme of Delegation.

Tendering / Ordering / Advertising

Before undertaking any competitive tendering process or before placing any Official Orders on behalf of the Council, Officers shall make full use of Corporate Contracts and the Corporate Procurement Unit for other contracts (including Welsh Purchasing Consortium Contracts / established Framework Agreements / other legally available arrangement).

Details of all Contracts available for use can be obtained from the Council's Procurement Intranet Site or from the Service Director of Procurement.

Aligned to the Council's continued modernisation agenda, the Corporate Procurement Unit has implemented a number of Electronic Procurement Systems that should be utilised as corporate solutions to support the cost efficient procurement of goods and services (streamlining the transaction process and reducing unnecessary administration overheads where possible). Please refer to Appendix 1 or the Council's Procurement intranet site for further information regarding the use of these systems.

In accordance with the principles of the Welsh Assembly Government "Opening Doors, The Charter for SME Friendly Procurement", contracts exceeding £25,000 shall be advertised on the Council's Contract Management System and or the Welsh National Procurement Website (Buy4Wales), where practical, and providing that it represents best value for the Council. In any event, all contracts for Supplies and Services exceeding the EU Procurement Thresholds and Works contracts exceeding £750,000 shall be advertised on the Council's Contract Management System and or the Welsh National Procurement Website. Details of contracts awarded shall also be advertised on the Council's Contract Management System and or the Welsh National Procurement Website.

Service Director of Procurement

The Service Director of Procurement has a clear strategic role in the procurement of all services, supplies and works, and as such, it is vital that this expertise is employed and consulted upon for all contracts that are deemed as being high value (more than £50,000), complex or where they involve the transfer of staff. Furthermore, the Service Director of Procurement on behalf of the relevant Director shall place all EU notices of advertisement, and where this is the case, all such tender returns or expressions of interest are to be addressed to the Service Director of Procurement and returned to the Corporate Procurement Unit.

Legal Requirements

Formal procedures are required to be made by every Local Authority under Section 135 of the Local Government Act 1972. The Act refers to the supply of 'goods or materials and the execution of works'.

All Public Procurement in the UK is governed by the EU Treaty and the EU Procurement Directives and UK Procurement Regulations that implement the Directives. This legal framework helps to ensure that Public Procurement is

conducted in a fair and open manner, both within the UK and across the EU.

Focus of these Rules

Section 135 of the 1972 Local Government Act does not set any particular format for Contract Procedure Rules nor does it prescribe the contents in any detail. In considering any specific set of circumstances however, it is expected that at all times, Officers will have in mind the objective implicit within section 135 of the Act, namely that contracting processes shall include '**provision for securing competition**'.

Procurement Planning

At the commencement of each financial year, Directors shall submit to the Service Director of Procurement a completed Contract Initiation Document (available through the Procurement Intranet site) detailing the planned procurement activities over £50,000. The Corporate Procurement Unit will use this information for procurement planning, to identify collaborative opportunities, to allocate appropriate resources and to ensure all relevant legislative requirements are observed.

EU Procurement Directives

The Council's Contract Procedure Rules require compliance in all cases to the EU Procurement Directives. In this regard all such notices are to be placed by the Service Director of Procurement.

Proprietary Products

The Contract Procedure Rules also recognise that some products and services may be unique and therefore are available from one source only, and that in such circumstances, competitive tendering may not always be appropriate. The procedures within these rules for the procurement of Proprietary Products set out the requirements to be followed in these situations.

The Framework of Rules

At the heart of these Contract Procedure Rules is a system of nominated Officers, which is intended to ensure proper separation of duties, to identify accountabilities and to encourage the best use of skills and knowledge. The framework includes for each contract:

- a Director
- a Contract Manager
- a Contracting Officer.

Due regard must be given to the responsibilities allocated to each under the Council's Scheme of Delegation.

Contract Management

In addition to the processes by which contracts are established, there is a need to ensure that contracts are properly managed during their life. These Contract Procedure Rules therefore cover aspects of Contract Management, which relate to ongoing contract variation, price control or termination of contracts at any time during the contract period.

Variation to Contracts

These Contract Procedure Rules give powers to Directors (in consultation with the Group Director of Corporate Services and the Director of Legal and Democratic Services) to agree variations beyond the original contract terms. Other variations regarding the terms of the contract are to be dealt with by the Contract Manager in conjunction with the Corporate Procurement Unit. Please also refer to the requirements of the Financial Procedure Rules concerning variations.

