

CONTRACT PROCUREMENT RULES**INDEX**

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1. INTRODUCTION

- 1.1 Contract Procurement Rules provide a framework for the procurement of works, goods and services. Following them will ensure value for money, propriety and the proper expenditure of public funds.
- 1.2 Procurement decisions are amongst the most important decisions a manager will make because the money involved is public money. Efficient use of scarce resources is therefore vital. Equally as important is the Council's reputation, which should be safeguarded from any suspicion of dishonesty or corruption. Officers must ensure that they are able to account for all actions and decisions they take, and that all processes are transparent and can be audited.
- 1.3 Officers have a responsibility to read and be familiar with these Rules. [Contact details](#) have been provided should you need to seek clarification of any point. You can also seek ad hoc advice from the Head of Business Support Services and the Procurement Officer. Failure to comply with the Rules may result in their conduct being examined under the Disciplinary Policy and Procedure.
- 1.4 It is a breach of Council's Code of Conduct for employees to fail to comply with Contract Procurement Rules when letting contracts and employees have a duty to report breaches of Contract Procurement Rules to their Director and the Internal Audit and Improvement Manager.
- 1.5 These Procurement Rules have been adopted in accordance with the requirements of Section 135(2) of the Local Government Act 1972
- 1.6 For general advice on contracts or interpretation of these Procurement Rules, please contact the Procurement Officer or the Head of Business Support Services.
- 1.7 The Council's Procurement Strategy Group is responsible for reviewing and providing guidance on all procurement and contractual matters.
- 1.8 The Director of Internal Services may delegate any of the functions and responsibilities contained in the Contract Procurement Rules to a suitably qualified and experienced officer.

2. SCOPE

- 2.1 These Procurement Rules apply to all contracts for works and the supply of goods and services to East Hertfordshire District Council. They also apply to all contracts with third parties and to all sub-contracts where the Council nominates a sub-contractor or supplier, or by a consultant acting on behalf of the Council. They also apply, in appropriate circumstances, to the sale of assets, goods or services by the Council.
They do not apply to:
 - contracts of employment
 - contracts with agencies for the temporary provision of specialist professional staff
 - contracts relating to treasury management advice placed by the Council
 - purchases made at public auction
 - the acquisition or disposal of any interest in land, which are subject to special procedures ([see Appendix E](#))
 - Exceptions:

- i) Goods at fixed price.
- ii) Goods controlled by trade organisation
- iii) Approved by a Consortium
- iv) Schedule of rates

- 2.2 In these Procurement Rules, unless otherwise stated, references to the Director are to the Director of the department responsible for the contract in question or such senior officer of that department to whom the Director has delegated in writing the powers in question.
- 2.3 The framework of rules for procurement are those determined by EU and UK law and those set out within these Contract Procurement Rules, in that order of precedence.
- 2.4 These Procurement Rules will be reviewed annually. Responsibility for this lies with the Procurement Strategy Group in consultation with the Director of Internal Services.

3. CONTRACT VALUES

- 3.1 The estimated annual and total aggregate values of a contract should be established prior to any invitation to quote or tender and be recorded in writing. It is this estimate, which determines which of the four procedures is applicable. However, if the preliminary estimate is within 10% of the higher category values, then the provisions for the higher category of contract should be applied.
- 3.2 The aggregate value of any contract is to be calculated on the basis of the total value of the consideration estimated to be payable over the entire contract period. If the contract period is indefinite, then the value shall be the total expenditure incurred over a four year period.
- 3.3 Where a value or estimated value is given in these Procurement Rules, it means the aggregate value payable in Pounds Sterling exclusive of Value Added Tax.
[This is a change from inclusive of VAT.]
- 3.4 Contracts must not be artificially under or over estimated or divided into two or more separate contracts where the effect is to avoid the application of Contract Procurement Rules. Where it can be demonstrated that there are insufficient suitably qualified contractors or suppliers to meet the competition requirement, all suitably qualified candidates must be invited.
- 3.5 After determining the proposed aggregate contract value, one of the following procedures shall be used in all procurements or sales, unless an approved waiver has been obtained as detailed in [section 10](#). In all cases the relevant Director may follow a procedure applicable to a higher value contract, if it is considered to be in the Council's best interests.

<u>Estimated Aggregate Value of Procurement</u>	<u>Requirement</u>
Up to £5,000	At least one estimate or offer shall be obtained. (see 4.1)
£5,001 to £50,000	A minimum of three written quotations shall be invited, unless the Director has complied in full with paragraph. 6.1G . (See 5. Quotations)

£50,001 to EU Procurement Threshold	A minimum of three competitive tenders shall be invited using one of the tendering options in this Code (paragraph.6.1), and a formal written contract prepared. Unless the Director has complied in full with paragraph. 6.1G . <i>[Are Members happy to include additional band?]</i>
Above the EU Threshold	The appropriate EU Procurement Directive shall be complied with.

- 3.6 To ensure adequate competition, there must be at least two satisfactory responses i.e. responses which meet a minimum quality standard under which the Council could award the contract. If the Council receives only one satisfactory response, the officer must obtain an additional quote or tender or obtain an exemption under 6.1G.

EU Procurement Thresholds

- 3.7 The EU procurement thresholds, effective from 1 January 2008, are shown in [Appendix A](#). If the thresholds change during the currency of these Procurement Rules, the Appendix will be updated.
- 3.8 The values of the thresholds specified in Pounds Sterling are fixed, subject to biennial review. Further details on the EU Directives and Regulations are contained in [Appendix A](#).
- 3.9 Further guidance on which types of contract are covered under the different categories and advice on the specific procedures to be followed may be obtained from the Head of Democratic and Legal Support Services and the Procurement Officer.

4. ESTIMATES OR OFFERS (Goods and Services not exceeding £5,000)

- 4.1 For goods and services estimated not to exceed £5,000, authorised officers will be expected to be able to demonstrate that Best Value has been obtained and should maintain records accordingly. It is the responsibility of each Director to ensure that appropriate mechanisms are in place within their Directorate. Such records should contain, as a minimum:
- i) The number of estimates or offers invited;
 - ii) The method of inviting estimates or offers (written quotes must be obtained);
 - iii) The basis of selecting suppliers/contractors; and
 - iv) The staff authorised to accept estimates or offers.
- 4.2 Written Purchase Orders should be placed in accordance with Financial Regulations.

5. QUOTATIONS (Goods and Services exceeding £5,000 but not exceeding £50,000)

- 5.1 A minimum of three quotations shall be invited. In selecting contractors who are to be requested to provide a quotation, Directors shall ensure that the selection process they are using is fair and equitable, and that no favouritism is shown to any one contractor. Where possible, use should be made of any existing approved lists. The Director shall keep a record of [?]:
- i) all those contractors or suppliers who were requested to provide a quotation;

- ii) the reasons why those particular contractors or suppliers were selected to provide a quotation; and if applicable,
- iii) the reasons why less than three contractors or suppliers were selected to provide a quotation.

