
Report to
Constitution Working Group

6th July, 2010

Report of
Director of Finance and Legal Services

Title
Corporate Rules for Contracts

1 Purpose of the Report

To outline the need for change to the existing Standing Orders and replace them with the proposed Rules for Contracts

2 Recommendations

Standards Committee are asked to:

- 2.1 Review the proposed new Rules for Contracts and recommend to Council that they be approved in place of Standing Orders and Administrative Procedures relating to Contracts for supply of Works and Services (including consultancies)
- 2.2 Council are asked to :
 - 2.2.1 Consider any comments from Standards Committee
 - 2.2.2 Approve the new Rules for Contracts in place of Standing Orders and the Administrative Procedures
 - 2.2.3 To amend part 4 of the Constitution as shown in tracked change in appendix 3

3 Information/Background

- 3.1 The Standing Orders and Administrative procedures for contracts has been in place since 1998 (attached as appendix 1) and it is these that are proposed to be replaced with the new Rules for Contracts (attached as appendix 2) . Since 1998 there have been legislative changes and good practice procurement developments that are required to be incorporated to ensure the Council is achieving value for money and is legally compliant in how it procures works, goods and services.
- 3.2 A Procurement Board was established in December 2009, chaired by the Chief Executive and supported by Assistant Directors from each Directorate. The Board has considered the proposed revisions to the Rules for Contracts and are recommending to Standards Committee that these revised rules be adopted.
- 3.3 The Government has also published proposals to require central and local government to publish electronically all spend and tender documentation above £500. This will provide openness and transparency in all procurements for goods and services

4 Proposal and Other Option(s) to be Considered

- 4.1 The significant changes to the current rules are:

- 4.1.1 The threshold where Officers are required to go out to public tender has been set at £50,000 in line with case law in the European Court of Justice. In addition, competitive quotations will be sought for requirements between £10,000 and £49,999 from a minimum of 3 suppliers, 2 of whom must be local where available. This will further ensure opportunity, openness and transparency for lower value procurements.
- 4.1.2 The opportunity for officers to use the single tender process has been removed and replaced by an "exceptions to Rules for Contracts" process. In exceptional circumstances, Officers will need to seek approval from the Director of Finance and Legal Services before starting negotiations without tendering.
- 4.1.3 On page 7 of the Rules for Contracts there is a summary of the approvals process, contractual requirements and required procurement routes to be followed, dependant on the value of spend. This shows that approval is required from the Procurement Board to proceed with any expenditure over £156,000.
- 4.2 It is anticipated that these changes will improve control of expenditure in the Council whilst still allowing officers to deliver value for money in their procurement.

5 Other specific implications

5.1

	Implications (See below)	No Implications
Best Value	√	
Children and Young People		√
Climate Change & Sustainable Development		√
Comparable Benchmark Data		√
Corporate Parenting		√
Coventry Sustainable Community Strategy		√
Crime and Disorder		√
Equal Opportunities	√	
Finance	√	
Health and Safety		√
Human Resources		√
Human Rights Act		√
Impact on Partner Organisations		√
Information and Communications Technology		√
Legal Implications	√	
Neighbourhood Management		√
Property Implications		√
Race Equality Scheme		√
Risk Management	√	
Trade Union Consultation		√
Voluntary Sector – The Coventry Compact		√

5.2 Best Value

Applying these Rules for contracts will help the Council achieve value for money through its procurement

5.3 Equal Opportunities

The reduction in the threshold for tendering from £100,000 to £50,000 will give small businesses more opportunity to bid for Council work. Officers will also be required to obtain 2 bids from local suppliers for procurement under the £50,000 threshold, where possible.

5.4 Finance

Once implemented the revised Rules for Contracts will protect the Council's financial interests

5.5 Legal

Some of the revisions made are to reflect the implications of case law coming from the European Court of Justice. Fundamentally the Council must comply with the Public Contracts Regulations 2006 which direct how we procure contracts for works goods and services. These regulations have now been amended by the Public Contracts (Amendment) Regulations 2009 which give a more robust remedy where the public sector has breached the regulations on a procurement process. It is therefore vital that we have a modern compliant approach to procurement which will protect the Council from challenge which can lead to contract set aside and damages.

Under the remedies directive if a challenge is made, it can have serious consequences which include :-

Pre award of contract :-

- automatic suspension so you have to restart process from failure point
- set aside and amend the process
- damages as a result of process failures

Post award :-

- ineffectiveness which means the contract will be set aside
- civil financial penalty – action in the civil courts which will impose a penalty
- damages/compensation award

5.6 Risk Management

Compliance with the revised Rules for Contracts will reduce the risks the Council is exposed to through contracting.

6 Timescale and expected outcomes

6.1 Once the revised Rules for Contracts are approved, it will be the responsibility of the Members of the Procurement Board to ensure their Directorates are aware of the changes.

6.2 Support and training on the changes to the Rules for Contracts will be offered by Procurement Services through the procurement practitioners' network.

