



DERBY CITY COUNCIL

CONTRACT PROCEDURE RULES

MAY 2009

FOREWORD BY CHAIR OF AUDIT & ACCOUNTS COMMITTEE



It is with great pleasure that I am able to provide a foreword for the Council's Contract Procedure Rules, which have been fully reviewed and revised.

When used in conjunction with the Council's Procurement Code, these rules seek to provide guidance and support for all officers of the Council who procure goods, services and works. There is a need for all staff to familiarise themselves with both the Contract Procedure Rules and the Procurement Code and understand how they impact on their area of work.

Failure to comply with Contract Procedure Rules is a disciplinary matter, which could result in dismissal.

These Contract Procedure Rules have the following primary objectives:

- To ensure that the Council can demonstrate that it fulfils its duty of achieving Value for Money.
- To ensure that the Council complies with current best practice and English and European law that governs the procurement of goods, services and works.
- To provide contracting rules and procedures which protect Members and Officers of the Council from any allegation of acting unfairly or unlawfully
- To help ensure openness and accountability within the Council.
- To ensure that any risks associated with entering into contracts are assessed and appropriately mitigated as part of the procurement process.

Also, for those of you with internet access, [Derby City Procurement Connection](#) is another valuable source of procurement information, training, best practice, toolkits and templates to assist in procurement activities large or small. If you have any queries or questions regarding procurement please contact Dawn Moran, Head of Procurement (dawn.moran@derby.gov.uk or call 256296).

Dave Roberts
Chair of Audit and Accounts Committee

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SECTION 1: COMPLIANCE, PURPOSE AND SCOPE OF THE RULES

1. COMPLIANCE

1.1 Compliance with these Rules is a requirement not a discretion. Every officer involved in buying goods or services or ordering building or engineering works must be aware of the Rules and comply with them. Failure to do so could result in disciplinary action.

1.2 Except for Corporate Contracts, only officers authorised under their Departmental Scheme of Delegation ("Approved Procuring Officers") can procure goods, services or works of £5,000 or over on behalf of the Council and only to the extent that they are authorised.

(See Rule 9.1)

2. GUIDANCE

2.1 Further information on procurement generally is given in the Council's Procurement Code and throughout this document links are included to;

- ◆ Derby Procurement Connection
- ◆ Source Derbyshire
- ◆ Other helpful documents

2.2 In addition advice on specific procurement issues and how to apply the Rules can be obtained by contacting the Procurement Unit in the Resources Department or the Chief Legal Officer.

2.3 A Flow Chart has also been included at Appendix 1 to help identify the major issues that need considering in a procurement exercise.

2.4 In addition at least one Departmental Procurement Adviser must be appointed in each Department to give help, assistance and guidance to others on procurement issues.
(See Rule 10.7)

3. PURPOSE

The purpose of the Rules is to;

- ◆ achieve value for money
- ◆ be consistent with the highest standards of integrity
- ◆ ensure fairness in allocating public contracts
- ◆ comply with all legal requirements
- ◆ support the Council's Procurement Strategy
- ◆ prevent fraud and corruption
- ◆ protect the interests of Council employees

4. WHEN THESE RULES APPLY

4.1 These Rules apply to the following types of procurement on behalf of the Council;

- ◆ purchasing any goods or materials
- ◆ purchasing of any services, including consultancy services
- ◆ hiring, renting or leasing of any goods or equipment
- ◆ ordering the carrying out of building or engineering works

(See also Rule 49)

(See Rule 13).4.2 **Schools:** Are covered by the Rules but as modified or extended under the Council's Scheme for Funding for Schools. They are entitled, but not required, to use the Corporate Contracts.

- 4.3 **Partnership Arrangements:** These Rules will apply where the Council is part of a partnership (eg Derby Community Safety Partnership) and it is the lead body or accountable body and/or goods, services or works are being ordered in its name.

5. EXEMPTIONS

The Rules do **NOT** apply to:

- ◆ contracts of employment with individual employees
- ◆ land transactions (sales, purchases, leases, licences, easements etc)
- ◆ performing artists contracts
- ◆ shared service or collaborative arrangements with other public bodies.
- ◆ the provision of services to or by other Local Authorities including under a service level agreement.
- ◆ contracts for the placement of individual clients under Care in the Community or other Social Care Schemes until such time as framework agreements are in place.

- ◆ contracts entered on behalf of individual users of adult Social Care Services who have been awarded personal budgets to support their Social Care needs.
- ◆ Goods and Services which a school is obliged to purchase from a Contractor under the terms of a PFi contract where the competition requirement has already been satisfied.
- ◆ provision of grant funding (*but contracts with voluntary organisations for the supply of services, goods and works are covered by the Rules*).
- ◆ Commissioning of post 16 educational provision which is covered by the Young People's Learning Agency National Funding Formula and Commissioning Framework together with associated audit and quality assurance arrangements.

6. WAIVERS

- 6.1 Waivers to the Rules may in exceptional circumstances be granted by Cabinet or, in cases of urgency by the relevant Director and either the Chief Legal Officer or the Head of Procurement.
- 6.2 Any request for a Cabinet waiver must, after consultation with the Head of Procurement or Chief Legal Officer, be submitted in writing to the Director of Resources or Assistant Director Corporate Finance and

Performance for inclusion in the “Contract & Financial Procedures Matters” report to Cabinet.

- 6.3 Any request for an urgent waiver must be submitted in the standard format **(LINK)** to the Chief Legal Officer or Head of Procurement.
- 6.4 A copy of approved urgent waivers must be sent to the Head of Procurement by the Officer obtaining the waiver.
- 6.5 A record of all urgent waivers must be kept by the Head of Procurement.

- 6.6 All approvals of urgent waivers must be reported to the next Cabinet meeting by the Head of Procurement.
- 6.7 All waiver approvals, both urgent and by Cabinet must be reported on a quarterly basis by the Head of Procurement to the Council's Audit & Accounts Committee who will monitor the use of waivers.
- 6.8 A waiver cannot be given where the contract value exceeds the E.U. threshold unless the Chief Legal Officer has confirmed in writing that an exemption is available under the E.U. Procurement Regulations.

7. DEFINITIONS/INTERPRETATION

- 7.1 A list giving definitions of the terms used in the Rules is included at Appendix 2.
- 7.2 The Chief Legal Officer will advise on the implementation and interpretation of the Rules and his/her views will be binding.

SECTION 2 - REQUIREMENT TO OBTAIN QUOTES OR TENDERS

8. COMPETITION REQUIREMENTS

8.1 The nature of the procurement process to be undertaken will depend
(See Rule 17) on the estimated total value of the contract..

8.2 Where the estimated total value of the proposed contract is within the
values the first column the award procedure in the Second Column
must be followed unless a waiver is obtained or one of the alternative
(See Rule 6) methods to Tendering is chosen.

(See Section 4)

TOTAL VALUE	AWARD PROCEDURE
Below £5,000	<ul style="list-style-type: none"> * Must use existing relevant Corporate Contract if there is one (LINK) and if not get at least one quote and then place an official order. * <i>Good practice to get three quotes.</i>
From £5,000 up to £30,000	<ul style="list-style-type: none"> * Must, before placing an order get at least three written quotes (using standard form quotation on Derbynet or other form of quotation approved by the Head of Procurement). * Directors may waive this requirement but must inform the Head of Procurement in writing of their reasons.

From £30,000 up to £75,000	<p>* Must Tender by one of the following methods:-</p> <p>(a) Public notice inviting Tenders. (<i>“Open Procedure”</i>; see Rule 19)</p> <p>(b) Invite to at least 3 organisations to Tender after public notice asking for expressions of interest, or maximum number who pre-qualify if less than 3 (<i>“Restricted Procedure”</i>; see Rule 19).</p> <p>(c) Where the contract is of a specialist nature by direct invite to tender to at least four organisations but the reasoning for selecting the invited firms must be kept on the contract file.</p>
Over £75,000	<p>* Must Tender by one of the following methods:-</p> <p>* Public notice inviting Tenders (<i>“Open Procedure”</i>; see Rule 19)</p> <p>* Invite Tenders from at least 4 organisations after public notice asking for expressions of interest or maximum number who pre-qualify if less than 4 (<i>“Restricted Procedure”</i>; see Rule 19).</p> <p><i>NB. Need to obtain waiver under Rule 5 to invite organisations to Tender direct even if the Contract is of a specialist nature .</i></p>
<p>(See Rule 16)</p> <p>Above EU Threshold (Approximately £140,000 Services and goods & £3.5m for works).</p>	In accordance with EU Procedures and advice from the Procurement Unit.

See Section 14 for use of Approved Lists and Section 15 for use of Framework Agreements.

SECTION 3 – OFFICERS’, DIRECTORS’ AND AGENTS’ ROLES AND RESPONSIBILITIES

9. OFFICERS

- 9.1 Each Department’s Scheme of Delegation must clearly identify officers who are entitled to procure goods, services or works of £5,000 or over (“Approved Procuring Officers”) and the scheme must state the contract value level of each officer’s approval and the type of contract they are entitled to deal with.
- 9.2 No officer other than an Approved Procuring Officer must procure on behalf of the Council a contract for £5,000 or over and then only to the extent of his/her approval under the Departmental Scheme of Delegation.

10 DIRECTORS

Directors, delegating as necessary to Assistant Directors and Heads of Service, must take all reasonable measures to ensure that procurement carried out by their Department complies with these Rules and that;

Training

- 10.1 Adequate Training in these Rules, provided or approved by the Procurement Unit, is given to:-

- ◆ All Approved Procuring Officers
- ◆ The Line Managers of Approved Procuring Officers
- ◆ Assistant Directors
- ◆ Heads of Service
- ◆ Other Officers with procurement responsibilities

(See Rule 28.2)

- ◆ Tender Receipt Officers

10.2 The level of training to be given will depend on the officers' responsibility for and involvement in procurement and may, if approved by the Head of Procurement, be provided on line.

Contract Register

(See Rule 35.2) 10.3 A Departmental or Divisional Contract Register of all contracts of £30,000 or over is set up and maintained.

Quotes/Tender Receipt Officers and Register

(See Rule 28.1) 10.4 Appropriate arrangements in place for the receipt and opening of quotes and Tenders between £5,000 to £30,000.

(See Rule 28.2) 10.5 Officers independent of the procurement process are appointed to be responsible for the receipt, safekeeping, opening and recording of all Tenders between £30,000 and £75,000 received by the Department ("Tender Receipt Officers") and a Tender Register is maintained which sets out clearly who these officers are.

Management Review

10.6 At least once a year the Departmental Management Team meets to;

- ◆ to consider contracts of £75,000 and over that need letting or re-letting and who will be responsible for them and the timetable for doing so.

(See Rule 10.3)

- ◆ review its Departmental Contract Register
- ◆ review the operation for the receipt, safekeeping & opening of Tenders to ensure its in compliance with Rule 28.

(See Rules 10.4 and 10.5)

- ◆ review the designation of Approved Procuring Officers under the Departmental Scheme of Delegation.

(See Rule 9)

10.7 Departmental Procurement Adviser

To appoint at least one Departmental Procurement Adviser, who must be at least Head of Service level, whose role will include;

- ◆ providing on request practical advice and guidance on procurement issues to others in the Department
- ◆ raising significant procurement issues at the Department's Management Team meetings
- ◆ being the Department's main contact point with the Head of Procurement.
- ◆ Ensuring that the details of Approved Procuring Officers in the Departmental Scheme of Delegation are kept up to date.

(See Rule 9.1)

11. AGENTS/CONSULTANTS

Any Agent or consultant appointed to act for the Council in a procurement exercise must be required to comply with these Rules.

SECTION 4 – ALTERNATIVES TO TENDERING

12. ALTERNATIVE PROCUREMENT METHODS: GENERAL

Before approaching the market for any supplies, services or works an Approved Procuring Officer must establish if there are any of the following he/she could use;

- ◆ A Corporate Contract
- ◆ An Approved List
- ◆ A Framework Agreement

13. CORPORATE CONTRACTS

13.1 The Council has Corporate Contracts which cover many items required on a daily basis such as stationery, office furniture and desk top equipment.

13.2 Details of suppliers' products and prices of these Corporate Contracts are published on the procurement section of Derbynet (**LINK**)

13.3 Corporate Contracts must be set up in accordance with these Rules but once established a product or service included in one can, subject to 13.4, be ordered from the approved supplier, using the Council's order system, without any need for quotes or Tenders.

13.4 Where there are multiple suppliers of a product on a Corporate Contract, the Officer ordering the product must compare prices and chose the cheapest unless there are compelling reasons why not and the Procurement Unit have been consulted.

14. APPROVED LISTS

14.1 Where there are regular and frequent demands for goods, services or works which cannot easily be put together and priced in a single tendering exercise an Approved List can be drawn up and used instead.

14.2 Guidance on the factors to take into account when deciding if to establish an Approved List and on determining the format of the list and how to create and maintain it has been produced by the Head of Procurement (**LINK**)

14.3 Good examples of areas where an Approved List can be used are print, maintenance services, building works and consultancy.

(See Rule 16)

14.4 Approved lists cannot be used where the E.U. Procedure applies, though suitable organisations on the Approved List can be sent copies of the OJEU notice.

14.5 Before commencing the process of drawing up an Approved List the Head of Procurement must be consulted.

14.6 Once the Head of Procurement has been consulted an advertisement inviting applications for inclusion onto the approved list must, as a minimum, be advertised on Source Derbyshire and other publications can also be used if agreed or stipulated by the Head of Procurement.

14.7 Applicants to be on the Approved List must be vetted, using the Council's Corporate Questionnaire (**LINK**) on their;

- ◆ technical ability
- ◆ financial standing
- ◆ health and safety
- ◆ insurance arrangements
- ◆ equalities record/policies
- ◆ environmental policies

14.8 Once interested organisations have been vetted a provisional Approved List must be drawn up which should give details of the type and maximum value of individual contracts the selected organisations can bid for.

14.9 Cabinet approval must then be obtained to the Approved List before it can be used.

14.10 All Approved Lists must be operated in accordance with the Procedure set out in Appendix 3 to these Rules.

14.11 At least every four years an Approved List must be re-advertised and notification sent to each organisation on the list inviting them to re-apply.

14.12 The Head of Procurement has power to suspend an organisation from an Approved List if there are serious concerns about their technical ability, health & safety practices or financial standing or there are allegations of impropriety.

14.13 Cabinet have power having considered a report by the Head of Procurement, to remove an organisation from an Approved List.

