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Contract Procedure Rules

1 General

1.1 Purpose

1.1.1 These Contract Procedure Rules are intended to provide a clear set of Rules and procedures for the procurement of:

- goods; and/or
- services; or
- works

for or on behalf of the Council.

1.1.2 These Rules are also intended, where possible, to introduce sufficient flexibility to the Council's procurement arrangements so as to maximise the Council's purchasing power and harness any economies of scale that may be achieved.

1.2 Scope and Compliance

1.2.1 Article 14.2 of the of the Council Constitution 'Contracts' states 'Every contract made by the Council will comply with the Contract Procedure Rules set out in Part 4 of this Constitution', unless it conflicts with statutory provisions.

1.2.2 These Contract Procedure Rules shall therefore apply, unless otherwise expressly excluded, to every contract entered into by the Council where under that contract the Council pays or receives money or consideration of value.

1.2.3 The Contract Procedure Rules do not apply to any:

- (i) contract of employment (see Employment Procedure Rules);
- (ii) acquisition or disposal of land; or
- (iii) internally recharged Council services (excluding any in-house bids).

1.2.4 No exception from any of the provisions in these Contract Procedure Rules shall be made unless directed by the Council, Cabinet or regulatory committee, or permitted under powers delegated by them.

1.2.5 Every exception made shall be reported to the Council, Cabinet or regulatory committee as appropriate. This should detail the circumstances that justify the exception.

1.3 Overriding Objective

1.3.1 The procurement of any contract for goods and/or services or works falling within the scope and remit of these Contract Procedure Rules shall comply with the Overriding Objective set out below.

1.3.2 Overriding Objective:

Any procurement process undertaken for or on behalf of the Council in relation to the provision of goods and/or services or works shall promote:

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- Fairness;
- Competition;
- Quality; and
- Value for money.

1.3.3 The primary aim of the Overriding Objective is to assist the Council in meeting and discharging its obligations whether legal and/or financial when procuring goods and/or services or works.

1.3.4 The exercise of any discretion permitted under these Contract Procedure Rules shall be consistent with the furtherance of the Overriding Objective.

1.3.5 For the purposes of the Overriding Objective:

Fairness means:

Ensuring:

- equality of treatment of all those involved in the procurement exercise;
- an open and transparent procurement process is followed; and
- integrity of the procurement process is maintained through compliance with all relevant legal requirements.

Competition means:

The procurement process:

- balances the need to achieve value for money, quality and fairness;
- affords the opportunity to legitimate parties to participate; and
- positively promotes choice.

Quality means:

Ensuring the procurement process:

- follows, so far as practicably possible, recognised good practice;
- encourages comprehensive and compliant tender submissions;
- adopts an effective and efficient process; and
- ensures probity.

Value for Money means:

The procurement process:

- is cost effective and efficient; and
- allows the Council the choice to accept the lowest price or the most economically advantageous tender submission.

1.3.6 In the event that there is any dispute, inconsistency or conflict which cannot be satisfactorily overcome or resolved between the promotion of Fairness,

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Competition, Quality and/or Value for Money, as referred to in Rule 1.3.5 above, then Fairness shall prevail.

1.4 Legislative Compliance

1.4.1 Every procurement contract made by the Council, the Cabinet, a regulatory committee (including the Pensions Committee on behalf of the Merseyside Pension Fund) or Officer acting for the Council, shall comply with any relevant Directives of the European Community in force in the United Kingdom, and with UK Statutes and Statutory Instruments.

1.4.2 In the event of a conflict arising between European Union Directives, UK Statutes and Statutory Instruments and the remainder of these Rules, the Directive, Statute or Statutory Instrument will prevail.

1.4.3 Within the framework of these requirements the Council has adopted the recommendations of the Egan Report and where appropriate will apply a partnering approach to its procurement arrangements, and seek to conclude arrangements which accord with the principles of best value.

