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## Contract Procedure Rules

### 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 Contract Procedure 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.

1.1.3 Any masculine references in these Rules shall also include the feminine.

1.1.4 Where the context so requires the following terms and expressions shall have the following meanings:

1.1.4.1 'Consultant' means any person other than an employee (including any agent or servant), engaged by the Council under a contract for services, to provide professional advice to and on behalf of, the Council.

1.1.4.2 'Corporate Contract' is a contract for the supply of goods and/or services and/or works which can most economically be procured by one central contract and not by Responsible Chief Officers acting independently of each other in relation to their department's requirements.

1.1.4.3 'Council' shall be deemed to include reference to the Cabinet or the relevant Committee (as applicable), or person acting in accordance with delegated authority on behalf of the Council.

1.1.4.4 'Responsible Chief Officer' shall mean the Chief Officer responsible for the procurement/tender exercise/contract in question; or the Chief Officer who issues an official order.

1.1.4.5 'Invitation to Tender' means the sending of documents to a prospective contractor asking him/her to make an offer to contract with the Council.

1.1.4.6 'Sub-let' means the allocation of the whole or part of the works / goods/ services / other contractual obligations and or benefits to a third party where :

- (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.

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- 1.1.4.7 ‘Supervising Officer’ means that person appointed by the Responsible Chief Officer to manage, supervise and monitor on a day to day basis the procurement exercise.
- 1.1.4.8 ‘Tender’ or ‘Tender submission’ means an offer made by a tenderer to the Council to execute works, provide goods and/or services or works on terms specified by the Council.
- 1.1.4.9 ‘procurement’ means an arrangement or exercise undertaken with the purpose of entering into a contract .
- 1.1.4.10 ‘Quotation’ means a tender submitted in respect of goods/services or works below £50,000.

All references in these Contract Procedure Rules to figures are to figures exclusive of value added tax or any tax amending or replacing the same.

A Responsible Chief Officer may appoint any officer falling within their management to manage supervise and monitor the procurement exercise on his behalf and if he does so shall record who that officer is.

A reference to a “Rule” is a reference to the relevant rule in these Contract Procedure Rules.

### **1.2 Scope and Compliance**

- 1.2.1 Article 14.2 of the of the Council’s 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 they conflict with statutory provisions or are disapplied under Rule 1.2.1, 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 There is an obligation upon every Council officer (or Consultant) who is engaged in a Council procurement exercise to comply with the Contract Procedure Rules. Failure to comply with the Contract Procedure Rules may result in disciplinary or other action being taken.
- 1.2.4 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).
- 1.2.5 No other exception from any of the provisions in these Contract Procedure Rules shall be made unless directed by the Council, Cabinet or Pensions Committee, or permitted under powers delegated by them.
- 1.2.6 Every exception made shall be reported to Council, Cabinet or Pensions Committee as appropriate. This should detail the circumstances that justify the exception.

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1.2.7 Where a contract comprises both an element of land acquisition /land disposal and the procurement of goods, services and/or works, the Responsible Chief Officer must seek the advice of the Director of Law HR and Asset Management or his nominated representative as to the relevance and applicability of any European Directives and whether the transaction is governed by these Rules.

## 1.3 Overriding Objective

1.3.1 The procurement of any contract for goods services works and/or disposal of assets (other than land) 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 services works and/or disposal of assets (other than land) shall endeavour to promote:

- Fairness;
- Competition; 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;
- integrity of the procurement process is maintained through compliance with all relevant legal requirements;
- ensures probity; and
- adopts an effective and efficient process.

Competition means:

The procurement process:

- balances the need to achieve value for money, quality and fairness;
- affords the opportunity to legitimate parties to participate;
- positively promotes choice;
- follows, so far as practicably possible,

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recognised good practice; and

- encourages comprehensive and compliant tender submissions.

Value for Money means:

The procurement exercise:

- is cost effective and efficient;
- allows the Council the choice to accept the lowest price or the most economically advantageous tender submission;
- delivers high quality goods/services or works (as applicable); and
- provides confidence that identified outcomes will be achieved.