14.14 The Head of Procurement shall keep a register of all Approved Lists approved by Cabinet and the dates of that approval (LINK)

15. FRAMEWORK AGREEMENTS

15.1 A Framework Agreement may be set up for goods, services or works that are needed on a regular basis.

15.2 Before advertising the setting up of a Framework Agreement the Head of Procurement must be consulted.

15.3 Once Cabinet approval has been given an advertisement for inclusion in the Framework must be advertised in Source Derbyshire, and if the EU Threshold has been exceeded, OJEU as a minimum and other publications agreed with or stipulated by the Head of Procurement.

15.4 Selection of organisations onto the Framework Agreement must follow a Tender process and be in accordance with these Rules.

- 15.5 Cabinet approval to a Framework Agreement must be obtained before it can be used.
- 15.6 A Framework Agreement must not exceed four years.
- 15.7 Where more than one Contractor is appointed to provide a service under a Framework Agreement individual contracts may unless the Framework Agreement says differently be awarded by using one or more of the following principles:-
- ◆ by a mini Tender competition
 - or
 - ◆ by value (lowest price)
- 15.8 Any mini competition under Rule 15.6 should be on the criteria used to establish the framework and therefore can include technical expertise and capacity if these were part of that criteria.
- 15.9 Framework Agreements procured by other local authorities, public bodies or purchasing consortiums, for example the East Midlands Centre of Excellence or Office of Government Commerce (OGC), may be used if Cabinet has approved their use on being satisfied that the Council can lawfully use them and that it is in the Council's interest to do so.

15.10 The Head of Procurement will keep a record of all Framework Agreements approved under this Rule including those set up by other public bodies but available to the Council to use. **[LINK]**

SECTION 5 – E.C. PROCUREMENT

16. REQUIREMENTS AND THRESHOLDS

(See Rules 16.3)

16.1 Contracts for the supply of goods or Priority Services or works which are estimated to be over the EU Threshold must be Tendered in accordance with the E.U. Public Procurement Regulations and the Procurement Unit **must** be consulted and their advice taken on how to comply with the Regulations.

16.2 The EU Thresholds change every two years and are quoted in European Currency units (ECU's). The sterling equivalent is recalculated on 31 December every other year.

16.3 The EU Thresholds until 31 December 2010 are;

◆ suppliers:	200,000 ECU	£139,893
◆ services:	200,000 ECU	£139,893
◆ works:	5 million ECU	£ 3,497,313

After 31 December 2010 the Head of Procurement can update this figure.

16.4 The thresholds relate to the estimated Total Value of the contract net of VAT, not the annual value.

16.5 Where they apply the EU Regulations impose requirement on such matters as;

- ◆ where the notice seeking Tenders must be placed and its format.
- ◆ minimum Tender periods.
- ◆ award criteria and procedures

SECTION 6 – STEPS PRIOR TO SEEKING QUOTATIONS OR INVITING TENDERS
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17. CONTRACT VALUE, FUNDING AND CABINET APPROVAL

Estimated Contract Value

- 17.1 Before seeking quotes or Tenders for any supplies, works or services the Approved Procuring Officer must estimate the Total Value (*see definition*) of the contract. This estimate will determine what competition requirements apply under these Rules (*see Rule 8*).
- 17.2 A written record of the Total Value estimate must be kept on the file for all contracts estimated to be over £5,000.
- 17.3 Contracts must not be artificially divided into two or more to avoid the application of the requirements under these Rules but should be packaged to ensure value for money.

Funding

- 17.4 An Approved Procuring Officer must not place an order or start a formal process for letting a contract unless he/she is satisfied that expenditure for it has been included in an approved capital or revenue budgets.
- 17.5 Inclusion of approved capital or revenue budgets can be demonstrated by any of the means listed in Appendix 6.

Cabinet Approval

17.6 Cabinet approval must be obtained before procuring any contract which has an estimated Total Value of £75,000 or over unless;

- ◆ it is merely a re-Tendering of a current contract with no significant change

or

- ◆ it is in a capital scheme previously approved by Cabinet

18. SOFT MARKET TESTING

18.1 Prior to the issue of the Invitation to Tender or advert asking for expressions of interest the Approved Procuring Officer may wish to know the views of potential Tenderers about the nature, level, standard and packaging of the goods or services or works to be supplied so as to best ensure competition and value for money: this is called “Soft Market Testing”.

18.2 The written consent of the Head of Procurement must be given before any soft marketing testing is carried out.

18.3 When carrying out soft market testing the Approved Procuring Officer must;

- ◆ make it clear to participating organisations that they will receive no preferential treatment in the Tender process.
- ◆ keep a written record in the contract file of all enquiries, responses and any related meetings.

19. CHOICE OF TENDERING PROCEDURE

19. Where there is a requirement in the Rules for a contract to be Tendered (*see Rule 8*) the following options are available;

19.1 **Open Procedure:** This is a one stage procedure where the contract is advertised and any interested organisation can obtain further information and submit a Tender. This procedure is not recommended where a large response is anticipated and/or detailed assessment of the bids will be necessary.

19.2 **Restricted Procedure:** This is a two stage procedure where firstly the contract is advertised and anyone who expresses an interest must
(*See Rule 23*) complete a Pre Qualification Questionnaire. These are then evaluated
and 22) and a number of selected organisations will be shortlisted and invited to Tender.

19.3 **Negotiated Procedure:** This procedure can be used where the nature of the service is such that specifications cannot be drawn up with sufficient precision to permit the award of the contract using the open or restricted procedures. This is especially useful for “intellectual Services”. **It can only be used with the written consent of the Head of Procurement.**

- 19.4 **Competitive Dialogue:** This procedure is available where the Council is unable to define the financial, legal or technical elements of the project. It is really intended for complex procurement exercises such as Private Finance Initiatives (PFI). **It can only be used with the consent of the Head of Procurement.**

20. ADVERTISING CONTRACTS

(See
Rule 8.2)

- 20.1 Where a contract's estimated Total Value is £30,000 or over and has to be advertised in accordance with these Rules it must be placed on Source Derbyshire. This can be done by completing the pro forma on Derbynet [[LINK](#)] and sending it to the Procurement Unit.

- 20.2 Depending on the nature, size or likely interest in the contract, consideration should also be given to placing the advert in;

- ◆ national trade/official journals
- ◆ local media
- ◆ the Official Journal of the European Union (OJEU) even if there is no requirement to do so

E.U. Adverts

(See Rule 16) 20.3 Any contract above the E.U. Threshold must, unless it is a non Priority Service, be advertised in OJEU and this must be done through the Procurement Unit.

Open Procedure Advert

(See Rule 19.1) 20.4 Any advertisement placed under the open procedure must;

- ◆ describe the scope of the contract
- ◆ invite Tenders
- ◆ state what Contractors have to do to Tender
- ◆ state the closing date and time for Tenders
- ◆ state the award criteria

Restricted Procedure Advert

(See Rule 19.2) 20.5 Any advertisement under the Restricted Procedure must:-

- ◆ state where and by when expressions of interest must be submitted.
- ◆ give brief details of the contract
- ◆ state the time periods for submission of completed Pre Qualification Questionnaires.

(See Rule 23)

Retention of Advert

- 20.6 Copies of adverts must be kept on the contract file together with details of when and where they were published.

21. AWARD CRITERIA

- 21.1 Before placing an advert asking for Tenders or issuing invitations to Tender the Approved Procuring Officer must define the award criteria for the contract which is best suited to the procurement exercise and is designed to secure value for money.

- 21.2 The three basic award criteria are;

- ◆ “lowest price” where payment is made by the Council
- ◆ “highest price” where payment is made to the Council
- ◆ Most economically advantageous

Most Economically Advantageous Criteria

- 21.3 Where the most economically advantageous criteria is used, considerations other than price apply but they must be relevant, such as;

- ◆ quality of goods
- ◆ service
- ◆ running costs
- ◆ technical merit
- ◆ previous experience
- ◆ safety
- ◆ after sales service
- ◆ technical assistance
- ◆ delivery date

- ◆ quantity
- ◆ aesthetic and functional characteristics.

21.4 An evaluation model must be drawn up stating the weight to be given to each relevant consideration, including price, and this or the weighting to be given to each award criteria must be notified to Tenderers in the Invitation to Tender or before in the advert or scope document.

21.5 The award criteria must not include any non-commercial matters. These are listed in Appendix 4

SECTION 7 - PRE QUALIFICATION QUESTIONNAIRE: SELECTION OF TENDERERS

22. Selection of Tenderers

When selecting a firm to Tender, other than from an Approved List or under a Framework Agreement, the Authorised Procuring Officer must have particular regard to their;

- ◆ financial standing
- ◆ technical ability/qualifications
- ◆ other relevant criteria

these matters should be included in the Pre-Qualification Questionnaire.

23. PRE – QUALIFICATION QUESTIONNAIRE

(See
Rule 19.2

23.1 Organisations applying to be selected for Tendering under the restricted tendering procedure must be required to complete a Pre - Qualification Questionnaire (PQQ) which will allow their financial standing and technical ability to be assessed and also where relevant their;

- ◆ health and safety management
- ◆ insurance arrangements
- ◆ equalities record/policies
- ◆ environmental policies

An example of a PQQ has been drawn up by the Procurement Unit
([LINK](#)).

23.2 Information may also be requested on other areas relevant to the contract but not any of the non-commercial matters listed in Appendix 4.

23.3 The selection of Tenderers must be carried out by a panel consisting of at least two officers one of whom must be the Approved Procuring Officer.

23.4 A written record of the reasons for choosing the selected Tenderers must be put on the Contract File by the Approved Procuring Officer.

SECTION 8 – TENDER DOCUMENTS

24. SPECIFICATION

- 24.1 The Approved Procuring Officer must make sure that the Tender documents include a specification giving details of the type and quality of goods or nature and standard of service or works to be supplied. It is vital that this is drawn up by or with the help of the officer who is directly involved in the delivery of the service or the works.
- 24.2 The length and detail of the specification will vary depending on the size, complexity and nature of the contract but it should be clear and include all the material details that the Contractor is obliged to comply with.
- 24.3 Technical specifications must be defined by reference to relevant European Standards. Where European Standards do not exist International or British Standards may be used but where they are the words “or equivalent” must be added.
- 24.4 The Specification must not refer to a particular make or brand names unless it is identified as a permissible exemption under the EU Procurement Regulations and the Procurement Unit have been advised.

24.5 The specification must not include any requirement which unjustifiably discriminates against other E.U. member states.

24.6 Advice on drawing up a specification has been developed up by the Procurement Unit (**LINK**) and they can, if requested, give further advice on specific contracts.

Pre-Tender Enquiries Regarding the Specification

24.7 Sometimes it may be necessary for the Approved Procuring Officer when preparing a complex specification to consult potential Contractors about the detailed requirements of the Specification but before doing so the Officer should seek the advice of the Head of Procurement and then act in accordance with the requirements in Rule 24.8.

24.8 When making such Pre-Tender Enquiries the Approved Procuring Officer must;

- ◆ Not draw up the specification wholly by reference to one Contractor or if they do, that organisation must be excluded from the Tender process.
- ◆ Keep a written record of all enquiries, responses and related meetings on the contract file.

25. INSTRUCTIONS TO TENDERERS

25.1 All invitations to Tender must include Instructions to Tenderers as well as;

- ◆ specification of the goods, services or works required.
- ◆ contract conditions.

25.2 All Instructions to Tenderers must include;

(See Rule 21)

- ◆ the award criteria and, where applicable, weightings
- ◆ the last time and date for receipt of Tenders
- ◆ the address to which Tenders must be delivered
- ◆ a check list of all documents that must be returned with the Tender, for example method statements.
- ◆ a requirement that Tenders must be kept open for acceptance for no less than 60 days.
- ◆ for non “e” Tenders a requirement that the Tender must be submitted in the official pre-addressed envelopes supplied with the invitation to Tender.

- ◆ where Tenders can be submitted electronically, full details of the time, date and method by which Tenders can be submitted through the Council's e-Tendering system.
- ◆ a statement that the Council is not bound to accept the lowest or any Tender unless the contrary has previously been agreed with the Head of Procurement.
- ◆ a statement that the Council will not be liable for the Tenderers expense in preparing their Tender.
- ◆ a statement that no Tender received after the closing date and time will be accepted.

25.3 All invitations to Tender should be issued at the same time with the same information and any supplementary information must be given on the same basis.

25.4 A written record must be kept of all those organisations to whom an Invitation to Tender was sent.

25.5 To assist Approved Procuring Officers a pro-forma Instruction to Tenderers has been prepared by the Procurement Unit (**LINK**) who can also give further advice.

26. CONTRACT CONDITIONS

General Requirement

26.1 All Contracts, irrespective of value, shall clearly specify:

- ◆ what is to be supplied (ie the works, goods, services).
- ◆ the provisions for payment (ie the price to be paid and when).
- ◆ the time, or times, within which the contract is to be performed

26.2 An official order must be placed for any contract irrespective of value.

Contracts from £5,000 up to £30,000

26.3 For contracts from £5,000 up to £30,000 whenever possible the following must be used;

- ◆ the Council's official order form (**LINK**) or
- ◆ the Council's standard form of quotation (**LINK**)
- ◆ the Council's standard terms and conditions (**LINK**) or
- ◆ Standard Form Contracts

Contracts over £30,000

26.4 For contracts over £30,000 the Legal Division must approve the contract conditions unless;

- ◆ the Council's standard terms and conditions are being used (**LINK**)
or
- ◆ Standard Form Contracts issued by a professional body are being used
or

- ◆ the Legal Division have previously approved or drafted the conditions.

26.5 The contract conditions for contracts over £30,000 should include the provisions listed in Appendix 5.

26.6 No significant variation to the contract conditions sent out with invitations to Tender can be agreed without the approval of the Legal Division.

(See Rule 40 regarding Contractor's own Terms and Conditions).

SECTION 9 – SUBMISSION, RECEIPT, CUSTODY AND OPENING OF TENDERS

27. PERIOD FOR SUBMISSION OF TENDERS

Tenderers must be given a reasonable period in which to prepare and submit a Tender having regard to the amount of detail that they have to prepare and the complexity of the contract requirements. Normally at least four weeks should be allowed. The EU Procedure lays down specific time periods.

28. RECEIPT, CUSTODY AND OPENING OF TENDERS/QUOTES

Contracts from £5,000 up to £30,000

28.1 Directors must make sure that there are procedures in place for the proper receipt, opening, recording and retention of quotes and Tenders whose estimated Total Value is from £5,000 up to £30,000 which as a minimum must ensure that;

- ◆ the quotes/Tender are all opened at the same time and place and after the specified closing date and time
- ◆ that an officer independent of the procuring process is present
- ◆ that a written record is kept and retained on the contract file of the names of the Tenderers and their bid.

Contracts £30,000 up to £75,000

28.2 Directors must:

- ◆ designate officers (“Tender Receipt Officers”) in their department who

are independent of the Tendering process to receive and open Tenders.