6. TENDERING OPTIONS (Goods and Services exceeding £50,000)

6.1 Directors shall select one of the following tendering methods. If any alternative tendering method is proposed, then approval of Executive is required before the proposed tendering option is followed. In selecting contractors who are to be requested to provide a tender, Directors shall ensure that the selection process they are using is fair and equitable, and that no favouritism is shown to any one contractor.

<u>Tender Option</u>		Requirement
A	Ad Hoc Tender Open tender	Public notice shall be given in one or more newspapers or, where appropriate, in one or more trade journals or websites. Where applicable, a public notice shall also be placed in the European Journal. The notice shall state the nature and purpose of the contract, where tender documentation can be obtained from, and the closing date for the receipt of tenders [?].
B	Standing Approved List of Tenderers Restricted tender	Tenders shall be invited from at least three contractors selected from an approved list [?].
C	Ad Hoc Approved List of Tenderers Open restricted tender	Tenders shall be invited from a list of contractors compiled for a specific contract.
D	Competitive Dialogue	Where the Council wishes to award a particularly complex contract which would not be suitable under an open or restricted tender, competitive dialogue can be used. A contract notice will be published and a selection process will take place, the Council can then negotiate with companies to develop a suitable solution and on which chosen companies will be invited to tender. After the ITT is issued no further negotiation is allowed, only discussion about clarifying or fine-tuning the tender. An award is subsequently made. This option is subject to the prior written approval of the Director responsible, and the Director of Internal Services
E	Negotiated Procedure	There are two types of negotiated procedure. Under the negotiated procedure without prior advertisement, the Council is not required to issue an OJEU notice and may negotiate directly with the supplier of its choice, this should only be used in circumstances where

		<p>only one supplier could supply the goods for example a work of art. Under the negotiated procedure with prior advertisement, however, an OJEU notice must be published, inviting expressions of interest. From those meeting its selection criteria, the Council may select a minimum number to be invited to negotiate.</p> <p>This option is subject to the prior written approval of the Director responsible, and the Director of Internal Services</p>
F	Serial Tenders Repeat contracts	<p>The proposed contract shall form part of a serial programme. The contract terms shall be negotiated with a contractor, using as a basis for negotiation the rates and prices contained in an initial contract that was awarded following a competitive tendering process not more than eighteen months previously. This option is subject to the prior written approval of the Director responsible, and the Director of Internal Services.</p>
G	Single Tenders	<p>A single tender or quotation may be obtained when:</p> <ol style="list-style-type: none"> 1. Prices are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available. 2. Work to be executed or goods, services or materials to be supplied consist of repairs to or the supply of parts or upgrading of existing proprietary machinery, equipment, software, hardware or plant and the repairs or the supply cannot be carried out practicably by alternative contractors. 3. Specialist consultants, suppliers, agents or professional advisors are required and <ul style="list-style-type: none"> - there is no satisfactory alternative; or - evidence indicates that there is likely to be no genuine competition; or - it is in the Council's best interest to engage a particular consultant, supplier, agent or advisor. 4. Products are sold at a fixed price, and market conditions make genuine competition impossible. <p>This option is subject to the prior written approval of the Director responsible and the Director of Internal Services.</p>

- 6.2 Except to the extent that the Executive in a particular case or specified categories of contract otherwise decides, all quotations or tenders that are being sought shall include approved contract terms, and be based on a definite written specification. This specification shall include pre-determined acceptance criteria. Where appropriate, there shall also be a requirement for a performance bond and liquidated damages. ([See Appendix C](#)).

7. CONTRACTOR SELECTION

- 7.1 The Council may compile and maintain approved lists [?] of suitable contractors in relation to various types of works, supplies, or services. The lists must be reviewed at intervals of not more than two years, although new contractors may be added to an approved list at any time if the criteria set by the Council are met. Contractors may also be deleted at any time if the Council becomes aware that they no longer meet the criteria
- 7.2 The Council may select contractors from a list maintained by ConstructionLine, another Local Authority, Government Agency, Department, or approved Partnering Organisation, provided that such lists are compiled and maintained to the satisfaction of the Director of Internal Services.. *[This is a change, gives more flexibility]*
- 7.3 If no suitable approved list exists, then a public notice may be issued inviting applications for inclusion on a specific approved list for the supply of goods, services, or materials. The ad-hoc approved list of tenderers may be established from contractors replying to a public notice, or who have previously requested to be included on an ad-hoc approved list for work of a similar nature.
- 7.4 Officers may compile an ad-hoc list by other means, provided that the appropriate Director and the Director of Internal Services approve the list and the reasons for the selection of those particular contractors.
- 7.5 Any shortlisting of contractors must have regard to financial and technical standards relevant to the contract and may have regard to award criteria. It is important that the process for selecting and shortlisting contractors is transparent and fair.
- 7.6 Prior to being invited to tender, all tenderers must be technically and financially appraised. Evidence of adequate Health and Safety policies and compliance with any other statutory obligations must also be obtained. All contractors must provide evidence of adequate insurance policies, as required by the Director of Internal Services. The usual method of obtaining the necessary information to carry out these checks, is through the use of a Pre-Qualification Questionnaire (PQQ).

8. EXCEPTIONS TO TENDERING PROCEDURES

- 8.1 The tendering procedures within Contract Procurement Rules will not apply to a contract for which the Director responsible, in consultation with the Director of Internal Services, agrees it is appropriate to award contracts to suppliers through an approved purchasing consortium where fixed unit pricing has been pre-agreed under a consortium framework agreement. *[This is a change from the existing]*
- 8.2 Such consortia include Hertfordshire Business Services, the Central Buying Consortium, the Office of Government Commerce Buying Solutions (including S-CAT and G-CAT), or through any consortia of local authorities of which East Hertfordshire District Council is a member. This is always provided that the procedures applied are no less stringent than this Council's own Contract Procurement Rules. The invitation to quote facility should be used when it is available.

- 8.3 If a Director believes that by following one of the procurement options detailed in 3.5 above, the procurement process will not provide the most appropriate method of service delivery, the most competitive prices, allow for continuous improvements in service delivery, or stifle procurement innovation, then he/she may suggest alternative procurement strategies for approval by the Executive. Prior to proceeding with the procurement, the Director shall produce a written procurement strategy that shall be approved by the Chief Executive and the Executive. *[This is a change from the existing]*

9. NOMINATED SUB-CONTRACTORS AND SUPPLIERS

- 9.1 Tenders for sub-contracts to be performed or goods or materials to be supplied by nominated suppliers shall be dealt with in accordance with the provisions of these Procurement Rules.

