



DERBY CITY COUNCIL

# CONTRACT PROCEDURE RULES

If you have any queries or questions regarding procurement please contact the Head of Procurement ([procurement@derby.gov.uk](mailto:procurement@derby.gov.uk) or call 01332 640768).

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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 discretionary. 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 Officers undertaking procurements for goods, services or works shall comply with these Rules complete the procurement e-learning modules and have regard to the procurement guidance available on iDerby. In case of doubt, advice must be sought from the Procurement Service before proceeding.  
(See Rule 8.3)

### **2. GUIDANCE**

- 2.1 Further information on procurement generally is on the iDerby Procurement pages.
- 2.2 In addition advice on specific procurement issues and how to apply the Rules can be obtained by contacting the Procurement Service or the Monitoring Officer.
- 2.3 A flow chart has also been included at *Appendix 1* to help identify how to proceed initially.

### **3. PURPOSE**

The purpose of the Rules is to:

- ◆ achieve 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);
- ◆ be consistent with the highest standards of integrity;
- ◆ ensure fairness in allocating public contracts;
- ◆ comply with all legal requirements;
- ◆ support the Council in complying with the principles of the National Procurement Strategy for Local Government; and
- ◆ 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, including information technology (*see Rule 45*);
- ◆ purchasing of any services, including consultancy services (*see Rule 44*)
- ◆ hiring, renting or leasing of any goods or equipment (*see Rule 48*);
- ◆ ordering the carrying out of building or engineering works (*see Rule 50*)
- ◆ purchasing any goods or services using external funding (*see Rule 49*).

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 Council's Corporate Contracts. Academies are not

covered by the Rules. All publicly funded schools are subject to EU and UK procurement legislation.

*(see Rule 12)*

- 4.3 **Partnership Arrangements:** These Rules will apply where the Council is part of a partnership (e.g. Derby Community Safety Partnership) and it is the lead or accountable body.

## 5. EXEMPTIONS

5.1 The Rules do **NOT** apply to:

- ◆ contracts of employment with individual employees;
- ◆ land transactions (sales, purchases, leases, licences, easements etc. although certain development agreements are covered);
- ◆ performing artists contracts;
- ◆ 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 specified contractor under the terms of a Private Finance Initiative (PFI) contract, where the competition requirement has already been satisfied;
- ◆ giving of grant funding *(but contracts with voluntary organisations for the supply of services, goods and works are covered by the Rules)*;
- ◆ Out of area Authority placements and Public Health services provided that those placements are established in line with the out of area Authority's rules.

## 6. INTERPRETATION

6.1 The Monitoring 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

### 7. COMPETITION REQUIREMENTS

7.1 The nature of the procurement process to be undertaken will depend on the estimated total value of the contract.

*(see Rule 16.1)*

7.2 Where the estimated total value of the proposed contract is within the values in the first column the award procedure in the second column must be followed, unless an alternative method to tendering is chosen *(see Section 4 – Alternatives To Tendering)* or a waiver is obtained *(see Rule 56)*.

<b>TOTAL VALUE</b>	<b>AWARD PROCEDURE</b>
Below £10,000	Must use existing relevant Corporate Contract if there is one and if not get at least one quote and then place an official order or use a Purchasing (VISA) Card. See Purchasing Card Procedures on iDerby.  It is good practice to get three Quotes and include at least one local supplier if possible.
From £10,000 up to £100,000	Must, before placing an order, get at least three written Quotes* using the procurement portal. A standard form quotation is available on iDerby. At least one quotation should be requested from a local supplier where possible. The

	<p>Procurement Service can advise on local suppliers.</p> <p>* Directors may waive this requirement but must inform the Head of Procurement in writing of their reasons. (see Rule 56.14)</p>
From £100,000 up to the EU threshold	<p>Must conduct a tender process by publishing a public notice inviting tenders (“Open Procedure”) (see Rule 0). All processes must be carried out using the procurement portal <a href="https://www.eastmidstenders.org">https://www.eastmidstenders.org</a>.</p> <p>The Procurement Service must be involved in the process and appropriate advice on process and tender content must be obtained.</p>
Above EU Threshold (See <i>Rule 15</i> )	<p>Must conduct a tender process in accordance with the Public Contract Regulations 2015. The Procurement Service must be involved in the process and advice sought.</p>

## **SECTION 3 – OFFICERS', DIRECTORS' AND AGENTS' ROLES AND RESPONSIBILITIES**

### **8. OFFICERS**

- 8.1 Each Directorate's Scheme of Delegation should identify those job roles which are required and authorised to procure goods, services or works of £10,000 or over. The Scheme of Delegation is a written scheme for each Department which identifies which officers are authorised to procure goods, works or services and the extent of their authority.
- 8.2 Budget Holders and Managers of post holders in identified job roles should ensure that the post holder completes the procurement e-learning modules, follows procurement guidance available on iDerby or seeks advice/guidance from the Procurement Service prior to commencing procurement processes and that they are aware of their obligations under the Rules.
- 8.3 Post holders of roles identified in 8.1 should ensure they complete the procurement e-learning modules, refer to procurement guidance on iDerby and seek advice from the Procurement Service before commencing any element of a procurement process about which they are unsure.

### **9. DIRECTORS**

- 9.1 Directors, delegating as necessary to Heads of Service, must take all reasonable measures to ensure that procurements carried out by their department comply with the Rules.
- 9.2 Directors are responsible for ensuring that adequate training in the Rules, provided or approved by the Procurement Service, is given to:

- ◆ all holders of post identified under 8.1
- ◆ the Line Managers of holders of posts identified under 8.1
- ◆ Heads of Service
- ◆ other Officers with procurement responsibilities

### 9.3 Contract Register

9.3.1 A Contract Register of all contracts of £25,000 or over is set up and maintained by the Procurement Service. Directors are responsible for ensuring that officers undertaking procurements, following contract award, promptly forward the award details to the Procurement Service for inclusion on the Contract Register. (see Rule 37)

### 9.4 Quotes/Tender Receipt Officers and Register

9.4.1 Directors must ensure that quotes/tenders with a value estimated over £10,000 are managed electronically using the corporate procurement e-tendering system. The Procurement Service provides guidance and support in the use of this system.

### 9.5 Management Review

9.5.1 The Directorate Management Team should meet:

- ◆ Quarterly to consider contracts of £100,000 and over that need to be awarded through a tendering process or re-tendered and who will be responsible for them and the timetable for doing so. (see Rule 9.3)

- ◆ Quarterly to review its contracts listed on the Contract Register to ensure that effective contract management is undertaken. (see *Rule 9.3*)
- ◆ At least annually to review the designation of job roles required to undertake procurements for goods, services or works under the Departmental Scheme of Delegation. (see *Rule 8*)

## 9.6 Directorate Procurement Link

9.6.1 Each Director should appoint at least one officer, who must be at least Head of Service level, whose role will include:

- ◆ providing a primary link between the Directorate and the Head of Procurement and Procurement Service;
- ◆ raising significant procurement issues at the Department's Management Team meetings;
- ◆ ensuring that the details of job roles undertaking procurements in the Departmental Scheme of Delegation are kept up to date. (see *Rule 8.1*)

## 10. AGENTS/CONSULTANTS

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

## **SECTION 4 – ALTERNATIVES TO TENDERING**

### **11. ALTERNATIVE PROCUREMENT METHODS: GENERAL**

11.1 Before approaching the market for any goods, services or works an Officer undertaking a procurement (“Procuring Officer”) must first establish if there are any of the following he/she could use:

- ◆ a Corporate Contract
- ◆ a Framework Agreement.

