



DERBY CITY COUNCIL

Document 17a

CONTRACT PROCEDURE RULES

If you have any queries or questions regarding procurement please contact the Head of Procurement (procurement@derby.gov.uk or call 01332 643271).

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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 of £5000 shall comply with these rules and have regard to the Procurement guidance available on iDerby. In case of doubt advice must be sought from the Procurement unit before proceeding.

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;
- ◆ iDerby Procurement pages
 - ◆ 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 Head of Legal and Democratic Services.
- 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 Each Directorate will have at least one representative on the Strategic Procurement Board. Board, members will provide a link to disseminate procurement strategy to Directorates, manage risks and resolve issues which may impact on the successful delivery of procurement and commissioning projects.

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. Academies are not covered by these rules. All publicly funded schools are subject to EU and UK procurement legislation.

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 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 by Social Services 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 provisions 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 Director of Legal and Democratic Services or the Head of Procurement.
- 6.2 Any request for a Cabinet waiver must, after consultation with the Head of Procurement or Director of Legal and Democratic Services, be submitted in writing to the Strategic Director of Resources or Director of Finance and Procurement 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 to the Director of Legal and Democratic Services 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 Director of Legal and Democratic Services 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 Director of Legal and Democratic Services 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	<p>* 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 Purchasing (VISA) Card. See Purchasing Card Procedures on Derby.</p> <p>* <i>Good practice to get three quotes and include at least one local supplier if possible.</i></p>
From £5,000 up to £30,000	<p>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). At least one quotation should be requested from a local supplier where possible. The procurement unit will advise on local suppliers on request.</p> <p>* Directors may waive this requirement but must inform the Head of Procurement in writing of their reasons.</p>

<p>From £30,000 up to the EU threshold</p>	<p>* Must Tender by one of the following methods:-</p> <p>(a) Public notice inviting Tenders. (“<i>Open Procedure</i>”; see <i>Rule 19</i>)</p> <p>(b) Invite to at least Four organisations to Tender after public notice asking for expressions of interest, or maximum number who pre-qualify if less than Four (“<i>Restricted Procedure</i>”; see <i>Rule 19</i>).</p>
<p>(See <i>Rule 16</i>) Above EU Threshold</p>	<p>In accordance with EU Procedures and advice from the Procurement Unit.</p>

See Section 15 for use of Framework Agreements.

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

9. OFFICERS

- 9.1 Each Directorate's Scheme of Delegation should identify those job roles which are required and authorised to procure goods, services or works of £5000 or over.
- 9.2 Budget holders and Managers of post holders in identified job roles should ensure that the post holder follows Procurement guidance available on iDerby or seeks advice/guidance from the Central Procurement unit prior to commencing Procurement processes and that they are aware of their obligations under these rules.
- 9.3 Post holders of roles identified in 9.1 should ensure they refer to Procurement guidance on iDerby and seek advice from the Central Procurement Unit before commencing any element of a procurement process about which they are unsure.

10 DIRECTORS

Directors, delegating as necessary to 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 holders of post identified under 9.1
- ◆ The Line Managers of holders of posts identified under 9.1
- ◆ Heads of Service
- ◆ Other Officers with procurement responsibilities
- ◆ Tender Receipt Officers

(See Rule 28.2)

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 Central Contract Register of all contracts of £30,000 or over is set up and maintained by the Central Procurement unit. Officers undertaking procurements must ensure the award details are forwarded to the Central Procurement unit for inclusion on the register.

Quotes/Tender Receipt Officers and Register

10.4 Appropriate arrangements in place for the receipt and opening of

(See Rule 28.1) quotes and Tenders between £5,000 to £30,000.

10.5 Tenders with a value estimated over £30,000 should be addressed to the Business Support hub who will be responsible for the receipt, safekeeping opening and

recording of the tender responses. The officer issuing the tender must liaise with the Business hub to schedule the opening of the tender.

(See Rule 28.2)

Management Review

10.6 The Directorate Management Team should meet :

- ◆ Quarterly 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. The Strategic procurement Board member for the Directorate will provide this information to the central Procurement unit for inclusion in Procurement plans.

(See Rule 10.3)

- ◆ Quarterly to review its contracts listed on the Contract Register to ensure that effective contract management is undertaken
- ◆ At least annually to review the operation for the receipt, safekeeping & opening of tenders to ensure it is in compliance with Rule 28.

(See Rules 10.4 and 10.5)

- ◆ 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 9)

10.7 Directorate Procurement Link

To appoint at least one officer to sit on the Strategic Procurement Board, 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 team
- ◆ raising significant procurement issues at the Department's Management Team meetings
- ◆ Ensuring that the details of job roles required to undertake procurements in the Departmental Scheme of Delegation is 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 a Procuring Officer must establish if there are any of the following he/she could use:

- ◆ A Corporate Contract
- ◆ 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 where suppliers' products and prices of these Corporate Contracts are can be found on the procurement section of iDerby.