10. WAIVERS

- 10.1 Where Contract Procurement Rules apply to a contract, any individual provision in them may be waived (except where the contract is subject to EU legislation there are circumstances where the requirement to tender cannot be waived). The waiver has to be agreed by:

- The Executive for contracts over £50,000; or
- The Chief Executive in consultation with the Leader of the Council if the matter is urgent and a meeting of the Executive cannot be called; or *[Do Members want this?]*
- A Director, in consultation with the Director of Internal Services and the Head of Democratic and Legal Support Services, if the contract value is £50,000 or less.
- The Chief Executive activating the Council's 'Emergency Plan' or the Business Continuity Plan)

- 10.2 Any waiver is subject in all cases, other than a major incident, to a written report being submitted by the authorised officer that the waiver is justified because either:

- a) the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procurement Rules is justifiable; or
- b) the contract is for supplies, works or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
- c) the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or UK law); or
- d) where it is in the Council's overall interest; or
- e) there are other circumstances which are genuinely exceptional.

- 10.3 A record of the decision and the reasons for it must be kept by the Head of Democratic and Legal Support Services.

11. RECEIPT OF TENDERS

- 11.1 Contractors must be informed in the invitation to tender that their tenders will only be considered if they are sent in a plain envelope or package which bears the official blue tender return address label or the word 'tender' followed by the subject of the contract. The envelope or package must be securely sealed and must not show the identity of the tenderer in any way.
- 11.2 Such envelopes shall be addressed impersonally to the Head of Democratic and Legal Support Services.
- 11.3 It must be delivered to the place and by the time stated in the tender invitation and must be endorsed on receipt with the date and time of receipt.
- 11.4 Late tenders shall not be considered, but shall be opened to ascertain the name of the sender and returned stating the reasons for rejection.
- 11.5 All envelopes received shall be kept securely and shall not be opened or accessed until the time appointed for their opening.
- 11.6 Where the circumstances so warrant, a Director may postpone for a reasonable period the closing time and date for the receipt of tenders, provided that all persons from whom tenders have been invited are notified by the same method, given the same information and that no tenders have been opened.

12. OPENING OF TENDERS

- 12.1 Tenders shall be opened at one time in the presence of two Members and one officer of the Council..
- 12.2 On opening, the results of all tenders received must be recorded in writing on a tender opening record. This record must contain the name of the proposed contract, the estimated cost, and the names of all those invited to tender. The form of tender shall be marked with the date of opening and signed by at least two officers present. The tender opening record shall be signed by all officers and Members present at the opening and retained in the custody of the Director of Internal Services.
- 12.3 The portfolio-holder, or a Member nominated by them shall be given not less than two working days notice of the date, time and place appointed for the opening of all tenders estimated to exceed £50,000 in value, to give them the opportunity of attending. *[Do Members require this or is notice not required?]*
- 12.4 Any Member of the Council has the right to be present if they want at the opening of tenders to which paragraph 12.3 applies, but is only entitled to receive prior notification of the time and place if a specific request has previously been made to the Director of Internal Services. *[Do Members require this?]*
- 12.5 **Electronic tenders-** when an appropriate system is available which meets the satisfaction of the Director of Internal Services tenders may be submitted by electronic means provided that:
- i) Evidence that the transmission was successfully completed is obtained and recorded;

ii) Each tender submitted electronically is deposited in a secure mailbox approved by the Head of Democratic and Legal Support Services in the manner prescribed in the advertisement or the invitation to tender documents before the return date, and;

iii) Electronic tenders are kept in a separate secure folder under the control of the Head of Democratic and Legal Support Services which is not opened until the deadline is passed for receipt of tenders.

Receipt of Quotations (Goods and Services exceeding £5,000 but not exceeding £50,000)

12.6 Directors may make such arrangements as they consider appropriate for the opening of quotations, provided that they are not opened until after the time appointed for the receipt of the quotations and that they are all opened at one time in the presence of at least three Council officers and the results are recorded on a quotation record sheet.

13. ACCEPTANCE OF TENDERS AND QUOTATIONS

13.1 The appropriate Director shall evaluate all the tenders or quotations received in accordance with the acceptance criteria set out in the bid documentation and shall accept, subject to 13.2 and 13.3 below, either:

- a) The LOWEST where payment is made by the Council; or
- b) The HIGHEST where payment is received by the Council; or
- c) The most economically advantageous tender (MEAT) in accordance with the guidance in [Appendix B](#). Corporate Management Team will refer decisions to accept MEAT tenders to the Executive where tenders offer different service solutions to the award of the contract is significant to the community of East Hertfordshire (?)

13.2 Tenders or quotations exceeding the approved budget may only be accepted once the budget holder is satisfied that they can increase the budget.

13.3 The acceptance of a tender or quotation that is not the lowest priced tender or quotation or the highest scoring tender or quotation (in accordance with acceptance criteria set out in the tender or quotation documentation), if payment is to be made by the Council; or the highest tender or quotation, if payment is to be received by the Council, shall only be accepted if:

- i. The Executive has considered a written report from the appropriate Director; or
- ii. In cases of urgency, the Chief Executive has consulted and obtained the approval of the Leader of the Council. The appropriate Director shall report tenders or quotations accepted in this way to the next meeting of the Executive. *[do Members require this?]*

13.4 Where post tender negotiations have been undertaken in accordance with Paragraph 14.2 below, the appropriate Director shall only accept the lowest priced tender received. A tender other than the lowest, shall not be accepted until the Executive has considered a written report from the appropriate Director, and recommended acceptance of a tender other than the lowest. *[Do Members want to allow for post tender negotiations?]*

14. ARITHMETIC ERRORS AND POST TENDER NEGOTIATION

Arithmetic Errors

- 14.1 Contractors can alter their tenders or quotations after the date specified for their receipt, but before the acceptance of the tender or quotation, where examination by officers of the tender or quotation reveals arithmetic errors or discrepancies which effect the tender or quotation figure. The contractor shall be given details in writing of all such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing their offer in writing.

Post Tender Negotiation

- 14.2 In evaluating tenders, the appropriate Director may invite one or more contractors who have submitted a tender to submit a revised offer following post-tender negotiations.