- ◆ set up a system for the receipt, custody, opening and recording of Tenders.
- ◆ have the system approved by the Director of Resources

Contracts over £75,000

- 28.3 The Department inviting the Tenders must make arrangements for their receipt, custody and opening by the Corporate and Adult Services Department [[LINK](#)]

General Requirements for Contracts of £30,000 or Over

- 28.4 All contracts with an estimated value of £30,000 or over must be received, opened and recorded in accordance with the requirements in Appendix 7.

E. Tenders

29. Tenders may be received electronically when the Tender documents have been issued through the Council's e-Tendering system or an alternative system approved by the Head of Procurement.

SECTION 10 - ALTERATION, CLARIFICATION <i>AND</i> EVALUATION OF TENDERS
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30. ALTERATION AND CLARIFICATION OF TENDERS

30.1 No Tenderer will be permitted to alter its Tender after it has been received by the Council except with the Head of Procurement's consent to correct an arithmetical or typographical error or omission made in the Tender.

30.2 Should the Tender have been accepted before the error or omission is identified, then it can only remain so if in the opinion of the Head of Procurement it is still the most favourable to the Council following the correction.

31. Abnormal Tender: Clarification

If the Approved Procuring Officer considers the lowest or most economically advantageous Tender to be abnormal given the nature of the contract, the estimated contract value, and value for other Tenders he/she may ask the Tenderer to clarify in writing its Tender or parts of it and can take such explanation into account in deciding which Tender to accept.

32. POST TENDER NEGOTIATIONS

32.1 Discussions with Tenderers after submission of a Tender and before the award of a contract with a view to obtaining adjustments in price,

delivery or content must, other than under the Negotiated or Competitive Dialogue only take place in exceptional circumstances

(See Rule 19) and in consultation with the Head of Procurement.

- 32.2 If post-Tender negotiations are necessary after a single-stage Tender or after the second stage of a two-stage Tender, then such negotiations must only be undertaken with the Tenderer who is identified as having submitted the best Tender unless two are very close together in which case negotiations can be undertaken with both.
- 32.3 Negotiations must be conducted by at least two officers, one of whom must be a senior officer of Principal Officer grade or above.
- 32.4 During negotiations Tendered rates and prices must only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the Tender documents.
- 32.5 Officers who carry out post-Tender negotiations must ensure that there are recorded minutes of the negotiation meetings.
- 32.6 Any change in specification or price arising from post Tender negotiations must be recorded in writing and signed by the Tenderer.
- 32.7. Where post-Tender negotiation result in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-Tendered.

33. EVALUATION OF TENDERS

33.1 Tenders must be evaluated in accordance with the stated award

(*See Rule 21*) criteria and where the criteria is other than the lowest price a written record must be kept of the evaluation with scores for each Tenderer on each of the stated award criteria.

33.2 Interviews may be conducted with some or all of the Tenderers as part of the evaluation process but only, except in the Competitive Dialogue

(*See Rule 19*) or Negotiated Procedures, to clarify matters relating to the award criteria or where part of the published award criteria is an interview/presentation evaluation.

SECTION 11 – CONTRACT AWARD FUNDING AND OTHER THAN LOWEST TENDERS
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34. AWARD PROCEDURE

34.1 Contracts must be awarded in accordance with the stated award

(See Rule 21) criteria.

35. Funding Approval and Register

Over £30,000 up to £75,000

35.1 No contract from £30,000 up to £75,000 can be awarded unless the expenditure for that contract has been included in the approved capital or revenue budgets and has been authorised by the Designated

(See Rule 17.4) Budget Manager.

(See also 35.2 All contracts over £30,000 must be included in the Departmental
10.3 and 38.1) Contracts Register.

Over £75,000

35.3 No contract can be awarded for a contract over £75,000 without Cabinet approval unless;

♦ the contract is merely relating to any existing service with no significant change in service delivery

or

♦ previous Cabinet approval has been given.

(See Rule 17.6)

or

it has been included in the capital programme

36. Acceptance of Tender Other Than Lowest

36.1 For contracts between £30,000 and £75,000, no Tender other than the lowest must be accepted, even if it is judged to be the most economically advantageous on the stated award criteria, unless;

- ◆ its Tender price is within £5,000 or 5% (whichever is the greatest) of the lowest Tender

or

- ◆ a waiver has been given under Rule 6

36.2 For contracts over £75,000 no Tender other than the lowest must be accepted, even if it is judged to be the most economically advantageous on the stated award criteria, unless;

- ◆ its Tender prices are within 10% of the lowest Tender

or

- ◆ a waiver has been given under Rule 6

37. EU Award Notice

The award of all contracts over the EU Thresholds must be advertised in OJEU through the Procurement Unit..

38. INFORMING TENDERERS OF CONTRACT AWARD

Contracts under EU Threshold

38.1 Where a Contract's Total Value is over £30,000 but under the EU Threshold the Approved Procuring Officer must notify all Tenderers simultaneously within 21 days of the award of the contract telling them the name of the successful Tenderer and the amount of the successful bid.

38.2 If requested by an unsuccessful Tenderer the Approved Procuring Officer must debrief them about their Tender and the characteristics and relative advantages of the Preferred Tenderer but must not disclose any additional information without the consent of the Head of Procurement or Chief Legal Officer.

Contracts above the EU Thresholds

38.3 Once a Preferred Tenderer has been identified the Approved Procuring Officer must as soon as reasonably possible notify all Tenderers simultaneously of the intention to award the contract to the Preferred Tenderer but such information should be restricted to;

- ◆ the Award Criteria applied
- ◆ The Tenderers score
- ◆ the name of the Preferred Tenderer
- ◆ the Preferred Tenderers score

- 38.4 The Approved Procuring Officer notice under 38.3 to unsuccessful Tenderers must provide them with a period of at least ten days in which to challenge the decision before the contract is awarded to the Preferred Tenderer.
- 38.5 The ten day (“Standstill”) period referred to in Rule 38.4 must;
- ◆ be extended if a public holiday comes within it
 - ◆ be started the day after the award notification is sent
 - ◆ end on a working day
- 38.6 If the decision is challenged by an unsuccessful Tenderer within the 10 day standstill period then the Approved Procuring Officer must not award the contract but must instead immediately seek the advice of the Chief Legal Officer or Head of Procurement.
- 38.7 If a Tenderer requests debriefing information within the first two days of the standstill period, the Authorised Procuring Officer must provide it before the end of the seventh day of the period.

39. FORM AND PREPARATION OF CONTRACTS

Under £30,000

- 39.1 As a minimum all contracts under £30,000 must be made on the Council's Standard Order Form or Standard Form of Quotation (**LINK**).

Under £75,000

- 39.2 All contracts between £30,000 and £75,000 must be made;

- ◆ on the Council's General Terms and Conditions (**LINK**)
- or
- ◆ on a Standard Form Contract
- or
- ◆ approved by the Procurement Unit or Legal Division

Over £75,000

- 39.3 Where the Total Value of a Contract is over £75,000 the advice of the Legal Division must be sought on contract conditions unless;

- ◆ the Council's standard terms and conditions are being used
[LINK]
- ◆ a Standard Form of Contract is being used
- ◆ the Legal Division have previously approved them.

40. CONTRACTOR'S OWN TERMS AND CONDITIONS

For contracts over £30,000 the contractors' own terms and Conditions must not be accepted without consulting the Legal Division.

41. SIGNING OF CONTRACTS

41.1 Contracts must be signed as follows:

VALUE	SIGNATURE
Up to £30,000	Any officer authorised under the Departmental Scheme of Delegation
£30,000 to £75,000	Any two officers authorised under the Departmental Scheme of Delegation
Above £75,000 (see 41.3 below)	By any two of the following Officers:- <ul style="list-style-type: none">◆ Director of Corporate and Adult Services.◆ Chief Legal Officer◆ Principal Solicitors (3)◆ Project Lawyer

41.2 The Officer responsible for securing the signature in the contract must ensure that the person signing for the Council has the authority to do so.

41.3 All contracts over £75,000 and submitted to Legal Services for signing or sealing must be accompanied by;

- ◆ a declaration from the Departmental Finance Officer or Assistant Director certifying that there is sufficient funding for the contract in the Council's budget and that all necessary approvals have been obtained

or

- ◆ a signed Scheme Commencement Report for Capital Contracts.

42. SEALING OF CONTRACTS

42.1 Where contracts are to be completed by each party adding their formal seal they must be submitted to the Legal Division for sealing together with a form signed by the Departmental Finance Officer or Assistant Director certifying that there is sufficient funding for the contract in the Council's budget and that all necessary internal consents and approvals have been obtained.

42.2 Contracts under seal must be signed by any two of the following;

- ◆ Director of Corporate and Adult Services
- ◆ The Chief Legal Officer
- ◆ Principal Solicitors
- ◆ Project Lawyer

SECTION 12 - CONTRACT REGISTERS

43. DEPARTMENTAL AND CENTRAL RECORDS

Departmental Contracts Record

43.1 Directors must ensure there is a register of all contracts over £30,000

(See also
43.5 Rule) entered into by the Department which in addition to the details specified in 43.4 must include;

- ◆ the duration of the contract
- ◆ whether it has been signed by a Department's Authorised Officer or submitted to the Legal Division for signing
- ◆ who signed on behalf of the Department and when or alternatively the date it was submitted to the Legal Division for signing and sealing

Central Records

43.2 The Director of Corporate & Adult Services shall keep a Register giving

(See Rule 42) the details in Rule 43.4 of all contracts over £75,000 or under seal which in either case have been submitted to the Legal Division for signing and sealing.

43.3 The Head of Procurement shall keep a record of all contracts over £30,000.

43.4 The details under 43.1 and 43.2 and 43.3 must include;

- ◆ the date of the contract
- ◆ the name of the contractor/supplier/provider
- ◆ brief details of the nature of the contract
- ◆ the value of the contract
- ◆ the duration of the contract

44. CONTRACT FILE RECORDS

44.1 Where the Total Value is less than £30,000, the following records must be kept on the Contract File:

- ◆ invitation to quote/Tender
- ◆ any quotations/Tenders received
- ◆ a record of any waiver, exemption from these Rules and the reasons for it
- ◆ if the lowest price is not accepted the reason why
- ◆ records of written communications with the successful contractor or an electronic record if a written record of the transaction would normally be produced.

44.2 Where the Total Value exceeds £30,000 the Approved Procuring Officer must keep on the Contract File:

- ◆ any waiver under *Rule 6* together with the reasons for it

(See Rule 20)

- ◆ the advert
- ◆ the Award Criteria applied
- ◆ Tender documents sent to and received from Tenderers
- ◆ how the shortlist of Tenderers was drawn up

(See Rule 18)

- ◆ any details of soft market testing
- ◆ details of post-Tender negotiation (to include minutes of meetings)

(See Rule 32)

- ◆ evaluation documentation

(See Rule 38)

- ◆ notification to Tenderers
- ◆ signed contract

45. RETENTION OF CONTRACTS AND TENDERS

Records required by Rule 44 must be kept for six years after the end of the contract. However, written documents which relate to unsuccessful Tenderers may be destroyed after 12 months from award of contract, provided there is no dispute about the award.

SECTION 13 - LENGTH OF CONTRACTS AND EXTENSIONS

46. DURATION OF CONTRACTS

No contract can be for longer than 5 years (including options to extend) unless they are:-

- ◆ tied to the completion of a specific job or
- ◆ tied to the supply contracts to a fixed quantity of goods
- ◆ express Cabinet approval has been given for a longer period.

47. CONTRACT EXTENSIONS

Exercising Options to Extend

47.1 Where a contract has been advertised with an option to extend beyond the original contract period and the contract includes such an option it may only be exercised if;

- ◆ the Approved Procuring Officer is satisfied that such an extension is in the best interests of the Council in the light of the contractor's performance
and
- ◆ the extension is for no longer than two years in total
and
- ◆ there is sufficient budget provision

47.2 Where the conditions in Rule 47.1 are not met the written consent of the Head of Procurement must be given before an option to extend is exercised.

No Option to Extend

47.3 Contracts, other than those above EU Thresholds, which contain no option to extend in the original contract may be extended:-

47.3.1 By up to six months by the Director in consultation with the Procurement Unit, if:-

- ◆ it will cost less than £75,000
- ◆ a new procurement process will or has been started

47.3.2 By Cabinet if it will be for longer than 6 months or cost more than £75,000.

PROVIDED that there is no requirement to get approval to extensions which a Contractor is entitled to under the terms of the contract, (e.g. for bad weather under a construction contract).

47.4 Contracts above the E.U. Threshold which contain no option to extend in the original notice can only be extended with the consent of the Chief Legal Officer.

48. FOLLOW ON CONSTRUCTION CONTRACTS

48.1 Where a construction contract has been awarded following a competitive Tendering exercise and it is proposed, within 12 months of that award, to let a further contract for work of a similar size and nature, then a price for that further work may be negotiated with the original contractor and the further contract awarded to it by the relevant Approved Procuring Officer without another competitive Tendering exercise provided the Contractor's performance on the current contract is satisfactory.

48.2 The procedure under 48.1 can only be used once before competitive Tenders are again required.

SECTION 14 - SPECIAL CASES

49. CONSULTANTS

49.1 The appointment of consultants should follow all the other Rules but in addition the following requirements in Rule 49 also apply.

Register

49.2 The Head of Procurement shall extract from Departmental Contract Registers the following details of all contracts for Consultants over £30,000;

- ◆ type of consultancy
- ◆ name of project
- ◆ name of consultant
- ◆ cost of consultancy
- ◆ date of appointment
- ◆ duration of consultancy (if known)

49.3 In order to provide an overview of the use of Consultants the Head of Procurement shall keep a register of contracts over £30,000 which shall include the details in 49.2.

Contracts

49.4 Consultants for contracts over £5,000 and below £30,000 must, if a formal contract is not being used, be appointed by an exchange of a formal letter of appointment which as a minimum must cover the matters specified in Appendix 8.

49.5 For consultancy contracts over £30,000 a formal contract must be entered into which must either be;

- ◆ based on the Council's Standard Consultancy Contract (**LINK**)
or
- ◆ follow a Standard Form of Contract
or
- ◆ be approved by the Chief Legal Officer

50. INFORMATION TECHNOLOGY

50.1 The procurement of information technology should, subject to Rule 50.4 follow all the other Rules but in addition the following requirements in Rule 50 are additional.

50.2 For information technology purchases estimated to be over £5,000, approval must be sought from the Corporate Head of ICT.

50.3 The purchase of any computer hardware or software (excluding standard desktop items), whatever the value, which is to be linked to the Council's network must have the prior written approval of the Head of Strategic Infrastructure.