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. DYNAMIC PURCHASING SYSTEM

- 14.1 A Dynamic Purchasing Systems (DPS) the A DPS is a completely electronic system which can be established for the purchase of commonly used goods, services or works and should be limited to a maximum duration of 4 years.
- 14.2 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 Service specification
- 14.3 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 Central Procurement Unit will support the DPS tender process development in conjunction with the department requiring the service.

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 the Head of Procurement's 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 The Head of Procurement following consultation with the relevant Cabinet Member should agree the use of a framework agreement with the Directorate as the best procurement solution for the Council.
- 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 further Tender competition
 - or
 - ◆ by value (lowest price)
- 15.8 Any further competition under Rule 15.7 should be based 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 consortia, for example Government Procurement Service (GPS), Members of the Pro 5 local government procurement consortia or East Midlands Property Alliance / Scape, may be used if the Head of Procurement and a Cabinet member 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.

SECTION 5 – E.C. PROCUREMENT

16. REQUIREMENTS AND THRESHOLDS

16.1 Contracts for the supply of goods or Priority Services or works which

(See Rules 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 (Euro). The sterling equivalent is recalculated on 31 December every other year.

16.3 The EU Thresholds until 31 December 2013 are:

- ◆ suppliers: 200,000 Euro £173,934
- ◆ services: 200,000 Euro £173,934
- ◆ works: 5 million Euro £ 4,348,350

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.
- ◆ Selection and award criteria and procedures

SECTION 6 – STEPS PRIOR TO SEEKING QUOTATIONS OR INVITING 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 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 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 an expenditure approval form has been completed and approved.
- 17.5 Inclusion of approved capital or revenue budgets can be demonstrated by any of the means listed in Appendix 5.

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 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 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 iDerby 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

20.4 Any advertisement placed under the open procedure must:

(See Rule 19.1) 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 selection and 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 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. SELECTION AND AWARD CRITERIA

21.1 Before placing an advert asking for Tenders or issuing invitations to Tender 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.

21.2 Selection Criteria

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 23 of the Public Contract Regulations 2006.
- ◆ Economic and financial standing
- ◆ Technical capacity and ability

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
- ◆ 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 advertisement or scope document.

21.5 The award criteria must not include any non-commercial matters. These are listed in Appendix 3.

SECTION 7 - PRE QUALIFICATION QUESTIONNAIRE: SELECTION OF TENDERERS
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22. SELECTION OF TENDERERS

When selecting a firm to Tender, other than from a Framework Agreement, the Authorised Procuring Officer must have particular regard to their:

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

these matters are included in the Pre-Qualification Questionnaire template available on iDerby.

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
- ◆ Sustainability policies

A template PQQ document is available on iDerby.

- 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 3.
- 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 Procuring Officer.
- 23.4 A written record of the reasons for choosing the selected Tenderers must be put on the Contract File by the Procuring Officer.

SECTION 8 – TENDER DOCUMENTS

24. SPECIFICATION

- 24.1 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 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 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 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 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:

- ◆ 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 under the official pre-addressed label 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.

(See Rule 21)

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 Procuring Officers a pro-forma Instruction to Tenderers has been prepared by the Procurement Unit 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 (i.e. the works, goods, services).
- ◆ the provisions for payment (i.e. 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 and
- ◆ the Council's standard form of quotation
- ◆ the Council's standard terms and conditions or
- ◆ Standard Form Contracts

Contracts over £30,000

26.4 For contracts over £30,000 the Legal Department 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
- ◆ the Legal Department have previously approved or drafted the conditions

26.5 The contract conditions for contracts over £30,000 should include the provisions listed in Appendix 4.

26.6 No significant variation to the contract conditions sent out with invitations to Tender can be agreed without the approval of the Legal Department.
(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 at least two officers are present one of whom must be independent of the procuring process
- ◆ 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 Directors must:

Ensure officers arrange the receipt, custody and opening of the tenders with the Business hub.

28.4 General Requirements for Contracts of £30,000 or Over

All contracts with an estimated value of £30,000 or over must be received, opened and recorded in accordance with the requirements in Appendix 6.

29. Electronic Tenders

Tenders should, wherever possible, be issued and received electronically through the Councils e-tendering system or alternative system approved by the Head of Procurement. The procurement unit should be contacted for advice.

SECTION 10 - ALTERATION, CLARIFICATION AND EVALUATION 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 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 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 takes place in exceptional circumstances and in consultation with the Head of Procurement.

(See Rule 19)

- 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**

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 *and an expenditure approval form has been completed and
approved.*

(See also 35.2 All contracts over £30,000 must be recorded in the Central
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 the Most Economically Advantageous

36.1 For contracts over £30,000 Tenders must be 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 documentation unless:

- ◆ 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 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. 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.