1.3.6 In the event that there is any dispute, inconsistency or conflict which in the opinion of Director of Law, HR and Asset Management (or his authorised representative) cannot be satisfactorily overcome or resolved between the promotion of Fairness, Competition 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 contract made by the Council, Cabinet or Pensions Committee 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 a Directive of the European Community having force in the UK, UK Statutes and Statutory Instruments and these Contract Procedure 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 services works and/or disposal of assets (other than land) falling within the scope and remit of these Contract Procedure Rules, the Director of Finance or his nominated officers shall, in consultation with the Director of Law HR and Asset Management or his nominated officers prepare and maintain a procurement toolkit (“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.

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## **1.6 Procurement on Behalf of the Merseyside Pension Fund**

- 1.6.1 The procurement of goods services works and/or disposal of assets (other than land) for and on behalf of the Merseyside Pension Fund shall comply with these Contract Procedure Rules.
- 1.6.2 Contracts to be entered into for the procurement of goods services works and/or disposal of assets (other than land) for and on behalf of the Merseyside Pension Fund valued at less than £500,000 will be awarded by the Council's Director of Finance (or any other person duly authorised by him/her) save for contracts for the provision of legal services valued at less than £500,000 which will be awarded by the Director of Law, HR and Asset Management (or any other person duly authorised by him/her); whereas Contracts valued at or above this amount will be awarded by the Council's Pensions Committee.

## **2.1 Role of the Corporate Procurement Service**

- 2.1.1 The Council's Corporate Procurement Service (or its equivalent) is the Council's specialist section for procurement, and is comprised of procurement professionals. The 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.
- 2.1.2 The Council's Corporate Procurement Board (or its equivalent) shall monitor and promote the engagement, role and effectiveness of the Corporate Procurement Service. Any recommendations for improvement concerning the Corporate Procurement Service shall be presented to the Director of Finance (or his authorised representative) and any recommendations relating to the Contract Procedure Rules shall be presented to the Director of Law, HR and Asset management (or his authorised representative) for consideration.

## **3.1 Preliminary Requirements**

- 3.1.1 Before a contract is entered into and/or a procurement exercise is formally commenced, the Responsible 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.
- 3.1.2 Where the value of a contract for goods services works and/or disposal of assets (other than land) 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 provisions and the contract would fall within the scope and remit of such provisions, 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.

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3.1.3 Where Rule 3.1.2 applies to a contract then the contract notices (unless otherwise prescribed by legislation) / tender documentation shall state:

- 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 such information as required by legislation and any other information considered by the Responsible Chief Officer appropriate such as matters relating to price, technical ability and financial standing

3.1.4 Where Rule 3.1.2 applies then the Responsible Chief Officer shall make appropriate enquiries as to each tenderer's technical or professional ability and economic and financial standing.

3.1.5 No invitation to tender documentation shall be sent to a tenderer who does not meet any pre-qualification criteria set under Rule 3.1.3.

3.1.6 The Responsible Chief Officer shall record the reasons for disqualifying any tenderer from the procurement process instigated under this Rule.

## **4.1 Procurement Procedures and Thresholds**

4.1.1 The procurement of any contract to which these Contract Procedure Rules apply for goods services works and/or disposal of assets (other than land) valued at £50,000 (excluding VAT) or more, must be in accordance with Rules 5.1 to 17.1 below.

4.1.2 The procurement of any contract to which these Contract Procedure Rules apply for goods services works and/or disposal of assets (other than land) valued at less than £50,000 (excluding VAT), if not carried out in accordance with Rules 5.1 to 17.1, must be made by Official Order in accordance with Rules 11, 12, 13, 15,16, 19.1 and 20 below.

## **5.1 Calculating contract values**

5.1.1 In calculating the values in 4.1.1 and 4.1.2, contracts to which these Contract Procedure Rules apply must not be divided to avoid the competitive procurement requirements as above and regard must be had to the guidance provided in the Procurement Toolkit in relation to determining contract value aggregation.

## **6.1 Obtaining Expressions of Interest**

6.1.1 Before formally entering into any contract to which Rule 3.1 applies, the Responsible 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 if the extent of the supply is valued more than or equal to or within ten percent of the relevant threshold sum determined by European Community law; and

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- ii. using the Council’s approved eTendering and sourcing portal and advertising in one or more local newspapers and/or trade journal as considered appropriate by the Responsible Chief Officer giving at least four weeks for contractors to reply.