Contract Management System

One significant purpose of these Contract Procedure Rules is to ensure transparency relating to decisions taken around the contracting process. These Contract Procedure Rules require the establishment of a Contract Management System, which shall be the primary place for recording details of all contracts awarded over the value of £50,000. Each Service Area shall ensure that contract details are notified to the Service Director of Procurement for inclusion on the Contract Management System (Alito). In such cases where access to this system has been granted, it is the responsibility of the Contract Officer to record details of contracts awarded on the system.

Directors shall ensure that detailed records of all contract correspondence and decisions taken are retained.

Whilst supporting a Divisional focus of responsibilities, the Contract Procedure Rules also recognise a corporate need to gather information and share contracting expertise and wisdom across the Council and with Members. The availability of information through the proper keeping of the Council's Contract Management System is vital in allowing this to take place.

Reviewing the Procedure Rules

It is intended that these rules will be kept under continuous review so that they reflect changes in contracting and best practice. The reviews will be carried out by the Service Director of Procurement in conjunction with the Group Director of Corporate Services and the Director of Legal and Democratic Services.

Guidance

In order to ensure that Officers have access to advice and guidance, a support system, including assistance and advice from the Corporate Procurement Unit is available. Officers who have doubt or difficulties in any

given situation relating to contracts should contact the Service Director of Procurement.

Corporate Procurement Unit contact details:

Tel: 01443 432070

Email: Purchasing@rctcbc.gov.uk

SECTION 2	CONTRACT PROCEDURE RULES
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Exemptions

- A.1. Schools with delegated budgets who have their regulations under the scheme for financing schools are exempt from these Contract Procedure Rules.
- A.2. Any purchase made through the following arrangements will be exempt from these Contract Procedure Rules, providing that prior approval has been obtained from the Service Director of Procurement:
- Through the Welsh Purchasing Consortium,
 - Any other Local Authority Purchasing Consortium,
 - Value Wales (Procurement),
 - Any joint purchasing and supply arrangements organised by another local authority or public body or a central government supply organisation.
- A.3. Other exemptions from these rules may only be granted:
- By the Group Director of Corporate Services in consultation with the Director of Legal and Democratic Services and the Service Director of Procurement.
 - In an emergency, threatening injury or damage to persons or property, when a Director can take any necessary action. This action must then be reported to the Group Director of Corporate Services or Director of Legal and Democratic Services as soon as practicable after the event.
- A.4. For any exemption, a formal request must be made by the relevant Director to the Group Director of Corporate Services.
- A.5. The Director must ensure that details relating to the exemption are reported to the Service Director of Procurement who will be responsible for maintaining an Exemptions Register. This Register will be provided to the Group Director of Corporate Services and Director of Legal and Democratic Services on a quarterly basis for review.

Instances where there is no requirement for competition

- B.1. There is no requirement for competition for work placed with internal trading organisations. However, where the value of the contract is above the low value threshold (£50,000), and another trading organisation is known to offer comparable services to those required, the Contracting Officer may seek competition. In these circumstances, the Contracting Officer must be able to demonstrate that competition is likely to lead to better value for money (taking account not only of price, but of the total cost to the Council of the competitive process, including any loss of revenue with the internal trading organisation).
- B.2. There is no requirement for competition for work placed with other Council departments that are not internal trading organisations.

- B.3. Any purchase made through the arrangements specified under A.2 will be deemed as having satisfied the competition requirements. Notwithstanding this, Contracting Officers shall satisfy themselves that a proper process has been followed in respect of EU Procurement Directives where the value of the contract is above the threshold.

Estimated Contract Value

- B.4. These relate to the estimated value over the term of the Contract (or over four years - if the term is four years or longer - reference EU Procurement Directive) and in estimating the contract value the Contracting Officer shall take account of historic cost and an assessment of future trends or, where the requirement is new, the best estimate of value available at the time. Guidance should be sought from the Corporate Procurement Unit where assistance is required in estimating contract values.
- B.5. Against which an estimate of Contract expenditure is made, the requirement shall not be artificially split to avoid competition, and neither shall:
- Any other form of disaggregating be accepted for similar purposes.
 - A Group, Service Area or Section of the Council be permitted to regard itself as a 'discrete operational unit' within the terms of the EU Procurement Directives.