### **12. CORPORATE CONTRACTS**

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

12.2 Details of these Corporate Contracts are can be found on the procurement section of iDerby.

12.3 Corporate Contracts are initially set up in accordance with these Rules, but once established goods or services included on a Corporate Contract can, subject to *Rule 12.4*, be ordered from the approved supplier, using the Council’s order system, without any need for further quotes or tenders.

12.4 Where there are multiple suppliers of particular goods on a Corporate Contract, the Officer ordering the particular goods must compare prices and choose the cheapest unless there are compelling reasons why not. In this instance the Procurement Service must have been consulted.

### **13. DYNAMIC PURCHASING SYSTEM**

13.1 A Dynamic Purchasing System (DPS) is a completely electronic system which can be established for the purchase of commonly used goods, services or works.

13.2 A DPS allows the addition of new providers during the life of the agreement subject to them meeting the selection criteria and complying with the specification

13.3 The Head of Procurement will review the appropriateness of the use of a DPS and must approve its use prior to commencement of the tender process. The Procurement Service will support the DPS tender process development in conjunction with the department requiring the system.

13.4 Agreements / Contract Order Forms may unless the DPS says differently, be awarded by using one or more of the following principles:

- ◆ by re-opening competition (further competition)

OR

- ◆ by value (lowest price)

13.5 The duration of Agreements / Contract Order Forms under a DPS must be limited to the maximum duration of the DPS, unless a longer period is agreed by the Head of Procurement and/ or Monitoring Officer.

13.6 Any re-opening of competition to award a contract under *Rule 13.4*:

13.6.1 Must be based on the criteria used to establish the DPS and therefore can include technical expertise and capacity if these were part of that original criteria.

13.6.2 Should have an award notice published on Contracts Finder and be recorded on the Contracts Register (Check with Procurement Unit for further advice)

13.7 The Head of Procurement will keep a record of all DPS approved under this Rule including those set up by other public bodies that are compliant and available to the Council to use.

#### **14. FRAMEWORK AGREEMENTS**

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

14.2 Before advertising the setting up of a new or using an existing Framework Agreement which is not approved in *Rule 14.10*, the Head of Procurement must be consulted.

14.3 Once the Head of Procurement's approval for a new Framework Agreement has been given, an advertisement for inclusion in the Framework must be placed on Source Derbyshire, Contracts Finder, and, if the relevant EU financial threshold will be exceeded, the Official Journal of the European Union (OJEU) as a minimum, and other publications agreed with or stipulated by the Head of Procurement.

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

14.5 The Head of Procurement should agree the use of a new Framework Agreement with the Directorate as the best procurement solution for the Council.

14.6 A Framework Agreement must not exceed four years (*see Rule 41.2*).

14.7 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 re-opening competition (further competition)

OR

◆ by value (lowest price)

14.8 Any re-opening of competition to award a contract under *Rule 14.7*:

14.8.1 must be based on the criteria used to establish the Framework Agreement and therefore can include technical expertise and capacity if these were part of that original criteria;

14.8.2 should have an award notice published on Contracts Finder and be recorded on the Contracts Register (check with the Procurement Service for further advice);

14.8.3 once awarded, constitutes a formal contract and will need to be signed by the authorised Officer(s) (*see Rule 35*), depending on the total value of the further competition.

14.9 The duration of individual contracts under a Framework must be limited to the maximum duration of the Framework, unless a longer period is agreed by the Head of Procurement and/ or Monitoring Officer.

14.10 Framework Agreements procured by other local authorities, public bodies or purchasing consortia, for example Crown Commercial Service (CCS), Eastern Shires Purchasing Organisation (ESPO), East Midlands Property Alliance / Scape, may be used if the Head of Procurement 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. A list of approved frameworks is available on iDerby.

14.11 The Head of Procurement will keep a record of all Framework Agreements approved under this Rule including those set up by other public bodies that are compliant and available to the Council to use.

## SECTION 5 – EU PROCUREMENT

### 15. REQUIREMENTS AND THRESHOLDS

15.1 The EU specifies financial thresholds, which determine how goods, services and works should be procured. Contracts for the supply of goods or services or works which are estimated to be over the EU financial thresholds must be Tendered in accordance with the Public Contract Regulations 2015 (PCR 2015) and the Procurement Service must be consulted and their advice taken on how to comply with PCR 2015.

*(see Rule 15.3)*

15.2 EU financial thresholds change every two years and are quoted in Euro. The sterling equivalent is recalculated on 31 December every other year.

15.3 The current EU financial thresholds can be found on iDerby.

15.4 The thresholds relate to the estimated total value of the contract net of VAT, not the annual value.

15.5 Where they apply, the PCR 2015 impose requirements on such matters as:

- ◆ Conduct of each stage of the procurement process;
- ◆ Preliminary market consultation, including consideration of the Public Services (Social Value) Act 2012 (*See Rule 17.2*);
- ◆ where the notices relating to advertising and awarding of tenders must be placed and their contents;

- ◆ minimum tender periods (specified shorter tender periods can be used if the process is managed electronically);
- ◆ selection and award criteria and procedures;
- ◆ reporting and documentation (*see Rule 38.2*).

## **SECTION 6 – STEPS PRIOR TO SEEKING QUOTATIONS OR INVITING TENDERS**

### **16. CONTRACT VALUE, FUNDING AND CABINET APPROVAL**

#### **16.1 Estimated Contract Value**

- 16.1.1 Before seeking quotes or tenders for any goods, works or services the Procuring Officer must estimate the total value of the contract. This estimate will determine what competition requirements apply under the Rules (*See Rule 7*).
- 16.1.2 A written record of the total value estimate must be sent to the Procurement Service for all contracts estimated to be over £10,000.
- 16.1.3 Contracts must not be artificially divided into two or more to reduce the total value and avoid the application of the requirements under these Rules but should be packaged to ensure value for money.
- 16.1.4 The total value or estimated total value (in money or equivalent value) for a contract is calculated as follows:
- ◆ 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;
  - ◆ where the purchase involves recurrent transactions for the same type of item: by aggregating the value of those transactions in the coming 12 months;
  - ◆ where the contract is for an uncertain duration: by multiplying the monthly payment by 48;

- ◆ for feasibility studies: the value of the scheme or contracts which may be awarded as a result;
- ◆ 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.

## 16.2 Funding

16.2.1 A 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 budget and a Procurement Approval/Use of Consultants Control Form has been completed and approved.

16.2.2 Inclusion of approved capital or revenue budgets can be demonstrated by any of the means listed in *APPENDIX 4*.

## 16.3 Cabinet Approval

16.3.1 Cabinet approval must be obtained before procuring any contract which has an estimated total value of £100,000 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.