## **7.1 Failure to meet pre-qualification criteria**

- 7.1.1 Where on any contract to which this Rule applies (save in respect of Rule 3.1.2 where rule 3.1.3 to 3.1.6 applies) it is proposed by the Responsible Chief Officer or relevant committee that a contractor must meet criteria as to financial standing or technical standing or otherwise before the Council can enter into a contract with it then such criteria must be advertised. Any decision to exclude a contractor for failure to meet such criteria together with the reasons for such decision must be recorded by the Responsible Chief Officer.

## **8.1 Invitation to Tender**

- 8.1.1 If open procurement rules are followed the Director of Finance (or his authorised representative) shall, subject to Rules 3.1 and 7.1 if applicable, dispatch identical tender documentation to each tenderer who has expressed an interest in the contract using the Council’s approved eTendering and sourcing portal.
- 8.1.2 If the Responsible Chief Officer has set selection criteria under Rule 3.1 or Rule 7.1 then the Responsible Chief Officer shall select from the prospective tenderers who meet the selection criteria no less than 4 prospective suppliers (or if legislation requires a greater number then such greater number as is required) to whom identical tender documentation shall be dispatched to them using the Council’s approved eTendering and sourcing portal. If fewer than four tenderers have expressed an interest in the tender, all the Responsible Chief Officer shall dispatch identical tender documentation to those tenderers.
- 8.1.3 A record shall be kept by the Director of Finance or his nominated representative of all those tenderers who have been invited to tender.

## **9.1 Corporate Contracts**

- 9.1.1 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 definitions at Rule 1.1.4).
- 9.1.2 The award of a Corporate Contract is subject to the normal tendering procedures as detailed in these Contract Procedure Rules. The contract will be re-tendered at appropriate intervals unless otherwise extended in accordance with Rules 16.1 or 16A.
- 9.1.3 Where Corporate Contracts are in existence, they must be used by a Chief Officer wishing to procure goods services works and/or disposal of assets (other than land) 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

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Procurement Service and approved by the Director of Finance. (See definitions at Rule 1.1.4).

## 10.1 Standing Lists of Contractors

10.1.1 With the agreement of the Cabinet or Pensions Committee (as applicable) that a series of contracts of a similar nature are to be awarded, the Responsible 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).

10.1.2 In reaching a decision in Rule 10.1.1 above, Cabinet or Pensions Committee (as applicable) shall be satisfied that the standing list shall be subject to periodic reviews by the Director of Finance or his appointed representative.

10.1.3 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.

10.1.4 For the purpose of construction related projects, only those contractors who are Constructionline registered and Contractor's Health & Safety Assessment Scheme ('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.

## 11.1 Receipt and Opening of Tenders

11.1.1 Subject to the exception set out in Rule 12.1 no tender will be considered or accepted unless it is 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.

11.1.2 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 (of whom at least one is either in category (i) or (v) below ) and only after the specified closing date and time for receipt:

- (i) the Director of Law, HR and Asset Management or his/her nominated representative;
- (ii) any member of the Council;

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- (iii) the Responsible Chief Officer or his/her duly authorised representative;
- (iv) the Director of Finance or his/her internal audit representative if he/she so requires; and
- (v) authorised officers within Legal and Member Services.

11.1.3 Tenders received electronically via the Council's approved eTendering and sourcing portal, shall be accessed and opened by authorised officers appointed by the Director of Law, HR and Asset Management.

11.1.4 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.

11.1.5 The Council's Director of Finance or his authorised 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 authorised representative shall record the names of those who have submitted hardcopy tenders and the amounts submitted, and forward the details to the Director of Finance or his nominated representative. These lists shall be kept and maintained by the Director of Finance or his nominated representative.

## **12.1 Delivery of Tender Submissions**

12.1.1 Unless otherwise permitted under Rule 12.2 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.

12.1.2 Where electronic submission is required of a tender submission and 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, and the tenderer has notified the relevant officer named in the tender documentation promptly (and in all circumstances before the expiry of the tender submission deadline) and sought consent from the Director of Finance (or his authorised representative) to submit his tender submission in hardcopy format, the Director of Finance (or his authorised representative) may in his discretion allow a hardcopy submission. Any discretion exercised in granting consent shall be consistent with Rule 13.1 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 in a envelope which must not reveal the name of the tenderer or any details of the tender submission save for the name of the tender exercise and marked "URGENT" (unless otherwise stipulated by the terms of the consent).