1.5 Procurement Toolkit

1.5.1 To ensure the effective and efficient procurement of goods and/or services or works falling within the scope and remit of these Contract Procedure Rules, officers in the Council's Corporate Procurement Service shall, in consultation with officers in the Council's Legal and Member Services Section, prepare and maintain a "Procurement Toolkit" to promote the Overriding Objective and assist those involved and engaged in procurement processes.

1.5.2 The Procurement Toolkit shall consist of and contain such advice, guidance, information, supporting documents, templates, and precedents considered appropriate and necessary to assist effective and efficient procurement by the Council and promote the Overriding Objective.

1.5.3 The procurement of any contract for goods and/or services or works falling within the scope and remit of these Contract Procedure Rules shall have regard to and be consistent with the Procurement Toolkit.

1.5.4 If there is any conflict between these Contract Procedure Rules and the Procurement Toolkit, the Contract Procedure Rules shall prevail.

1.6 Procurement on Behalf of the Merseyside Pension Fund

1.6.1 The procurement of goods and/or services or works for and on behalf of the Merseyside Pension Fund shall comply with these Contract Procedure Rules.

1.6.2 Contracts valued at less than £500,000 will be awarded by the Council's Director of Finance; whereas Contracts valued at or above this amount will be awarded by the Council's Pensions Committee.

2 Role of the Corporate Procurement Service

2.1.1 The Council's Corporate Procurement Service is the Council's specialist section for procurement, and is comprised of procurement professionals. The

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Corporate Procurement Service shall give expert advice on procurement matters and shall be consulted in relation to all procurement exercises undertaken by or on behalf of the Council.

3 Preliminary Requirements

3.1 Before a procurement exercise is formally commenced, the relevant Chief Officer shall be satisfied that sufficient budgetary provision exists to meet the actual or anticipated/estimated cost of any tender and/or the anticipated/estimated cost of the procurement exercise before any expenditure is incurred or Council resources expended.

3.2 Where the value of a contract for goods and/or services or works falling within the scope and remit of these Contract Procedure Rules is estimated to equal, exceed or be within ten percent (10%) or less of a relevant threshold prescribed by The Public Contracts Regulations 2006 (as amended), The Public Contracts Amendment Regulations 2009 or any other relevant and applicable regulatory provision, then:

- a contract notice will be placed in the Official Journal of the European Union; and
- any other necessary steps shall be undertaken to ensure compliance with the aforementioned Regulations and/or any other relevant and applicable regulatory provision.

4 Procurement Procedures and Thresholds

4.1 The procurement of any contract for goods and/or services or works valued at £50,000 (excluding VAT) or more, must be in accordance with Rules 5 to 17 below.

4.2 The procurement of any contract for goods and/or services or works valued at less than £50,000 (excluding VAT), if not carried out in accordance with Rules 5 to 17, must be made by Official Order in accordance with Rules 18 and 19 below.

4.3 In calculating the values in 4.1 and 4.2, contracts must not be divided to avoid the competitive procurement requirements as above.

5 Exceptions to Procurement Procedure

5.1 The procurement of goods and/or services or works valued at £50,000 (excluding VAT) or more but less than any applicable thresholds under European Regulations (minus ten percent), may be made by Official Order in accordance with Rules 18 and 19 in the following circumstances (but only after consultation with the Chief Executive or in his absence the Director of Law, HR and Asset Management or the Director of Finance):

- (i) Where there is only one viable contractor and there would be no genuine competition. In such circumstance Rules 5.2 and 5.3 shall apply.

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- (ii) Where the Council seeks to procure goods and/or services or works through the extension of an existing contract. In such circumstance Rules 5.2 and 5.3 shall apply.
 - (iii) Where the procurement is required so urgently that it is not possible to invite tenders and the time likely to be taken to undertake the necessary procurement process would (in the opinion of the relevant Chief Officer) expose the Council to an unacceptable risk, challenge and/or reputational harm.
 - (iv) Where tenders have already been invited by a Local Government consortium or other public body e.g. the Office of Government Commerce, in accordance with the procurement procedures of that organisation, being subject to the provisions of any European or UK procurement legislation.
 - (v) Where in the opinion of the Cabinet or appropriate regulatory committee it is in the Council's interests to do so, a single tender may be invited from a contractor or negotiated with a contractor already engaged by the Council. The justification for this must be reported as soon as practicably possible to a meeting of Council.
- 5.2 Where this Rule applies, the officer leading the procurement shall, in consultation with the Council's Corporate Procurement Service, undertake an assessment of the procurement which shall include consideration of relevant options available, issues and factors; and must be satisfied that the award of the procurement in question to the one viable contractor represents value for money to the Council.
- 5.3 The assessment undertaken under Rule 5.2 above shall be writing and shall include details of the options, issues and factors taken into account, together with all information considered. The assessment and decision shall be reported to Cabinet or the appropriate regulatory committee of the Council