50.4 Any extension or additional modules to software may be procured without a Tendering process if:-

- ◆ the original system was procured through a full Tendering exercise
- ◆ the contracts for the system and any support and maintenance contracts are still in term
- ◆ the cost of the additional modules does not exceed 25% of the original purchase price
- ◆ the total cumulative price does not exceed the OJEU threshold
- ◆ the proposed purchase satisfies the following three tests;
 - technical assurance sign off by either the Head of Strategic Infrastructure or Corporate Head of ICT
 - Financial appraisal and Value for Money Assessment sign off by the Head of Finance
 - Defined User requirements signed off by the Senior User.

- 50.5 All procurements of computer hardware or software should follow any advice on technical standards issued by the Head of Strategic Infrastructure.

51. OUTSOURCING AND TRANSFERRING SERVICE CONTRACTS (TUPE)

Where the proposed contract is outsourcing work currently done “in House” or may involve the transfer of a service contract from one contractor to another the Approved Procuring Officer must as soon as possible consult the Chief Legal Officer regarding TUPE implications and in particular to the need to;

- ◆ compile and send out with the Invitation to Tender detailed information about the current workforce (Workforce Information)
- ◆ include specific reference to the possible TUPE transfer in the Invitation to Tender
- ◆ include TUPE clauses in the contract conditions

52. PROVIDING WORKS/SERVICES TO OTHER ORGANISATIONS

Where it is proposed to provide services or do works for other organisations then the prior consent of:-

- 52.1 the relevant Director must be given for contracts from £5,000 up to £30,000.

52.2 the Director of Resources and relevant Director for contracts between £30,000 and £75,000.

52.3 Cabinet approval for contracts over £75,000.

53. FINANCE OPERATING LEASES

No operating/finance lease including those for equipment and vehicles must be entered into without the prior written consent of the Director of Resources.

SECTION 15 – AVOIDANCE OF CORRUPTION

54. CONFLICTS OF INTEREST

Conflicts of interest can lead to allegations of corruption. Therefore when an officer is directly involved in the award or management of a contract to a particular organisation he/she must, whenever possible avoid any personal dealings with that organisation. Where that is not possible the officer must act in accordance with Rule 55.

55. DECLARATIONS OF INTEREST BY OFFICER

55.1 Any officer who has a material interest, financial or otherwise, which may affect the Contract process at any stage must immediately he/she becomes aware of it declare it in writing to his/her Director and take no further part in the procurement process unless the Chief Legal Officer gives his written approval to the officer's continued involvement in the procurement exercise.

55.2 Each Director must maintain a register of Interests, declared by Officers under 55.1 which must include;

- ◆ the name and grade of the officer
- ◆ the nature of the declaration

56. GIFTS AND REWARDS

No officer must accept any gift, fee or other material reward from any organisation in return for giving them more favourable treatment in a procurement exercise.

57. FAILURE TO COMPLY

A failure to comply with Rules 54, 55 or 56 could be a criminal offence as well as being a disciplinary matter.

SECTION 16 - VARIATIONS TO THE RULES

58.1 The Chief Legal Officer, after consulting with the Head of Procurement has power to make a minor amendment to these Rules but must subsequently report them to the Audit and Accounts Committee.

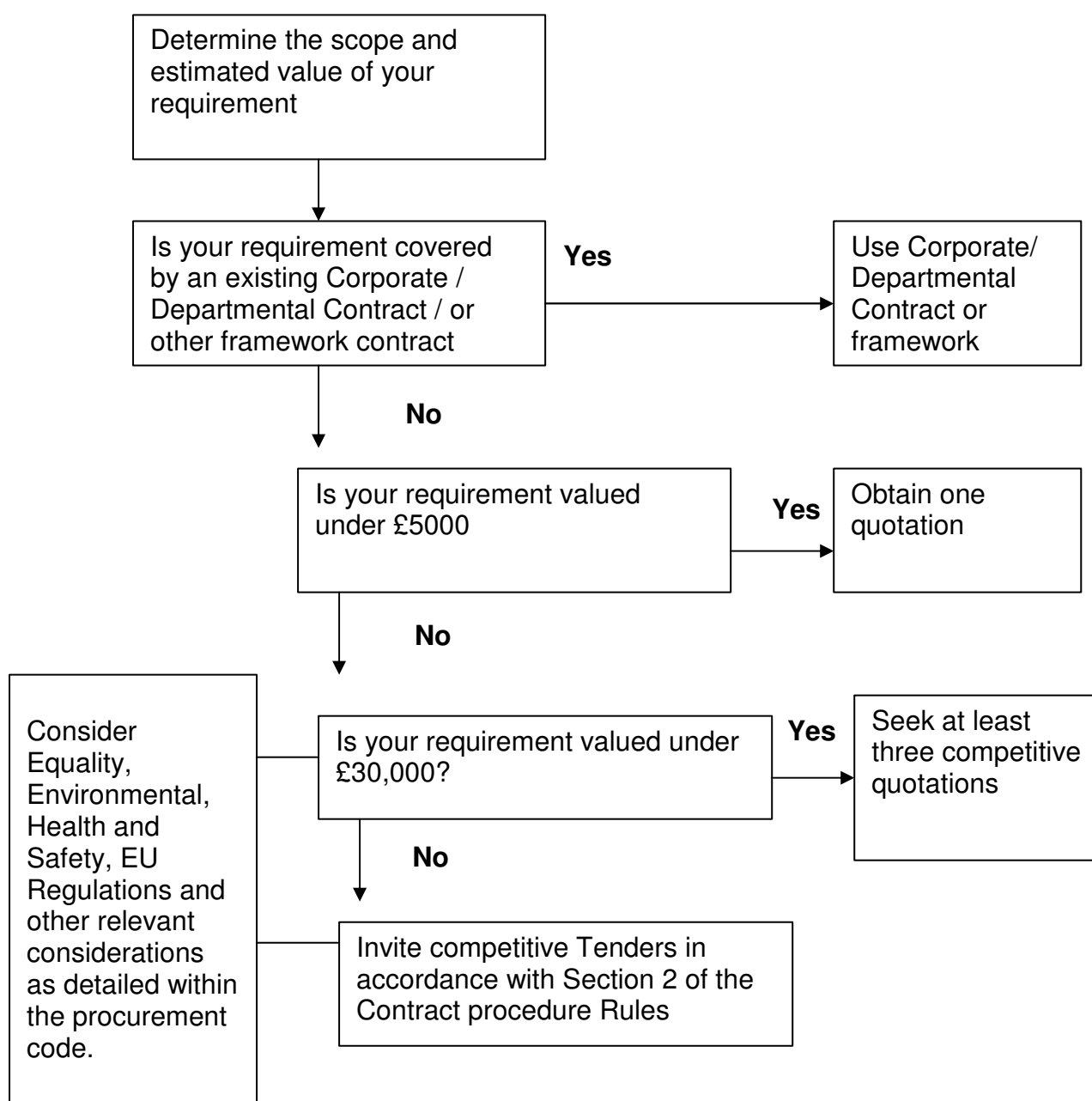
58.3 Any significant amendment to these Rules must be approved by full Council but only after consultation with the Audit and Accounts Committee.

58.3 Anyone with suggested amendments to the Rules should contact the Chief Legal Officer.

APPENDIX 1

FLOW CHART

Deciding How to Proceed Flowchart



APPENDIX 2

DEFINITIONS AND INTERPRETATION

Agent	A person or organisation acting on behalf of the Council or on behalf of another organisation.
Approved List	A list drawn up in accordance with Rule 14
Approved Procuring Officer	An officer of the Council who is authorised under the relevant Departmental Scheme of Delegation to procure goods, work or services of £5,000 or over.
Assistant Directors	Means a second tier officer of the Council.
Audit & Accounts Committee	The Council's Audit and Accounts Committee or any other Committee designated to take on its responsibilities for overseeing the application of the Contract Procedure Rules.
Award Criteria	The criteria by which the successful Quote or Tender is to be selected (<i>see further Rule 21</i>).

Award Procedure	The procedure for awarding a contract as specified in Rule 21.
Cabinet	The Council's cabinet as defined in the Constitution.
Chief Legal Officer	The Chief Legal Officer of the Council or in his or her absence a Principal Solicitor of the Council.
Code of Conduct	The code regulating conduct of Council Officers
Competitive Dialogue	One of the procedures available under the E.C. Procurement Regulations for selecting a Contractor but which can only be used in limited circumstances (<i>see Rule 19.4</i>).
Councils General Terms and Conditions	The Council's standard terms and conditions for ordering goods, services or works.
Consultant	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role.

Contract File	A file on which all relevant matters relating to a contract are kept.
Contractor	An organisation which is bidding for or which has been awarded a Council contract and includes an individual, a partnership, a firm, a limited company and a charity.
Corporate Contract	A contract let by the Procurement Unit and to support the Council's aim of achieving Value for Money (<i>see Rule 13</i>).
Corporate Head of ICT	The Corporate Head of ICT in the Resources Department or any other person authorised to carry out the functions of that post by the Director of Resources.
Corporate Questionnaire	The standard questionnaire used by the Council to vet organisations interested in tendering for Council contracts (<i>see rule 14.7</i>).
Departmental Contracts Register	A register to be kept by all Council Departments recording the details set out in Rule 43.1 for all contracts of £30,000 or over (<i>see Rule 10.3</i>).

Departmental Finance Officer	The senior finance officer in a Department or any other officer designated by the Relevant Director to fulfill that role (<i>see Rule 42</i>).
Departmental Procurement Adviser	The officer appointed by each Department under Rule 10.7 to be its lead procurement officer.
Departmental Scheme Of Delegation	A written scheme for each Department which identifies which officers are authorised to procure goods, works or services and the extent of their authority.
Derbynet	Council's Intranet (<i>See Rule 35.1</i>).
Director	Head of one of the Council's Departments/ Directorates.
Directors of Corporate and Adult Services	The Council's Director of Corporate or Adult services or such other officer delegated by him/her to carry out the functions allocated to that post by these Rules.
Director of Resources	The Council's Director of Resources or such other officer as may be designated chief finance officer by the Council as being responsible for the

Council's finances or any other officer delegated by him/her to carry out the functions allocated to that post by these Rules.

EU Procedure The procedure required by the EU where the Total Value exceeds the EU Threshold (*see section 5*).

EU Threshold The contract value at which the EU Public Procurement Regulations apply (*see Rule 16.3*).

EU Procurement Regulations Public Contract Regulations 2006.

Framework Agreement An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

Funding for Schools The legal basis of the financial relationship between schools and the local authority.

Head of Procurement Head of the Procurement Unit or any other officer in the Procurement Unit delegated by her/him to carry out the functions of that post.

Head of Strategic Infrastructure	The Head of Strategic Infrastructure in the in the Resources Department or any other person authorised to carry out the functions of that post by the Director of Resources.
Heads of Service	A third tier officer designated as a Head of Service or equivalent.
Invitation to Tender	An Invitation to Tender in the form required by these Rules (<i>see Rule 25</i>).
Legal Division	The Council division headed by the Chief Legal Officer.
Line Manager	The officer's immediate superior or the officer designated by the Director to exercise the role reserved to the line manager by these Rules.
Most Economically Advantageous	The criteria for selecting a contractor other than on price alone being equivalent to "best value for money" (<i>see Rule 21.3</i>).

Negotiated Procedure	A procedure for awarding contracts under the E.C. Procurement Regulations but which can only be used in limited circumstances (<i>see Rule 19.3</i>).
Non Commercial Matter	A matter listed in Appendix 4 which by law cannot be taken into account in selecting tenderers or awarding contracts (<i>see Rule 21.5</i>).
Non Priority Service	A category of service not required to be tendered in full compliance with the E.C. Procurement Regulations sometimes known as Schedule B or residual services
OJEU	The Official Journal of the European Union or any replacement publication.
“Open Procedure”	A procedure for awarding contracts under the E.C. Procurement Regulations (<i>see Rule 19.1</i>).
Post Tender Negotiations	Discussions with a tenderer after the submission of its tender (<i>see Rule 32</i>).
Preferred Tender	The tenderer who has been provisionally identified as the successful contractor (<i>see Rule 38.3</i>).

Pre-Qualification Questionnaire	A questionnaire used to select organisations to invite to tender.
Pre-Tender Enquiries	Enquiries to help draw up a Contract Specification (<i>see Rule 24.7</i>).
Priority Services	Those services required to be tendered in full compliance with the EU Procurement Regulations as defined by those Regulations sometimes called Schedule A Services.
Procurement Code	The Council's approved procurement code produced by the Procurement Unit which gives advice on how to apply these Rules. The guide is available on the Council's intranet.
Procurement Strategy	The document setting out the Council's approach to procurement and key priorities for the next few years.
Procurement Unit	The Council's central procurement unit charged with providing strategic direction and advice to secure value for money in the Council's procurement activities.

Quote	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Restricted Procedure	A two stage procedure under the E.C. Procurement Regulations for selecting a contractor (<i>see Rule 19.2</i>).
Shortlisting	The process of selecting Tenderers who are to be invited to quote or bid or to proceed to final evaluation.
Source Derbyshire	The web portal for advertising Council contracts.
Soft Market Testing	The process of seeking views about the nature, level, standard or packaging of a contract before inviting tenders (<i>see Rule 18.1</i>).
Standard Form Contract	A standard form contract issued by a recognised professional body such as the RIBA or ICE.
“Standstill Period”	The 10 day period before which a contract awarded under E.U. Procurement Regulations can be awarded (<i>see Rule 38.5</i>).

Supervising Officer	The Line Manager's immediate superior.
Tender	A tenderer's proposal submitted in response to an Invitation to Tender.
Tenderer	An organisation who submits a tender to the Council.
Tender Receipt Officer	An Officer designated as being responsible for the receipt, custody, opening and recording of tenders/quotes (<i>see Rule 28</i>).
Total Value	<p>The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:-</p> <p>(a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period</p> <p>(b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months.</p>

- (c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48.
- (d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result
- (e) for Nominated Suppliers and Sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the Nominated Supplier or Sub-contractor.

TUPE Transfer of Undertakings (Protection of Employment) Regulations 2006.

Value for Money Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.

Waiver A waiver from a requirement to comply with these Rules (*see Rule 6*).

APPENDIX 3

OPERATION OF APPROVED LISTS

- Officers will select a minimum of four organisations from the list as each call off requirement is identified.
- Lists should be strictly rotated for selection or where an alternative methodology for the selection of bidders has been approved, operated in accordance with that.
- Each organisation will be asked if they are able to provide a quote/Tender before any documentation is issued.
- If any of the organisations selected cannot provide a quote then another organisation will be selected to replace that company.
- Quotes/Tender documents will be issued and returned in keeping with the general requirements of these Rules.
- Quotes and Tenders received will be managed in accordance with these Rules.