## 17. PRELIMINARY MARKET CONSULTATIONS

### 17.1 Soft Market Testing

17.1.1 Prior to the issue of an invitation to tender or advert asking for expressions of interest the 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”.

17.1.2 When carrying out soft market testing the 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.

The Procurement Service provides advice on the conduct of soft marketing testing exercises.

## **17.2 The Public Services (Social Value) Act 2012**

17.2.1 For all contracts for services which exceed the EU Threshold, Procuring Officers must consider the various matters prescribed by the Public Services (Social Value) Act 2012. Cabinet Office guidance however, recommends where appropriate following the requirements of the 2012 Act for lower value services and goods and works contracts, although this is not compulsory.

17.2.2 Whilst staying within the PCR 2015, Officers must before the formal procurement process starts consider:

- ◆ how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area; and

- ◆ how, in conducting the process of procurement, the Council might act with the aim of securing that improvement.

17.2.3 The Public Services (Social Value) Act 2012 requires public sector agencies to consider how the service they are procuring could bring added economic, environmental and social benefits and to consider whether they should consult on these issues. It is not specified who should be consulted but Officers could include service user representatives, voluntary and community groups and suppliers of the services in order to be able to shape the service required to maximise social value.

17.2.4 Further guidance on consultation principles can be obtained at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Officers may wish to take account of those principles when deciding whether to consult and how to do it. The expectation is that consultations should be digital by default and carried out online if at all possible but Procuring Officers should consider what they are looking to procure and the best way of getting the views of potential users who may not be familiar with modern IT.

17.2.5 Evidence gathered should be retained in case the Council is required to provide it at the request of the Public Procurement Review Service. (see Rule 38.2)

## **18. CHOICE OF TENDERING PROCEDURE**

18.1 Where there is a requirement in the Rules for a contract to be tendered (See Rule 7) the following options are available under PCR 2015:

18.2 **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. Although this is our default process, this procedure is not recommended where a large response is anticipated and/or detailed assessment of the bids will be necessary.

**18.3 Restricted Procedure:** This is a two stage procedure where firstly the contract is advertised and anyone who expresses an interest must complete a Pre-Qualification Questionnaire (PQQ). These are then evaluated and a number of selected organisations will be shortlisted and provided with an Invitation to Tender (ITT).

18.3.1 The restricted procedure should not be used for procurements below the EU threshold as Pre-Qualifications Questionnaires are not permitted under the EU threshold (*See Rule 15*).

18.3.2 All procurement documents (PQQ and ITT) must be ready and available at the point of advertising the opportunity. (*See Rule 22 and 23*)

**18.4 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.

**18.5 Competitive Procedure with Negotiation/Competitive Dialogue:** These procedures are available where the Council is unable to define the financial, legal or technical elements of the project. They are really intended for complex procurement exercises, where significant negotiation with a number of interested parties is anticipated. It can only be used with the consent of the Head of Procurement.

**18.6 Innovation Partnership:** This procedure is available if the purchaser has a need for an innovative product, service or works that cannot be

met by purchasing products, services or works already on the market. It can only be used with the consent of the Head of Procurement.

**18.7 Light Touch Procedure:** This procedure is available when the services procured fall under specific EU Common Procurement Vocabulary codes, the general description for these services are:

- ◆ Health social and related services
- ◆ Administrative social, educational healthcare and cultural services
- ◆ Compulsory social security services
- ◆ Benefit services
- ◆ Other community, social and personal services
- ◆ Religious services
- ◆ Hotel and restaurant services
- ◆ Legal services (not litigation / advocacy which is exempt)
- ◆ Prison related services.

18.7.1 This procedure allows for more flexibility to the requirements governing procurements over the EU Threshold for social and other specific services (*see Rule 15.3*).

18.7.2 The Procurement Service must advise whether the service to be procured is eligible for this procedure and provide guidance on how to use it.

## **19. ADVERTISING CONTRACTS**

19.1 Where a contract's estimated total value is £100,000 or over, the contract has to be advertised in accordance with these Rules. It must be placed on Source Derbyshire and Contracts Finder. The use of Contracts Finder is mandated in PCR 2015. This can be done by completing the pro-forma on iDerby and sending it to the Procurement Service.

(*See Rule 7.2*)

19.2 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

### 19.3 EU Adverts

19.3.1 Any contract above the relevant EU financial threshold must be advertised in OJEU and in all cases the Procurement Service must manage this process.

*(See Rule 15)*

### 19.4 Open Procedure Advert

19.4.1 Under PCR 2015 all procurement documentation must be issued with the advertisement. This must include:

- ◆ a description of the scope of the contract and specification
- ◆ an ITT
- ◆ a statement of what interested parties have to do to submit a tender
- ◆ the closing date and time for tender submission
- ◆ the selection and award criteria
- ◆ the duration of the contract
- ◆ the quantity or value of goods, nature of services and extent of services. If in lots, the detail for each lot.

(see Rule 18.2)

## **19.5 Restricted Procedure Advert**

19.5.1 Any advertisement under the Restricted Procedure must contain the information required for the open procedure and in addition:

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

(See Rule 18.3, 19.4.1 and 22)

## **19.6 Retention of Advert**

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

## **20. SELECTION AND AWARD CRITERIA**

20.1 Before placing an advert asking for tenders or issuing an ITT the Procuring Officer must define the selection and award criteria for the contract which is best suited to the procurement exercise and is designed to secure value for money.

### **20.2 Selection Criteria**

20.2.1 Selection (often referred to as pre-qualification stage) criteria involves an examination of the suitability and capability of the potential suppliers to perform the contract. Selection criteria include:

- ◆ eligibility for public contracts in regard to the grounds specified in regulation 57 of PCR 2015;
- ◆ economic and financial standing;
- ◆ suitability to pursue a professional ability;
- ◆ technical and professional ability.

### **20.3 Award Criteria**

20.3.1 PCR 2015 states that contracting authorities should base the award of public contracts on the basis of most economically advantageous tender assessed from the point of view of the contracting authority.

20.3.2 Processes with an estimated total contract value below EU Thresholds can base the award on lowest value, following consultation with the Procurement Service, if deemed appropriate.

### **20.4 Most Economically Advantageous Tender Criteria**

20.4.1 Under the most economically advantageous criteria, considerations other than price apply but they must be relevant and linked to the subject matter, such as:

- ◆ quality of goods
- ◆ service
- ◆ running costs
- ◆ technical merit
- ◆ safety
- ◆ after sales service
- ◆ technical assistance

- ◆ delivery date
- ◆ quantity
- ◆ aesthetic and functional characteristics.

20.4.2 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 potential tenderers in the ITT or before in the advertisement or scope document. Further guidance is provided on the procurement pages on iDerby.

20.4.3 The award criteria must not include any “*Non-Commercial Matters*”. These are listed in *Appendix 2*.

<b>SECTION 7 - PRE QUALIFICATION QUESTIONNAIRE: SELECTION OF TENDERERS</b>
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## **21. SELECTION OF TENDERERS**

21.1 The Public Contracts Regulations 2015 set out clear rules on the use of Pre-Qualification Questionnaires (PQQ).

21.2 Under PCR 2015 the use of PQQ is controlled and Officers wishing to undertake a restricted process including a PQQ should contact the Procurement Service at the earliest opportunity. Failure to undertake the process correctly could render the procurement exercise invalid.