6 Obtaining Expressions of Interest

- 6.1 With the exception of the Standing List procedure in Rule 10, before formally entering into any contract, the relevant Chief Officer shall invite potential contractors to express their interest in tendering for the supply of goods and/or services or works by:
- i. placing an appropriate contract notice in the Official Journal of the European Union where the extent of the supply is valued more than or equal to or within ten percent of the relevant threshold sum determined by the European Community; and
 - ii. using of the Council's approved electronic tendering and sourcing portal and, if required, advertising in one or more local newspapers and/or trade journal as considered appropriate by the Chief Officer giving at least four weeks for contractors to reply.
- 6.2 All contract notices (unless otherwise prescribed by legislation) / tender documentation shall state:

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- i. the nature and purpose of the goods and/or services or works to be provided; and
- ii. the criteria by which tenderers will be assessed. This will include their technical ability and financial standing.

7 Assessment of Technical Ability and Financial Standing

- 7.1 On receipt of expressions of interest in tendering for a contract, and prior to dispatching invitations to tender, the relevant Chief Officer shall make appropriate enquiries as to each tenderer's technical or professional ability and economic and financial standing.
- 7.2 No invitation to tender documentation shall be sent to a tenderer who does not meet any pre-qualification criteria either under restricted procurement arrangements of the European Community or as set out in the original advertisement.
- 7.3 The relevant Chief Officer shall record the reasons for disqualifying any tenderer from the procurement process.

8 Invitation to Tender

- 8.1 If open procurement rules are followed the Council's Corporate Procurement Service shall dispatch identical tender documentation to each tenderer who has expressed an interest in the contract using the Council's approved eTendering and sourcing portal.
- 8.2 In cases other than the above, the relevant Chief Officer shall select wherever possible no fewer than four (or five if using the Restricted Procedure) potential tenderers from the list and the Council's Corporate Procurement Service shall dispatch identical tender documentation to them using the Council's approved eTendering and sourcing portal.
- 8.3 A record should be made of those contractors who have been invited to tender.

9 Corporate Contracts

- 9.1 Corporate Contracts are to be used for the supply of goods and/or services.. The responsibility for procuring Corporate Contracts is vested in the Director of Finance. Once negotiated the Corporate Contract must be approved by the Cabinet. (See Definition in 21.6).
- 9.2 The award of a Corporate Contract is subject to the normal tendering procedures as detailed in these Contract Procedure Rules. The contract will be retendered at appropriate intervals.
- 9.3 Where Corporate Contracts are in existence, they must be used by a Chief Officer wishing to procure goods and/or services or works falling within the scope of the relevant Corporate Contract. Any requirement to procure such goods and/or services or works outside a relevant Corporate Contract must be discussed with the Council's Corporate Procurement Service and approved by the Director of Finance. (See definition 21.6).

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10 Standing Lists of Contractors

- 10.1 With the agreement of the Cabinet or appropriate regulatory committee that a series of contracts of a similar nature are to be awarded, the relevant Chief Officer may invite expressions of interest from contractors to be entered onto a standing list for the supply of specified goods and/or services or works (providing all legal procurement obligations have been discharged).
- 10.2 In reaching a decision in 10.1 above, Cabinet, Executive Board or appropriate regulatory committee shall be satisfied that the standing list shall be subject to periodic reviews by the Director of Finance or his appointed representative.
- 10.3 Any standing list of contractors shall be compiled and maintained by the Council's Corporate Procurement Service. This list should give details as to which type and value of contracts a contractor is approved to tender for. On the completion of a contract the responsible Chief Officer shall review the performance of the contractor and details shall be provided to the Council's Corporate Procurement Service..
- 10.4 For the purpose of construction related projects, only those contractors who are Constructionline registered and CHAS accredited are to be used when compiling a list of tenderers.