	Yes	No
Key Decision	√	
Scrutiny Consideration (if yes, which Scrutiny meeting and date)		√
Council Consideration (if yes, date of Council meeting)	√ 24 June 2010	

List of background papers

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Papers open to Public Inspection

Description of paper

Location

None

Coventry City Council

RULES FOR CONTRACTS

Issue date: June 2010

RULES FOR CONTRACTS

Introduction

The Local Government Act 1972 requires the Council to have standing orders with respect to the making of contracts. These Rules for Contract are the standing orders required by the 1972 Act. They are part of the Council's Constitution and are, in effect, the instructions of the Council to officers and members for making contracts on behalf of the Council. The purpose of these Rules for Contracts is to set clear rules for the procurement of works, goods and services for the Council and to ensure a system of openness, integrity and accountability, in which the probity and transparency of the Council's procurement process will be beyond reproach. Accordingly, these Rules for Contracts must be followed for **all** contracts (but excluding the categories listed in para. 3.2 and land contracts which are dealt with under different rules) for:-

- the supply of goods to the Council;
- the supply of services to the Council; and
- the execution of works for the Council.

The Council has a Procurement Strategy, setting out how the Council intends to go about procuring works, goods and services. Conformity to these Rules for Contracts, and the Council's Codes of Conduct, will ensure that contracts are let in accordance with the *Procurement Strategy*, the *Compliant Procurement Process* and associated *User Guides and Procedures*.

The Council is subject also to the United Kingdom Public Contract regulations 2006, the legislation which reflects the EU Public Procurement Directives. This legislation requires contract letting procedures to be open, fair and transparent. These Rules for Contracts provide a basis for true and fair competition in contracts, by providing clear and auditable procedures, which, if followed, will give confidence that the Council has a procurement regime that is fully accountable and compliant with the legislation.

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Definitions

In these Rules for Contracts:

Authorising Officer means an officer authorised to approve the placement of orders or invoices for payment

Cabinet means the Leader of the Council and the other members of the Council's Executive

Contract means the agreement between the Council and a contractor for the supply of works, goods or services, or for any activity that generates income for the Council

Contractor means a supplier or provider of works, goods or services to the Council

Contract change note means the document that describes changes to the original contract which have been agreed by both parties

Contract package means the scope for amalgamating like requirements/services currently operating at different parts of the organisation, to suit the supply market to achieve overall better value

Corporate contract means a contract or framework agreement for the supply of works, goods or services to the Council e.g. for computer consumables, stationery, Legal and financial services.

Assistant Director Procurement means the Head of the Procurement Service or his or her authorised representative.

Procurement Service means the centralised procurement service for Coventry

Decision making body means the body responsible for decisions in the described situation under the Council's Standing Orders

Assistant Director Legal Services means the person holding that post or his or her authorised representative.

Director means a member of the Council's Corporate Management Board.

Framework Agreement means an agreement between the Council and a contractor for the provision of estimated quantities of goods or services. This becomes a contract when an order for a specific quantity is placed either after further competition or through the most competitive source identified in the original tender.

Monitoring Officer means the officer designated as such under Section 5 of the Local Government and Housing Act 1989 or his or deputy

Outcome based specifications means a specification that describes the required outcomes through service delivery and leaves the method of delivery to the third party provider.

Performance Specifications means a specification that provides details of the methods to be adopted when delivering the requirements

Procurement Board means the officer board responsible for all procurement decisions

Public procurement legislation The Remedies Directive 1992, The Public Contracts Regulations 2006, the EC Directives from which they are derived, UK legislation affecting public sector contracts and any amendment, re-enactment or replacement of any of them.

Quotation means an offer to undertake a contract of £10,000 or more but less than £50,000 in value

Services contract means a contract or framework agreement for the provision of services to the Council

Supplies contract means a contract or framework agreement for the sale or hire of goods to the Council and includes, where appropriate, installation of goods

Tender means an offer to undertake a contract of £50,000 or more in value

TUPE Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 1981 and any amendment, re-enactment or replacement of the same

Works contract means a contract for the construction, repair or maintenance of a physical asset not defined as Services in the Public Contract Regulations

RULES FOR CONTRACTS	
Quick Reference Guide Table – Financial Thresholds	
£3,927,260m +	<i>Competitive tenders and Public Contract Regulations 2006 required for works, goods and services contracts. Contracts in the form of Deeds must be prepared in Legal Services and sealed formally for the Council and witnessed by an authorised signatory in Finance & Legal Services.</i>
£156,442+ (EU threshold)	<i>Competitive tenders and Public Contract Regulations 2006 required for goods and services contracts. Contracts in the form of Deeds must be prepared in Legal Services and sealed formally and witnessed by an authorised Signatory in Finance & legal Services Directorate.</i>
£50,000- £156,441 (EU threshold)	<i>Competitive tenders required. Contract on standard form of contract or bespoke form of contract. Contract signed by Assistant Director Procurement or authorised deputy</i>
£10,000 - £49,999	<i>Competitive quotations required. Contract on official order form or standard form of contract. Contract signed by Assistant Director Procurement or authorised deputy.</i>
Below £10,000	<i>No need for competitive quotations, but must either use corporate contracts where one exists or show value for money. Use official order form.</i>
NB Any requirement over £10,000	<i>Use (a) corporate contract where one exists unless there is good reason not to; or (b) refer the requirement to Corporate Procurement Service/Procurement Service</i>
NB EU Thresholds	<i>EU Thresholds are revised every 2 years in January. Figures quoted above for Works (£3,927.260) and Goods and Services (£156,422)are applicable 1st January 2010 – 31st December 2011</i>

Summary of Rules for Contracts – quick reference guide including approval levels.