APPENDIX 4

NON COMMERCIAL MATTERS

- | | |
|----------------------------------|---|
| Non-commercial
Considerations | <p>(a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').</p> <p>(b) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.</p> <p>(c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.</p> |
|----------------------------------|---|

- (d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').
- (e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.
- (f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.
- (g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.
- (h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.

Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply.

APPENDIX 5

STANDARD CONTRACT CONDITIONS

Every Contract over £30,000 must also state clearly state as a minimum:

- ◆ that the Contractor may not assign or sub- contract without prior written consent
- ◆ indemnity and insurance requirements
- ◆ health and safety requirements (where relevant)
- ◆ data protection requirements, (if relevant)
- ◆ Freedom of Information Act requirements
- ◆ where Agents are used to let contracts, that Agents must comply with these rules
- ◆ a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.
- ◆ termination where evidence of bribery or corruption
- ◆ compliance with legislative requirements (e.g. Data Protection).

APPENDIX 6

Inclusion in approved capital or revenue budgets can be demonstrated by:

- ◆ a scheme cost in the approved capital programme
- ◆ where expenditure is within a block scheme in the approved capital programme, a budget plan showing proposed individual projects and commitments against the total, to indicate that there is sufficient funding remaining
- ◆ for revenue schemes, a budget heading against which only the contract cost is charged or if this does not exist
- ◆ a budget plan showing commitments against a total budget for the cost centre, to indicate that there is sufficient funding remaining
- ◆ Cabinet approvals for virements, use of reserves or changes to the capital programme demonstrating specific earmarked capital or revenue funding to fund the contract cost

APPENDIX 7

PROCEDURES FOR THE RECEIPT, OPENING AND RECORDING OF TENDERS OVER £5,000

Receipt

1. On receipt a Tender envelope must be marked with the date and time of receipt and be signed by the receiving officer. The Tender envelope must remain in the custody of a Tender Receipt Officer until they are opened in accordance with this appendix.
2. No Tender received after the deadline for receipt must be considered unless it can be proved that the Tender was delayed within the Council offices through no fault of the Tenderer and arrived before the other Tenders had been opened.
3. The reason for rejecting any Tender envelope, for example it is late, must be recorded in a register by a Tender Receipt Officer.

Opening Tender

4. Tenders other than later Tenders will be opened:
 - ◆ after the deadline for Tender submissions
 - ◆ at the same time and place
 - ◆ in the presence of a Tender Receipt Officer and an employee involved in inviting the Tenders.

5. The Tender Receipt Officer must at the time of opening Tenders record the following details:
- ◆ the date and time
 - ◆ the name of each Tenderer
 - ◆ the amount of each Tender
- and this record must be signed by all persons present at the Tender opening. The Tender Officer must sign after the last Tenderer's name to prevent any addition to the record.
6. The Tender Receipt Officer and any other person present at the opening of Tenders must also initial the Tender form page and any other page of the Tender on which the Tenderer has entered a final price. Tenders received through the e-Tendering system will not require any form of signature.
7. All Tenders received and opened will be retained by the inviting department. Unsuccessful Tenders will be kept for one year after opening. The successful Tender will be kept for the period specified in Rule 45.
8. If an Internal Provider submits a bid, no employee involved in the preparation or submission of that bid must be present when the Tenders are opened.

9. A Tender Receipt Officer must consult and follow the advice of the Chief Legal Officer if in any doubt as to whether to consider a Tender for any reason, including its late submission.

APPENDIX 8

CONSULTANCY AGREEMENTS: MINIMUM REQUIREMENTS

1. Name of Project
2. Description of Service (ideally attach brief)
3. Timetable
4. Schedule of Payments related to Timetable and other project documents.
5. Expenses Entitlement
6. Copyright in Report (if relevant)
7. Indemnity and Professional Indemnity Insurance Cover
8. Identify Consultants' Project Team
9. Media Relations and Publications (where relevant)
10. Liaison Requirements
11. Conflict of Interests
12. Freedom of Information
13. Presentation of Project Results (if relevant)



DERBY CITY COUNCIL

CONTRACT PROCEDURE RULES FOR SCHOOLS

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SECTION 1: COMPLIANCE, PURPOSE AND SCOPE OF THE RULES

1. COMPLIANCE

1.1 Compliance with these Rules, which form an annex to the Scheme for Funding Schools, is a requirement not a discretion for all schools maintained by the Council. Every member of staff involved in buying goods or services or ordering building works must be aware of the Rules and comply with them. Failure to do so could result in disciplinary action and/or withdrawal of delegated powers or the issue of a Notice of Financial Concern.

1.2 Only members of staff authorised under the school's Scheme of
(See Rule 9.1) Delegation ("Approved Procuring Officers") can procure goods, services or works on behalf of a school and only to the extent that they are authorised.

1.3 Where capital expenditure is planned, schools must also comply with the Scheme for Funding Schools (paragraphs 2.22 and 2.23), "The governing body must notify the Corporate Director of Children and Young People of any planned capital expenditure (including any improvement work or change to a mechanical or electrical system) and, where this is greater than £15,000, must take into account any advice from the Corporate Director of Children and Young People as to the merits of the proposed expenditure. Notification should include which relevant professional adviser has been consulted. If the premises are

owned by the Council, or the school has voluntary controlled status, then the governing body must seek the consent of the Corporate Director of Children and Young People and Corporate Director of Corporate and Adult Services to the proposed works, but such consent can be withheld only on health and safety grounds. If the premises are not owned by the Council, the governing body must obtain consent from the owner of the premises where necessary. In voluntary-aided schools, the DCSF grant aid returned to governors for projects financed from delegated funds must be transferred back to the budget share. Any capital work which affects pupil accommodation must be notified to the Corporate Director of Children and Young People to enable the Council to plan for pupil numbers.”

2. GUIDANCE

2.1 Further information on procurement generally is given in the Council’s Procurement Code and throughout this document links are included to;

- ◆ Derby Procurement Connection
- ◆ Source Derbyshire
- ◆ Other helpful documents

2.2 For general queries about the operation of these Rules, schools should contact the Children and Young People’s Finance section in the first instance. The Children and Young People’s Departmental Procurement Adviser will also be available for help, assistance and guidance on procurement issues. In addition, specialist advice on specific procurement issues and how to apply the Rules can be obtained by

contacting the Procurement Unit in the Resources Department or the Chief Legal Officer.

- 2.3 A Flow Chart has also been included at Appendix 1 to help identify the appropriate procurement route for particular contract values.

3. PURPOSE

The purpose of the Rules is to;

- ◆ achieve value for money
- ◆ be consistent with the highest standards of integrity
- ◆ ensure fairness in allocating public contracts
- ◆ comply with all legal requirements
- ◆ support the Council's Procurement Strategy
- ◆ assist schools in complying with the Financial Management Standard in Schools
- ◆ prevent fraud and corruption
- ◆ protect the interests of Council and school employees

4. WHEN THESE RULES APPLY

- 4.1 These Rules apply to the following types of procurement on behalf of schools;

- ◆ purchasing any goods or materials
- ◆ purchasing of any services, including consultancy services
- ◆ hiring, renting or, in exceptional circumstances, leasing of any goods or equipment

(See also Rule 49)

- ♦ ordering the carrying out of building works

4.2 Schools are entitled, but not required, to use the Council's Corporate
(See Rule 13) Contracts.

5. EXEMPTIONS

The Rules do **NOT** apply to:

- ♦ contracts of employment with individual employees
- ♦ land transactions (sales, purchases, leases, licences, easements etc)
- ♦ performing artists contracts
- ♦ shared service or collaborative arrangements with other schools or public bodies.
- ♦ the provision of services by the Council as part of a service level agreement such as through the "City Services" brochure, under which the service provider will ensure compliance with Contract Procedure Rules
- ♦ financial contributions made to expenditure on contracts let by the Council centrally.
- ♦ goods and services which a school is obliged to purchase from a contractor under the terms of a PFI contract, where the competition requirement has already been satisfied.

6. WAIVERS

- 6.1 Waivers to the Rules may in exceptional circumstances be granted by Cabinet or, in cases of urgency by the Corporate Director for Children and Young People and either the Chief Legal Officer or the Head of Procurement.
- 6.2 Any request for a Council Cabinet waiver must be submitted in writing to the Head of Children and Young People's Finance, who will consult with the Head of Procurement or Chief Legal Officer, before consideration for inclusion in the "Contract & Financial Procedures Matters" report to Cabinet.
- 6.3 All approvals of urgent waivers will be reported to the next Cabinet meeting by the Head of Procurement.
- 6.4 All waiver approvals, both urgent and by Cabinet will be reported on a quarterly basis by the Head of Procurement to the Council's Audit & Accounts Committee who will monitor the use of waivers.
- 6.5 A waiver cannot be given where the contract value exceeds the E.U. threshold unless the Chief Legal Officer has confirmed in writing that an exemption is available under the E.U. Procurement Regulations.

7. DEFINITIONS/INTERPRETATION

7.1 A list giving definitions of the terms used in the Rules is included at Appendix 2.

7.2 The Chief Legal Officer will advise on the implementation and interpretation of the Rules and his/her views will be binding.

SECTION 2 - REQUIREMENT TO OBTAIN QUOTES OR TENDERS

8. COMPETITION REQUIREMENTS

8.1 The nature of the procurement process to be undertaken will depend
(See Rule 17) on the estimated total value of the contract.

8.2 Where the estimated total value of the proposed contract is within the
(See Rule 6) values the first column the award procedure in the Second Column
(See Section 4) must be followed unless a waiver is obtained or one of the alternative
methods to Tendering is chosen

TOTAL VALUE	AWARD PROCEDURE
Below £5,000	<ul style="list-style-type: none"> * Must get at least one quote and then place an official order. * <i>Good practice to get three quotes.</i>
From £5,000 up to £30,000	<ul style="list-style-type: none"> * Must, before placing an order get at least three written quotes * Governors may waive this requirement but must inform the Head of Procurement in writing of their reasons.
From £30,000 up to £75,000	<ul style="list-style-type: none"> * Must Tender by one of the following methods:- <ul style="list-style-type: none"> (a) Public notice inviting Tenders. (“Open Procedure”); see Rule 19) (b) Invite to at least 3 organisations to Tender after public notice asking for expressions of interest, or maximum

	<p>number who pre-qualify if less than 3 (<i>“Restricted Procedure”</i>); see <i>Rule 19</i>).</p> <p>(c) Where the contract is of a specialist nature by direct invite to tender to at least four organisations but the reasoning for selecting the invited firms must be kept on the contract file.</p>
Over £75,000	<p>* Must Tender by one of the following methods:-</p> <p>* Public notice inviting Tenders (<i>“Open Procedure”</i>; see <i>Rule 19</i>)</p> <p>* Invite Tenders from at least 4 organisations after public notice asking for expressions of interest or maximum number who pre-qualify if less than 4 (<i>“Restricted Procedure”</i>; see <i>Rule 19</i>).</p> <p><i>NB. Need to obtain waiver under Rule 5 to invite organisations to Tender direct even if the Contract is of a specialist nature.</i></p>
(See Rule 16)	<p>Above EU Threshold (Approximately £140,000 Services and goods & £3.5m for works.</p> <p>In accordance with EU Procedures and advice from the Procurement Unit.</p>

See Section 14 for use of Approved Lists and Section 15 for use of Framework Agreements

SECTION 3 – MEMBERS OF STAFF, GOVERNORS’ AND AGENTS’ ROLES AND RESPONSIBILITIES
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9. MEMBERS OF STAFF

- 9.1 Each school’s Scheme of Delegation must clearly identify members of staff who are entitled to procure goods, services or works of £5,000 or over (“Approved Procuring Officers”) and the scheme must state the contract value level of each member of staff’s approval and the type of contract they are entitled to deal with.
- 9.2 No member of staff other than an Approved Procuring Officer must procure on behalf of the school a contract for £5,000 or over and then only to the extent of his/her approval under the school’s Scheme of Delegation.

10 GOVERNORS

Governors must take all reasonable measures to ensure that procurement carried out by their school complies with these Rules and that;

Training

- 10.1 Adequate Training in these Rules, provided or approved by the Procurement Unit, is given to relevant members of staff and governors:-

Contract Register

- 10.2 A school Contract Register of all contracts of £30,000 or over is set up
(See Rule 35.2) and maintained.

Quotes/Tender Receipt Officers and Register

- 10.3 Appropriate arrangements in place for the receipt and opening of
(See Rule 28.1) quotes and Tenders between £5,000 to £30,000.
- 10.4 Members of staff independent of the procurement process are
(See Rule 28.2) appointed to be responsible for the receipt, safekeeping, opening and recording of all Tenders over £30,000 received by the school ("Tender Receipt Officers") and a Tender Register is maintained which sets out clearly who these are.

Management Review

- 10.5 At least once a year the governing body meets to;
- ◆ to consider contracts of £75,000 and over that need letting or re-letting and who will be responsible for them and the timetable for doing so.
- (See Rule 10.2)
- ◆ review its Contract Register
 - ◆ review the operation for the receipt, safekeeping & opening of Tenders to ensure it's in compliance with Rule 28.
- (See Rules 10.3 and 10.4)

- ◆ review the designation of Approved Procuring Officers
under the school's Scheme of Delegation.

(See Rule 9)

11. AGENTS/CONSULTANTS

Any Agent or consultant appointed to act for the school in a procurement exercise must be required to comply with these Rules.

SECTION 4 – ALTERNATIVES TO TENDERING

12. ALTERNATIVE PROCUREMENT METHODS: GENERAL

Before approaching the market for any supplies, services or works an Approved Procuring Officer can establish if there are any of the following he/she could use;

- ◆ A Corporate Contract
- ◆ An Approved List
- ◆ A Framework Agreement

13. CORPORATE CONTRACTS

13.1 The Council has Corporate Contracts which cover many items required on a daily basis such as stationery, office furniture and desk top equipment. A list of the current Corporate Contracts can be obtained from the Procurement Unit.

13.2 Once established a product or service included in a Corporate Contract can be ordered from the approved supplier, using the Council's order system, without any need for quotes or Tenders.

14. APPROVED LISTS

14.1 Where there are regular and frequent demands for goods, services or works which cannot easily be put together and priced in a single tendering exercise an Approved List can be drawn up by the Council and used instead.

14.2 Good examples of areas where an Approved List might be used are print, maintenance services, building works and consultancy.

14.3 Approved lists cannot be used where the E.U. Procedure applies,
(See Rule 16) though suitable organisations on the Approved List can be sent copies of the OJEU notice.

14.4 Schools may use Approved Lists with the agreement of the Head of Procurement and the managing department.

15. FRAMEWORK AGREEMENTS

15.1 The Council may set up Framework Agreements for goods, services or works that are needed on a regular basis.

15.2 Schools may use these Framework Agreements with the agreement of the Head of Procurement and the managing department.