Constructionline is owned and operated by the Department for Business Innovation & Skills and is the UK's largest register of pre-qualified construction contractors.

11 CHAS is the Contractor's Health & Safety Assessment Scheme. **Receipt and Opening of Tenders**

- 11.1 No tender will be considered unless it is either received:
- i. electronically via the Council's approved eTendering and sourcing portal; or
 - ii. if permitted, returned in a pre-printed tender envelope or in a plain sealed envelope addressed to the Director of Law, HR and Asset Management, marked "Tender for....." (specifying the contract), to the specified Council office
- by the specified closing date and time for receipt.
- 11.2 Where applicable, hardcopy tenders received within the time limit shall be opened at the same time and only in the presence of two of the following:
- (i) the Director of Law, HR and Asset Management or his/her nominated representative;
 - (ii) any member of the Council;
 - (iii) the responsible Chief Officer or his/her nominated representative;
 - (iv) the Director of Finance or his/her internal audit representative if he/she so requires; and

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- (v) authorised officers within Legal and Member Services.
- 11.3 Tenders received electronically via the Council's approved eTendering and sourcing portal, shall be opened by authorised officers appointed by the Director of Law, HR and Asset Management.
- 11.4 Requests for quotation and invitations to tender may be transmitted electronically through the Council's approved eTendering and sourcing portal.

Quotations and tenders can be received electronically provided that:

- i) Evidence within the portal shows that the transmission was successfully completed and recorded;
 - ii) Each tender submitted electronically is deposited in a secure mailbox;
 - iii) Electronic tenders are kept in a separate secure folder which is not opened until the deadline is passed for the receipt of tenders.
11. The Council's Director of Finance or his/her nominated representative shall record the names of those who have submitted tenders electronically via the approved eTendering and sourcing portal and the amounts submitted. The Council's Director of Law, HR and Asset Management or his/her nominated representative shall record the names of those who have submitted hardcopy tenders and the amounts submitted. These lists shall be kept and maintained by the Council's Corporate Procurement Service and the responsible Chief Officer shall check the relevant lists for accuracy.

12 Delivery of Tender Submissions

- 12.1 Unless otherwise permitted under Rule 13 below, no tender shall be considered or accepted if it is received after the closing date and time specified in the invitation to tender or is in contradiction of Rule 11.1 above.
- 12.2 In the event that a tenderer experiences technical difficulties that are beyond his control that prevent him submitting his tender submission via the Council's eTendering and sourcing portal, then in such circumstances the tenderer must notify the procurement officer named in the tender documentation of this fact promptly (and for the avoidance of doubt must be before the expiry of the tender submission deadline) and seek consent from the Director of Finance (or anyone nominated by him) to submit his tender submission in hardcopy format. Any discretion exercised in granting consent shall be consistent with Rule 13 below. Any hardcopy tender submission permitted under this Rule must be addressed and delivered to the offices of the Council's Director of Law, HR and Asset Management prior to the expiry of the tender submission deadline.
- 12.3 Any tender that has not been accepted shall be opened by the responsible Chief Officer only to ascertain where the documents should be returned.
- 12.4 Any tenderer who improperly canvasses Elected Council Members or employees of the Council with regards any aspect of the tender process, may at the discretion of the Director of Law, HR and Asset Management, be disqualified.