All post-tender negotiations shall:

- Only be undertaken where permitted by law and where the appropriate Director, together with the Director of Internal Services consider additional financial or other benefits may be obtained which over the period of the contract shall exceed the cost of the post-tender negotiation process, and
 - Be conducted by a team of officers approved in writing by the appropriate Director, and the Director of Internal Services,
 - Be conducted in accordance with guidance issued by the Director of Internal Services and in compliance with current EU legislation.
 - Not disclose commercially sensitive information supplied by other bidders for the contract.
- 14.3 Post tender negotiations shall not be used to degrade the original specification unless the capital or revenue budget is exceeded, or the appropriate Director considers other special circumstances exist. This process must not put other tenderers at a disadvantage, distort competition or affect adversely trust in the competitive tendering process.
- 14.4 The appropriate Director shall ensure that all post-tender clarification meetings are properly minuted with all savings and benefits offered clearly costed. Following negotiations, but before the letting of the contract, amendments to the original tender submitted shall be put in writing by the contractor and shall be signed by him.

15 ENGAGEMENT OF CONSULTANTS

- 15.1 It is important that best value is obtained when employing consultants. Therefore, for all instances where the estimated value of a consultancy appointment is over £5,000, the commissioning officer must provide a report to the Head of Service responsible setting out as a minimum:
- i) The nature of the services for which the appointment of a consultant is required, identifying the project objectives;
 - ii) The estimated total value of the services (which should be project based);
 - iii) Details of the in-house costs to support the consultants;
 - iv) Confirming that no employee of the Council has the capacity or is available to undertake the services.

- 15.2 Contract Procurement Rules must be followed for the engagement of consultants. All consultants must provide evidence of adequate professional indemnity insurance as determined by the Director of Internal Services prior to their appointment. The requirement for insurance and the levels required should be advised in the specification of works.
- 15.3 It shall be a condition of the engagement of any consultant, agent or professional advisor who is to be responsible to the Council for the award or supervision of a contract on its behalf, that in relation to that contract they shall:
- i) Comply with these Procurement Rules as though they were an employee of the Council
 - ii) At any time during the carrying out of the contract produce to the appropriate Director on request, all the records maintained by them in relation to the contract; and
 - iii) On completion of the contract transmit all records that they have produced or received that relate to the contract to the appropriate Director.
 - iv) On completion of the contract ensure that professional indemnity insurance is maintained for a period of up to six or twelve years, as appropriate.
- 15.4 [Appendix F](#) provides further guidance on the engagement of consultants.

16. PAYMENT PROCEDURES

- 16.1 No contract shall be entered into until all necessary approvals, sanctions and consents have been obtained. No tender or quotation shall be accepted unless the necessary approval, sanction and consent have been approved.
- 16.2 The Director of Internal Services shall be informed of all contracts and contract extensions by relevant departments. The Director of Internal Services shall maintain a Contract Register showing all contracts (except for minor contracts where the Director of Internal Services determines that this is unnecessary or inappropriate), entered into by the Council and a schedule of contractual payments made on an individual contract basis. The Director of the contracting department will be responsible for informing the Director of Internal Services of every contract payment for inclusion within the Contract Register.
- 16.3 Payment to contractors on account of construction contracts should only be made on a certificate issued by the officer or consultant. Subject to the provisions of the contract, any variations must be authorised in writing and shall conform to the appropriate Financial Regulations.
- 16.4 Directors shall be responsible for ensuring adequate checks on contractor's final accounts. The officer managing the contract and a representative of the Internal Audit Team who has had no previous involvement should carry these out. *[Contracts over £50,000].*

17. VARIATIONS (Goods and Services over £50,000)

- 17.1 If the terms of a contract allow for an extension, then a Director may, with the agreement of the Director of Internal Services and the relevant portfolio holder, agree to such an extension. In all other cases the Executive may vary or extend a contract for a period of more than 3 months, provided that to do so is consistent with the provisions of Financial Regulations and Procurement Rules. In all cases, officers must demonstrate that a detailed and robust cost/benefit analysis has been undertaken and that sufficient budget is available. Evidence of the decision making

process must be formally recorded in a delegated decision sheet which is filed on the relevant contract file and a copy sent to the Director of Internal Services.

- 17.2 In addition a Director may authorise variations to a contract where either delay would incur substantial cost penalties to the Council, or the proposed variations are unavoidable and/or essential for the project to proceed or continue. Officers must demonstrate that a detailed and robust cost/benefit analysis has been undertaken and that sufficient budget is available. The Director of Internal Services must be informed in writing. *[Do Members agree to change this?]*
- 17.3 Subject to any statutory restrictions and compliance with Financial Regulations and Procurement Rules, a Director may authorise the following changes to an existing contract.
- i) A change in price determined within the terms of the contract or arising from the application of a price formula in the contract;
 - ii) A single extension of the contract by up to three months;
 - iii) Issue a variation and a resulting change in price determined in accordance with the contract terms.
- [Do Members agree to this point?]*
- 17.4 A Director may authorise variations to a contract where circumstances arise during the performance of the contract which make it necessary to amend the specification or method of carrying out the works, provided that any such variations do not vary the original contract price by +/- 10% and that the amended contract price does not exceed the budget allocation.

18. CONTRACT DOCUMENTS

- 18.1 All contracts must be in writing. Contracts under £50,000 must, as a minimum, be in the form of an official order, issued and signed by an authorised officer in accordance with the Council's Financial Regulations. The Director of Internal Services will determine if a formal written contract procedure is required.
- 18.2 . Contracts for the supply of goods, materials, or services, or the execution of works in excess of £50,000 in amount or value or in any other case where the responsible Director decides it is necessary, must be drawn up in a form approved by the Director of Internal Services.
- 18.3 For all contracts over £50,000, documents must be completed, proof of adequate insurance cover provided and signed by both parties prior to any works commencing. Any exceptions are to be reported to the Executive, together with the reasons for this omission.
- 18.4 Contracts exceeding £100,000 in amount or value should be sealed. Any exceptions to this should be agreed with the Director of Internal Services. Where the responsible Director or the Director of Internal Services requires, a contract of any value below £100,000 may be sealed.
- 18.5 The Council's [Confidential Reporting Code](#) will be included in the tender documents and applies equally to contractors, sub-contractors, suppliers or agency staff. The Policy should therefore be disseminated to all those working on behalf of the Council, or who have a contractual relationship with it, to ensure that any concerns may be raised without the fear that it will affect their relationship with the Council, or that they could lose business with it.

APPENDIX A - EU DIRECTIVES AND REGULATIONS

1) INTRODUCTION

As part of the drive to remove barriers to cross border public procurement, the European Union introduced laws which seek to enhance free trade by ensuring that all EU members are able to tender for contracts anywhere within the EU. In addition, EU member states sought to ensure that public sector organisations achieve best value by ensuring that the procurement methods they use increase competition and make purchasing decisions more rational and justifiable. The effect of these rules is to require transparency and fairness in the procurement process.