External Service Agreements

- B.6. A Service Level Agreement (SLA) is an agreement between a service provider and client that governs all aspects of their relationship. Where the Service Provider is a legal entity external to the client, the SLA will often be a formal contract.

It is important to document and agree any Service Level Agreement, including any commercial and exit arrangements of the participating organisations. This should include clear criteria for determining the ongoing viability of the arrangement and supported by agreed and measurable performance indicators with the service provider. In support of this, the standard Service Level Agreement Template available via the Council's Procurement intranet site or from the Service Director of Procurement should be used.

Bonds or Guarantees

- B.7. May be required of a Contractor or a parent company by the Contracting Officer, having taken due account of risks (through risk assessment) involved for the Council. Guidance relating to Bonds or Guarantees can be obtained from the Corporate Procurement Unit.

Private Interests

- B.8. No Member, employee or agent of the Council shall improperly use their position to obtain any personal or private benefit from any Contract entered into by the Council.

- B.9. Members and employees of the Council shall comply with the requirements of Section 117 of the Local Government Act 1972 and the employees Code of Conduct set out in the Constitution about the declaration of private interest in Contracts with the Council. Such interests must be declared to the Director of Legal and Democratic Services acting in his or her capacity as a Monitoring Officer for inclusion in the appropriate registers.

SECTION 3	PROCEDURES
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C.1. Deciding Which Value Threshold

The Contracting Officer shall determine in accordance with B.4 the estimated value of the contract and thereby the thresholds to be used which shall be as follows:

C2	Purchases below £50,000 (see pg. 14)
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C3	Between £50,000 and below the EU Procurement Thresholds for Supplies and Services contracts (see pg. 15)
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C4	Between £50,000 and below the EU Procurement Thresholds for Works contracts (see pg. 16)
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C5	Above the EU Procurement Thresholds (see pg. 17)
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The **EU Procurement Thresholds** effective from 1st January 2010 and valid for a period of two years are:

Works	£3,927,260
Supplies	£156,442
Services	£156,442

Note:

- For term contracts, the estimated total value relates to the entire term or four years whichever is the less.

CONTRACT PROCEDURES – OVERVIEW:

	Estimated Contract Value			
	C2 Below £50,000	C3 £50,000 to EU Thresholds (Supplies & Services)	C4 £50,000 to EU Thresholds (Works)	C5 Above EU Thresholds
Key requirement	*Where possible, Utilise Corporate Contracts / other available contracts <u>before</u> placing order / undertaking tender process.	*Where possible, Utilise Corporate Contracts / other available contracts <u>before</u> placing order / undertaking tender process.	*Where possible, Utilise Corporate Contracts / other available contracts <u>before</u> placing order / undertaking tender process.	*Where possible, Utilise Corporate Contracts / other available contracts <u>before</u> placing order / undertaking tender process.
<i>* Details of all Contracts available for use can be obtained from the Council's Procurement Intranet Site or from the Service Director of Procurement.</i>				
Key requirement	Due regard for ensuring value for money is achieved.	Contracting Officer must arrange for a <u>Competitive Tender</u> to be undertaken.	Contracting Officer must arrange for a <u>Competitive Tender</u> to be undertaken.	Seek advice from Service Director of Procurement before commencing any tender process.
Quotations or Tenders?	Where Corporate Contract / other Contract <u>not</u> available for use: <ul style="list-style-type: none"> • Ensure VFM is achieved (below £20k). • Ensure VFM is achieved & 2 written quotations - documentary evidence retained (between £20k and £50k). 	Where Corporate Contract / other Contract <u>not</u> available for use: <ul style="list-style-type: none"> • 4 written tenders. 	Where Corporate Contract / other Contract <u>not</u> available for use: <ul style="list-style-type: none"> • 4 written tenders (between £50k and £250k). • 5 written tenders (between £250k and EU Threshold). 	Seek advice from Service Director of Procurement before commencing any tender process.
Advertising Requirements	<i>Refer to 'Tendering / Ordering / Advertising' Section (pg. 5, Para. 4).</i>			
Returned to:	Any Officer	**Any Officer	**Any Officer	**Service Director of Procurement
Opened by:	Any Officer	**Two Tender Opening Officers	**Two Tender Opening Officers	**Two Tender Opening Officers
<i>**Refer to 'Receipt' section & 'Opening' section (pg. 18-19).</i>				
Form of Contract:	Official order	Formal Contract	Formal Contract	Formal Contract
Contract Awarded by:	Contract Officer with delegated responsibility under the Council's Scheme of Delegation.	Contract Officer with delegated responsibility under the Council's Scheme of Delegation.	Contract Officer with delegated responsibility under the Council's Scheme of Delegation.	Contract Officer with delegated responsibility under the Council's Scheme of Delegation.
Completion of Contract	Retain evidence of all contract documentation (quotations etc).	Provide contract details to Service Director of Procurement for inclusion on the Council's Contract Management System (Alito).	Provide contract details to Service Director of Procurement for inclusion on the Council's Contract Management System (Alito).	Provide contract details to Service Director of Procurement for inclusion on the Council's Contract Management System (Alito) and update the Buy4Wales site (create OJEU Award Notice).