## **22. PRE – QUALIFICATION QUESTIONNAIRE**

22.1 Pre-Qualification Questionnaires must not be used for contracts with a value less than the EU financial threshold. This is designed to allow small and medium sized enterprises to win public sector business. For below EU threshold procurements only suitability assessment questions may be asked.

22.2 For above EU threshold procurements supplier selection questions may be used providing these are based on the Cabinet Office standardised selection questions or the industry standard PAS91 questions for construction projects.

22.3 The selection of tenderer(s) must be carried out by a panel consisting of at least two Officers one of whom must be the Procuring Officer.

22.4 A written record of the evaluation scoring, feedback, any moderation and correspondence against the stated selection criteria to determine the selected Tenderer(s) invited to tender must be kept on the Contract File by the Procuring Officer.

*(See Rule 31 and 38)*

## **SECTION 8 – TENDER DOCUMENTS**

### **23. SPECIFICATION**

23.1 The 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(s) who is directly involved in the delivery of the goods, service or the works.

23.2 The length and detail of the specification will vary depending on the size, complexity and nature of the proposed contract but it should be clear and include all the material details that the contractor will be required to comply with and deliver.

23.3 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.

23.4 The specification must not refer to a particular make or brand names unless it is identified as a permissible exemption under PCR 2015 and the Procurement Service have provided specific advice.

23.5 The specification must not include any requirement which unjustifiably discriminates against other EU member states.

23.6 Advice on drawing up a specification has been developed up by the Procurement Service and they can, if requested, give further advice on specific contracts.

### **23.7 Pre-Tender Enquiries Regarding the Specification**

23.7.1 The Public Contracts Regulations 2015 encourage pre-tender market engagement in order to ensure that specifications are as accurate as possible. The Procuring Officer, when preparing a complex specification, should 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 23.7.2*.

23.7.2 When making pre-tender enquiries, the Procuring Officer must:

- ◆ not draw up the specification wholly by reference to one specific contractor or if they do, that organisation must be excluded from the subsequent tender process.
- ◆ keep a written record of all enquiries, responses and related meetings on the contract file.
- ◆ consider the application of the Public Services (Social Value) Act and if so ensure meet the requirements in *17.2*.

## **24. INSTRUCTIONS TO TENDERERS**

24.1 All ITTs must include Instructions to Tenderers as well as:

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

24.2 All Instructions to Tenderers must include:

- ◆ the award criteria and, where applicable, the weightings applicable to each of those criteria;  
(*See Rule 20.3*)

- ◆ 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;
- ◆ 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;
- ◆ 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.

24.3 To assist Procuring Officers a pro-forma Instruction to Tenderers is available within the template documents on the procurement pages of iDerby. The Procurement Service can also give further advice.

## **25. CONTRACT CONDITIONS**

### **25.1 General Requirement**

25.1.1 The Council has a library of precedent forms of contract, which set out the terms and conditions on which the Council will enter into contracts. The specification for the goods, services or works

forms part of the contract. All Contracts, as laid out in our standard form of contract, irrespective of value, shall clearly specify as a minimum:

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

25.1.2 An official order must be placed for any contract irrespective of value prior to the commencement of any services, works or to formally purchase any goods.

## **25.2 Contracts from £10,000 up to £99,999**

25.2.1 For contracts from £10,000 up to £99,999 whenever possible the following must be used:

- ◆ the Council's official order form and
- ◆ the Council's standard form of quotation
- ◆ the Council's standard terms and conditions or
- ◆ standard form contracts issued by a professional body.

## **25.3 Contracts over £99,999**

25.3.1 For contracts over £99,999 Legal Services must approve the contract conditions unless:

- ◆ the Council's standard terms and conditions are being used;

OR

- ◆ standard form contracts issued by a professional body are being used;
- OR
- ◆ Legal Services have previously approved or drafted the conditions.

25.3.2 The contract conditions for contracts over £99,999 should include the provisions listed in *APPENDIX 3*.

25.3.3 No significant variation to the contract conditions sent out with ITTs can be agreed without the approval of Legal Services.  
*(See Rule 34 regarding contractor's own terms and conditions)*

<b>SECTION 9 – SUBMISSION, RECEIPT, CUSTODY AND OPENING OF TENDERS</b>
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**26. PERIOD FOR SUBMISSION OF TENDERS**

26.1 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. PCR 2015 lay down specific minimum time periods for contracts with a value in excess of EU financial thresholds.

**27. RECEIPT, CUSTODY AND OPENING OF TENDERS / QUOTES****27.1 Electronic Quotes/Tenders**

27.1.1 Quotes/tenders should, wherever possible, be issued and received electronically through the Council's e-tendering system.

27.1.2 For tenders above EU financial thresholds, tender communications must be managed electronically unless there are justified reasons. These reasons must be recorded and reported as per the requirements of Regulation 84(1) of the Public Contract Regulations 2015.

## **SECTION 10 - ALTERATION, CLARIFICATION AND EVALUATION OF TENDERS**

### **28. ALTERATION AND CLARIFICATION OF TENDERS**

28.1 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.

28.2 Should the Contract have been awarded 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.

### **29. ABNORMAL TENDER: CLARIFICATION**

29.1 If the Procuring Officer considers the lowest or most economically advantageous Tender to offer an unusually low price or excessive benefits ("abnormal") given the nature of the contract, the estimated contract value, and value for other tenders he/she must ask the tenderer to clarify in writing its tender or parts of it. The Officer must take such explanation into account in deciding whether to consider the abnormal Tender as part of the evaluation. PCR 2015 sets out grounds on which abnormal tenders can be excluded from procurement processes. Any explanations provided must be recorded and reported as per the requirements of Regulation 84(1) of the Public Contract Regulations 2015.

### **30. POST TENDER NEGOTIATIONS**

30.1 Post submission discussions or negotiations with tenderers should not occur under the Open or Restricted Procedures. In exceptional

circumstances some clarification may be permitted, but only with the consent of the Head of Procurement. Discussions with tenderers after submission of a tender and before the award of a contract may occur under the Negotiated, Competitive Procedure with Negotiation and Competitive Dialogue procedures.

*(See Rule 18)*

30.2 Where negotiations are permitted by the procurement procedure being followed:

- ◆ negotiations must be conducted by at least two Officers, one of whom must be a Senior Officer or Principal Officer grade or above;
- ◆ 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;
- ◆ negotiation meetings should be minuted;
- ◆ any change in specification or price arising from post tender negotiations must be recorded in writing and signed by the tenderer; and
- ◆ where post-Tender negotiation result in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-Tendered. *(See Rule 43)*

## **31. EVALUATION OF TENDERS**

31.1 Tenders must be evaluated in accordance with the stated award 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.

*(See Rule 20.3)*

31.2 Under the Open and Restricted procedures, interviews may be conducted with some or all of the Tenderers as part of the evaluation process but only to clarify matters relating to the award criteria or where part of the published award criteria is an interview/presentation evaluation.