The EU Procurement Directives have been implemented into national law in the UK by Regulations. Revised Regulations came into force on 31st January 2006 to implement new Procurement Directives. Although the EU Directives are directly enforceable in the UK, the UK government has introduced Statutory Regulations, which transpose the requirements of the Directives into a UK legal format. The revised regulations are:

Public Contracts Regulations (SI 2006 No. 5)

These regulations replace the previously separate Supply, Works and Services Regulations

Utilities Contracts Regulations (SI 2006 No. 6)

Utilities have been updated in line with the Public Contract Regulations.

Whether the regulations apply depends upon the value of the proposed contract. The current threshold levels for contract value above which you are legally required to follow the regulations are as follows: -

Contracts for Works -	£3,497,313
Contracts for Services -	£ 139,893
Contracts for Supplies -	£ 139,893

(Correct at 1/01/2008 and subject to biennial review)

Public Sector Directive

The new Public Sector Directive simplifies and consolidates the three existing Directives for public works, supplies and services into a single text. Many of the basic provisions remain the same as in the existing Directives. However new provisions have been added to take account of modern procurement methods and developments in best practice. These include explicit provisions on:

- Framework agreements
- Central purchasing bodies
- Electronic auctions
- Dynamic purchasing systems

Framework Agreements

Article 1 (5) defines a framework as;

- 'An agreement between one or more contracting 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',

- i.e. the framework establishes the terms and conditions that will apply to subsequent contracts (call offs) but does not create rights and obligations
- *A 'call off' contract which creates rights and obligations (e.g. where work and response times are guaranteed) is not a 'framework' as defined in the Directive.*
- Frameworks can cover supplies, works and services and can be used in conjunction with the open, restricted, competitive dialogue and negotiated procedures.
- The maximum duration is four years unless, exceptionally, a longer period can be justified.
- Call offs may extend beyond the life of the framework
- Where a single appointment is not made then the minimum number of framework suppliers is three or the number passing the selection criteria if less.

Central Purchasing Bodies

Article 1(10) defines a central purchasing body as a contracting authority which:

- acquires supplies and / or services intended for contracting authorities' or
- 'awards public contracts or concludes framework agreements for works, supplies or services intended for contracting authorities'
- Purchases may be managed through a central purchasing body (CPB) and organisations are deemed to have complied with the Directives in so far as the CPB has complied, i.e. OGC, CBC

Electronic Auctions

Article 1 (7) defines an electronic auction as:

- 'A repetitive process of involving an electronic device for the presentation of new prices, revised downwards, and / or new values concerning certain elements of tenders, which occurs after an initial evaluation of the tenders, enabling them to be ranked using automatic evaluation methods'.
- I.e. an electronic system enabling suppliers to adjust specified elements of their initial bid and which shows consequent changes in rank immediately
- Auctions may be based on price or a combination of quality and price award criteria.

Dynamic Purchasing Systems

Article 1 (6) defines a dynamic purchasing system as:

- 'A completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification'.
- Dynamic purchasing systems are a kind of electronic framework agreement where **Indicative Bids** to enter the framework can be made at any time and each call off is subject to competitive tender

- The **open procedure must be used** to invite Indicative Bids to join the system
- The contract notice must state the intention to use a dynamic purchasing system and where to obtain bid documents

Competitive Dialogue

Article 1 (11c) defines competitive dialogue:

- ‘A procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender’.

Article 29 (1) describes its use:

- For particularly complex contracts where use of the open or restricted procedures will not allow the award of the contract.

Competitive Dialogue, has been introduced to complement the existing open, restricted and negotiated procedures. It is intended to be used for large complex projects in circumstances where, currently, use of the negotiated procedure might be considered. The negotiated procedure may be used as a fall back in circumstances where other procedures are not workable, remains unchanged.

2) ASSESSING THE CONTRACT VALUE

The valuation rules for contracts can be somewhat complex. The general test for calculating the value of the contract is to estimate the total value of the consideration of the contract net of VAT at the time the contract goes out to tender. This value should include all aspects of consideration, whether it takes a monetary form or the contribution by the authority of other types of consideration such as goods or equipment.

There is a general rule, which prohibits the division or splitting of contracts with the intention of evading the application of the procurement rules. In addition, there are specific aggregation rules, which apply where the contract is for an indefinite period or is a repetitive or regular contract.

Services Contracts

In the case of services contracts which do not specify a total price, the basis of calculating the estimated contract value shall be:

- i) in the case of fixed term contracts with a term of 48 months or less, the total contract value; or
- ii) in the case of contracts of indefinite duration, or with a term of more than 48 months, the monthly instalment multiplied by 48.

Where the contract provides for an option to renew or extend, then the estimate should be based on the assumption that the option is exercised.

Supplies Contracts

In the case of supply contracts, the contract value for regular or renewable contracts is:

- i) the aggregate consideration to be paid during the anticipated duration of the contract; or
- ii) over the first 12 months of the contract if the duration is indefinite; or
- iii) the consideration paid by the contracting authority under similar contracts for the provision of goods of the same type during the preceding 12 months.

Whichever is the most appropriate.

In the case of contracts for lease, rental, or hire purchase, the relevant figure is the aggregate of the consideration, which will be paid throughout the duration of the contract. Where the term exceeds 12 months, the estimate of residual value must also be included, where the duration is indefinite or uncertain, the relevant figure is the monthly contract value multiplied by 48.

Works Contracts

When assessing the value of a works contract it is necessary to include not only the value of the works themselves but also all the related service, equipment and materials which the contractor will be expected to provide under the contract.

3) THE REQUIREMENTS OF THE REGULATIONS

Where the regulations apply, they lay down strict guidelines on:

- i) the advertising of contracts and the disclosure of certain information relating to the procurement process;
- ii) the manner in which tenderers are selected and invited to tender;
- iii) the specification of requirements utilising the appropriate EU references and avoiding criteria which would have the effect of favouring or eliminating particular tenderers without good reason;
- iv) the evaluation of bids received from tenderers and the award of contract; and
- v) the timescales between the various stages of the procurement process

The Advertising/Notification Requirements

The regulations recommend that authorities, at the beginning of every financial year, publish **Prior Information Notices**, (PIN), setting out their procurement plans for the coming year the value of which will exceed the relevant threshold.

(N.B All notices and adverts must be published in the Official Journal of the European Union. Publication is free and there are downloadable forms for the purpose.)

In most cases it is a requirement that the authority publishes a **Contract Notice**, (OJ Notice), inviting expressions of interest in the forthcoming procurement project. There is a special coding system to describe the nature of the requirement services/supplies etc. which is intended to ensure that people from all EU countries will recognise the type of procurement whatever their native tongue.

After the award of a contract the authority is required, no later than 48 days, to publish a **Contract Award Notice** confirming details of the award.

The Options for Procurement Procedures

The regulations provide for four distinct procedures for conducting the procurement process, these are;

The Open Procedure

... under which all interested persons may tender for the contract

The **Restricted Procedure**

... under which only selected persons are invited to tender for a contract.