C2	Purchases with an Estimated Total Value Below £50,000
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C.2.1. Before undertaking any competitive tendering process or before placing any Official Orders on behalf of the Council, Officers shall make full use of Corporate Contracts and the Corporate Procurement Unit for other contracts (including Welsh Purchasing Consortium Contracts / established Framework Agreements / other legally available arrangement) and observe the requirements of B.1.

Details of all Contracts available for use can be obtained from the Council's Procurement Intranet Site or from the Service Director of Procurement.

Where Framework Agreements are to be utilised, Contracting Officers must conform to the specific requirements of each Framework Agreement for the selection and letting of contracts.

Aligned to the Council's continued modernisation agenda, the Corporate Procurement Unit has implemented a number of Electronic Procurement Systems that should be utilised as corporate solutions to support the cost efficient procurement of goods and services (streamlining the transaction process and reducing unnecessary administration overheads where possible). Please refer to Appendix 1 or the Council's Procurement intranet site for further information regarding the use of these systems.

C.2.2. Where the requirements of C.2.1 cannot be met or where a Corporate Contract is not available for use, the Contracting Officer shall observe the following requirements:

- For contracts below £20,000 due regard must be given for ensuring value for money is achieved.
- For contracts between £20,000 and £50,000 a minimum of 2 written quotations should be requested and due regard must be given for ensuring value for money is achieved. Documentary evidence of the decision making process must be retained.

C.2.3. The Contracting Officer may only award a contract or enter into contractual arrangements providing that this responsibility has been properly authorised to them in accordance with the Council's Scheme of Delegation.

C.2.4. The Contracting Officer may utilise an Approved Vendors List (AVL) up to the European Thresholds (e.g. Constructionline), however prior approval of the Service Director of Procurement must be obtained.

Where an AVL is utilised to select potential Tenderers, the Contracting Officer should ensure that at least one third of the selected Tenderers are refreshed on each occasion from any previous selection list used.

C3	Supplies and Services Contracts with a value between £50,000 and below the EU Procurement Thresholds
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C.3.1. The contracting Officer shall observe the requirements of C.2.1 (where available, practical and appropriate to do so) before undertaking any competitive tendering process or before placing any Official Orders on behalf of the Council.

C.3.2. Where the requirements of C.2.1 cannot be met or where a Corporate Contract is not available for use, the Contracting Officer shall arrange for a Competitive Tender to be undertaken and shall arrange for the following number of tenders to be obtained and evidenced (these are minimum requirements and Contracting Officers may deem it appropriate to seek more to ensure a competitive process):

- For contracts between £50,000 and the European Thresholds at least 4 written tenders for Supplies and Services contracts.

Due regard must be given for ensuring value for money is achieved. In such cases where the minimum amount of tenders cannot be obtained, the Contracting Officer shall refer to C.6.4.

C.3.3. The Contracting Officer must decide and record:

- The form in which Tenderers shall be invited to tender.
- The criteria to be used to select the successful Contractor / Supplier from among those tendering.
- The criteria to determine whether the chosen Contractor performs satisfactorily.

C.3.4. The Contracting Officer may only award a contract or enter into contractual arrangements providing that this responsibility has been properly authorised to them in accordance with the Council's Scheme of Delegation.

C.3.5. The Contracting Officer may utilise an Approved Vendors List (AVL) up to the European Thresholds (e.g. Constructionline), however prior approval of the Service Director of Procurement must be obtained.

Where an AVL is utilised to select potential Tenderers, the Contracting Officer should ensure that at least one third of the selected Tenderers are refreshed on each occasion from any previous selection list used.