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13 Exercise of Discretion

- 13.1 Discretion can be exercised by the relevant Chief Officer to accept or allow a tender submission where a minor non-compliance or mistake has been made by the tenderer or where Rule 12.2 is relied upon. However, the exercise of such discretion shall be consistent with the furtherance of the Overriding Objective.
- 13.2 By way of example, a tenderer who has omitted ancillary documents, made obvious errors in calculating figures or has failed to submit the tender on time due to a freak incident or due to reasons which an experienced and competent tenderer could not have reasonably foreseen, may be allowed to correct any minor non-compliance(s) or mistake(s). However, where a tender submission omits substantive/key documents (for example, a pricing schedule) or the tenderer fails to allow sufficient time for the timely submission of his tender, then in such cases the tender submission shall be rejected.
- 13.3 Legal advice must be sought where there is any doubt as to compliance and the exercise of discretion permitted under Rule 13.1.
- 13.4 Any discretion exercised under Rule 13.1 shall be approved by the Director of Finance and/or his nominated representative.

14 Acceptance of Tenders

- 14.1 The responsible Chief Officer is authorised to accept tenders on one of the two following bases:
- (i) Subject to the thresholds below, the lowest tender (or highest if the payment is to be received by the Authority): or
 - (ii) The most economically advantageous tender should be accepted using as a basis an appropriate evaluation model. The evaluation model should be approved by the evaluation panel established under 14.4 (below) which should have regard to guidance issued by the Council's Corporate Procurement Service.
- 14.2 When the evaluation model has been approved by the evaluation panel, it shall be lodged with the Council's Corporate Procurement Service, prior to tenders being received.
- 14.3 (i) The Chief Officer when determining the evaluation model shall decide upon the appropriate balance between quality and price, having due regard to the nature of the services and the complexity of each contract.
- (ii) The scoring methodology must be included within any invitation to tender, and set to achieve the optimum combination of whole life costs and benefits to meet the Council's requirements.
- 14.4 The responsible Chief Officer, after consultation with the Council's Corporate Procurement Service, shall decide whether the importance of a contract justifies the formation of an evaluation panel. The composition of the panel will

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depend on the nature of the contract. Consideration should be given to the inclusion of the following:

The Project Manager
Operational Manager(s)
Finance
Human Resources
Legal Services
Procurement
Specialist Consultant (where appropriate)

- 14.5 Subject to Rule 14.6, the responsible Chief Officer, under delegated powers, may accept tenders and quotations below £500,000 provided that:
- (i) the appropriate provision in the budget has not been reserved for further consideration by the Council, and the tender does not exceed that provision by more than 10% and
 - (ii) in the case of tenders or quotations between £50,000 and £500,000 the acceptance is reported to the next meeting of the appropriate Overview and Scrutiny committee.
- 14.6 If the responsible Chief Officer wishes to accept a tender other than the lowest/most economically advantageous, the matter shall be referred to Cabinet for decision, or urgent cases to the Leader and /or Deputy Leader of the Council unless:
- (i) the tender or quotation does not exceed £20,000 and
 - (ii) the Chief Officer considers that it would be in the best interests of the Council to accept it.
- 14.7 Cabinet Portfolio holders may approve the acceptance of tenders below £750,000 where the contracts meet the requirements set out in Part 3 Schedule 5. In all other cases, where the tender recommended for acceptance is in excess of £500,000 the matter shall be reported to the Cabinet or appropriate regulatory committee for decision.
- 14.8 Where the Cabinet or appropriate regulatory committee resolves to accept a tender other than the lowest, the reason for its decision shall be recorded in the minutes of that meeting.
- 14.9 Where it is proposed to accept a tender exceeding the budget provision by more than 10%, or where the Director of Finance reports that difficulties in financing the project would result from any excess, acceptance of the tender shall be reported to the appropriate select committee and then to Cabinet, Executive Board or appropriate regulatory committee for approval.
- 14.10 Acceptance of the tender is subject to the completion of a formal contract.
- 14.11 Any post tender negotiations, if permitted and considered necessary by the relevant Chief Officer, shall be consistent with the Overriding Objective. The following provisions will apply:

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- (i) no post tender negotiations shall be carried out in relation to any tender exercise in respect of which an OJEU Notice has been issued, unless agreed by the relevant Chief Officer and the Director of Law, HR and Asset Management (or their nominated representatives).
- (ii) all negotiations must take place only with the two highest scoring tenderers (unless the Overriding Objective is better satisfied by also including the third highest scoring tenderer). This shall be in accordance with procedures approved by the Director of Finance. For the avoidance of any doubt, unless only one tender is received, no post tender negotiations must be undertaken with only one tenderer;
- (iii) a suitable record should be maintained of the negotiations.