15.3 Where more than one Contractor is appointed to provide a service under a Framework Agreement individual contracts may unless the Framework Agreement says differently be awarded by using one or more of the following principles:-

- ◆ by a mini Tender competition
- or
- ◆ by value (lowest price)

- 15.4 Any mini competition under Rule 15.3 should be on the criteria used to establish the framework and therefore can include technical expertise and capacity if these were part of those criteria.
- 15.5 Framework Agreements procured by other local authorities, public bodies or purchasing consortiums, for example the East Midlands Centre of Excellence or Office of Government Commerce (OGC), may be used if Cabinet has approved their use on being satisfied that the Council can lawfully use them and that it is in the Council's interest to do so.

SECTION 5 – E.C. PROCUREMENT

16. REQUIREMENTS AND THRESHOLDS

16.1 Contracts for the supply of goods or Priority Services or works which
(See Rule 16.3) are estimated to be over the EU Threshold must be Tendered in accordance with the E.U. Public Procurement Regulations and the Procurement Unit **must** be consulted and their advice taken on how to comply with the Regulations.

16.2 The EU Thresholds change every two years and are quoted in European Currency units (ECU's). The sterling equivalent is recalculated on 31 December every other year.

16.3 The EU Thresholds until 31 December 2010 are;

◆ suppliers:	200,000 ECU	£139,893
◆ services:	200,000 ECU	£139,893
◆ works:	5 million ECU	£ 3,497,313

After 31 December 2010 the Head of Procurement can update this figure.

16.4 The thresholds relate to the estimated Total Value of the contract net of VAT, not the annual value.

16.5 Where they apply the EU Regulations impose requirement on such matters as;

- ◆ where the notice seeking Tenders must be placed and its format.
- ◆ minimum Tender periods.
- ◆ award criteria and procedures

SECTION 6 – STEPS PRIOR TO SEEKING QUOTATIONS OR INVITING ORDERING TENDERS

17. CONTRACT VALUE, FUNDING AND CABINET APPROVAL

Estimated Contract Value

- 17.1 Before seeking quotes or Tenders for any supplies, works or services the Approved Procuring Officer must estimate the Total Value (see definition) of the contract. This estimate will determine what competition requirements apply under these Rules (*see Rule 8*).
- 17.2 A written record of the Total Value estimate must be kept on the file for all contracts estimated to be over £5,000.
- 17.3 Contracts must not be artificially divided into two or more to avoid the application of the requirements under these Rules but should be packaged to ensure value for money.

Funding

- 17.4 An Approved Procuring Officer must not place an order or start a formal process for letting a contract unless he/she is satisfied that expenditure for it has been included in the school's approved budget.
- 17.5 Inclusion of approved capital or revenue budgets can be demonstrated by any of the means listed in Appendix 6.

Governors' Approval

- 17.6 Governors' approval must be obtained before procuring any contract which has an estimated Total Value of £75,000 or over unless it is merely a re-Tendering of a current contract with no significant change

18. SOFT MARKET TESTING

- 18.1 Prior to the issue of the Invitation to Tender or advert asking for expressions of interest the Approved Procuring Officer may wish to know the views of potential Tenderers about the nature, level, standard and packaging of the goods or services or works to be supplied so as to best ensure competition and value for money: this is called "Soft Market Testing".
- 18.2 The written consent of the Head of Procurement must be given before any soft marketing testing is carried out.
- 18.3 When carrying out soft market testing the Approved Procuring Officer must;
- ◆ make it clear to participating organisations that they will receive no preferential treatment in the Tender process.
 - ◆ keep a written record in the contract file of all enquiries, responses and any related meetings.

19. CHOICE OF TENDERING PROCEDURE

19. Where there is a requirement in the Rules for a contract to be tendered
(see Rule 8) the following options are available;

19.1 **Open Procedure:** This is a one stage procedure where the contract is advertised and any interested organisation can obtain further information and submit a Tender. This procedure is not recommended where a large response is anticipated and/or detailed assessment of the bids will be necessary.

19.2 **Restricted Procedure:** This is a two stage procedure where firstly the contract is advertised and anyone who expresses an interest must
(See Rule 23) complete a Pre Qualification Questionnaire. These are then evaluated
and 22) and a number of selected organisations will be shortlisted and invited to Tender.

19.3 **Negotiated Procedure:** This procedure can be used where the nature of the service is such that specifications cannot be drawn up with sufficient precision to permit the award of the contract using the open or restricted procedures. This is especially useful for “intellectual Services”. **It can only be used with the written consent of the Head of Procurement.**

- 19.4 **Competitive Dialogue:** This procedure is available where the Council is unable to define the financial, legal or technical elements of the project. It is really intended for complex procurement exercises such as Private Finance Initiatives (PFI). **It can only be used with the consent of the Head of Procurement.**

20. ADVERTISING CONTRACTS

- 20.1 Where a contract's estimated Total Value is £30,000 or over and has to
(See Rule 8.2) be advertised in accordance with these Rules it can be placed on the Source Derbyshire website. This can be done by contacting the Procurement Unit.

- 20.2 Depending on the nature, size or likely interest in the contract, consideration should also be given to placing the advert in;

- ◆ national trade/official journals
- ◆ local media
- ◆ the Official Journal of the European Union (OJEU) even if there is no requirement to do so

E.U. Adverts

- 20.3 Any contract above the E.U. Threshold must, unless it is a non Priority
(See Rule 16) Service, be advertised in OJEU and this can be done through the
Procurement Unit.

Open Procedure Advert

- 20.4 Any advertisement placed under the open procedure
(See Rule 19.1) must;

- ◆ describe the scope of the contract
- ◆ invite Tenders
- ◆ state what Contractors have to do to Tender
- ◆ state the closing date and time for Tenders
- ◆ state the award criteria

Restricted Procedure Advert

- 20.5 Any advertisement under the Restricted Procedure must:-
(See Rule 19.2)
- ◆ state where and by when expressions of interest must be submitted.
 - ◆ give brief details of the contract
 - ◆ state the time periods for submission of completed Pre
(See Rule 23) Qualification Questionnaires.

Retention of Advert

- 20.6 Copies of adverts must be kept on the contract file together with details of when and where they were published.

21. AWARD CRITERIA

- 21.1 Before placing an advert asking for Tenders or issuing invitations to Tender the Approved Procuring Officer must define the award criteria for the contract which is best suited to the procurement exercise and is designed to secure value for money.

- 21.2 The three basic award criteria are;

- ◆ “lowest price” where payment is made by the school
- ◆ “highest price” where payment is made to the school
- ◆ Most economically advantageous

Most Economically Advantageous Criteria

- 21.3 Where the most economically advantageous criteria are used, considerations other than price apply but they must be relevant, such as;

- ◆ quality of goods
- ◆ service
- ◆ running costs
- ◆ technical merit
- ◆ previous experience
- ◆ safety

- ◆ after sales service
- ◆ technical assistance
- ◆ delivery date
- ◆ quantity
- ◆ aesthetic and functional characteristics.

21.4 An evaluation model must be drawn up stating the weight to be given to each relevant consideration, including price, and this or the weighting to be given to each award criteria must be notified to Tenderers in the Invitation to Tender or before in the advert or scope document.

21.5 The award criteria must not include any non-commercial matters. These are listed in Appendix 4

SECTION 7 - PRE QUALIFICATION QUESTIONNAIRE: SELECTION OF TENDERERS

22. Selection of Tenderers

When selecting a firm to Tender, other than from an Approved List or under a Framework Agreement, the Authorised Procuring Officer must have particular regard to their;

- ◆ financial standing
- ◆ technical ability/qualifications
- ◆ other relevant criteria

these matters should be included in the Pre-Qualification Questionnaire.

23. PRE – QUALIFICATION QUESTIONNAIRE

23.1 Organisations applying to be selected for Tendering under the
(See Rule 19.2) restricted Tendering procedure must be required to complete a Pre - Qualification Questionnaire (PQQ) which will allow their financial standing and technical ability to be assessed and also where relevant their;

- ◆ health and safety management
- ◆ insurance arrangements
- ◆ equalities record/policies
- ◆ environmental policies

An example of a PQQ has been drawn up by the Procurement Unit
([LINK](#)).

23.2 Information may also be requested on other areas relevant to the contract but not any of the non-commercial matters listed in Appendix 4.

23.3 The selection of Tenderers must be carried out by a panel consisting of at least two members of staff one of whom must be the Approved Procuring Officer.

23.4 A written record of the reasons for choosing the selected Tenderers must be put on the Contract File by the Approved Procuring Officer.

SECTION 9 – TENDER DOCUMENTS

24. SPECIFICATION

- 24.1 The Approved Procuring Officer must make sure that the Tender documents include a specification giving details of the type and quality of goods or nature and standard of service or works to be supplied. It is vital that this is drawn up by or with the help of the member of staff who is directly involved in the delivery of the service or the works.
- 24.2 The length and detail of the specification will vary depending on the size, complexity and nature of the contract but it should be clear and include all the material details that the Contractor is obliged to comply with.
- 24.3 Technical specifications must be defined by reference to relevant European Standards. Where European Standards do not exist International or British Standards may be used but where they are the words “or equivalent” must be added.
- 24.4 The Specification must not refer to a particular make or brand names unless it is identified as a permissible exemption under the EU Procurement Regulations and the Procurement Unit have been advised.

24.5 The specification must not include any requirement which unjustifiably discriminates against other E.U. member states.

24.6 Advice on drawing up a specification has been developed up by the Procurement Unit (**LINK**) and they can, if requested, give further advice on specific contracts.

Pre-Tender Enquiries Regarding the Specification

24.7 Sometimes it may be necessary for the Approved Procuring Officer when preparing a complex specification to consult potential Contractors about the detailed requirements of the Specification but before doing so he/she should seek the advice of the Head of Procurement and then act in accordance with the requirements in Rule 24.8.

24.8 When making such Pre-Tender Enquiries the Approved Procuring Officer must;

- ◆ Not draw up the specification wholly by reference to one Contractor or if they do, that organisation must be excluded from the Tender process.
- ◆ Keep a written record of all enquiries, responses and related meetings on the contract file.

25. INSTRUCTIONS TO TENDERERS

25.1 All invitations to Tender must include Instructions to Tenderers as well as;

- ◆ specification of the goods, services or works required.
- ◆ contract conditions.

25.2 All Instructions to Tenderers must include;

(See Rule 21)

- ◆ the award criteria and, where applicable, weightings
- ◆ the last time and date for receipt of Tenders
- ◆ the address to which Tenders must be delivered
- ◆ a check list of all documents that must be returned with the Tender, for example method statements.
- ◆ a requirement that Tenders must be kept open for acceptance for no less than 60 days.
- ◆ for non “e” Tenders a requirement that the Tender must be submitted in the official pre-addressed envelopes supplied with the invitation to Tender.

- ◆ where Tenders are being submitted electronically through the Council's e-Tendering system, full details of the time, date and method by which Tenders can be submitted.
- ◆ a statement that the school is not bound to accept the lowest or any Tender unless the contrary has previously been agreed with the Head of Procurement.
- ◆ a statement that the school or Council will not be liable for the Tenderers expense in preparing their Tender.
- ◆ a statement that no Tender received after the closing date and time will be accepted.

25.3 All invitations to Tender should be issued at the same time with the same information and any supplementary information must be given on the same basis.

25.4 A written record must be kept of all those organisations to whom an Invitation to Tender was sent.

25.5 To assist Approved Procuring Officers a pro-forma Instruction to Tenderers has been prepared by the Procurement Unit (**LINK**) who can also give further advice.

26. CONTRACT CONDITIONS

General Requirement

26.1 All Contracts, irrespective of value, shall clearly specify:

- ◆ what is to be supplied (ie the works, goods, services).
- ◆ the provisions for payment (ie the price to be paid and when).
- ◆ the time, or times, within which the contract is to be performed

Contracts from £5,000 up to £30,000

26.2 For contracts from £5,000 up to £30,000 whenever possible the following must be used;

- ◆ an official order form (**LINK**) or
- ◆ the Council's Standard Form of quotation (**LINK**)
- ◆ the Council's standard terms and conditions (**LINK**) or
- ◆ Standard Form Contracts

Contracts over £30,000

26.3 For contracts over £30,000 the Legal Division must approve the contract conditions unless;

- ◆ the Council's standard terms and conditions are being used (**LINK**)
or
- ◆ Standard Form Contracts issued by a professional body are being used
or
- ◆ the Legal Division have previously approved or drafted the conditions.

26.4 The contract conditions for contracts over £30,000 should include the provisions listed in Appendix 5.

26.5 No significant variation to the contract conditions sent out with invitations to Tender can be agreed without the approval of the Legal Division.

(See Rule 40 regarding Contractor's own Terms and Conditions).

SECTION 9 – SUBMISSION, RECEIPT, CUSTODY AND OPENING OF TENDERS
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27. PERIOD FOR SUBMISSION OF TENDERS

Tenderers must be given a reasonable period in which to prepare and submit a Tender having regard to the amount of detail that they have to prepare and the complexity of the contract requirements. Normally at least four weeks should be allowed. The EU Procedure lays down specific time periods.

28. RECEIPT, CUSTODY AND OPENING OF TENDERS/QUOTES

Contracts from £5,000 up to £30,000

28.1 Governors must make sure that there are procedures in place for the proper receipt, opening, recording and retention of quotes and Tenders whose estimated Total Value is from £5,000 up to £30,000 which as a minimum must ensure that;

- ◆ the quotes/Tender are all opened at the same time and place and after the specified closing date and time
- ◆ that a member of staff independent of the procuring process is present
- ◆ that a written record is kept and retained on the contract file of the names of the Tenderers and their bid.

Contracts over £30,000

28.2 Governors must:

- ◆ designate members of staff (“Tender Receipt Officers”) in their school who

are independent of the Tendering process to receive and open Tenders.

- ◆ set up a system for the receipt, custody, opening and recording of Tenders.

General Requirements for Contracts of £30,000 or Over

28.3 All contracts with an estimated value of £30,000 or over must be received, opened and recorded in accordance with the requirements in Appendix 7.

29. E. Tenders

Tenders may be received electronically when the Tender documents have been issued through the Council's e-Tendering system or an alternative system approved by the Head of Procurement.

SECTION 10 - ALTERATION, CLARIFICATION ANDEVALUATION OF TENDERS

30. ALTERATION AND CLARIFICATION OF TENDERS

30.1 No Tenderer will be permitted to alter its Tender after it has been received by the school except to correct an arithmetical or typographical error or omission made in the Tender.

30.2 Should the Tender have been accepted before the error or omission is identified, then it can only remain so if it is still the most favourable to the school following the correction.