*(See Rule 18)*

## **SECTION 11 – CONTRACT AWARD, FUNDING AND OTHER THAN LOWEST TENDERS**

### **32. AWARD PROCEDURE**

32.1 Contracts must be awarded in accordance with the stated award criteria.  
(See Rule 20.3)

#### **32.2 Acceptance of Tender Other Than the Most Economically Advantageous**

32.2.1 For contracts over £100,000 tenders must be evaluated and accepted on the basis of the “most economically advantageous” tender. The winning bidder will be determined by using the criteria and process communicated to bidders in the tender.

#### **32.3 EU Award Notice**

32.3.1 The award of all contracts over the EU financial thresholds must be advertised in OJEU through the Procurement Service within 30 days of the award of the contract or the conclusion of a Framework.

### **33. INFORMING TENDERERS OF CONTRACT AWARD**

#### **33.1 Contracts under EU Threshold**

33.1.1 Where a contract’s total value is over £100,000 but under the EU financial threshold the Procuring Officer must as soon as possible following the identification of the successful bidder, notify all tenderers simultaneously of the award of contract telling them the name of the successful tenderer and the price difference compared to the successful bid. The notification

should also include the reasons for the decision including '*the characteristics of the successful tender*' (including, where relevant, why the tenderer did not meet the technical specifications).

### 33.2 Contracts above the EU Thresholds

33.2.1 Once a preferred tenderer has been identified the Procuring Officer must as soon as reasonably possible notify all tenderers simultaneously of the intention to award the contract to the preferred tenderer.

33.2.2 The notification to unsuccessful tenderers must include:

- ◆ the Award Criteria applied;
- ◆ the tenderer's score;
- ◆ the name of the preferred tenderer(s);
- ◆ the preferred tenderer's score;
- ◆ the reasons for the decision including '*the characteristics and relative advantages of the successful tender*' (including, where relevant, why the tenderer did not meet the technical specifications);
- ◆ a precise statement of when the standstill period is expected to end and whether there are any factors which may impact on this, or alternatively the date before which the Council will not enter into the contract.

33.2.3 The notification to the preferred tenderer must include:

- ◆ the Award Criteria applied;
- ◆ the preferred tenderer's score;
- ◆ if applicable, the name of any other preferred tenderer(s);
- ◆ if applicable, the other preferred tenderer(s) score(s);

- ◆ the reasons for the decision including ‘*the characteristics of the successful tender*’ (including, where relevant, why the tenderer did not meet the technical specifications);
- ◆ a precise statement of when the standstill period is expected to end and whether there are any factors which may impact on this, or alternatively the date before which the Council will not enter into the contract.
- ◆ a statement to provide clarity that the notification does not constitute an award. Award of the contract will be further notified following the successful completion of the standstill period.

33.2.4 The Procurement Service must review all ‘standstill letters’ to ensure compliance with the PCR 2015 and will provide pro-forma letters to Procuring Officers.

33.2.5 The Procuring Officer notice under 33.2.1 to unsuccessful tenderers must provide them with a period of at least ten (10) days in which to challenge the decision before the contract is awarded to the preferred tenderer. The 10 day period is extended to 15 days if non electronic means of communication are used.

33.2.6 The ten day “standstill” period referred to in *Rule 33.2.5* 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

33.2.7 If the decision is challenged by an unsuccessful tenderer within the 10 day standstill period then the Procuring Officer must not award the contract but must instead immediately seek the advice of the Monitoring Officer or Head of Procurement.

## 34. CONTRACTOR'S OWN TERMS AND CONDITIONS

34.1 For contracts over £100,000 the contractors' own terms and Conditions must not be accepted without consulting Legal Services.

## 35. SIGNING OF CONTRACTS

35.1 Contracts must be signed as follows:

VALUE	SIGNATURE
Up to £10,000	Any officer authorised under the Departmental Scheme of Delegation
£10,000 to £100,000	Any <u>two</u> officers authorised under the Departmental Scheme of Delegation
Above £100,000 (See 35.4 below)	By any of the following:- <ul style="list-style-type: none"><li>◆ the Monitoring Officer and either the Head of Legal Services or one DCC Principal Lawyer with delegated approval by the Monitoring Officer;</li><li>◆ <u>OR Head of Legal Services and one DCC Principal Lawyer</u> with delegated approval by the Monitoring Officer</li></ul> OR <ul style="list-style-type: none"><li>◆ <u>two</u> DCC Principal Lawyers with delegated approval by the Monitoring Officer</li></ul>
For Agreements/Contract Order Forms awarded pursuant to a properly tendered process (Social Care and Education), for the purposes of assessing the value of an I Agreement, the cumulative value must be used and therefore a reasonable assessment of the number of years such arrangement is likely to be in place must be made in assessing value.	

Up to £10,000	Any officer authorised under the Departmental Scheme of Delegation
£10,000 to £100,000	By: <ul style="list-style-type: none"> <li>◆ a relevant Head of Service and</li> <li>◆ <u>one</u> officer authorised under the Departmental Scheme of Delegation.</li> </ul>
Above £100,000	By: <ul style="list-style-type: none"> <li>◆ a relevant Director and</li> <li>◆ one officer authorised under the Departmental Scheme of Delegation.</li> </ul>

35.2 Contracts should be signed prior to commencement of services, works or delivery of goods.

35.3 The Officer signing the contract for the Council must ensure that they have the authority to do so.

35.4 All contracts over £100,000 and submitted to Legal Services for signing or sealing must be accompanied by a completed signing/sealing request form.

## **36. SEALING OF CONTRACTS**

36.1 Where contracts are to be executed under seal they must be submitted to Business Support who will arrange for sealing by Legal Services. Documents submitted to Business Support for sealing must be accompanied by a completed signing/sealing form

Execution of documents under the Council's seal must be witnessed by any of the following:-

- ◆ the Monitoring Officer and either the Head of Legal Services or one DCC Principal Lawyer with delegated approval by the Monitoring Officer;  
OR
- ◆ Head of Legal Services and one DCC Principal Lawyer with delegated approval by the Monitoring Officer  
OR
- ◆ two DCC Principal Lawyers with delegated approval by the Monitoring Officer

## **SECTION 12 - CONTRACT REGISTERS, RECORD KEEPING AND CONTRACT MANAGEMENT**

### **37. CENTRAL RECORDS**

#### **37.1 Departmental Contracts Record**

37.1.1 Directors must ensure that details of all contracts over £25,000 entered into by the Department are passed to the Procurement Service for inclusion in the Contracts Register, which in addition to the details specified in 37.1.3 must include:

- ◆ whether it has been signed by a Department's Authorised Officer or submitted to the Legal Department for signing/execution as a deed; and
- ◆ who signed on behalf of the Department and when or alternatively the date it was submitted to the Legal Department for signing/execution as a deed.