14.12 Where only one tender is received in the course of a tender exercise, the relevant Chief Officer shall, prior to accepting the tender, notify the Council's Cabinet of this fact and, if the intention is to accept the tender, explain to Cabinet how the tender is considered competitive having regard to Rule 14.1 above.

15 Contract Conditions

15.1 The Director of Law, HR and Asset Management or a nominated representative shall sign all contracts and agreements made by or with the Council, with a value above £50,000. Contracts greater than £100,000 in value shall be sealed with the Common Seal of the Council.

15.2 All contracts greater than £50,000 shall be in writing in a form approved by the Director of Law, HR and Asset Management. This shall incorporate such plans, drawings, specifications and other documents as may be necessary.

15.3 Where appropriate contracts shall specify:

- (i) the goods or services to be supplied or the works to be done;
- (ii) the time or times within which the contract is to be performed;
- (iii) the price to be paid with a statement of discount and other deduction;
- (iv) where the Chief Officer considers necessary the liquidated and ascertained damages to be paid by the contractor if the contract is not completed at the specified date, or the deduction in payments where defined service levels are not met. The amount payable shall be determined in consultation with the Director of Finance.
- (v) Compliance with other relevant legislation such as the Equality Act 2010, Bribery Act 2010, Health and Safety at Work legislation.
- (vi) Require all workmanship, goods and services to be supplied in accordance with any appropriate standard, specification or code of practice in force at the date of the invitation to tender;
- (vii) state that the contractor shall not assign the contract without the approval of the Council;

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- (viii) state that except where otherwise provided, the contractor will not sub-let any part of the works without the approval of the responsible Chief Officer. The contractor shall be responsible for the acts, defaults and neglect of any sub-contractor, his agents, tenants or employees as fully as if they were his own acts, unless the contract provides otherwise;
- (ix) require all tenderers to provide for a bond or sufficient security for due performance of any contract valued at £500,000 or more, and also where the Director of Finance considers it appropriate. 'Sufficient security' shall be at least 10% of the value of the contract. These requirements may be waived with the consent of the Director of Finance;
- (x) empower the Council to terminate the employment of a contractor if the contractor offers, promises or gives a financial or other advantage to another person in contravention of the Bribery Act 2010 or Council Policy or receives or accepts any fee or reward in contravention of section 117(2), Local Government Act 1972;
- (xi) require the contractor to hold appropriate public liability and other insurance. Proof of this is to be supplied to the Council throughout the life of the contract.

16 Variation Orders and Extra Work Orders

- 16.1 The responsible Chief Officer shall record every Variation Order or extra works order immediately it is raised. If the issue of Variation Order(s) would at the date of the order cause the final contract price to exceed the original contract sum by more than £50,000 or 10%, whichever is the lower, the Chief Officer must immediately inform the Director of Finance. This Rule applies to all contracts as defined in Contract Procedure Rule 4.1, including those based on an 'Agreed Maximum Price'.
- 16.2 If the supervising officer considers in his or her professional opinion that it is necessary for the works specified in a contract to be varied for technical reasons to ensure the successful delivery of the contract (for example; dealing with unforeseen ground conditions) , the officer shall be authorised to consent in writing to the necessary variations to the contract. He shall subsequently submit a written report to the next meeting of the Cabinet or relevant regulatory committee in order to explain the reasons for the action taken if the agreed variations are likely either singly or cumulatively to result in the contract price exceeding the tender total by a sum calculated as 10% of the tender total including contingencies or £50,000 whichever is lower.
- 16.3 Any other variations to a contract which are not technically necessary for the successful delivery of the contract for example variations which increase or enhance the approved scope of the contract, shall be in writing and shall require the prior approval of the relevant Cabinet portfolio holder or relevant regulatory committee after consideration of a written report but only if the supervising officer estimates that the variations are likely either singly or cumulatively with previous variations to result in an increase of expenditure of more than £20,000.