Procurement Process	Above EU threshold (£156,442k)	Over £50,000 - £156,442 (EU threshold)	£10,000 to £49,999	Below £10,000
Requirement to be referred to	Procurement Board	Procurement Service	Procurement Service	N/A
Approval	Through Budget Setting and compliance with Rules for Contracts, Procurement Board approval	Director approval.	Director approval or delegated authority to budget holder.	budget holder
Invitation to tender	Supplies and Services - Public Contract Regulations 2006 Works > £3.9m Public Contract Regulations 2006	Competitive tenders. Minimum of 3, which must be advertised.	Minimum of 3 written competitive quotations In addition, where appropriate, a minimum of 2 should be local	Use of corporate contract or demonstrate value for money
Opening of tenders	Electronic or Legal Services in presence of Procurement Services.	Electronic or - Legal Services in presence of Corporate Procurement.	N/A – quotes	N/A
Form of Contract	Standard or bespoke Form of Contract. Contracts in the form of Deeds must be prepared and sealed in Legal Services	Standard or bespoke Form of Contract as advised by Legal Services/Procurement Service.	Official order form or standard Form of Contract.	Official order form or Council procurement card
Contract to be endorsed/signed by	Under seal by the Council in the presence of Authorised signatory in Finance & Legal Services	Under seal by the Council in the presence of Authorised signatory in Finance & Legal Services	Assistant Director Procurement or authorised deputy.	Budget holder
N.B. Contracts to be signed before expenditure incurred				

The Director responsible for the Procurement Service and the Section 151 officer (if they are not the same officer) or his authorised deputy, subject to conditions, may grant an exception to the Rules for Contracts. An exception cannot be granted where a breach of any UK or EU legislation would be incurred.

1. Objectives

The Rules for Contracts exist to achieve the aims set out below and to assist and protect the interests of the Council and individual Officers.

It is important that they are viewed as ***an aid to good management and not as a hindrance***. Followed properly they provide protection for Officers against criticism and support good procurement practice.

Officers must be able to demonstrate that they followed procedure or had obtained the necessary authority for not doing so, in order to:-

- ✓ *ensure value for money is obtained;*
- ✓ *ensure probity in the award of Council contracts;*
- ✓ *ensure fairness, equity, openness and transparency in the treatment of contractors/suppliers;*
- ✓ *ensure that procedures for placing contracts/orders comply with legislation;*
- ✓ *ensure records are kept which demonstrate compliance with Rules for Contracts.*

2. Scope of Rules for Contracts

All purchases and contracts made in the name of and binding the Council of the City of Coventry must comply with these Rules for Contracts, and also any contract that involves income to the Council. This includes contracts where the expenditure is grant aided by a third party. These rules also apply to a company which is controlled by the Council for the purposes of the Local Government and Housing Act 1989. Any arrangement where the Council pays or receives money or equivalent value, other than a contract to employ staff, must comply with these Rules. This includes contracts for:

- a) buying and selling goods;
- b) any work being carried out;
- c) services (including financial and consultancy services);
- d) hire, rental or lease (of goods)

3. Compliance

- 3.1 Every contract entered into on behalf of the Council must comply with these Rules for Contracts and all relevant UK and EU legislation.
- 3.2 The only areas excluded from these rules are:
- a) Internally recharged services;
 - b) Schemes where the Council has delegated a function to a third party to perform and where a contract makes separate provision for procurement rules
 - c) Test purchasing in the course of an Officer's duty. (e.g. Trading Standards).
 - d) land transactions which have their own rules
- 3.3 All contracts must be in writing. Whenever possible, contracts under £50,000 in value must be made on an official Council order form or standard form of contract, as appropriate, approved by a designated Authorising Officer, with the Council's standard terms of trading endorsed or referred to. For works contracts, one of the standard forms of contract, such as the NEC, JCT or ICE forms may be appropriate. Procurement in consultation with Legal Services will advise on other suitable forms of contract.
- 3.4 Responsibility for compliance with Rules for Contracts remains at all times with Council Officers. Directors and the Assistant Director Procurement will be responsible for monitoring compliance against these rules, aided by internal or external audits or inspections which will be carried out as appropriate.

4. Justification of Need and the Common Commissioning Framework/commissioning cycle

- 4.1 Before any purchase is made consideration must be given to:
- a) whether the expenditure is really necessary and
 - b) whether a critical review has been carried out to identify if the requirement can be met from within existing resources or whether it is being funded through grants or other approved income sources
 - c) the revenue consequences of any capital investment.

4.2 If the purchase is justified then for goods, the exact requirements must be defined and an appropriate specification drawn up. For Services and Works, the full commissioning cycle must be followed i.e. Plan, understanding where we are now and where we want to get to, Engage, involving key stakeholders, Secure, sourcing the right services or works to meet need, Manage, ensuring good performance.

5. Exceptions to Rules for Contracts

5.1 An exception to the Rules for Contracts is a permission to let a contract without complying with one or more of the Rules. An exception to Rules for Contracts may be granted subject to conditions. An exception cannot be granted where a breach of any UK or EU legislation would be incurred.