31. Abnormal Tender: Clarification

If the Approved Procuring Officer considers the lowest or most economically advantageous Tender to be abnormal given the nature of the contract, the estimated contract value, and value for other Tenders he/she may ask the Tenderer to clarify in writing its Tender or parts of it and can take such explanation into account in deciding which Tender to accept.

32. POST TENDER NEGOTIATIONS

32.1 Discussions with Tenderers after submission of a Tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content must, other than under the Negotiated or Competitive Dialogue only take place in exceptional circumstances

(See Rule 19) and in consultation with the Head of Procurement.

- 32.2 If post-Tender negotiations are necessary after a single-stage Tender or after the second stage of a two-stage Tender, then such negotiations must only be undertaken with the Tenderer who is identified as having submitted the best Tender unless two are very close together in which case negotiations can be undertaken with both.
- 32.3 Negotiations must be conducted by at least two members of staff, at least one of whom must be on the school's senior management team.
- 32.4 During negotiations Tendered rates and prices must only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the Tender documents.
- 32.5 Members of staff who carry out post-Tender negotiations must ensure that there are recorded minutes of the negotiation meetings.
- 32.6 Any change in specification or price arising from post Tender negotiations must be recorded in writing and signed by the Tenderer.
- 32.7. Where post-Tender negotiation result in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-Tendered.

33. EVALUATION OF TENDERS

33.1 Tenders must be evaluated in accordance with the stated award

(See Rule 21) criteria and where the criteria is other than the lowest price a written record must be kept of the evaluation with scores for each Tenderer on each of the stated award criteria.

33.2 Interviews may be conducted with some or all of the Tenderers as part of the evaluation process but only, except in the Competitive Dialogue

(See Rule 19) or Negotiated Procedures, to clarify matters relating to the award criteria or where part of the published award criteria is an interview/presentation evaluation.

SECTION 11 – CONTRACT AWARD FUNDING AND OTHER THAN LOWEST TENDERS
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34. AWARD PROCEDURE

34.1 Contracts must be awarded in accordance with the stated award

(See Rule 21) criteria.

35. Funding Approval and Register

Over £30,000 up to £75,000

35.1 No contract from £30,000 up to £75,000 can be awarded unless the expenditure for that contract has been included in the school's approved budget and has been authorised by the Headteacher (See Rule 17.4) .

(See also 35.2 All contracts over £30,000 must be included in the school's
10.2 and 38.1) Contracts Register.

Over £75,000

35.3 No contract can be awarded for a contract over £75,000 without governors' approval unless;

- ◆ the contract is merely relating to any existing service with no significant change in service delivery

or

- ◆ previous governors' approval has been given.

(See Rule 17.6)

36. Acceptance of Tender Other Than Lowest

36.1 For contracts between £30,000 and £75,000, no Tender other than the lowest must be accepted, even if it is judged to be the most economically advantageous on the stated award criteria, unless;

- ◆ its Tender price is within £5,000 or 5% (whichever is the greatest) of the lowest Tender
- or
- ◆ a waiver has been given under Rule 6

36.2 For contracts over £75,000 no Tender other than the lowest must be accepted, even if it is judged to be the most economically advantageous on the stated award criteria, unless;

- ◆ its Tender prices are within 10% of the lowest Tender
- or
- ◆ a waiver has been given under Rule 6

37. EU Award Notice

The award of all contracts over the EU Thresholds must be advertised in OJEU through the Procurement Unit.

38. INFORMING TENDERERS OF CONTRACT AWARD

Contracts under EU Threshold

38.1 Where a Contract's Total Value is over £30,000 but under the EU Threshold the Approved Procuring Officer must notify all Tenderers simultaneously within 21 days of the award of the contract telling them the name of the successful Tenderer and the amount of the successful bid.

38.2 If requested by an unsuccessful Tenderer the Approved Procuring Officer must debrief them about their Tender and the characteristics and relative advantages of the Preferred Tenderer.

Contracts above the EU Thresholds

38.3 Once a Preferred Tenderer has been identified the Approved Procuring Officer must as soon as reasonably possible notify all Tenderers simultaneously of the intention to award the contract to the Preferred Tenderer but such information should be restricted to;

- ◆ the Award Criteria applied
- ◆ The Tenderers score
- ◆ the name of the Preferred Tenderer
- ◆ the Preferred Tenderers score

38.4 The Approved Procuring Officer notice under 38.3 to unsuccessful Tenderers must provide them with a period of at least ten days in which to challenge the decision before the contract is awarded to the Preferred Tenderer.

38.5 The ten day ("Standstill") period referred to in Rule 38.4 must;

- ◆ be extended if a public holiday comes within it
- ◆ be started the day after the award notification is sent
- ◆ end on a working day

38.6 If the decision is challenged by an unsuccessful Tenderer within the 10 day standstill period then the Approved Procuring Officer must not award the contract but must instead immediately seek the advice of the Chief Legal Officer or Head of Procurement.

38.7 If a Tenderer requests debriefing information within the first two days of the standstill period, the Authorised Procuring Officer must provide it before the end of the seventh day of the period.

39. FORM AND PREPARATION OF CONTRACTS

Under £30,000

39.1 Schools are encouraged to use the Council's Standard Order Form for all contracts under £30,000

Under £75,000

39.2 All contracts between £30,000 and £75,000 must be made;

- ◆ on the Council's General Terms and Conditions (**LINK**)
- or
- ◆ on a Standard Form Contract
- or
- ◆ approved by the Procurement Unit or Legal Division

Over £75,000

39.3 Where the Total Value of a Contract is over £75,000 the advice of the Legal Division must be sought on contract conditions unless;

- ◆ the Council's standard terms and conditions are being used
[LINK]
- ◆ a Standard Form of Contract is being used
- ◆ the Legal Division have previously approved them.

40. CONTRACTOR'S OWN TERMS AND CONDITIONS

For contracts over £30,000 the contractors' own terms and Conditions must not be accepted without consulting the Legal Division.

41. SIGNING OF CONTRACTS

41.1 Contracts must be signed as follows:

VALUE	SIGNATURE
Up to £30,000	Any member of staff authorised under the school's Scheme of Delegation
£30,000 to £75,000	Headteacher
Above £75,000 (see 41.3 below)	Headteacher and confirmed at a meeting of the governing body.

41.2 The member of staff responsible for securing the signature in the contract must ensure that the person signing for the school has the authority to do so.

41.3 All contracts over £75,000 and submitted to the governing body must be accompanied by;

- ◆ a declaration from the headteacher or bursar/finance officer certifying that there is sufficient funding for the contract in the school's budget and that all necessary approvals have been obtained

42. SEALING OF CONTRACTS

42.1 Where contracts are to be completed by each party adding their formal seal they must be submitted to the Council's Legal Division for sealing together with a form signed by the headteacher certifying that there is sufficient funding for the contract in the school's budget and that all necessary internal consents and approvals have been obtained.

42.2 Contracts under seal must be signed by any two of the following;

- ◆ Director of Corporate and Adult Services
- ◆ The Chief Legal Officer
- ◆ Principal Solicitors
- ◆ Project Lawyer

SECTION 12 - CONTRACT REGISTERS

43. SCHOOL RECORDS

School Contracts Record

43.1 Governors must ensure there is a register of all contracts over £30,000 entered into by the school which in addition to the details specified in 43.2 must include;

- ◆ the duration of the contract
- ◆ whether it has been signed by a school's Authorised Officer
- ◆ who signed on behalf of the school and when or alternatively the date it was submitted to the Legal Division for signing and sealing

43.2 The details under 43.1 must include;

- ◆ the date of the contract
- ◆ the name of the contractor/supplier/provider
- ◆ brief details of the nature of the contract
- ◆ the value of the contract
- ◆ the duration of the contract

44. CONTRACT FILE RECORDS

44.1 Where the Total Value is less than £30,000, the following records must

be kept on the Contract File:

- ◆ invitation to quote/Tender
- ◆ any quotations/Tenders received
- ◆ a record of any waiver, exemption from these Rules and the reasons for it
- ◆ if the lowest price is not accepted the reason why
- ◆ records of written communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

44.2 Where the Total Value exceeds £30,000 the Approved Procuring Officer must keep on the Contract File:

- ◆ any waiver under *Rule 6* together with the reasons for it the advert

(See Rule 20)

- ◆ the Award Criteria applied
- ◆ Tender documents sent to and received from Tenderers
- ◆ how the shortlist of Tenderers was drawn up
- ◆ any details of soft market testing

(See Rule 18)

- ◆ details of post-Tender negotiation (to include minutes of meetings)

(See Rule 32)

- ◆ evaluation documentation

(See Rule 38)

- ◆ notification to Tenderers
- ◆ signed contract

45. RETENTION OF CONTRACTS AND TENDERS

Records required by Rule 44 must be kept for six years after the end of the contract. However, written documents which relate to unsuccessful Tenderers may be destroyed after 12 months from award of contract, provided there is no dispute about the award.

SECTION 13 - LENGTH OF CONTRACTS AND EXTENSIONS

46. DURATION OF CONTRACTS

No contract can be for longer than 5 years (including options to extend) unless they are:-

- ◆ tied to the completion of a specific job or
- ◆ tied to the supply contracts to a fixed quantity of goods
- ◆ express Cabinet approval has been given for a longer period.

47. CONTRACT EXTENSIONS

Exercising Options to Extend

47.1 Where a contract has been advertised with an option to extend beyond the original contract period and the contract includes such an option it may only be exercised if;

- ◆ the Approved Procuring Officer is satisfied that such an extension is in the best interests of the school in the light of the contractor's performance
and
- ◆ the extension is for no longer than two years in total
and
- ◆ there is sufficient budget provision

47.2 Where the conditions in Rule 47.1 are not met the written consent of the Head of Procurement must be given before an option to extend is exercised.

No Option to Extend

47.3 Contracts other than those above EU Thresholds which contain no option to extend in the original contract may be extended:-

47.3.1 By up to six months by the Corporate Director for Children and Young People in consultation with the Procurement Unit, if:-

- ◆ it will cost less than £75,000
- ◆ a new procurement process will or has been started

47.3.2 By Cabinet if it will be for longer than 6 months or cost more than £75,000.

PROVIDED that there is no requirement to get approval to extensions which a Contractor is entitled to under the terms of the contract, (e.g. for bad weather under a construction contract).

47.4 Contracts above the E.U. Threshold which contain no option to extend in the original notice and contracts can only be extended with the consent of the Chief Legal Officer.

48. FOLLOW ON CONSTRUCTION CONTRACTS

48.1 Where a construction contract has been awarded following a competitive Tendering exercise and it is proposed, within 12 months of that award, to let a further contract for work of a similar size and nature, then a price for that further work may be negotiated with the original contractor and the further contract awarded to it by the relevant Approved Procuring Officer without another competitive Tendering exercise provided the Contractor's performance on the current contract is satisfactory.

48.2 The procedure under 48.1 can only be used once before competitive Tenders are again required.

SECTION 14 - SPECIAL CASES

49. CONSULTANTS

49.1 The appointment of consultants should follow all the other Rules but in addition the following requirements in Rule 49 also apply.

Contracts

49.2 Consultants for contracts over £5,000 and below £30,000 must, if a formal contract is not being used, be appointed by an exchange of a formal letter of appointment which as a minimum must cover the matters specified in Appendix 8.

49.3 For consultancy contracts over £30,000 a formal contract must be entered into which must either be;

- ◆ based on the Council's Standard Consultancy Contract (**LINK**)
- or
- ◆ follow a Standard Form of Contract
- or
- ◆ be approved by the Chief Legal Officer

50. INFORMATION TECHNOLOGY

50.1 The procurement of information technology should, subject to Rule 50.3 follow all the other Rules but in addition the following requirements in Rule 50 are additional.

50.2 The purchase of any computer hardware or software (excluding standard desktop items), whatever the value, which is to be linked to the Council's Network must have the prior written approval of the Council's Head of Strategic Infrastructure.

50.3 Any extension or additional modules to software may be procured without a Tendering process if:-

- ◆ the original system was procured through a full Tendering exercise
- ◆ the contracts for the system and any support and maintenance contracts are still in term
- ◆ the cost of the additional modules does not exceed 25% of the original purchase price
- ◆ the total cumulative price does not exceed the OJEU threshold

50.4 In procuring computer hardware or software, schools are encouraged to follow any advice on technical standards issued by the Council.

50.5 Where ICT provision in schools is undertaken through corporately approved outsourced contracts, guidance on ICT procurement will be issued to the relevant schools.

51. OUTSOURCING AND TRANSFERRING SERVICE CONTRACTS (TUPE)

Where the proposed contract is outsourcing work currently done “in House” or may involve the transfer of a service contract from one contractor to another the Approved Procuring Officer must as soon as possible consult the Chief Legal Officer regarding TUPE implications and in particular to the need to;

- ◆ compile and send out with the Invitation to Tender detailed information about the current workforce (Workforce Information)
- ◆ include specific reference to the possible TUPE transfer in the Invitation to Tender
- ◆ include TUPE clauses in the contract conditions

52. PROVIDING WORKS/SERVICES TO OTHER ORGANISATIONS

Where it is proposed to provide services or do works for other organisations or schools then the prior consent of the governors is required for contracts over £5000.

53. FINANCE OPERATING LEASES

No operating/finance lease including those for equipment and vehicles may be entered into without the prior written consent of the Director of Resources. This should be sought through the Head of Children and Young People's Finance. Under the Scheme for Funding Schools, governing bodies of schools may borrow money from sources external to the Council only with the written permission of the Secretary of State for Children, Schools and Families

SECTION 15 – AVOIDANCE OF CORRUPTION

54. CONFLICTS OF INTEREST

Conflicts of interest can lead to allegations of corruption. Therefore when a member of staff or governor is directly involved in the award or management of a contract to a particular organisation he/she must, whenever possible avoid any personal dealings with that organisation. Where that is not possible the member of staff or governor must act in accordance with Rule 55. Staff and governors should complete the register of pecuniary interests as required by section 2.16 of the Scheme for Funding Schools.

55. DECLARATIONS OF INTEREST BY MEMBERS OF STAFF AND GOVERNORS

- 55.1 Any member of staff or governor who has a material interest, financial or otherwise, which may affect the Contract process at any stage must immediately he/she becomes aware of it declare it in writing to their headteacher or Chair of Governors and take no further part in the procurement process unless the Chief Legal Officer gives his written approval to the member of staff's or governor's continued involvement in the procurement exercise.
- 55.2 Each governing body must maintain a register of Interests, declared by members of staff or governors under 55.1 which must include;

- ◆ the name of the member of staff or governor
- ◆ the nature of the declaration

56. GIFTS AND REWARDS

No member of staff or governor must accept any gift, fee or other material reward from any organisation in return for giving them more favourable treatment in a procurement exercise.