37.1.2 The Head of Procurement keeps a record of all contracts over £25,000 which is available on iDerby

37.1.3 The details under 37.1.1 and 37.1.2 must include:

- ◆ the name of the contractor/supplier/provider
- ◆ status of the contractor/supplier/provider (Small, Medium Enterprise, Voluntary and Community (SME) etc.)
- ◆ brief details of the nature of the contract
- ◆ the annual value of the contract
- ◆ amount of non-recoverable VAT
- ◆ the total value of the contract
- ◆ the duration of the contract and options for extension (if any)
- ◆ the process used to award the contract

- ◆ any contract notice period
- ◆ start and end date of the contract

## **38. CONTRACT FILE RECORDS**

38.1 Where the total value is less than £25,000, the Procuring Officer must set up and maintain a Contract File containing the following records:

- ◆ invitation to quote/Tender
- ◆ any quotations/Tenders received
- ◆ a record of any waiver/exemption from these Rules and the reasons for it (*See Rule 56*)
- ◆ records of written/electronic communications with the successful contractor..

38.2 Where the total value exceeds £25,000 the Procuring Officer must provide the Procurement Service the following records to keep on their Contract File:

- ◆ evidence of approval (e.g. Procurement Approval/Use of Consultants Control Form or Cabinet approval)
- ◆ the advertisement (*See Rule 19*)
- ◆ the Award Criteria applied
- ◆ Tender documents sent to and received from tenderers
- ◆ how the shortlist of tenderers was drawn up
- ◆ names of selected and rejected candidates or tenderers and reasons for their selection or rejection
- ◆ if applicable, reasons for the rejections of tenders found to be abnormally low
- ◆ if applicable, conflicts of interest detected and subsequent measures taken
- ◆ if applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders

- ◆ if applicable, the reasons why the Council decided not to award the contract
- ◆ any details of soft market testing and/or Public Services (Social Value) Act 2012 consultation evidence (*See Rules 17 and 17.2*)
- ◆ details of any post-tender negotiation (to include minutes of meetings) (*See Rule 30*)
- ◆ selection and award evaluation documentation (to include individual panel members scores and comments, moderated scores and feedback)
- ◆ notifications to tenderers (*See Rule 33*)
- ◆ successful and unsuccessful feedback letters
- ◆ letter to formally award the contract
- ◆ signed contract
- ◆ contract award notice
- ◆ any waiver under *Rule 56* together with the reasons for it
- ◆ any details of contract variations made during its lifetime

### **39. RETENTION OF CONTRACTS AND TENDERS**

39.1 Records required by *Rule 38* must be kept for six years after the end of the contract. An accessible electronic copy stored on the Council's systems for the stated period will satisfy this requirement.

39.2 Procuring Officers must send all original signed contracts to the Procurement Service.

### **40. CONTRACT MANAGEMENT**

40.1 Every contract awarded by the Council should have a named Contract Manager, responsible for the day to day management of the contract. The Contract Manager's responsibilities include:

- 40.1.1 scheduling regular meetings with the contractor, alongside annual review meetings to include performance review and financial monitoring;

- 40.1.2 obtaining, recording and monitoring, management information and KPI data, to assist discussions regarding performance and finance monitoring;
- 40.1.3 undertaking financial monitoring to ensure expenditure is in line with that expected under the contract. The Contract Manager must confirm to the Procurement Service, on a six monthly basis, that expenditure is (or is not) in line with the contract;
- 40.1.4 seeking advice from the Procurement Service, before amendments are made to the contract or framework, for example to vary the scope and /or price.
- 40.1.5 should the contractor fail to meet requirements, notifying the contractor of the issues, giving reasonable time for these to be addressed and rectified. If a contractor continually fails to meet the contract requirements, the process for managing non-compliance detailed within the terms and conditions of the contract must be followed.

## **SECTION 13 - LENGTH OF CONTRACTS, EXTENSIONS AND MODIFICATIONS**

### **41. DURATION OF CONTRACTS**

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

- ◆ the contract involves delivery of a project which is programmed for longer than 5 years; or
- ◆ the contract is for the supply of a fixed quantity of goods which will take longer than 5 years to supply; or
- ◆ express Cabinet approval has been given for a longer period or
- ◆ the contract is for software maintenance tied to a software licence.

41.2 Frameworks must be for a maximum period of 4 years (including options to extend) (*See Rule 14.6*).

### **42. CONTRACT EXTENSIONS**

#### **42.1 Exercising Options to Extend**

42.1.1 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 Procuring Officer or Contract Manager 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

AND

- ◆ the total contract value advertised has not been exceeded and would be unlikely to be exceeded during the extension period.

42.1.2 Where the conditions in *Rule 42.1.1* are not met the written consent of the Head of Procurement must be given before an option to extend is exercised.

## 42.2 No Option to Extend

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

42.2.1.1 By up to six months with approval from the relevant Director in consultation with the Procurement Service, if:

- ◆ it will cost less than £100,000;
- ◆ a new procurement process will or has been started;
- ◆ there are no material changes to the contract (*See Rule 43*); and
- ◆ the value of the extension does not take the contract value over the EU financial threshold.

42.2.1.2 By the relevant Cabinet Member if it will be for longer than 6 months or cost more than £100,000 (up to a maximum of £250,000) or by Cabinet if it will be for longer than 6 month or cost more than £250,000, if:

- ◆ a new procurement process will or has been started;
- ◆ there are no material changes to the contract (*See Rule 43*)

- ◆ the value of the extension does not take the contract value over the EU financial threshold.

42.2.2 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).

42.2.3 Contracts above the EU financial threshold which contain no option to extend in the original notice can only be extended with the consent of the Monitoring Officer.

### **43. CONTRACT MODIFICATIONS (MATERIAL CHANGE)**

43.1 For contracts above the EU financial threshold there are six grounds for permitted changes which do not require a new procurement procedure to take place.

43.1.1 Ground 1 – if:

- ◆ clauses within the contract clearly state the scope and nature of permitted modifications (review options), as well as conditions under which they may be used;
- AND
- ◆ the modification does not alter the overall nature of the contract.

43.1.2 Ground 2 – Where additional works, services or supplies which have become necessary, were not included in the initial procurement and where a change of Contractor:

- ◆ cannot be made for economic or technical reasons; or
- ◆ would cause significant inconvenience or substantial duplication of costs for the Council.

AND

- ◆ provided that any price increase is no greater than 50% of the original contract value.

In using this ground the Procuring Officer must publish an OJEU Modification Notice if the modification or cumulative value is over 10% of the original contract value for goods and services or 15% for works, via the Procurement Service.

43.1.3 Ground 3 – Change is required due to circumstances which were unforeseeable, and;

- ◆ the modification does not alter the overall nature of the contract
- AND
- ◆ any price increase is no greater than 50% of the original value.

In using this ground the Procuring Officer must publish an OJEU Modification Notice if the modification or cumulative value is over 10% of the original contract value for goods and services or 15% for works, via the Procurement Service.

43.1.4 Ground 4 – Where a contractor is replaced due to:

- ◆ an unequivocal review clause or option; or
- ◆ complete or partial succession following corporate restructuring (e.g. take-over, merger, acquisition and insolvency) provided that new contractor meets the original contract Selection Criteria.