5.2 Only the Director responsible for the Procurement Service or his authorised deputy may grant an exception to these Rules for Contracts. Applications for exceptions must be made in writing to the Director responsible for the Procurement Service, and include the exception that is requested and the justification for the exception.

5.3 The Director responsible for the Procurement Service will keep a register of all exceptions to Rules for Contracts, which shall be available by appointment for inspection by members of the Council and the public. In April, an annual report on exceptions granted in the previous financial year will be presented to the Cabinet Portfolio holder for Resources

5.4 An application for an exception to Rules for Contracts to allow a contract to be let without genuine competition will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not permit an exception to Rules for Contracts. If an application is granted, the Director responsible for the contract must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value for money.

5.5 Where an exception has been granted in line with these rules, the Director will seek a further exception if the value of the original exception has been exceeded or the time period granted for the exception has elapsed.

5.6 An exception to the requirements to follow the tender or quotation procedure **may** be granted in the following circumstances:

- an unforeseeable emergency involving danger to life or health or serious damage to property, in which the work, goods or services are required more urgently than would be possible if the tender or quotation procedure were followed;
- for justifiable technical reasons, the works, goods or services can be obtained from only one supplier;
- acquiring goods or services from a different supplier would result in incompatibility with existing goods or service or disproportionate technical difficulties;
- the proposed contract is an extension to or variation of the scope of an existing contract, if permitted by the public procurement legislation i.e. below the required EU limit, *unless* the existing contract provides for an extension;
- the purchase of works of art, museum artefacts, manuscripts or archive collection items;
- there is a need to develop and influence the market by extending the range and provision of services, provided the contract is for a fixed term of no more than three years;
- it is necessary to enable the continuation of a new service, development of which was initially grant-aided, provided the contract is for a fixed term of no more than three years;
- value for money can be achieved by the purchase of used vehicles, plant or materials;
- when a grant from a public body includes a recommendation as to the supplier or is time limited;
- in furtherance of the Council's social enterprise policy, or other economic development aims, subject to the prevailing financial support limits for this type of activity and without breaching public procurement rules;
- if there are exceptional circumstances in which it would not be in the Council's best interests to follow the tender or quotation procedure or another Rule for Contract;

5.7 An exception to Rules for Contracts is granted and separate authorisation is not required in the following circumstances:

- placing an order with a single supplier under an existing corporate contract or framework agreement;
- placing an order against a contract/framework agreement let by another Public Body where contracts have been let to allow collaboration, e.g. Eastern Shires Purchasing Organisation (ESPO), Central Buying Consortium (CBC, Buying Solutions, etc.
- as part of a partnering contract that contemplates a series of contracts with a single supplier;
- legislation requires the Council to let a contract differently from these Rules for Contracts;
- for decision making on Utilities contracts. Due to the volatile nature of utilities markets and the need for expedient decision making, authority has been delegated through the approval of these rules to the Director responsible for the Procurement Service in consultation with the Section 151 Officer. If the Section 151 Officer is also the Director responsible for the Procurement Service then the decision will be made by the Section 151 Officer in consultation with the Chief Executive or his nominated representative. All utilities contracts will be let through the Procurement Service and in line with the procedures dictated by the Assistant Director Procurement.

6. Valuation of contracts and Aggregation of Requirements

- 6.1 The Director responsible for each contract must record an estimated value for the contract before any offers are sought.
- 6.2 The value of a contract is the total amount that the Council expects to pay for the contract, either in a single sum or periodically over time.
- 6.3 Contracts for the same works, goods or services must not be split into smaller, separate contracts to avoid compliance with these Rules for Contracts or the EU public procurement legislation. If it will achieve best value for money, contracts for the same or similar works, goods or services must be aggregated into a single contract of greater value, or be let as a series of contracts based on the appropriate process for the total value.

7. Duties of Directors and the Assistant Director Procurement

- 7.1 The Director is responsible for ensuring that all expenditure involving procurement activity complies with the Rules for Contracts, in conjunction with the Assistant Director Procurement. He/she is also responsible for ensuring that contracts within his/her division are managed and operated within the terms of the contracts themselves.
- 7.2 The Assistant Director Procurement is responsible for maintaining a register of contracts and for providing an up-to-date copy of the register at the end of each financial year. Contracts for less than £10,000 or one off contracts need not be recorded in the register.
- 7.3 As soon as practicable after the Council's budget has been set and in any event before the end of March in each financial year, the Director must notify the Assistant Director Procurement of all contracts (including their values) that his/her division plans to enter into during the following financial year. This will enable the Assistant Director Procurement to publish the Council's Prior Information Notice (PIN) in accordance with the EU regulations. This has the benefit of reducing the EU tendering timescales.
- 7.4 The Director must use corporate contracts, where they are in place. To do otherwise would be unlikely to give value for money for the Council and may be in breach of the Public Contract Regulations.
- 7.5 If there is an in-house service available that operates as a trading unit, the Director must consider, in accordance with Value for Money principles, whether that service should be used or whether a contract should be let to an external provider, although all resource implications e.g. TUPE implications and/or redundancies for directly employed staff, must be considered as part of the best value assessment.

8. Selection of Procurement Route

- 8.1 When selecting the most appropriate procurement route to secure value for money, the Director, in consultation with the Assistant Director Procurement, shall adhere to the following principles:
- All practical options for contract packages and methods of procurement should be analysed and evaluated, with the object of

selecting the option that most effectively ensures value for money is achieved. The preferred option must provide full, fair, transparent and open competition and be identified as the most economically advantageous bid.