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- 12.1.3 Any tender that has not been accepted shall be opened by the Responsible Chief Officer only to ascertain where the documents should be returned.
- 12.1.4 Any tenderer who improperly canvasses Elected Council Members or officers of the Council with regards to any aspect of the tender process will be disqualified. Any Elected Council Member or officer of the Council who believes that they may have been or are being improperly canvassed in connection a tendering exercise being conducted by the Council must inform the Director of Law, HR and Asset Management immediately.

## **13.1 Exercise of Discretion**

- 13.1.1 Discretion can be exercised by the Responsible 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 12.1.2 is relied upon providing advice is first sought by the Responsible Chief Officer from the Director of Finance (or his authorised representative). The Responsible Chief Officer shall record his decision in writing which must also include the reasons for any discretion exercised or not as the case may be. The exercise of discretion under this Rule must be consistent with the furtherance of the Overriding Objective.
- 13.1.2 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.
- 13.1.3 Legal advice must be sought from the Director of Law, HR and Asset Management (or his authorised representative) where there is any doubt as to compliance and the exercise of discretion permitted under Rule 13.1.1.
- 13.1.4 Any discretion exercised under Rule 13.1.1 shall be approved by the Director of Finance (or his authorised representative) unless the Responsible Chief Officer is the Director of Finance in which case the exercise of discretion shall be approved by the Director of Law, HR and Asset Management (or his authorised representative).

## **14.1 Acceptance of Tenders**

- 14.1.1 Subject to the thresholds set out in Rule 14.1.4 and Rules 14.1.7.2 and 14.1.7.3 the Responsible Chief Officer is authorised to accept tenders on one of the two following bases:
- (i) the lowest tender (or highest if the payment is to be received by the Authority): or
  - (ii) the most economically advantageous tender using as a basis an appropriate evaluation model. The evaluation model should be approved by the evaluation panel established under 14.1.4 (below) which should have regard to guidance issued by the Director of Finance (or his authorised representative).

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14.1.2 When the evaluation model has been approved by the evaluation panel, it shall be lodged with the Director of Finance (or his authorised representative), prior to tenders being received.

14.1.3 (i) The Responsible 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, the complexity of each contract and the Overriding Objective.

(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; and also include relevant performance measures and/or factors.

14.1.4 The Responsible Chief Officer shall, in consultation with the Director of Finance (or his authorised representative), be responsible for setting up any evaluation panel required. The composition of the evaluation panel will depend on the nature of the contract in question however consideration should be given to the inclusion of the following persons and/or a person from the following service areas:

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

14.1.5 Subject to Rule 14.1.6, 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%;
- (ii) the acceptance of the tender is consistent with Rule 11.1; and
- (iii) in the case of tenders or quotations between £50,000 and £500,000 the acceptance is reported to the next meeting of the relevant Council committee (unless the tender relates solely to income or a payment to be received by the Council, in which case the relevant Cabinet Portfolio Holder shall be notified).

14.1.6 If the Responsible Chief Officer wishes to accept a tender that is within the thresholds set out in 14.1.5 but is other than the lowest/most economically advantageous (including a tender that exceeds the allocated financial provision), 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 does not exceed the allocated financial provision by more than £20,000 or 10% whichever is the lesser and the additional sum required can be met from existing approved budgets under the control of the Responsible Chief Officer; and

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- (ii) the Responsible Chief Officer considers that it would be in the best interests of the Council to accept it.
  - (iii) Where a tender has been accepted by the Responsible Chief Officer in pursuance of Rules 14.1.6(i) and (ii) above, the acceptance of the tender shall be reported to Cabinet by the Responsible Chief Officer as soon as practicable possible (unless otherwise directed by the Leader of the Council).
- 14.1.7.1 Cabinet Portfolio Holders may approve the acceptance of tenders (other than tenders in relation to the Merseyside Pension Fund) below £750,000 where the tenders meet the requirements set out in Part 3 Schedule 5 of the Council's Constitution.
- 14.1.7.2 Except where Rule 14.1.7.3 applies, where the tender recommended for acceptance is in excess of £500,000 the matter shall be reported to the Cabinet or Pensions Committee (as applicable) and approval sought.
- 14.1.7.3 Tenders in excess of £500,000 for acceptance by or on behalf of Merseyside Pension Fund shall in all circumstances be reported to the Pensions Committee and approval sought.
- 14.1.8 Where the Cabinet or Pensions Committee (as applicable) resolves to accept a tender other than the lowest, the reason for its decision shall be recorded in the minutes of that meeting.
- 14.1.9 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 need to be met from any excess, acceptance of the tender shall be reported to the Cabinet or Pensions Committee (as applicable) and approval sought.
- 14.1.10 Acceptance of the tender is subject to the completion of a formal contract.
- 14.1.11 Any post tender negotiations, if permitted by law and considered necessary by the Responsible Chief Officer, shall be consistent with the Overriding Objective.