C4	Works Contracts with a value between £50,000 and below the EU Procurement Thresholds
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C.4.1. The contracting Officer shall observe the requirements of C.2.1 (where available, practical and appropriate to do so) before undertaking any competitive tendering process or before placing any Official Orders on behalf of the Council.

C.4.2. Where the requirements of C.2.1 cannot be met or where a Corporate Contract is not available for use, the Contracting Officer shall arrange for a Competitive Tender to be undertaken and shall arrange for the following number of tenders to be obtained and evidenced (these are minimum requirements and Contracting Officers may deem it appropriate to seek more to ensure a competitive process):

- For contracts between £50,000 and £250,000 at least 4 written tenders for Works contracts.
- For contracts between £250,000 and the European Thresholds at least 5 written tenders for Works contracts.

Due regard must be given for ensuring value for money is achieved. In such cases where the minimum amount of tenders cannot be obtained, the Contracting Officer shall refer to C.6.4.

C.4.3. The Contracting Officer must decide and record:

- The form in which Tenderers shall be invited to tender.
- The criteria to be used to select the successful Contractor from among those tendering.
- The criteria to determine whether the chosen Contractor performs satisfactorily.

C.4.4. The Contracting Officer may only award a contract or enter into contractual arrangements providing that this responsibility has been properly authorised to them in accordance with the Council's Scheme of Delegation.

C.4.5. The Contracting Officer may utilise an Approved Vendors List (AVL) up to the European Thresholds (e.g. Constructionline), however prior approval of the Service Director of Procurement must be obtained.

Where an AVL is utilised to select potential Tenderers, the Contracting Officer should ensure that at least one third of the selected Tenderers are refreshed on each occasion from any previous selection list used.

C5	Contracts with a total value in excess of the EU Procurement Thresholds
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- C.5.1. The Contracting Officer shall follow rules C.2.1 – C.4.5 except where they conflict with EU Procurement Directives (see pg. 12).
- C.5.2. The Contracting Officer shall seek advice from the Service Director of Procurement before commencing the process to ensure full compliance with EU Procurement Directives and to decide the procedure to be used.
- C.5.3. The Service Director of Procurement shall place all Contract Notices in accordance with the requirements of the EU Procurement Directives.
- C.5.4. The Contracting Officer shall ensure compliance with the procedure set out in the relevant Directives.
- C.5.5. The Contracting Officer shall provide details of all Contracts subject to EU Directives, including details of Contract Award, so that the Service Director of Procurement can publish a Contract Award Notice in accordance with the requirements of the EU Directives.
- C.5.6. The Contracting Officer may only award a contract or enter into contractual arrangements providing that this responsibility has been properly authorised to them in accordance with the Council's Scheme of Delegation.

Single Tenders

- C.6.1. A single tender may only be invited when:
- by reason of regulation or legislation only one supplier of the product or service exists;
 - the value of the contract is below £50,000 and the costs of complying with a tender procedure outweighs the likely benefits;
 - only a Propriety Product is suitable or acceptable to customers or the Product consists of repairs or works to an existing Propriety Product;
 - in exceptional cases of such extreme emergency that a tender process cannot be undertaken. In these cases the reason for the urgency shall not be within the control of the Director or Contracting Officer.
- C.6.2. In all such cases, the Director and Contracting Officer must certify the reason why, sign and date the certification and maintain a record.
- C.6.3. In all such cases above, the Contracting Officer must ensure:
- that the product is specified in writing;

- where only one tenderer is identified, ensure that the best price and conditions are negotiated and that these are recorded;
- that provisions for the adjustment in price, volumes or other variable factors have been agreed and recorded in writing.

Contracts where there are less than the required minimum Tenders Invited

C.6.4. In such cases where the Contracting Officer wishes to proceed with less than the required number of tenders specified in these Contract Procedure Rules, the Director and Contracting Officer must certify the reasons why, sign and date and maintain records for future use and inform the Service Director of Procurement.

D. Terms and Conditions

D.1. Where available, practical and appropriate to do so, the Council's adopted Standard Terms and Conditions shall be specified as a minimum requirement for entering into contracts for Supplies, Works or Services. Any doubt as to the applicability of these conditions or any clauses contained therein should be referred to the Director of Legal and Democratic Services or Service Director of Procurement for consultation.