The **Negotiated Procedure**

... under which a purchaser may negotiate the terms of the contract with one or more persons selected by it.

The **Competitive Procedure**

... under which suppliers are selected in the same way as a restricted procedure but a dialogue is conducted about the supplier's proposed solution before tenders are sought.

The Open and Restricted Procedures may be used in any situation but the negotiated procedure and competitive procedure can only be utilised in certain circumstances.

Timetables

Each of the 4 procedures lay down minimum timescales between certain stages of the procedure. These periods are designed to ensure that all potential tenderers have a reasonable opportunity to formulate and submit a tender should they wish to. E.g. if you are using the Open Procedure there should be a gap of not less than 52 days between the despatch of the Contract Notice and the deadline for responses, please see the table below. The timescales vary and will be shorter if a PIN had been published. In addition the new Directive introduces shorter timescales in circumstances where the contract notice has been sent to the OJEU through an approved electronic system; in this case 7 days can be removed from the minimum period for responding to the notice. If contract documents are made available for download from the internet a further 5 days can be removed from the minimum period to bid. Thus in open procedures the minimum period can be reduced from 52 days to 40 days if both conditions are met.

Procedure	Date of dispatch of notice (restricted and negotiated)	Date of dispatch of notice (open)	Tendering period (restricted and negotiated)	Contract Award Notice
Open	-	52 days	-	48
Restricted	37 (15)* days	-	40 (10)*	48
Competitive Dialogue	37 days	-	Not Specified	48
Negotiated	37 (15)* days	-	Not Specified	48

* The figures in brackets denote the time allowed under the accelerated procedure. The accelerated procedure may be used where compliance with the standard timescales is "rendered impracticable for reasons of urgency". (Reasons justifying use of the accelerated procedure must be set out in the Contract Notice and a clear audit trail for the decision should be documented).

Selection Criteria

The Regulations stipulate which factors may justify excluding potential tenderers from those invited to tender. In addition the regulations provide for only two bases for the ultimate selection of the successful bidder, those of Lowest Price or Most Economically Advantageous Tender, (MEAT). Careful thought should be given to which selection criteria should be used and what, if any, system of weighting should be used. Selection matrices can often be used and these have the advantage of providing a clear record of the selection decision. Advice should be sought from the Council's Procurement Officer as to how to choose appropriate selection criteria and methodology.

Records

Due to the reporting requirements contained in the regulations and the possibility of legal challenge for non compliance it is essential that comprehensive records are kept documenting the key stages of the process and recording the reasons for any key decisions such as award.

4) SOURCES OF FURTHER GUIDANCE

Office of Government Commerce
(Click on procurement policy and EC rules)

www.ogc.gov.uk

The European Commission Procurement Website

www.simap.eu.int

APPENDIX B - MOST ECONOMICALLY ADVANTAGEOUS TENDER

As stated in 13.1 tenders can be accepted on the following basis, either:

- a) The LOWEST where payment is made by the Council, or
- b) The HIGHEST where payment is received by the Council, or
- c) The most economically advantageous tender (MEAT) in accordance with the guidance in Appendix B.

This Appendix does not provide comprehensive or exhaustive procedures for the application and evaluation of tenders using the above criteria. It aims to provide officers with practical advice on suggested evaluation methods to ensure that the aims of NHDC can be achieved and demonstrated within the Best Value framework.

It is therefore vital to ensure that assessment criteria are agreed and documented both in the invitation to tender documents and on the contract notice prior to tenders being invited. An evaluation structure must be defined so that an objective evaluation can take place whatever method is applied. The Internal Audit and Improvement Manager should be consulted when considering the assessment criteria and weighting to be used.

In its simplest form, the Most Economically Advantageous Tender (MEAT) will be items (a) and (b) above, where tenders are being evaluated purely on financial issues and quality/best value issues are not being considered.

However, this is not the only definition of the MEAT term, criteria for evaluating tenders can include quality and best value issues in addition to financial issues.

It is possible that the lowest priced tender may not satisfy the MEAT criteria.

Such criteria should usually include the following three elements:

- i) A point scoring system for individual quality/ best value considerations.
- ii) Weightings applied to quality/best value issues in accordance with their importance to the completion of the contract.
- iii) A 'quality threshold' which sets the minimum standards expected. Tenders which fall below this shall be excluded from consideration. Tenders which exceed the quality threshold can then be assessed on the tender price and:
 - any additional quality features included within the bid
 - the additional cost of these features compared to the lowest bid.

A schedule of tenders can therefore be produced which ranks in order of price and in order of quality. Tenders can be eliminated where they do not satisfy the specified quality threshold even when they are the lowest based solely on price.

APPENDIX C - LEGAL PROVISIONS

This Appendix is not designed to be a comprehensive list of all provisions required for all contracts. It has been drafted to provide guidance for staff to highlight those areas, which should normally be incorporated into all contracts let by the Council.

Where contracts do not contain these provisions, contract documentation should clearly state the reasons for this and incorporate the advice given by the Head of Democratic and Legal Support Services. Additionally the contract shall specify that contractors should comply with all legislation including race relations, health and safety at work etc.

In all cases departments shall fully and properly consult the Head of Democratic and Legal Support Services to ensure that contract documentation is appropriate.

Contracts for the supply of goods materials or services or the execution of works below £50,000 in amount or value shall be in the form of an official order issued and signed by an authorised officer in accordance with the Council's Financial Regulations. Contracts for the supply of goods materials or services or the execution of works in excess of £50,000 in amount or value must be drawn up in a form approved by the Head of Democratic and Legal Support Services.

Every contract shall specify, so far as is appropriate:

- (i) the goods, materials, services or the work to be supplied provided or executed (including as appendices any necessary technical specifications, plans or drawings), including compliance with any British or European Standard current at the date of the tender;
- (ii) the payments to be made under the contract with a statement of any discounts or other deductions;
- (iii) the time or times within which the contract is to be performed;
- (iv) such other conditions and stipulations (including in particular provisions with regard to the initial deduction from payments to be made to the contractor of a specified percentage to be held as retention money; the subsequent release of amounts so deducted; the contractor's responsibility for the maintenance of any works to be carried out under the contract during a specified defects liability period; insurance by the contractor and the circumstances in which the contract shall be determinable) as may in any particular case be necessary or desirable.
- (v) that the Council's Internal Auditors shall have access to records in the possession of the contractor which are, or have been used in the performance of the contract.

Contracts which exceed £100,000 in amount or value should be under seal except with the agreement of the Head of Democratic and Legal Support Services and where the appropriate Director or the Head of Democratic and Legal Support Services shall so require, a contract of any value below £100,000 shall be under seal.