43.1.5 Ground 5 – Where modifications are not “substantial”

”substantial” means:

- ◆ the amended contract is materially different in character; or
- ◆ the changes would have affected the outcome of the original procurement; or

- ◆ the modification changes the economic balance in favour of the contractor in a manner not provided for in the contract; or
- ◆ the modification extends the scope of contract considerably;  
or
- ◆ a change in the identity of the contractor other than where permissible under Ground 4

43.1.6 Ground 6 – Value of the modification is below;

- ◆ the relevant EU threshold value  
AND
- ◆ less than 10% of initial value for services and supply of goods contracts or less than 15% of initial value for works contracts  
AND
- ◆ the modification does not alter the overall nature of the contract

## SECTION 14 - SPECIAL CASES

### 44. CONSULTANTS

44.1 The appointment of consultants should follow the Rules set out in this document and in addition the following requirements in *Rule 44* also apply.

#### 44.2 Register

44.2.1 Prior to the appointment of consultants, irrelevant of the value, approval must be sought using the Procurement Approval/Use of Consultants Control Form and procedure.

44.2.2 The Head of Procurement shall keep a record of all consultant contracts to include the following details:

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

#### 44.3 Contracts

44.3.1 Contracts for consultants below £10,000 must be appointed using the Council's Standard Consultancy Agreement.

44.3.2 For consultancy contracts over £10,000 a formal contract must be entered into which must either be:

- ◆ based on the Council's Standard Services Agreement

OR

- ◆ follow a Standard Form of Contract

OR

- ◆ be approved by the Monitoring Officer

44.3.3 Copies of signed consultancy contracts are to be sent to the Procurement Service (*See Rule 39.2*)

44.3.4 An IR35 determination questionnaire should be completed and returned to the Procurement Service.

## **45. INFORMATION TECHNOLOGY**

45.1 The procurement of information technology should, subject to *Rule 45.3* follow all the other Rules and in addition the following requirements in *Rule 45* also apply.

45.2 For information technology purchases estimated to be over £5,000, approval must be sought from the Director of ICT or an ICT Head of Service if unavailable through existing contracts within ICT.

45.3 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 follow the IT Projects and Small Works Approval Process on iDerby.

45.4 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 the Head of Technology and Service Delivery or Head of Transformation and Business Application Solutions
  - financial appraisal and Value for Money Assessment sign off by the Head of Finance
  - Defined User requirements signed off by the Senior User.

45.5 All procurements of computer hardware or software should follow any advice on technical standards issued by the Head of Technology and Service Delivery or Head of Transformation and Business Application Solutions.

## **46. OUTSOURCING AND TRANSFERRING SERVICE CONTRACTS (TUPE)**

46.1 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 Procuring Officer must as soon as possible consult the Monitoring Officer regarding TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) implications and in particular the need to:

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

## **47. PROVIDING WORKS/SERVICES TO OTHER ORGANISATIONS**

47.1 Where it is proposed to provide services or do works for other organisations then Officers must ensure compliance with the Council's Financial Procedure Rules.

#### **48. FINANCE OPERATING LEASES**

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

#### **49. EUROPEAN REGIONAL DEVELOPMENT FUND (ERDF) PROJECTS AND OTHER EXTERNALLY FUNDED PROJECTS**

49.1 Any procurement using ERDF money, other external funding or grants received should follow all the other Rules in addition the following requirements in *Rule 49* also apply together with those within the Financial Procedure Rules:

##### **49.2 Officers**

49.2.1 The Procuring Officer has responsibility to:

49.2.1.1 adhere strictly to the requirements set within the funding/grant conditions which may be more stringent than the Contract Procedure Rules, to avoid any reclaiming of monies;

49.2.1.2 when seeking advice from the Procurement Service make it clear that the funding for the project is coming from an external source;

49.2.1.3 keep accurate records throughout any procurement process which can be accessed for routine audits to check compliance.

*(See Rules 37, 38, and 49.3).*

##### **49.3 Contract File Records**

- 49.3.1 In addition to *Rules 37 and 38*, as per the ERDF/other external body funding conditions the Procuring Officer must keep on file:
- 49.3.1.1 an explanation of the reasons for the specific procurement procedure selected;
  - 49.3.1.2 a copy of any OJEU notice or relevant advertisement and OJEU Prior Information Notice (PIN) if applicable (including for Framework Agreements);
  - 49.3.1.3 any PQQ used, including the associated selection criteria (where used) and log of responses received
  - 49.3.1.4 copy of tender specification with clear award criteria
  - 49.3.1.5 log sheet for all tenders received (time and date)
  - 49.3.1.6 copy of all tenders
  - 49.3.1.7 copy of tender score sheets dated and signed by two people
  - 49.3.1.8 PQQ (where used) assessment scores
  - 49.3.1.9 copy of OJEU award notice
  - 49.3.1.10 copy of report on evaluation of tenders
  - 49.3.1.11 copy of correspondence, including interview questions where appropriate
  - 49.3.1.12 copy of letters to unsuccessful tenderers giving an appropriate standstill period (where appropriate)
  - 49.3.1.13 copy of award letter /signed contract
  - 49.3.1.14 copy of notes from inception meeting
  - 49.3.1.15 summary record of the above process to assist with future monitoring and audits.
- 49.3.2 Records of all procurement evidence must be maintained for verification until 3 years after the final payment made on the programme and at present this is likely to be until at least 2025. Grant recipients must ensure that delivery partners and sub-contractors also retain evidence.

#### **49.4 Competition Requirements**

49.4.1 Thresholds will be detailed within the funding/grant conditions, which may differ from *Rule 7.2*.

49.4.2 For clarity, if the funding/grant conditions are less stringent than the Contract Procedure Rules takes precedent and Procuring Officer must adhere to *Rule 7.2*.

49.4.3 If using a Framework due diligence must be done to check the eligibility to access Frameworks and to ensure that they have been procured compliantly in accordance with the Public Contract Regulations 2015.

#### **49.5 Guidance**

49.5.1 Further ERDF guidance notes can be found on the procurement pages of iDerby.

### **50. PROPERTY RELATED GOODS AND SERVICES**

50.1 The procurement of property related goods and services should follow all the other Rules but in addition the following requirements in Rule 50 also apply.

50.2 Property related goods and services, irrelevant of value, must have approval from the appropriate Head of Service in the Property Services Management Team using the Procurement Approval/Use of Consultants Control Form.

50.3 Further Property Procedure guidance can be found on the procurement pages of iDerby.



## **SECTION 15 – AVOIDANCE OF CORRUPTION**

### **51. CONFLICTS OF INTEREST**

51.1 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 52*.

### **52. DECLARATIONS OF INTEREST BY OFFICER**

52.1 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 Monitoring Officer gives his/her written approval to the officer's continued involvement in the procurement exercise.

52.2 Each Director must maintain a register of interests, declared by Officers under *Rule 52.1* which must include:

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

### **53. GIFTS AND REWARDS**

53.1 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.

### **54. FAILURE TO COMPLY**

54.1 A failure to comply with *Rules 52, 53 or 54* could be a criminal offence as well as being a disciplinary matter.

### SECTION 16 - VARIATIONS TO THE RULES AND WAIVERS

#### 55. VARIATIONS TO THE RULE

55.1 The Monitoring 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.

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

55.3 Anyone with suggested amendments to the Rules should contact the Monitoring Officer.

#### 56. WAIVERS

56.1 Officers must in the first instance comply with the requirements of the Contract Procedure Rules. Waivers are not an alternative procurement method to tendering.