E. Approved Lists

E.1. Approved Lists cannot be used for the exclusive selection of Tenderers for any Contract above the value thresholds set in European Procurement Directives as detailed at C.1 of these rules (other than Contracts designated as Part B services under the EU Services Directive).

E.2. Contracting Officers shall also observe the requirements of C.2.4 before utilising an Approved Vendors List (AVL).

F. Processing Of Tenders

A key function of these Procedure Rules is to set down a framework, which can demonstrate that the requirements of public accountability and transparency are extant. To achieve this, the following shall apply:

Receipt

F.1. The Contracting Officer must ensure:

- Returned Tenders are contained in a plain envelope or package with no identifying markings.
- The envelope or package is securely sealed and bear the words "Tender for....." followed by the Product, Work or Service(s) to which it relates, using the template available through the Corporate Procurement Unit Intranet site.

- Envelopes or packages shall be addressed impersonally to the Director, (or for values above EU thresholds, the Service Director of Procurement), who shall date stamp them and keep them unopened in safe custody until the time appointed for opening. Envelopes or packages that do not comply with this Regulation shall be opened as part of the formal opening procedures and recorded as non-compliant.
- F.2. Where tenders are to be returned electronically, the Contracting Officer must ensure:
- All potential tenderers have been appropriately registered on the Council's Contract Management System (Alito).
 - All tender documentation is made visible to tenderers.
 - The exact time and date of the receipt of tenders is clearly recorded.
 - Two Tender Opening Officers are assigned to open the tenders on the time and date allocated for opening.

Opening

- F.3. Tenders that are subject to EU Procurement Directives (see pg. 12) shall be opened and recorded by the Service Director of Procurement.
- F.4. Tenders shall be opened and details recorded at one time by not less than two Tender Opening Officers (at which time either the Contracting Officer or the Contract Manager for the Contract may be present). The Tender Opening Register template available through the Procurement Intranet Site should be used to record the tender opening details.
- F.5. Where tenders are to be opened electronically via the Alito System, the Contracting Officer must ensure - prior to opening tender documents submitted through the system - the 'Content Type' appears in the correct format and also ensure the document size does not appear as zero. In the event that the document size appears as zero, the requirements of F.14 shall be observed.
- F.6. No Tender received after the other Tenders have been opened shall be considered.
- F.7. A Tender received after the time fixed for receipt but before the other Tenders have been opened may be considered, provided there is evidence that it was posted or dispatched early enough to be received in due time by the normal course of post or dispatch.
- F.8. Bona fide tenders opened shall be recorded in the Tender Opening Register and should include the name of all contractors or suppliers submitted. The Tender Opening Register should also be signed and dated by the Tender Opening Officers. There is no requirement to maintain a written Tender Opening Register where Tenders are

received and opened via the Council's Contract Management System (Alito).

- F.9. The requirements of F.1 to F.8 shall be followed where a Pre Qualification process is to be undertaken.

Electronic Tenders and Electronic Auctions

F.10. The requirements of F.1 to F.9 shall be deemed to have been satisfied if the Council's approved Electronic Tendering and or Electronic Auction elements of the Council's Contract Management System (Alito) have been used in accordance with appropriate guidance, user documentation and procedures for using the systems. Further information regarding the use of the Council's Contract Management System (Alito) may be obtained via the Corporate Procurement Unit or via the Corporate Procurement Unit Intranet site.

F.11. Where an externally hosted extranet is to be used to support the tendering process; prior approval of the Service Director of Procurement must be obtained.

Amendment to Tenders, Errors and Omissions

F.12. No request to amend a Tender after the time fixed for receipt shall be accepted.

F.13. If a Contracting Officer finds an error in a Tender, the Tenderer shall be given the opportunity of either confirming or withdrawing the Tender.

F.14. Except where a standard form of contract code provides to the contrary, the Contracting Officer may certify that any error contained in an offer appears to be a genuine mistake by typing, printing or arithmetic, or appears to be an Alito technical issue, in which case the Contracting Officer may, in consultation with the Director, draw the error to the attention of the Tenderer, and allow them to correct it.

F.15. A Contracting Officer may seek clarification of the information provided (or not provided) by a Tenderer only where this is necessary to aid understanding.

F.16. If, for any reason, it is necessary to amend the Specification after Tenders have been received, the Tender procedure shall be repeated unless the Contracting Officer certifies that this is not possible and records the reasons why.