- The scope of contract packages should take into account cross-cutting themes and outcomes identified by strategic, policy and service reviews. Stakeholders within and outside the Council should be consulted about service standards and specifications and investigation of the market undertaken. Performance under any current contract should be appraised and prospective performance considered in the light of consultations and investigations.
- The contract package should seek to stimulate diversity and innovation, enhance choice for service users and attract new suppliers.
- Partnerships between the public, private and voluntary sectors should be sought, which demonstrate a shared commitment to objectives that benefit users of the Council's services.
- The requirements of the Common Commissioning framework defined under the Sustainable Community Strategy, with the objective of achieving a contract that best serves the needs of service users and contributes to sustainable development, whilst achieving value for money for the Council.

8.2 The Council is developing a *Compliant Procurement Process* which will replace the current Procurement Manual that sets out minimum requirements for reporting and decision-making with regard to contracts and the key stages and actions the Council requires major procurements to follow, including market assessment and analysis, user consultation, risk analysis and project planning and management. The Compliant Procurement Process will detail how partnership contracts should be let and minimum requirements for ongoing contract monitoring and management.

9. Authority to enter into a contract

9.1 Officers of the Council have no authority in their own right to enter into any contract on behalf of the Council. They may only enter into a contract if

authority is delegated to them or by specific decision of the Council, the Cabinet or a Committee or Sub-Committee.

- 9.2 Unless an officer has been given authority to enter into a contract, all contracts involving capital expenditure must be authorised by a specific decision of the Cabinet or a Cabinet member.
- 9.3 Unless an officer has been given authority to enter into a contract, all contracts involving revenue expenditure must be authorised by a specific item in the approved revenue budget for the relevant year . A specific item in the approved revenue budget is deemed to be an authority for the relevant Director to enter into a contract up to the value estimated.
- 9.4 All contracts will be let with the involvement of the Procurement Service in consultation with service users and technical experts.

10. Specifications

- 10.1 The Director in conjunction with the Assistant Director Procurement must ensure that an appropriate specification is prepared for every contract, which sets out clearly the Council's requirements with regard to the works, goods or services to be supplied.
- 10.2 All works, goods and services must be specified by reference to European or national standards where appropriate.
- 10.3 Specifications should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the contract to be monitored and managed, and should build in a capacity for flexibility and innovation, to secure sustained improvements and the ability to meet changing local and national circumstances.
- 10.4 Where appropriate, specifications should identify and allocate the risks inherent in the contract.
- 10.5 If a contract may involve the transfer of employees (from the Council to a contractor or from one contractor to another), the tender documents should, if the contractor has assured confidentiality of personal information, include all relevant information relating to those employees.
- 10.6 The Director must obtain all necessary professional and technical advice and assistance in preparing a specification, to ensure a comprehensive document that expresses the Council's requirements and protects its interests.

Consultants or other third parties who assist in the preparation of a specification must not be invited to tender or quote for the contract.

11. Contract procedures

- 11.1 If a corporate contract is in place for the supply of any works, goods or services, the Director must place orders under that contract. The Procurement Service publishes data to enable Directors to order from corporate contracts.
- 11.2 The Director in conjunction with the Assistant Director Procurement must establish whether the public procurement legislation applies to a proposed contract. If in doubt, the Legal Services will advise whether the legislation applies. When public procurement legislation does apply, the Director/Assistant Director Procurement must use the open or restricted procedure unless the Legal Services agrees the use of competitive dialogue or the negotiated procedure. Whenever possible, a competitive procedure must be adopted.
- 11.3 The Assistant Director Procurement will place all notices relating to contracts in the Supplement to the Official Journal of the European Union and will provide the statutory annual returns to HM Treasury of contracts let by the Council.
- 11.4 The Director need not obtain competitive quotations for contracts of less than £10,000 in value, but must demonstrate in any event that the Council is receiving value for money (see the “*Quick Reference Guide*” Table on page 6). Additionally all relevant documentation will need to be retained for audit or scrutiny purposes in line with Council policy.

12. Invitation to Formal Tender

- 12.1 If the public procurement legislation applies to a contract, the selection of suppliers to be invited to tender for the contract must follow the requirements of that legislation.
- 12.2 If the public procurement legislation does not apply, and the estimated contract value is greater than £50,000 at least three potential contractors, who have expressed an interest, should be invited to tender. Where appropriate those invited to tender should include at least two local suppliers.

The number of contractors invited to tender should ensure full competition is achieved. Potential contractors should be selected in the following way:

Placing an advertisement on the council's website or in one or more newspapers circulating in the West Midlands or in one or more newspapers or journals circulating among persons who undertake such contracts or sub-contracts. Responses to the advert may be supplemented by contractors appearing on a suitable approved list. The placing of the advertisement should aim to achieve maximum interest amongst contractors. If less than three contractors express an interest, The Director must agree to proceed, and the steps taken to try and obtain the minimum number of tenderers documented.