The following provisions will apply to post tender negotiation:

- (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 Responsible Chief Officer and the Director of Law, HR and Asset Management (or their nominated representatives). For the avoidance of any doubt, EU procurement legislation prohibits any negotiations taking place in relation to any tendered price(s); however seeking clarification on any tendered price(s) is permitted.
- (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

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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 and the relevant Cabinet Portfolio Holder advised of all negotiations undertaken. If the Cabinet Portfolio Holder considers it appropriate, details of the negotiations can also be reported to Cabinet for noting.
- (iv) All negotiations undertaken must be consistent with relevant legislation and any relevant and applicable contract rules.

14.1.12 Where only one tender is received in the course of a tender exercise, the Responsible 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 14.1.1 above. Where time is of the essence and there is insufficient time available to notify the Council's Cabinet as required, the Responsible Chief Officer must in the alternative and prior to accepting the tender, notify the Leader of the Council, the relevant Cabinet Portfolio Holder, Director of Finance and Director of Law, HR and Asset Management (or their authorised representatives) of his intention to accept the tender and explain how the tender is considered competitive having regard to Rule 14.1.1 above.

### 15.1 Contract Conditions

15.1.2 The Director of Law, HR and Asset Management or (or his authorised 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.

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

15.1.3 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 Responsible 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 (or his authorised representative).
- (v) Compliance with other relevant legislation such as the Equality Act 2010, Bribery Act 2010, Health and Safety at Work legislation.

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- (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 transfer or assign its interest in the contract without the approval of the Council;
- (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 in consultation with the relevant Cabinet Portfolio Holder, where it is considered in the interests of the Council to do so;
- (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, breaches of money laundering legislation/requirements 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.
- (xii) Relevant performance measures relating to the performance and monitoring arrangements relevant to the contract.

### **16.1 Contract Variation and Extension**

16.1.1 The Responsible Chief Officer shall keep a record of every Variation Order or extra works order that is placed in relation to a contract. 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 Responsible Chief Officer must immediately inform the Director of Finance (or his authorised representative). This Rule applies to all contracts as defined in Contract Procedure Rule 4.1.1, including those based on an 'Agreed Maximum Price' and falling within Rule 16A.

16.1.2 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 or altering a specification to overcome an unexpected difficulty), 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 Pensions Committee (as applicable) for noting and shall explain the reasons for the action taken if the

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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.

- 16.1.3 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 Pensions Committee (as applicable) 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.
- 16.1.4 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.
- 16.1.5 Where the contract price includes a sum for contingencies, the limits in Rule 16.1.1 shall relate to the total contract price inclusive of contingencies.

### **16A Variations to Prices/Rates – Term Contracts**

- 16A.1 Term Contracts 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 (e.g. those in place for waste collection and highway maintenance). Where a contract is awarded for a fixed period of time for delivery of works and /or services and/or goods and permits the Council to raise task orders or vary the works and /or services and./or goods to be supplied under that contract which actions would have the effect of increasing prices and /or rates payable under that contract then this Rule 16 A shall apply.
- 16A.2 The Responsible 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 Responsible Chief Officer must immediately inform the Director of Finance. This Rule applies to all contracts as defined in Contract Procedure Rule 4.1.1, 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 caused by the Council), the officer shall be authorised to consent in writing to the necessary variations to the contract providing value for money can be demonstrated and achieved. He shall subsequently submit a written report to the next meeting of the Cabinet or Pensions Committee (as applicable), for noting and shall to explain the reasons for the action taken if the

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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 made by the Supervising Officer 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 Pensions Committee (as applicable), 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 16.1 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 Responsible Chief Officer for every term contract relating to schools shall keep a written record of all such variations requested by schools.