Assessment of Tenders

F.17. The assessment of Tenders shall be based upon the criteria for award and the criteria set out in the Tender documents (and where appropriate, published in an EU notice).

Acceptance of Tenders

The Director:

- F.18. Shall accept the highest Tender where payment is to be received by the Council unless a decision is taken not to proceed with the Contract.
- F.19. Shall accept the lowest or the most economically advantageous tender for all contracts where payment is to be made by the Council unless a decision is taken not to proceed with the Contract. Guidance and approval should be sought from the Service Director of Procurement where tenders are to be evaluated on a quality or price basis.
- F.20. May accept a Tender not complying with the above only if the Director in consultation with the Group Director of Corporate Services and the Service Director of Procurement certify why it is in the Council's best interest to do so.
- F.21. Shall, where appropriate, sign the Contract documents or place them before the Director of Legal and Democratic Services for signature or seal, with such explanations as he or she may require.

G. Guidance and Support

In the use of these Procedure Rules:

- G.1. Should there be any doubt or lack of clarity as to the meaning or application, then Officers must seek advice from the Group Director of Corporate Services, Director of Legal and Democratic Services or Service Director of Procurement. Guidance may also be obtained via the Procurement Intranet site.

H. Completion of Contracts

- H.1. All Contracts shall be attested either Under Hand by the Director or Under Seal. The Director of Legal and Democratic Services shall be consulted if a Contract is to be attested Under Seal.
- H.2. The Director shall consider (in consultation with the Director of Legal and Democratic Services) whether, having regard to the need for extension of the period of limitations, a Contract should be attested Under Seal.
- H.3. The Common Seal shall be attested by the Director of Legal and Democratic Services or a signatory authorised by him and an entry of every sealing shall be made, consecutively numbered and shall be signed by the person who has attested the seal. The seal shall not be affixed without the authority of Council, Cabinet, Committee or under delegated powers.
- H.4. Following the award of the contract (and where the contract value exceeds £50,000), the Contract Officer must ensure that the contract details are notified to the Service Director of Procurement for inclusion

on the Council's Contract Management System (Alito). In such cases where access to this system has been granted, it is the responsibility of the Contract Officer to record details of contracts awarded on the system.

I. Contract Management

- I.1. A Director must appoint a Contract Manager to manage the performance of a contract throughout its term. The duties of the Contract Manager shall begin when the contract is awarded and shall cease when it is completed or terminated.
- I.2. The Contract Manager should ensure that management and monitoring arrangements for the contract have been established and recorded (including the methods for reporting and monitoring performance, costs and service delivery against the agreed Contract Specification and Terms and Conditions).
- I.3. The Contract Manager will also be responsible for:
 - The management of the relationship between the Council and the supplier (ensuring effective lines of communication are in existence between client representatives, stakeholders and service providers).
 - The identification, allocation and management of the risks associated with the performance of the contract.

J. Termination Procedures

- J.1. Where consideration is being given to terminating any contract arrangements, reference should be made to the Service Director of Procurement and or the Director of Legal and Democratic Services.

K. Retention of Documents

- K.1. Contract documentation should be retained securely, in an appropriate format and in accordance with the Council's Document Retention Policy (available through the Procurement Intranet site).
- K.2. Where tender or contract documentation is transferred between Council premises, appropriate records should be maintained recording the date of transfer and the location where the documentation will be available or stored.
- K.3. Where consultancy services are utilised in progressing any procurement, it should be ensured that copies of all documentation are retained on behalf of the Council.

L. Compliance

- L.1. Any identified failure to comply with any of the requirements under these Contract Procedure Rules may result in the matter being referred to the relevant Chief Officer.

DEFINITIONS

“Approved List” means a list of Tenderers, established in accordance with Sections 17 – 22 of the Local Government Act 1988, who have met the Council’s predetermined criteria and who are willing and able to supply Products of a particular type or description. This includes the use of Constructionline, or a similar organisation, and such lists will need to be administered in accordance with guidance, agreed with the Group Director of Corporate Services and approved by the Service Director of Procurement before being utilised.

“Common Use” means any Product purchased by the Council, which are required for use by more than one Service Area or Section of the Council or in schools.

“Contract Manager” means a person authorised under the Council’s Scheme of Delegation to manage the performance of a contract throughout its term. The duties of a Contract Manager shall begin when the contract is awarded and shall cease when it is completed or terminated.