Contracts above the EU Thresholds

38.2 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 the notification must include:

- ◆ the Award Criteria applied
- ◆ The Tenderers score
- ◆ the name of the Preferred Tenderer
- ◆ the Preferred Tenderers score
- ◆ 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 contracting authority will not enter into the contract.

The procurement team will review 'standstill letters' to ensure compliance with the regulations.

38.3 The Procuring Officer notice under 38.2 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. The 10 day period is extended to 15 days if non electronic means of communication are used.

38.5 The ten day “Standstill” period referred to in Rule 38.3 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

38.5 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 Head of Legal and Democratic Services or Head of Procurement.

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

Under £75,000

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

- ◆ on the Council’s General Terms and Conditions
- or
- ◆ on a Standard Form Contract

or

- ◆ approved by the Procurement Unit or Legal Department

Over £75,000

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

- ◆ the Council's standard terms and conditions are being used.
- ◆ a Standard Form of Contract is being used
- ◆ the Legal Department 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 Department.

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	By any two of the following Officers:-

(see 41.3 below)

- ◆ Strategic Director of Resources
- ◆ Director of Legal & Democratic Services
- ◆ Head of Legal (General)
- ◆ Head of Legal (Child & Adult Care)

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 Directorate Finance Officer 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 Department for sealing together with an expenditure approval form signed by the Departmental Finance Officer 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:

- ◆ Strategic Director of Resources

- ◆ Director of Legal & Democratic Services
- ◆ Head of Legal (General)
- ◆ Head of Legal (Child & Adult Care)

SECTION 12 - CONTRACT REGISTERS

43. CENTRAL RECORDS

Departmental Contracts Record

43.1 Directors must ensure that details of all contracts over £30,000 entered into by the Department are passed to the Procurement Unit for inclusion in the central contracts register, 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 Department for signing
- ◆ who signed on behalf of the Department and when or alternatively the date it was submitted to the Legal Department for signing and sealing

43.2 The Head of Procurement shall keep a record of all contracts over £30,000 which will be available on iDerby

43.3 The details under 43.1 and 43.2 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 and options for extension (if any)

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
- ◆ 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 Procuring Officer must keep on the Contract File:

- ◆ any waiver under *Rule 6* together with the reasons for it
- ◆ the advertisement
- ◆ 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
- ◆ details of post-Tender negotiation (to include minutes of meetings)
- ◆ evaluation documentation
- ◆ notification to Tenderers
- ◆ signed contract

(See Rule 20)

(See Rule 18)

(See Rule 32)

(See Rule 38)

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. An accessible electronic copy stored on the Councils systems for the stated period will satisfy this requirement.

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.
- ◆ A software maintenance contract tied to a software licence.

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 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

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 Director of Legal and Democratic Services.

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 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 and may not be used where the value of the secondary works are above the EU works thresholds.

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 Prior to the appointment of consultants approval should be sought from the Chief Officer Group (COG) using the Use of Consultants control procedure..

49.3 The Head of Procurement shall keep a record of consultant contracts over £30,000 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)

Contracts

49.4 Contracts for Consultants 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 7.

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

or

- ◆ follow a Standard Form of Contract

or

- ◆ be approved by the Director of Legal and Democratic Services

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 Director of ICT or a ICT Head of Service.

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 Director of ICT or a ICT Head of Service.

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 the 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 ICT

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 Procuring Officer must as soon as possible consult the Director of Legal and Democratic Services 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 Strategic 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 Strategic 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 Director of Legal and Democratic Services 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