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- 16.4 Where the contract sum fluctuates in accordance with an index linked to measure of inflation, the £50,000 or 10% relates to the original tender sum as adjusted under the terms of the contract.
- 16.5 Where the contract price includes a sum for contingencies, the limits in Rule 16.1 shall relate to the total contract price inclusive of contingencies.

16A Variations to Prices/Rates – Term Contracts

- 16A.1 Term Contracts (e.g. those in place for waste collection and highway maintenance) are awarded on the basis of a fixed period of time ('term'); utilising approved rates or prices to deliver services through approved budgets rather than an approved contract total.
- 16A.2 The Chief Officer responsible for every term contract shall record in writing every change in the works or service information which results in a variation to the prices or rates (including the deletion or provision of new rates), immediately it is raised; recording the estimated financial impact of the variation over the life of the contract (the 'whole cost') based, where appropriate, on the latest complete year's quantities to assess future year's quantities. If the whole cost of the variation exceeds £50,000 or 10% of the estimated value of the contract over its term (whichever is the lesser); the Chief Officer must immediately inform the Director of Finance. This rule applies to all contracts as defined in Contract Procedure Rule 4.1, including those based on an 'Agreed Maximum Price'.
- 16A.3 If the Supervising Officer considers in their professional opinion that it is necessary for the works or services information in a term contract to be varied for technical reasons to ensure the successful delivery of the contract (for example, unforeseen sub-surface or drainage conditions, or an omission or ambiguity in the contract), the officer shall be authorised to consent in writing to the necessary variations to the contract. He shall subsequently submit a written report to the next meeting of the Cabinet, or relevant regulatory committee, in order to explain the reasons for the action taken if the whole cost of the variation is likely to exceed £50,000 or 10% of the estimated value of the contract over its term (whichever is the lesser).
- 16A.4 Any other variations to a term contract which are not technically necessary for the successful delivery of that contract (for example, variations which increase or enhance the approved scope of the contract (such as improved gritting routes, a modified park management plan or a change in the number of car parks)) shall be in writing and shall require the prior approval of the relevant Cabinet portfolio holder, or regulatory Committee, after consideration of a written report; but only if the Supervising Officer estimates that the whole cost of the variation is likely to exceed £50,000 or 10% of the estimated value of the contract over its term (whichever is the lesser).
- 16A.5 This Rule 16A and Rule 16 shall not apply in relation to variations to works or prices or rates (including the deletion or provision of new rates) for the provision of goods or services to schools where the variation is requested in writing by a school; but the Chief Officer responsible for every term contract relating to schools shall keep a written record of all such variations requested by schools.

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17 Interim Payments and Final Certificate

- 17.1 Where contracts provide for payment to be made by instalments, the responsible Chief Officer shall arrange for the keeping of a Contract Register to show the state of the account between the Council and the Contractor, together with any other payments and related fees.
- 17.2 Payments to contractors on account of contracts shall be made only on a certificate signed by the responsible Chief Officer or other authorised departmental officer, or by a consultant responsible to the authority for the supervision of the contract, showing the total value of the contract, the value of the work executed to date, retention money, amount paid to date, and the amount now certified.
- 17.3 The responsible Chief Officer shall not issue a certificate for the final payment due to the contractor under a contract until he/she is satisfied as to the accuracy of the detailed statement of account. This should show how the amount of the final payment is calculated, and the completeness of supporting vouchers and documents that verify the statement. The final statement shall be supplied to the Director of Finance for examination.
- 17.4 The Director of Finance shall, to the extent he/she considers necessary, examine interim and final accounts for contracts and shall be entitled to make such enquiries and receive information and explanations necessary to be satisfied as to the accuracy of the accounts.