“Contract” means the agreement between the Council and the Contractor comprising the conditions of contract, Specification and any defined schedules and all matters referred to in the invitation to Tender and the Contractor’s response thereto, together with acceptance by the Council.

“Contracting Officer” means a person authorised under the Council’s Scheme of Delegation for the purpose of carrying out the appropriate duties set out in these Contract Procedure Rules. A Contracting Officer may be appointed specifically for the purpose of a single contract or for a range of contract requirements but may not also be the Director for any contract for which he or she is the Contracting Officer.

“Contractor” means any person contracted to sell or buy a Product. This term applies after a contract is formed.

“Group Director of Corporate Services and Director of Legal and Democratic Services” include Officers specifically authorised by them.

“Corporate Contract” means any contract for Products in Common Use and applies particularly to contracts where exclusive use by the Council is a term of the Contract. Details of these contracts can be obtained directly from the Council’s Procurement Intranet Site or from the Service Director of Procurement.

“Council’s Contract Management System” means the electronic Alito system in use by the Council for managing its procurement activities, part of which includes an electronic contract register. The system also includes facilities for supplier registration and management as well as E-tendering.

“Director” means the Chief Executive, any Chief Officer as defined in Article 12 of the Council’s Constitution or any officer authorised by them under the Council’s Scheme of Delegation in the same or another Group or Service Area to act for them under these rules. Such authorisation shall be in writing, shall include any limitations to the authorisation and shall be recorded. Officers may not act in the capacity of Contracting Officer and Director for any single contract.

The Service Director of Procurement (or persons within the Procurement Unit) may be authorised under the Council’s Scheme of Delegation to act as Director, Contract Manager and or Contracting Officer. The Service Director of Procurement will ensure in these cases the required separation of duties as defined in these rules.

“Executive” means the Leader and Cabinet of the Authority.

“Service Director of Procurement” means the Service Director of Procurement or Head of Operational Procurement.

“Partnering Agreement” means an agreement between the Council and a Contractor, which is intended to govern the way in which both parties work together in the management and delivery of the Contract. The basis of the agreement would normally imply a long-term relationship based on trust and on clear mutually agreed objectives. The Partnering Agreement is not a substitute or addendum to the formal Contract.

“Product” includes any goods, equipment, material, works, service or benefit.

“Proprietary Product” means a product which has unique characteristics which alone meet the required realistic performance specification and is either sold only at fixed rates or sold by more than one source but may be purchased from the prime source at clearly better terms.

“Specification” means a clear statement of the Product in sufficient detail:

- to enable the contractor to submit a competitive price.
- to ensure that a Product supplied will meet the requirement of the Council.
- to define the precise output required.

“Tender Opening Officer” means any person authorised under the Council’s Scheme of Delegation to carry out tender opening procedures set out in these Contract Procedure Rules.

“Tender” means an offer to sell or buy made by a Tenderer.

“Tenderer” means any person offering to sell or buy a Product. This term applies before a contract is formed and includes unsuccessful bidders.

“To Tender” means to make an offer to sell or buy.

“Under Hand” means under the signatures of authorised Officers.

“Under Seal” means under the common seal of the Council attested by the Director of Legal and Democratic Services or officers authorised by him or her. The application of the common seal to a Contract will increase the period of limitations (for legal remedy) from 6 years to 12 years.

E trading

- **E Purchasing System** – an electronic ordering system that interfaces with the Council’s Financial Ledger applications and generates electronic orders to suppliers from centrally maintained catalogue information.

This system has been implemented to replace the hardcopy order book function and should be utilised and adopted as the corporate system for electronic purchasing of goods and services.

- **Purchasing Cards** – should be used throughout the Council to support a wide range of purchasing requirements that cannot be supported via the Council’s Purchasing System. These requirements must be identified as necessary for the enhanced provision of service delivery or as adding value to the cost efficiency of the transaction process.

Requests for a Purchasing Card must be submitted to the Corporate Procurement Unit via email and supported by a business case aligned to the above requirements (with each request being managed on its own specific criteria).

E – Sourcing

- **Contract Management System** - the electronic Alito system or other available systems in use by the Council for managing its procurement activities, part of which includes an electronic contract register. The system also includes facilities for supplier registration and management as well as E-tendering.

Further information regarding the use of any of the above Electronic Procurement Systems is available via the Council’s Procurement intranet site or from the Service Director of Procurement.