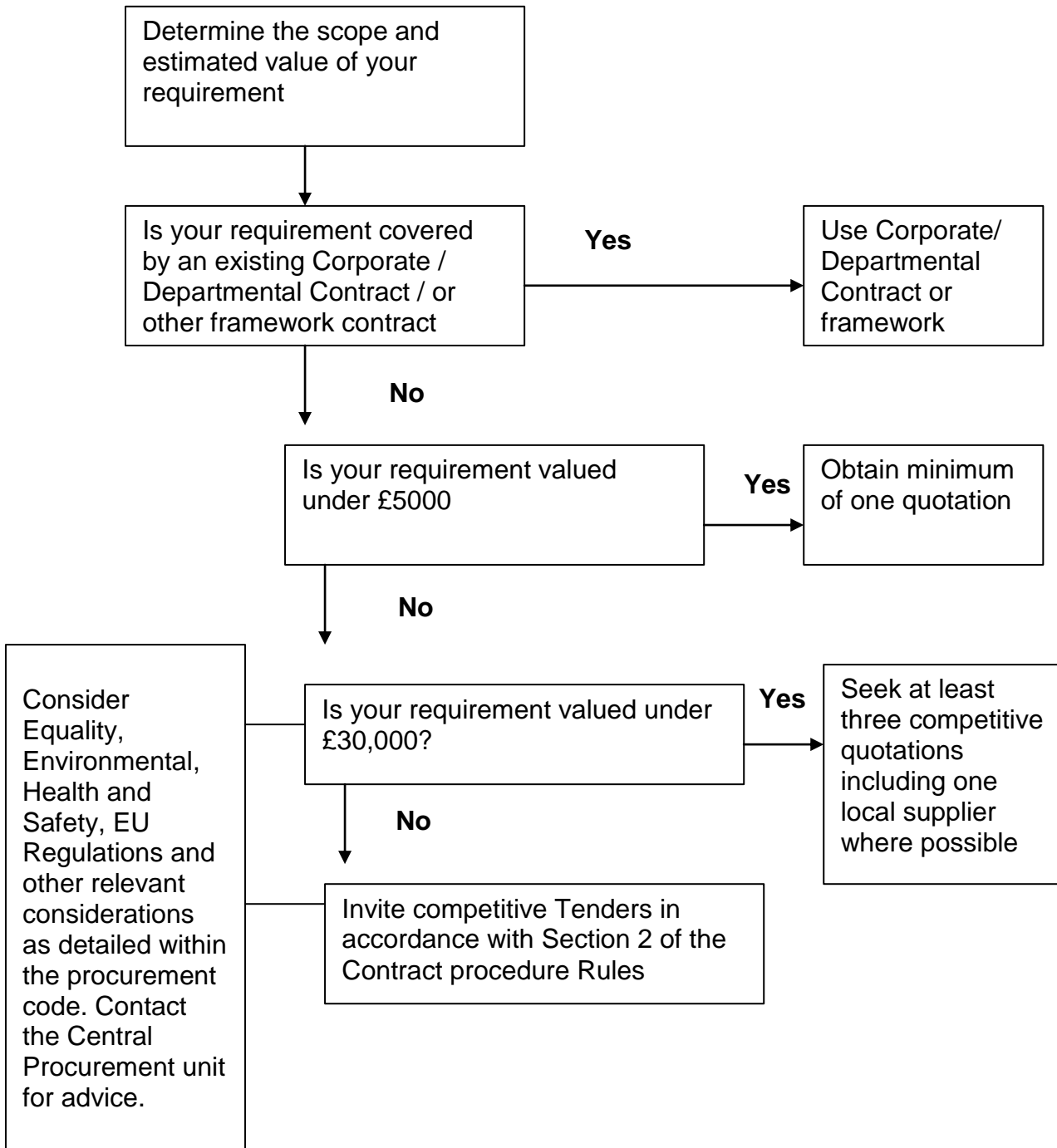
58 VARIATIONS TO THE RULE

- 58.1 The Director of Legal and Democratic Services, 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.
- 58.3 Anyone with suggested amendments to the Rules should contact the Director of Legal and Democratic Services.

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.

Procuring Officer An officer of the Council whose role is authorised under the relevant Departmental 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 Quote 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 Constitution.

Head of Legal and Democratic Services
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 (see *Rule 19.4*).

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 (see Rule 13).
Head of ICT	The Head of ICT in the Resources Department or any other person authorised to carry out the functions of that post by the Strategic 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 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 (see Rule 10.3).
Departmental Finance	The senior finance officer in a Department or Officer any other officer designated by the Relevant Director to fulfil that role (see Rule 42).
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.

iDerby	Council's Intranet (<i>See Rule 35.1</i>).
Director	Head of one of the Council's Departments/ Directorates.
Director of Resources	The Council's Strategic 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 (<i>see section 5</i>).
EU Threshold	The contract value at which the EU Public Procurement Regulations apply (<i>see Rule 16.3</i>).
EU Procurement Regulations	Public Contract Regulations 2006.and Public Contracts (Amendment) Regulations 2009
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 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 (*see Rule 25*).

Legal Department The Council department headed by the Director of Legal and Democratic Services.

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 3 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>).
Selection Criteria	The Criteria used at 'Pre Qualification' stage to shortlist the Tenderers who will be invited to bid or to proceed to final evaluation.
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>

Waiver

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

APPENDIX 3

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.

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 4

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 5

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

- ◆ 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.

APPENDIX 6

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. Tenders received through the e-tendering system will be retained electronically within the system for the same time periods.

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 Head of Legal and Democratic Services if in any doubt as to whether to consider a Tender for any reason, including its late submission.

10. Electronic tenders may be received via the Council's e-tendering system, or such system as approved by the Head of Procurement. The recording of information requirements listed above apply equally to e-tenders as well as hard copy (paper) tenders.

APPENDIX 7

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)