- 12.3 Companies expressing an interest in being invited to tender in response to a advertisement, must satisfy the Council as to their legal, financial and technical capacity (including their health & safety and equal opportunities policies) to undertake the contract by completing a pre-qualification questionnaire or tender document where the open procedure of the Public Contract Regulations is used, in a form approved by the Assistant Director Procurement.
- 12.4 The Assistant Director Procurement shall be responsible for ensuring that an "Invitation to Tender" procedure – that demonstrates public sector best practice – is available and adhered to, at all times.

13. Opening Formal Tenders

- 13.1 The information obtained at the opening of tenders is confidential to those involved in the opening process and those directly involved in evaluation of the tenders. Confidentiality must be maintained and any breach reported to the Monitoring Officer.

For electronic tendering:

- 13.2 The tender opening process must be appropriate to the specific electronic software employed and its facilities for guaranteed receipt of tenders.

For paper based tendering:

- 13.3 Legal Services are responsible for marking the tender envelopes or parcels with the date and time of receipt; keeping tenders in a secure place until after

the last date and time for receipt and for returning tenders that are received late or identify the sender.

- 13.4 Tenders must be opened one at a time by a member of the Legal Services team in the presence of :
- a member of the Assistant Director Procurement's team. In all cases this must be an officer other than the officer running the tender process.
- 13.6 The Legal Services must number all tenders in the order they are opened and all persons present must initial them.
- 13.7 The representative of the Legal Services must record:
- the works, goods or services to be supplied;
 - the name of each tenderer;
 - the amount of each tender or such other information as may be relevant to the procurement;
 - the date and time of opening of each tender;
 - the names of all persons present at the time of opening.

The member of the Assistant Director Procurement's team opening the tenders must certify the record as correct.

14. The Quotation Procedure

- 14.1 For contracts of under £50,000 in value, suppliers to be invited to quote may be selected from an appropriate approved list or advertised on the Council's website.
- 14.2 The Head of Service must satisfy him/herself as to the legal, financial and technical capacity of suppliers invited to quote to undertake the contract for the Council, through seeking appropriate in house professional advice, and that they will provide value for money.
- 14.3 A sufficient number of suppliers must be invited to quote to ensure genuine competition. The minimum number is three.
- 14.4 The Assistant Director Procurement shall be responsible for all procedural aspects of seeking quotations, ensuring that probity and proper public accountability standards are in operation. Monitoring shall be carried out periodically by either the internal or external auditor.

15. Acceptance of Formal Tenders and Quotations

- 15.1 Where expenditure has been approved through the budget setting process, the Procurement Board has given approval to proceed and these Rules for Contracts have been followed, for contracts over the EU threshold, the Director shall review the evaluation against the award criteria and agree which tender has been successful. He/she shall not be bound to accept the lowest tender if payment is to be made by the Council or the highest tender if payment is to be received. The responsible officer is described in the table summarising approvals on page 7 of this document.
- 15.2 For contracts over £50,000, contracts are to be awarded under the “most economically advantageous” criterion (see para. 15.3) the Assistant Director Procurement shall require a written report from the responsible officer requesting approval for acceptance and detailing the reasons for doing so. This shall be recorded in writing. In extreme urgency the Assistant Director Procurement, may agree a verbal report from the responsible officer with a written report being signed off by the Assistant Director Procurement within a fortnight of this meeting. All written reports will be stored in line with the document retention policy.
- 15.3 Tenders or quotations must be evaluated on the basis of which is most economically advantageous to the Council. When using Public Contract Regulations 2006, the criteria for evaluation must be set out in the invitation to tender or equivalent document depending on which procedure is used, in descending order of priority, with the weightings to be given to them. The criteria may also be set out in the OJEU and public notices. Whole life and environmental costs may be included in criteria for evaluation.

16. Electronic tendering and quotations

- 16.1 The Assistant Director Procurement is responsible for the procedure for these processes.
- tenders and quotations may be invited electronically, provided paper copies of any documents that cannot be sent on-line are sent by post and paper copies of all documents are sent to suppliers who do not specify an e-mail address for receipt of tenders or quotations. In selecting suppliers to be invited to tender or quote, the Assistant

Director Procurement must not discriminate against suppliers who do not have facilities for receiving invitations by e-mail. Where the e tendering system is the only process being used support must be found for suppliers in this category.

- invitations to tender and quotes may be submitted electronically through the approved e tendering system. Where electronic submissions are made outside of the approved system, submissions must be made after the official opening deadline, and they must be supported by paper copies of all invitation documents and formally opened under the process described in section 13 of this document.
- the procedure will also include arrangements for e-auctions.

17. Amendments and alterations to tenders and quotations

- 17.1 Amendments to invitation to tender or invitation to quote documents, made after the invitations have been sent out, must be clearly headed “Tender Amendment” or “Quotation Amendment” as appropriate and sent to all suppliers who have been invited to tender or quote. If there is more than one amendment, they should be numbered consecutively. Amendments should be sent out in sufficient time to allow suppliers to adjust their tenders or quotations as appropriate.
- 17.2 A supplier’s tender or quotation is his offer to the Council, which the Council may accept as it stands. Once a tender or quotation has been submitted, alterations will only be accepted through formal clarifications under the restricted procedure; or negotiations under the Competitive Dialogue process of the Public Contract Regulations 2006
- 17.3 In all other situations, if a supplier attempts to alter his offer after the last date for receipt of tenders or quotations, he must be given the opportunity to stand by or withdraw his original offer. Correction of an obvious arithmetical error, which would reduce the price to be paid by the Council or increase the price to be paid to the Council, may be accepted.
- 17.4 Where performance specifications are used, a tender or quotation that is expressed to be conditional upon the Council’s acceptance of alterations to the specification or the terms and conditions of contract may be treated as non-compliant and rejected. This does not prevent the Council inviting

variant bids (that is an invitation to submit an alternative bid that could then be considered as being to the Council's benefit provided that the condition applying to the mandatory reference bid is followed). If variant bids are invited, suppliers must be required to submit a mandatory reference bid based on the specification and terms and conditions included in the invitation to tender or invitation to quote, so that all bids may be compared fairly.