18 Orders for Goods, Works and Services

- 18.1 All official orders shall be in recorded in a manner approved by the Director of Finance. The order shall clearly state the quantity and description of the goods, materials or services ordered. The contract price or price quoted shall be specified on the order issued to the supplier. Telephone or verbal orders shall be confirmed by a written order as soon as practicable. Copies of all orders shall be retained and, in addition to that sent to the supplier, should show the relevant expenditure code.
- 18.2 Official orders shall be issued by the Chief Officer responsible for the budget to which the expenditure is to be charged, subject to any Corporate Procurement Service arrangements or other exceptions approved by the Council. Orders shall be authorised by the Chief Officer or by a nominated officer within the department.
- 18.3 Where orders are required for a period in excess of a financial year, a new official order shall be raised at 1st April each year.

19 Procurement Valued at Less Than £50,000

- 19.1 Procurement of goods, works and services where the contract value does not exceed £50,000 shall be carried out as follows:
- (i) where the estimated value is less than £10,000, by three verbal or written quotations, provided a note of such quotations is made on the relevant copy orders;

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- (ii) between £10,000 and £50,000, following consideration by the responsible officer of three written, faxed or e-mailed quotations.

In both the above cases, the Department should be able to demonstrate that genuine attempts have been made to obtain three quotes. If for any reason less than three quotes have been obtained the Chief Officer can accept the lowest quote providing that he is satisfied that the reasons for this are acceptable.

20. In-house Bids

20.1 Where a decision has been made by the Council to submit an in-house bid in relation to any tender for the provision of goods and/or services or works, the Chief Executive (or any other person authorised by him) shall, on a case by case basis and in consultation with the Cabinet Portfolio Leader for Corporate Resources, Director of Law, HR and Asset Management and the Director of Finance, ensure all necessary and appropriate arrangements are in place to effectively manage the preparation and submission of the in-house bid.

20.2 The necessary arrangements referred to in Rule 20.1 shall be consistent with the Overriding Objective and include:

- (i) such governance arrangements as are considered appropriate;
- (ii) clarification on the role of the relevant Chief Officer under who's area of management the in-house bid falls;
- (iii) clarification on the separation of duties of relevant officers; and
- (iv) such steps considered necessary to mitigate any potential conflicts of interest.

21 Definitions

In these Contract Procedure Rules:

21.1 'Contract' means an agreement constituting;

- (i) an offer to do or forbear from doing anything by one party;
- (ii) an acceptance of that offer by the other party, turning the offer into a promise.

A party suing on a promise must show that he has given consideration for the promise unless the promise was given under seal. Contracts are not restricted to capital expenditure or large transactions. They are more commonly entered into for small revenue items.

21.2 'The Council' or 'Authority' shall be deemed to include reference to the Cabinet or the appropriate regulatory committee, or person acting in accordance with delegated authority on behalf of the Council.

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- 21.3 'relevant Chief Officer' shall mean the Chief Officer responsible for the tender exercise in question; or who issues an official order.
- 21.4 'A Consultant' means any person other than an employee, engaged by the Council under a contract for services, to provide professional advice to, and on behalf of, the Council.
- 21.5 'Assign' means the transfer to a third party of the Contractor's interest in the contract.
- 21.6 A Corporate Contract is one for the supply of goods and/or services which can most economically be procured by one central contract and not by Chief Officers acting independently of each other in relation to their department's requirements.
- 21.7 'Competitive Tendering' means the obtaining of more than one tender.
- 21.8 'Invitation to Tender' means the sending of documents to a contractor asking him/her to make an offer to the Council.
- 21.9 'Tender' or 'Tender submission' means an offer made by a tenderer to the Council to execute works, provide goods, materials or services on terms specified by the Council.
- 21.10 'Sub-let' means the allocation of the whole or part of the works to a third party. However:
- (i) the contractor retains the right of control over the performance of the contract;
 - (ii) the contractor is ultimately responsible to the Council for the execution of the contract.
- 21.11 'Serial Tender' means a procedure for dealing with a series of tenders.
- 21.12 'Goods' includes materials, vehicles, plant and equipment.
- 21.13 'Procurement' means arrangements with a view to completing a contractual agreement for the supply of work, goods and services.
- 21.14 'Quotation' means a tender submitted in respect of works, goods or services below £50,000