Liquidated Damages

All contracts should, where appropriate, provide for liquidated and ascertained damages to be obtained from the contractor where the terms of the contract are not duly performed. Liquidated and ascertained damages should equate to a genuine pre-estimate of the losses that the Council would incur as a consequence of the delay or other non-compliance with contract conditions.

Performance Bonds

Performance bonds will be required at the discretion of the relevant Director in consultation with the Director of Internal Services and the Head of Democratic and Legal Support Services. Where contract payment is in arrears and a reasonable retention is applied, performance bonds will not usually be required.

[Do we accept parent company guarantees instead of performance bonds?]

Cancellation

The contract shall contain a clause which entitles the Council to terminate the contract and to recover from the contractor the amount of any loss to the Council resulting from such termination, if the contractor shall have acted to induce any individual in relation to obtaining or executing a Council contract.

This applies equally to the Contractor and any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor) under the Prevention of Corruption Acts, 1889 to 1916, and subsection (2) of section 117 of the Local Government Act 1972.

Making Good

A clause shall be inserted to enable the Council to make good (a) such default or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered in the event that the contractor has wholly or partially defaulted. The contractor will be liable for the additional costs to the Council for this.

Extension

If the terms of a contract allow for an extension, then a Director may, with the agreement of the Director of Internal Services and the relevant portfolio holder, agree to such an extension. In all other cases, the Executive may vary or extend a contract for a period of more than 3 months, provided that to do so is consistent with the provisions of Financial Regulations and Procurement Rules. In all other cases, officers must demonstrate that a detailed and robust cost/benefit analysis has been undertaken and that sufficient budget is available. Evidence of the decision making process must be formally recorded in a delegated decision sheet which is filed on the relevant contract file and a copy sent to the Head of Democratic and Legal Support Services.

Where a contract may be extended beyond its original term, the Director responsible shall obtain minuted approval of the Executive to such extension and the Head of Democratic and Legal Support Services shall advise and prepare the necessary documentation to enable such extension.

Data Protection Act/ Freedom of Information Act

All contracts entered into should contain a clause requiring contractors to comply with the Data Protection Act 1998 and the Freedom of Information Act 2000 which indemnifies the Council against any failure to comply on the part of a contractor. Advice should be obtained from the Head of Democratic and Legal Support Services on the precise requirements of the Acts.

Assignment

In every written contract for the execution of any work or for the supply of goods or materials, the following clauses, or a substantially similar one shall be inserted:

- i) The contractor shall be prohibited from sub-letting or assigning the contract or any part of the contract without the written consent of the Council. Such consent to be on those terms the Council considers to be reasonable in the circumstances. Such consent will not be unreasonably withheld to the prejudice of the contractor.
- ii) If the contractor has, without previous consent in writing, sub-let any portion of the works, notwithstanding that the contractor may have subsequently ceased to employ that sub-contractor, the Council may exercise its right to determine the contract.
- iii) It shall be a condition of any sub-letting of any part of the works that the employment of the sub-contractor shall cease immediately upon the determination (for whatever reason) of the contractor's employment under this contract.

Environmental Issues

Goods or services which are known to be harmful to the environment and where there are other adequate alternatives, should not be used. Wherever practical and cost-effective, only materials from sustainable sources will be used.

Equality and Diversity

All contractors will be expected to have or commit to develop equality policies that ensure that East Hertfordshire District Council (through its contractors) can demonstrate that it has achieved the appropriate equality standard level

All contractors will be expected to evidence that they can deliver mandatory equality standards that apply to the District Council, irrespective of whether a service is procured through a third party who is not subject to the same legislation as public bodies.

The new Gender Equality Duty, implemented by legislation in April 2007, requires consideration of the Authority and all its partners, suppliers and service deliverers to ensure that it actively promotes equality between men and women. This extends not only through their actual employment being conducted fairly, but also strives to ensure that services are actively targeted and more responsive to the needs of each gender.

The Disability Discrimination Act 2005 (amendment) puts additional duties onto local authorities in terms of ensuring that every service provided by the Council is mindful of the needs of people with disabilities, whether of a sensory, physical or mental nature. Contracts with suppliers, businesses etc will need to take full account of this too.

With specific reference to the Race Relations (Amendment) Act 2000, the Council will ask 6 approved questions specifically relating to race equality. Answers to these questions will be used to determine if a potential service provider satisfies the pre-contract requirements of the standard

Officers should also take steps to encourage a diverse and competitive supply market, including small firms, social enterprises, ethnic minority businesses and voluntary and community sector suppliers.

APPENDIX D – OFFICERS INTERESTS IN CONTRACTS

Relations with Contractors

The nature of the Council's activities often calls for a close working relationship with commercial organisations and whilst it is in no way implied that those contractors with whom the Council has dealings are likely to act improperly in such circumstances, it must be recognised that by virtue of their position, staff involved in the placing, supervision or overall control of contracts could be particularly vulnerable to criticism.

Private Interests

No contract may be let to an officer of the Council, or to any partnership of which they or any member of their family are a member (except for a corporation in which they are a shareholder) or to any company of which they or any member of their family are a Director unless the Chief Executive has given permission for the letting of the contract to proceed. In such a case the officer must disclose the full measure of their interest in the contract to their Director who will notify the Chief Executive.

No officer may accept a directorship in any company, without the express permission of the Chief Executive. Permission should be sought through their Director who will make a submission to the Chief Executive.

Any member of staff who comes into official contact with any matter concerning a business organisation in which they or a member of their family have an interest must disclose this interest to their Director and ask that some other officer deals with the matter.

All officers are expected to be aware of and comply with the requirements of the Council's policy on Conflicts of Interest.

Prevention of Corruption

The Standard Conditions of Contracts prohibit a contractor from offering or making a gift or other consideration of any kind as an inducement to some action pertaining to a contract and refer to the Prevention of Corruption Acts 1889 to 1916. Under these Acts it is an offence for an officer corruptly to solicit or accept any gift or consideration as an inducement or reward for:

- (i) doing or refraining from doing anything in his official capacity, or
- (ii) showing favour or disfavour to any person in his official capacity.

Use of Services supplied by Contractors

No officer may purchase goods from or use the service of a contractor on preferential terms for private purposes if these terms are given either directly or indirectly because of the potential or actual contractual or other official business relationship between the contractor and the Council.

Contracts Staff

Whilst the above rules apply to all staff whose duties bring them into contact with contractors, they are of particular importance to staff in contracts and purchasing sections who are in close contact with commercial firms seeking the opportunity to tender for the Council's services. It is important that the actions of such staff should be manifestly above suspicion of bias in favour of a particular firm and every care must be taken not to disclose 'in confidence' information e.g. tender prices.