- 17.5 Where outcome based specifications are used it will be for the bidder to decide the method of service delivery. Tenders or quotations will be evaluated fairly against published evaluation criteria.
- 17.5 A properly approved and EU-compliant competitive dialogue process or negotiated procedure will normally result in one or more Best and Final Offers as a result of negotiation with selected bidders. No alteration to the Best and Final Offer, in terms of outcomes or contract price is permitted without the specific approval of the Monitoring Officer.
- 17.7 Before a tender or quotation has been accepted, the Assistant Director Procurement may ask all tenderers or suppliers to maintain their tendered or quoted prices for a longer period. Tenders and quotations should in any event remain open for acceptance for a period of (ninety) days from the last date for receipt of tenders or quotations, or such other period as the Assistant Director Procurement considers appropriate, and the form of tender or quotation should make this clear.

18. Contract extensions

- 18.1 Where extensions to contracts have been included in the original advert, tender documentation and contract, the extensions may be agreed; where performance is satisfactory and the original contract terms are to continue (including price variations in line with the original contract) through the issuing of a contract change note (templates to be issued by the Assistant Director Procurement). The contract change note must be kept with the original contract in line with the document retention policy.
- 18.2 Over £50,000 and below the EU threshold, if a contract extension is proposed where the terms and conditions of the original contract will be changed; the Director shall require a written report from the responsible officer requesting approval for acceptance and detailing the reasons for doing

so. This shall be recorded in writing. In extreme urgency the Director may agree a verbal report from the responsible officer, with a written report being signed off by the Director within a fortnight of this meeting. Once approval is received a contract change note will be issued and kept with the original contract documentation. All written reports will be stored in line with the document retention policy. If a contract is under seal a short supplemental deed may be required and this will be dealt with on request to Legal Services

19. Form of Contract

- 19.1 Legal Services will decide whether a contract over the EU threshold in value is to be executed as a deed under the seal of the Council or under hand as a simple contract. As a general rule, works contracts, and high value contracts (exceeding £156,442) will be executed as deeds under the Council's seal.
- 19.2 All contracts made as deeds must be made under the Council's Common Seal, witnessed in accordance with the relevant Standing Order of the Council's Rules of Procedure (Standing Orders) by the Chief Executive or such other person appointed by the Council.
- 19.3 A contract under seal is retained for twelve years in Finance and Legal Services to enable any action to be taken under it, if required
- 19.4 Simple contracts over the EU threshold in value must be signed for and on behalf of the Council by an officer of the Council, usually the Director whose directorate is responsible for the contract and the Assistant Director Procurement unless there is a requirement that the contract be under seal.
- 19.5 Simple contracts of between £10,000 and the EU threshold in value must be signed for and on behalf of the Council by the Assistant Director Procurement or an authorised deputy.

20. Contract administration and management

- 20.1 The Assistant Director Procurement shall arrange for publication of a contract award notice, no later than 45 days after contract award, if appropriate, and shall keep a register of the notified information, which shall be available for inspection by appointment by any Member of the Council, internal and external auditors and any member of the public.
- 20.2 The Assistant Director Procurement shall be responsible for ensuring that a procedure on "Contract Administration and Management" is made available to all officers and partners managing contracts on the Council's behalf. This will include guidance on managing partnering or partnership contracts explaining techniques such as target costing and "open book".

21. Prevention of fraud and corruption

- 21.1 All purchases, contracts and income covered by these rules must be let in line with the Council's Anti fraud and Corruption Policy and Strategy.
- 21.2 If an officer of the Council has a pecuniary interest, in a contract or proposed contract, he/she must in accordance with Section 117 of the Local Government Act 1974 register the interest with the Monitoring Officer and declare it at any meeting at which the officer is present and the contract is discussed and thereafter leave the room and take no further part in the discussion.
- 21.3 If an officer of the Council has a personal or non pecuniary interest in a contract or proposed contract he/she must declare that interest to their Director as required by the Council's Code of Conduct for Employees.
- 21.4 If a Member of the Council has a personal interest in a contract as defined in the Members Code of Conduct, the member must take such action as is required by that Code.
- 21.5 A contract must be terminated immediately, and any losses to the Council arising from the termination recovered from the contractor, if the contractor, or anyone acting on his behalf
- offers or gives or agrees to give any member or officer of the Council any gift, benefit or consideration of any kind or value as an inducement or reward with regard to the contract;

- commits any offence under the Prevention of Corruption Acts 1889 to 1916 or section 117 of the Local Government Act 1972.

A declaration to this effect must be contained in all invitations to tender or quote.