### **17.1 Interim Payments and Final Certificate**

17.1.1 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.

17.1.2 Payments to contractors on account of contracts shall be made only on a certificate signed by the Responsible Chief Officer or other officer duly authorised by him (which may include a Consultant responsible to the Council 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.

17.1.3 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 (or his authorised representative) for examination.

17.1.4 The Director of Finance (or his authorised representative) 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.

### **18.1 Orders for Goods, Works and Services**

18.1.1 All official orders shall be recorded in a manner approved by the Director of Finance (or his authorised representative). The order shall clearly state the quantity and description of the goods, materials or services ordered. The

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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.

18.1.2 Official orders shall be issued by the Responsible Chief Officer 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 Responsible Chief Officer or other officer duly authorised by him (which may include a Consultant responsible to the Council for the supervision of the contract).

18.1.3 Where orders are required for a period in excess of a financial year, a new official order shall be raised at 1<sup>st</sup> April each year.

## **19.1 Procurement Valued at Less Than £50,000**

19.1.1 Procurement of goods/services and/or works where the estimated contract value does not exceed £50,000 shall be carried out, subject to Rule 19.1.4 below, as follows:

- (i) where the estimated value is less than £10,000, by three written quotations from prospective suppliers;
- (ii) where the estimated value is between £10,000 and £50,000, by five quotations using the Council's eTendering and sourcing portal, unless the Director of Finance (or anyone authorised by him) is satisfied, having regard to the Overriding Objective that it is not possible to obtain five quotations in which case a minimum of three quotations must be obtained or it is in the interests of the Council for its eTendering and sourcing portal not to be used in which case written quotations must be obtained.

19.1.2 Where a particular quotation is accepted the Responsible Chief Officer shall record the reasons for accepting that quotation and why the other quotes were not successful.

19.1.3 In relation to both 19.1.1 (i) and (ii), the Responsible Chief Officer must demonstrate and record the reasons for the selection of the prospective suppliers from whom quotations were sought and that genuine attempts have been made to obtain the requisite minimum quotations.

19.1.4 If for any reason the requisite minimum quotes referred to in Rule 19.1.1 (i) and (ii) cannot be obtained, the Responsible Chief Officer shall be entitled to accept the lowest quote obtained providing that he is satisfied that the reasons for this are acceptable. The Responsible Chief Officer shall record the reasons.

## **20.1 In-house Bids**

20.1.1 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 Holder for Corporate Resources, Director of Law, HR and Asset Management (or his authorised

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representative) and the Director of Finance (or his authorised representative), ensure all necessary and appropriate arrangements are approved by him and in place to effectively manage the preparation and submission of the in-house bid.

20.1.2 The necessary arrangements referred to in Rule 20.1.1 shall be consistent with the Overriding Objective and include:

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

## 21.1 Exceptions to Procurement Procedure

21.1.1 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 the following circumstances (but only after consultation with the Chief Executive (or his authorised representative) or in his absence the Director of Law, HR and Asset Management or the Director of Finance (or their authorised representatives):

- (i) Where there is only one viable contractor and there would be no genuine competition.
- (ii) Where the Council seeks to procure goods and/or services or works through the extension of an existing contract.
- (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 Responsible 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 Pensions Committee (as applicable) 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.

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- (vi) Where only one tender is received in the course of a tender exercise, in which case the Responsible 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 satisfies the Overriding Objective.

21.1.2 Where Rule 21.1.1 applies, the officer leading the procurement shall, in consultation with the Director of Finance (or his authorised representative) 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 represents value for money to the Council.

21.1.3 The assessment undertaken under Rule 21.1.2 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 Pensions Committee (as applicable).

21.1.4 Unless otherwise provided for under legislation, where less than three expressions of interest have been received (or where the number of expressions of interests received is below any prescribed legislative minimum) in relation to any procurement exercise for goods and/or services or works valued at the relevant financial threshold under European Regulations (minus ten percent), then the procurement exercise shall proceed in accordance with Rules 7.1 to 17.1, unless it is considered by the Responsible Chief Officer after having had regard to the Overriding Objective that it would not be in the interests of the Council to do so. The Responsible Chief Officer shall keep a written record his/her decision to proceed or abandon the procurement exercise and before implementing the decision shall provide a copy of those reasons to the Director of Law, HR and Asset Management and Director of Finance (or their authorised representatives).