The utmost discretion must therefore be exercised if offers of hospitality, gifts etc. are received from contractors with whom staff deal in the course of their official duties; dealings must be kept strictly on a business footing and the highest standard of watchfulness and integrity must be maintained at all times.

Record of Interests

The Head of Democratic and Legal Support Services shall record in a book to be kept for the purpose, particulars of any notice given by an officer of the Council under Section 117 of the Local Government Act 1972, of a pecuniary interest in a contract. During office hours any Member of the Council may inspect the book.

APPENDIX E - LAND TRANSACTIONS

This Contract Procurement Rule shall apply to purchases and sales of property and land and to leases for a fixed term of more than twenty five years.

All valuations and negotiations in respect of transactions shall be carried out by or under the supervision of a properly qualified Member of the Royal Institution of Chartered Surveyors or equivalent. In no circumstances shall Members of the Council conduct them.

This Contract Procurement Rule will apply to all valuations of land carried out by a qualified and independent Chartered Surveyor not in the employ of the Council.

In respect of all transactions not subject to tender and where the estimated value (or the aggregated value of related transactions) exceeds £250,000 at least two officers of the Council or an officer of the Council and its duly appointed valuer / advisor or other agent shall be involved in all negotiations.

It shall be the duty of the Council's valuer whether employed or appointed to report on the progress of any transaction authorised by the Council or the Portfolio holder to the appropriate Committee or Group (normally Asset Management Group) at least at every other convened meeting of that Committee or Group.

All valuations prepared for the purpose of a transaction shall be accompanied by evidence of the values of comparable properties in the locality.

No property or land owned or leased by the Council shall be disposed of to a third party until it has been established that no other directorates of the Council have a need for the property or land.

Any appropriation between functions will reflect the open market value of the land as certified by the Council valuer. .

No property or land owned or leased by the Council shall be disposed of until a detailed report has been presented by the Director of Internal Services to the Portfolio Holder for Resources and Internal Support containing:

- a description of the property or land, its title, physical characteristics and development constraints.
- any information from the Council's records or those of statutory undertakers which would affect the property or land's value or development potential.
- an assessment of the development potential of the property or land.
- evidence that the property or land has been offered to all directorates and that the Council has no operational use for the property or land, and local members have been advised of the proposed disposal.
- recommendations on the following:
 - i) the title to be transferred
 - ii) the method of disposal
 - iii) whether negotiations should proceed with a special purchaser
 - iv) the estimated price the Council may receive

In arriving at the recommendation, other factors that officers need to take into consideration are:

- i) issues that need to be resolved before marketing of the property or land can proceed
- ii) whether legal and other costs should be recovered from the prospective purchaser and if so an estimate of their amount
- iii) whether the appointment of external advisors or agents is required

In the event that it is decided to dispose of property or land by way of a tender then so far as it is practicable the procedures laid down in Contract Procurement Rules shall apply,.

APPENDIX F - GUIDANCE FOR THE ENGAGEMENT OF CONSULTANTS

Procurement Rules relating to contracts should be followed in the engagement of consultants.

This guidance is designed to give managers an indication of good practice in the processes of engaging and managing consultants, complying with the Audit Commission report "Reaching the Peak".

1. IDENTIFICATION OF NEED

Before consultants are invited to bid/tender, the Director shall:

- identify the project objectives
- document the reasons for the employment of consultants including the benefits of employing consultants against in-house staff or agency staff
- document the residual in-house costs to support the consultant and ensure that sufficient budget is available to meet all identified costs.

[Do Members agree with this approach?]

2. PROJECT BRIEF

The Director is responsible for ensuring that a project brief is prepared including background, objectives, timetable, costs, monitoring arrangements, documentation standards, contact names and numbers for enquiries.

3. CONTRACT MONITORING

In relation to this area the term 'contract' refers equally to the employment of consultants in accordance with Procurement Rules, even where no formal contract document exists.

Any letter of appointment or contract must set out the consultants legal obligations to the Council.

The Director shall be responsible for ensuring that the consultant's work is properly monitored on an ongoing basis. This includes:

- appointing a named project officer or group
- specifying key tasks and dates for consultants
- monitoring costs against budgets
- arranging regular progress meetings with consultants

The project officer shall maintain the following documentation:

- project brief/objectives
- minute authority, were required
- agreement with the consultant and any variations to that
- records to provide evidence of contractor compliance with the contract standard prior to payment being made
- a record of payments made to the consultant and for the project
- a project evaluation form

The project officer shall report immediately to the Director any material technical or financial deviation by the consultant from the specified agreement.

At the end of a project it is expected that a post-project appraisal exercise be carried out, to include an assessment of the consultant's performance.

APPENDIX G - DEFINITIONS OF TERMS

"The Council" shall be deemed to include reference to, the Executive, a committee or sub-committee, approved working group, or person acting in accordance with delegated authority on behalf of the Council.

"Portfolio Holder" means the Elected Councillor who is a Member of the Executive and is responsible for an area of Council activity. In the event of a dispute or absence, the Chief Executive, in consultation with the Leader of the Council shall determine the portfolio holders who shall be consulted.

"Director" means the Director of the department responsible for the contract in question or such senior officer of that department to whom the Director may have delegated in writing the powers in question.

"Contractor", "Sub-contractor" or "Consultant" means any person, company or supplier who has:

- i) requested to be on an approved or ad-hoc approved list of tenderers;
- ii) been approached to provide a quotation or tender;
- iii) provided a quotation or tender; or
- iv) been awarded a contract in accordance with these Procurement Rules.

"Tender" means a formal offer to supply or purchase goods, or materials, execute works or provide services including consultancy, at a stated price based on set terms and conditions. For the purposes of these Contract procurement Rules, the Council uses the term 'Tender' as opposed to 'Quote' for the more complex procurement procedure required for estimated contract values over £50,000.

"Quotation" means an offer to supply or purchase goods, or materials, execute works or provide services including consultancy, at a stated price based on terms and conditions agreed with the supplier. For the purpose of Contract Procurement Rules, the Council uses the term 'Quote' rather than 'Tender' for the more simplistic procurement process to be followed for the estimated contract values up to £50,000.

"Supplier" any person or organisation who supplies the Council with goods, works or services. For the purpose of Contract Procurement Rules, the term supplier includes contractors, consultants and service providers.

APPENDIX H - CONTACT OFFICERS

Procurement Officer

Lisa Rank Ext. 2112

Legal

George Robertson Ext. 2193

Internal Audit

Chris Gibson Ext. 2073

Committee Services

Jeff Hughes Ext. 2170

Finance

?

Risk & Insurance

Graham Mully Ext. 2166

Health & Safety

Peter Dickinson Ext. 1636

Equalities

Shona Gray Ext. 1652