21.6 The attention of officers is drawn to the Council's Code of Conduct, Whistleblowing policy, Disciplinary Policy and Procedures and the Code of Conduct for Employees. Non-compliance with these Rules for Contracts constitutes grounds for disciplinary action.

21.7 All of the requirements in 22.1 to 22.6 above will apply to any third party acting on the Council's behalf in a contractual situation e.g. consultants and community representatives on evaluation panels

22. Freedom of Information Act 2000

22.1 When entering into contracts the Council will refuse to include contractual terms that purport to restrict the disclosure of information held by the Council and relating to the contract beyond the restrictions permitted by the Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, the Council will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

22.2 When entering into contracts with non-public authority contractors, the Council may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, the Council will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Council will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information which should not be disclosed. The Council will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner. When entering into the above contracts the Council will make it clear that these restrictions apply to sub-contractors also and that the

Secretary of State has the powers to designate them as 'public bodies' for the purpose of making them comply with the Act.

- 22.3 The Council will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellors Department indicates that the exemption provided for in section 41 only applies if information has been obtained by a public authority from another person and the disclosure of the information to the public, otherwise than under the Act, would constitute a breach of confidence actionable by that, or any other person.
- 22.4 It is for the Council to disclose information pursuant to the Act, and not the non-public authority contractor. The Council will take steps to protect from disclosure by the contractor information that the authority has provided to the contractor (which would clearly be exempt from disclosure under the Act) by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Council will not impose terms of secrecy on contractors.
- 22.5 The Assistant Director Procurement will be responsible for advising on the application of the Freedom of Information Act and contracts, in conjunction with the Council's Corporate Information Governance Manager, where circumstances arise that are not specifically covered by Council policy. He/she will also be responsible for updating procedure following any case law that materially amends or augments Council policy in this area.

23 Management of Risk in Contracts

For contracts of strategic importance a risk register will be drawn up for the contract letting process. Once the contract is awarded, a risk register to cover the implementation and successful ongoing management of the contract will be drawn up by the Head of Service or authorised deputy. This risk register will be monitored in line with the corporate guidance on risk throughout the life of the contract.

4.7 **Contracts and Disposal of Land Procedure Rules**

4.7.1 The Council's Contract ~~Standing Orders are being reviewed~~[Rules for Contracts apply](#).

~~4.7.2 Following that review and approval by Cabinet, the Council will adopt the new Procurement Manual.~~

~~4.7.3 In the meantime, the existing Contract Standing Orders and Administrative Procedures will apply.~~

~~4.7.4~~[4.7.2](#) Part G of former Standing Orders (Sale or other Disposal of Land) will also apply

The Director of Finance and Legal Services publishes this manual to guide officers, mainly but not exclusively finance staff, on what is a very technically complex area. The manual covers the definition of capital spending, capital accounting requirements, government rules surrounding capital, and the requirements for the approval of capital expenditure.

- 4.6.13.5 **Cash Control:** The purpose of this manual is to ensure the effective control of the Council's cash. Cash (coins, banknotes, cheques, postal orders, stamps etc) is the one negotiable asset of the City Council which is available for use by anyone, authorised or unauthorised, and whether employed by the council or not. This manual lays down the rules for the strict control of cash in order that potential losses are minimised, and actual losses are identified and reported as soon as possible after they occur.
- 4.6.13.6 **Contracts:** The Contract Procedure Rules (currently ~~Contract Standing Orders and Administrative Procedures~~[Rules for Contracts](#)) are set out in Part 4.7. The City Council has established written standing orders and administrative procedures – rules to govern its business in relation to contracts for the supply of works and services including consultancies. These are not limited to financial rules, and are issued by the Director of Finance and Legal Services, but for completeness they are included here. They exist to protect the City Council, its Members, Directors and other officers involved in the award of contracts, to demonstrate that the City Council is obtaining value for money in the award of contracts, and to prevent corruption, or allegations of corruption, in the award of contracts. They provide the means of securing competition in the award of contracts, to regulate the manner in which tenders are invited, and to monitor and control the performance and delivery of contracts awarded.
- 4.6.13.7 **Creditors:** The purpose of this manual is to ensure that the Council pays invoices to its suppliers in a controlled way. The City Council pays 300,000 invoices each year to its suppliers of goods and services. The Director of Finance and Legal Services publishes a manual to set out the means by which proper control can be established and maintained over these payments, so that they can be made in an accurate, and timely way and accounted for correctly.
- 4.6.13.8 **Debtors:** The purpose of this manual is to ensure that the Council bills its customers and manages the receipt of income in a controlled way. The City Council issues 275,000 invoices each year to customers of its services. The Director of Finance and Legal Services sets down in the Debtors Finance Function manual best practice, guidance and controls for the prompt raising of these invoices, credit management, and control and recovery of debts.
- 4.6.13.9 **Education – Fair Funding:** The Fair Funding scheme of delegation defines the status of financial regulations and the responsibility of schools to observe them. The scheme contains regulations which cover all aspects of financial management, and are designed to assist Governing Bodies in discharging their responsibilities. Governing Bodies are responsible for proper financial management and financial probity of their schools, and are publicly accountable for the money spent. Governors should conduct the business of the school in a manner consistent with public expectations of legality and propriety. The Director of Finance and Legal Services' responsibility for the proper administration of the City Council's financial affairs includes all aspects of financial management