56.2 Any waiver is contrary to the overarching principles of the Treaty for the Functioning of the European Union (i.e. transparency, equal treatment, proportionality, non-discrimination and mutual recognition) and therefore exposes the Council to a risk of a legal challenge.

56.3 Waivers should not be sought due to insufficient time to follow correct procedures (as this is evidence of failure to plan sufficiently) except in unforeseeable emergencies (e.g. fire, flood etc.).

56.4 In exceptional circumstances, waivers to the Rules may be granted by Cabinet or, in cases of urgency by the relevant Director and either the Monitoring Officer or the Head of Procurement.

56.5 Potential acceptable grounds for a waiver may be:

- ◆ insufficient number of valid tenders received;
- ◆ specialist expertise is required and is available from only one source

56.6 Any request for a Cabinet waiver must, after consultation with the Head of Procurement or Monitoring Officer, be submitted in writing to the Director of Corporate Resources for inclusion in the “Contract & Financial Procedures Matters” report to Cabinet.

56.7 Any request for an urgent waiver must be submitted in the standard format, available from Procurement to the Monitoring Officer or Head of Procurement. The requestor must have gained prior approval from the relevant cabinet member.

56.8 In exceptional very urgent circumstances the waiver may be approved by the Monitoring Officer or the Head of Procurement. The Head of Procurement will report the circumstances of the waiver to the Chief Officer Group retrospectively. If the Monitoring Officer has approved the urgent waiver a copy must be provided to the Head of Procurement in order that it is included in Waiver reports.

56.9 A record of all waivers must be kept by the Head of Procurement.

56.10 All approvals of urgent waivers must be reported to the next Cabinet meeting by the Head of Procurement.

56.11 All waiver approvals, departmental, 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.

56.12 A waiver cannot be given where the contract value exceeds the EU threshold unless the Monitoring Officer has confirmed in writing that an exemption is available under the EU Procurement Regulations.

56.13 The Head of Procurement will inform the applicant when the waiver has been approved. Officers must not enter into contracts under waiver until confirmation of its approval has been received.

**56.14 Departmental Waiver**

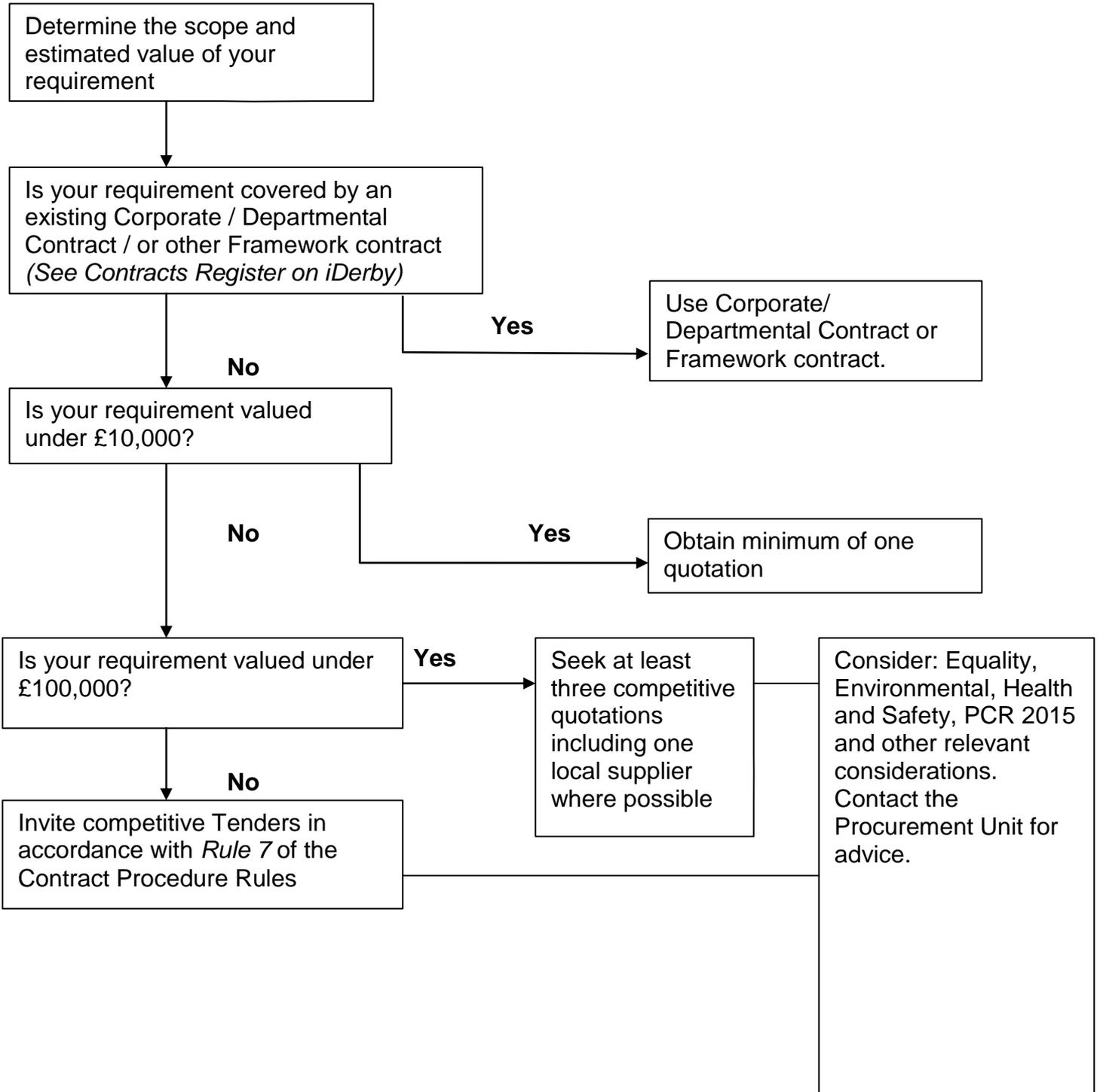
56.14.1 Directors may approve a waiver not to obtain three written quotes for procurements with a value under £100,000 (*See Rule 7.2*) only on the grounds set out in *Rule 56.5*.

56.14.2 Directors must send a copy of the signed waiver to the Head of Procurement for inclusion in the report to Audit and Accounts Committee (*See Rule 56.11*).

# APPENDIX 1

## FLOW CHART

### Deciding How to Proceed Flowchart



## APPENDIX 2

### NON COMMERCIAL MATTERS

#### Non-commercial Considerations

- (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.
- (i) 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 3

### STANDARD CONTRACT CONDITIONS

Every Contract over £100,000 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)
- ◆ information sharing and/or data protection requirements (where 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 other applicable legislative requirements

## APPENDIX 4

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

**for capital schemes:**

- ◆ a scheme cost in the approved capital programme
- ◆ a signed Expenditure Approval for 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.