57. FAILURE TO COMPLY

A failure to comply with Rules 54, 55 or 56 could be a criminal offence as well as being a disciplinary matter.

SECTION 16 - VARIATIONS TO THE RULES

58.1 The Chief Legal Officer, after consulting with the Head of Procurement has power to make a minor amendment to these Rules but must subsequently report them to the Audit and Accounts Committee.

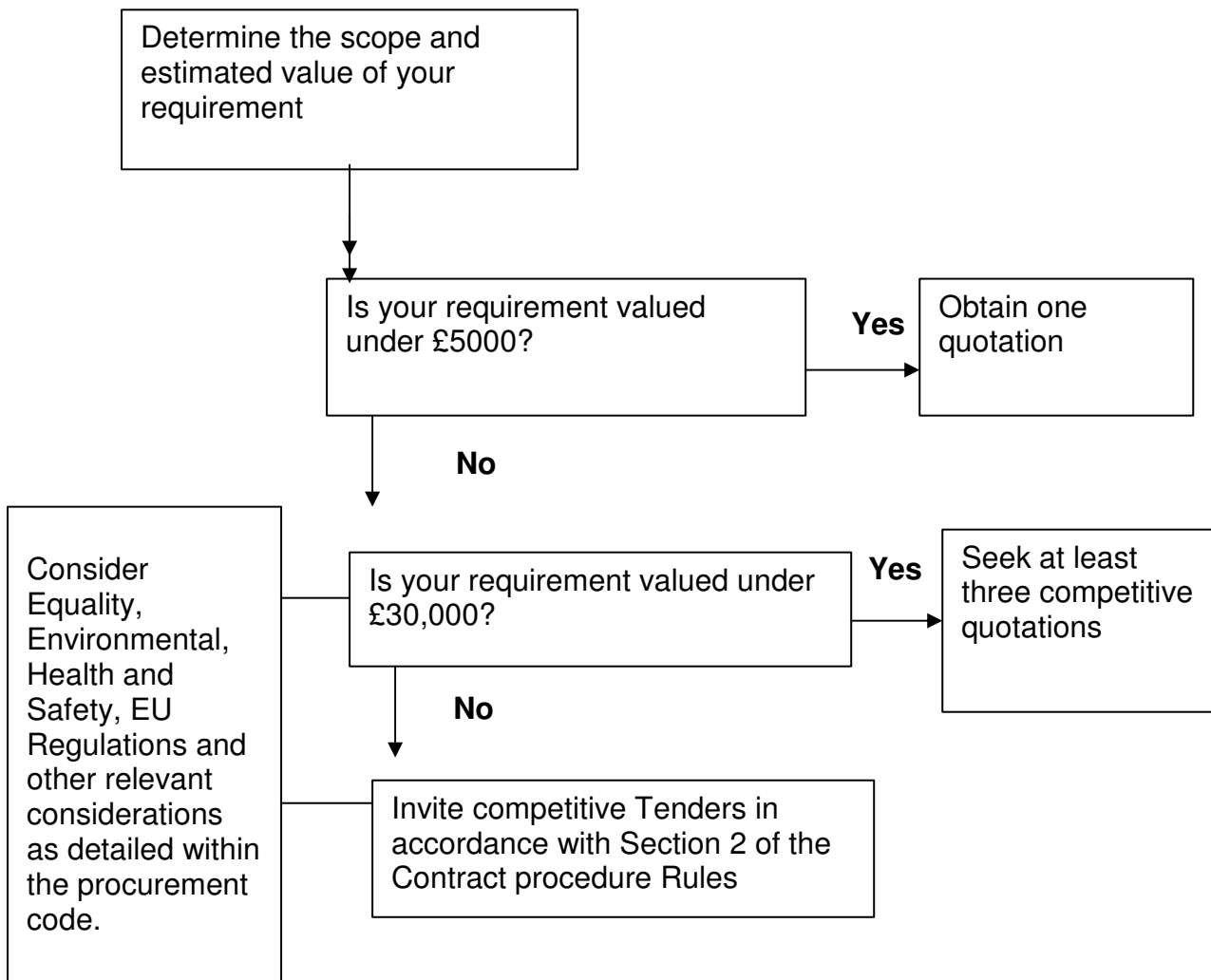
58.2 Any significant amendment to these Rules must be approved by full Council but only after consultation with the Audit and Accounts Committee and Schools Forum.

58.3 Anyone with suggested amendments to the Rules should contact the Chief Legal Officer.

APPENDIX 1

FLOW CHART

Deciding How to Proceed Flowchart



APPENDIX 2

DEFINITIONS AND INTERPRETATION

Agent	A person or organisation acting on behalf of the school or on behalf of another organisation.
Approved List	A list drawn up in accordance with Rule 14
Approved Procuring Officer	A member of staff who is authorised under the relevant school Scheme of delegation to procure goods, work or services of £5,000 or over.
Audit & Accounts Committee	The Council's Audit and Accounts Committee or any other Committee designated to take on its responsibilities for overseeing the application of the Contract Procedure Rules.
Award Criteria	The criteria by which the successful Quotation or Tender is to be selected (see further Rule 21).
Award Procedure	The procedure for awarding a contract as specified in Rule 21.
Cabinet	The Council's cabinet as defined in the Council's Constitution.

Chief Legal Officer	The Chief Legal Officer of the Council or in his or her absence a Principal Solicitor.
Code of Conduct	The code regulating conduct of Council Officers
Competitive Dialogue	One of the procedures available under the E.C. Procurement Regulations for selecting a Contractor but which can only be used in limited circumstances (see Rule 19.4).
Council's General Terms and Conditions	The Council's standard terms and conditions for ordering goods, services or works.
Consultant	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the school has no ready access to employees with the skills, experience or capacity to undertake the work.
Contract File	A file on which all relevant matters relating to a contract are kept.

Contract Register	A register of all contracts of £30,000 or over (see Rule 10.2).
Contractor	An organisation which is bidding for or who has been awarded a school contract and includes an individual, a partnership, a firm, a limited company or a charity.
Corporate Contract	A contract let by the Council's Procurement Unit and to support the Council's aim of achieving Value for Money (see Rule 13).
Corporate Head of ICT	The Corporate Head of ICT in the Resources Department or any other person authorised to carry out the functions of that post by the Director of Resources.
Corporate Questionnaire	The standard questionnaire used by the Council to vet organisations interested in tendering for Council contracts (see rule 14.7).
Departmental Procurement Adviser	The officer appointed by the Children & Young People's Department to be its lead procurement officer
Scheme Of Delegation	A written scheme for each school which identifies which members of staff are authorised to

procure goods, works or services and the extent of their authority.

Directors of Corporate and Adult Services	The Council's Director of Corporate or Adult services or such other officer delegated by him/her to carry out the functions allocated to that post by these Rules.
Director of Resources	The Council's Director of Resources or such other officer as may be designated chief finance officer by the Council as being responsible for the Council's finances or any other officer delegated by him/her to carry out the functions allocated to that post by these Rules.
EU Procedure	The procedure required by the EU where the Total Value exceeds the EU Threshold (See section 5).
EU Threshold	The contract value at which the EU public procurement Regulations apply (see Rule 16.3).
EU Procurement Regulations	Public Contract Regulations 2006.

Framework Agreement	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
Head of Procurement	Head of the Procurement Unit or any other officer in the Procurement Unit delegated to carry out the functions of that post.
Head of Strategic Infrastructure	The Head of Strategic Infrastructure in the Resources Department or any other person authorised to carry out the functions of that post by the Director of Resources.
Invitation to Tender	An Invitation to Tender in the form required by these Rules (See Rule 25).
Legal Division	The Council division headed by the Chief Legal Officer.
Most Economically Advantageous	The criteria for selecting a contractor other than on price alone being equivalent to “best value for money” (<i>see Rule 21.3</i>).

Negotiated Procedure	A procedure for contracts under the E.C. Procurement Regulations but which can only be used in limited circumstances (see Rule 19.3).
Non Commercial Matter	A matter listed in Appendix 4 which by law cannot be taken into account in contract (see Rule 21.5).
Non Priority Service	A category of service not required to be tendered in full compliance with the E.C. Procurement Regulations sometimes known as Schedule B or residual services
OJEU	The Official Journal of the European Union or any replacement.
“Open Procedure”	A one stage procedure under the E.C. Procurement Regulations for selecting a contractor (see Rule 19.1)
Post Tender Negotiations	Discussions with a tenderer after the submission of its tender (see Rule 32).
Preferred Tender	The tenderer who has been provisionally identified as the successful contractor (see Rule 38.3).
Pre-Qualification	A questionnaire used to select organisations to

Questionnaire

invite to tender.

Pre-Tender Enquiries Enquiries to help draw up a Contract Specification (see Rule 24.7).

Priority Services Those services required to be tendered in full compliance with the EU Procurement Regulations as defined by those Regulations sometimes called Schedule A Services.

Procurement Code The Council's approved procurement code produced by the Procurement Unit which gives advice on how to apply these Rules.

Procurement Strategy The document setting out the Council's approach to procurement and key priorities for the next few years.

Procurement Unit The Council's central procurement unit charged with providing strategic direction and advice to secure value for money in the Council's procurement activities.

Purchasing Guide	The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these contract procedure rules.
Quote	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Restricted Procedure	A two stage procedure under the E.C. Procurement Regulations for selecting a successful contractor (see Rule 19.2).
Scheme for Funding Schools	The legal basis of the financial relationship between schools and the local authority.
Shortlisting	The process of selecting Tenderers who are to be invited to quote or bid or to proceed to final evaluation.
Source Derbyshire	The web portal for advertising Council contracts.
Soft Market Testing	The process of seeking views about the nature, level, standard or packing of a contract before inviting tenders (see Rule 18.1).
Standard Form Contract	A standard form contract issued by a recognised

professional body such as the RIBA or ICE.

“Standstill Period” The 10 day period before which a contract awarded under E.U. Procedure can be awarded (see Rule 38.5).

Tender A tenderer's proposal submitted in response to an Invitation to Tender.

Tenderer An organisation who submits a tender to the Council or school.

Tender Receipt Officer A member of staff designated as being responsible for the receipt, custody, opening and recording of tenders/quotes (see Rule 28).

Total Value The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:-

(a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period

(b) where the purchase involves recurrent transactions for the same type of item, by

aggregating the value of those transactions in the coming 12 months.

(c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48.

(d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result

(e) for Nominated Suppliers and Sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the Nominated Supplier or Sub-contractor.

TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006.
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Value for Money	Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.
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Waiver

A waiver from a requirement to comply with these Rules (See Rule 6).

APPENDIX 3

OPERATION OF APPROVED LISTS

- ◆ Where schools receive approval to use an approved list, a minimum of four organisations will be selected from the list as each call off requirement is identified.
- ◆ Lists should be strictly rotated for selection or where an alternative methodology for the selection of bidders has been approved, operated in accordance with that.
- ◆ Each organisation will be asked if they are able to provide a quote/Tender before any documentation is issued.
- ◆ If any of the organisations selected cannot provide a quote then another organisation will be selected to replace that company.
- ◆ Quotes/Tender documents will be issued and returned in keeping with the general requirements of these Rules.
- ◆ Quotes and Tenders received will be managed in accordance with these Rules.

APPENDIX 4

NON COMMERCIAL MATTERS

- | | |
|----------------------------------|--|
| Non-commercial
Considerations | <ul style="list-style-type: none">(a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').
(b) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.
(c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy. |
|----------------------------------|--|

- (d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').
- (e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.
- (f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.
- (g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.
- (h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.

Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply.

APPENDIX 5

STANDARD CONTRACT CONDITIONS

Every Contract over £30,000 must also state clearly state as a minimum:

- ◆ that the Contractor may not assign or sub- contract without prior written consent
- ◆ indemnity and insurance requirements
- ◆ health and safety requirements (where relevant)
- ◆ data protection requirements, (if relevant)
- ◆ Freedom of Information Act requirements
- ◆ where Agents are used to let contracts, that Agents must comply with these rules
- ◆ a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.
- ◆ termination where evidence of bribery or corruption
- ◆ compliance with legislative requirements (e.g. Data Protection).

APPENDIX 6

Inclusion in the school's approved budget can be demonstrated by:

- ◆ a scheme cost separately identified in the initially approved annual budget plan
- ◆ for revenue schemes, a budget heading against which only the contract cost is charged or if this does not exist
- ◆ a budget plan showing commitments against a total budget for the budget heading, to indicate that there is sufficient funding remaining
- ◆ Governors' approvals for virements or, use of balances demonstrating specific earmarked funding to fund the contract cost

APPENDIX 7

PROCEDURES FOR THE RECEIPT, OPENING AND RECORDING OF TENDERS

Receipt

1. On receipt a Tender envelope must be marked with the date and time of receipt and be signed by the receiving member of staff. The Tender envelope must remain in the custody of a Tender Receipt Officer until they are opened in accordance with this appendix.
2. No Tender received after the deadline for receipt must be considered unless it can be proved that the Tender was delayed within the school through no fault of the Tenderer and arrived before the other Tenders had been opened.
3. The reason for rejecting any Tender envelope, for example it is late, must be recorded in a register by a Tender Receipt Officer.

Opening Tender

4. Tenders other than late Tenders will be opened:
 - ◆ after the deadline for Tender submissions
 - ◆ at the same time and place
 - ◆ in the presence of a Tender Receipt Officer and a member of staff involved in inviting the Tenders.

5. The Tender Receipt Officer must at the time of opening Tenders record the following details:

- ◆ the date and time
- ◆ the name of each Tenderer
- ◆ the amount of each Tender

and this record must be signed by all persons present at the Tender opening. The Tender Officer must sign after the last Tenderer's name to prevent any addition to the record.

6. The Tender Receipt Officer and any other person present at the opening of Tenders must also initial the Tender form page and any other page of the Tender on which the Tenderer has entered a final price. Tenders received through the e-Tendering system will not require any form of signature.

7. All Tenders received and opened will be retained by the school. Unsuccessful Tenders will be kept for one year after opening. The successful Tender will be kept for the period specified in Rule 45.

8. A Tender Receipt Officer must consult and follow the advice of the Chief Legal Officer if in any doubt as to whether to consider a Tender for any reason, including its late submission.

APPENDIX 8

CONSULTANCY AGREEMENTS: MINIMUM REQUIREMENTS

1. Name of Project
2. Description of Service (ideally attach brief)
3. Timetable
4. Schedule of Payments related to Timetable and other project documents.
5. Expenses Entitlement
6. Copyright in Report (if relevant)
7. Indemnity and Professional Indemnity Insurance Cover
8. Identify Consultants' Project Team
9. Media Relations and Publications (where relevant)
10. Liaison Requirements
11. Conflict of Interests
12. Freedom of Information
13. Presentation of Project Results (if relevant)