

## Appendix 1

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# **Procurement Regulations**

**Updated November 2010**

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## **1. INTRODUCTION**

- 1.1 These Procurement Regulations provide a framework for the Council's purchase of works, goods and services. It is a breach of Council's Code of Conduct for employees to fail to comply with Procurement Regulations. Employees have a duty to report suspected breaches of Procurement Regulations to their Director and the Internal Audit and Business Improvement Manager.
- 1.2 Before committing any expenditure employees (and others authorised to make purchase for the Council) must ensure they are familiar with and understand these Regulations. Contact details have been provided should you need to seek advice on or clarification of any point from the Procurement Officer, Legal Services Manager and the Internal Audit & Business Improvement Manager.
- 1.3 These Procurement Regulations have been adopted in accordance with the requirements of Section 135(2) of the Local Government Act 1972
- 1.4. The Council will maintain a Procurement Strategy Group to review and provide guidance on all procurement and contractual matters. The Group will report to the Director of Internal Services
- 1.5 The Director of Internal Services may delegate any of their functions and responsibilities contained in the Procurement Regulations to a suitably qualified and experienced officer.

## **2. SCOPE**

- 2.1 These Procurement Regulations apply to all contracts, including the engagement of nominated subcontractors, for works and the supply of goods and services to East Hertfordshire District 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 or to the renting in of land and buildings where there is no reasonable choice of location.

- 2.2 In these Procurement Regulations, 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 Procurement Regulations, in that order of precedence.
- 2.4 These Procurement Regulations will be reviewed annually. Responsibility for this lies with the Procurement Strategy Group in consultation with the Director of Internal Services.

### **3. CONTRACT SPECIFICATION**

- 3.1 Contracts must be consistent with the delivery of the Council's approved policies, service plans and budgets. If for any reason a proposed contract appears likely to require a change to any policy, service plan and/or budget approval of those changes must be obtained in accordance with the Constitution prior to procurement being initiated.
- 3.2 Whenever a contract is to be re let the opportunity should be taken to revise the specification to achieve better value, where necessary seeking approvals as above.
- 3.3 Specifications should have regard to all of the Council's priorities and policies. In the specification (and/or award criteria) consideration should be given to factors such as the method of working or production, sourcing of materials, packaging, or type of fuel employed which may impact on those wider policies and priorities. These factors should not be applied as a means to stifle competition and be commensurate with potential costs.
- 3.4 Where required the specification shall include pre-determined acceptance criteria. Where appropriate, there shall also be a requirement for a performance bond and liquidated damages. (See Appendix D)

### **4. CONTRACT VALUES**

- 4.1 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.
- 4.2 The aggregate value of any contract is to be calculated as 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.

- 4.3 Where a value or estimated value is given in these Procurement Regulations, it means the aggregate value payable in Pounds Sterling exclusive of Value Added Tax.
- 4.4 Contracts must not be artificially under or over estimated or divided into two or more separate contracts where the effect is to avoid or vary the application of Procurement Regulations. 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.
- 4.5 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 12. 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><b>Estimated Aggregate Value of Procurement</b></u>	<u><b>Requirement</b></u>
Up to £5,000	At least one <b>estimate or offer</b> shall be obtained. (see 5.1)
£5,001 to £50,000	A minimum of three formal <b>written quotations</b> shall be invited, unless the Director has complied in full with <u>paragraph. 8.1D.</u> (See 6. Quotations)
£50,001 to EU Procurement Threshold (see Appendix B)	A minimum of three formal <b>competitive tenders</b> shall be invited using one of the tendering options in this Code ( <u>paragraph.8.1</u> ), and a formal written contract prepared. Unless the Director has complied in

	full with <u>paragraph. 8.1D.</u>
Above the EU Threshold	The appropriate EU Procurement Directive shall be complied with.

- 4.6 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 8.1D.

#### **EU Procurement Thresholds**

- 4.7 The EU procurement thresholds, effective from 1 January 2010, are shown in Appendix B. If the thresholds change during the currency of these Procurement Regulations, the Appendix will be updated.
- 4.8 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 B.
- 4.9 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 Legal Services Manager and the Procurement Officer.

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

- 5.1 For goods and services estimated not to exceed £5,000, authorised officers will be expected to be able to demonstrate that value for money 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
- iii) The basis of selecting suppliers/contractors; and
- iv) The staff authorised to accept estimates or offers.

Written Purchase Orders should be placed in accordance with Financial Regulations.

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

6.1 A minimum of three formal written 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. 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) in exceptional circumstances when less than three contractors or suppliers were selected to provide a quotation.

6.2 Any of the tendering methods listed under 8.1 can be used in a formal quotation process. If appropriate, advertising of contract opportunities can be carried on the Council's website, through Supply2Gov – [www.supply2.gov.uk](http://www.supply2.gov.uk) or through newspapers or trade journals.

6.3 For contracts under £50,000, the three quotes and supporting evidence or details of any waiver are required on Market Place. Where market place is not used a separate record will be kept with contract documentation. Refer to document retention policies.

## **7. TENDERING (Goods and Services exceeding £50,000)**

- 7.1 A tender must be advertised through Supply2Gov – [www.supply2.gov.uk](http://www.supply2.gov.uk) or through the Council's internet pages. If required an advert can be placed in a newspaper or trade journal. Directors shall ensure that the selection process being used is fair and equitable, and that no favouritism is shown to any one contractor. A flowchart to show the different tendering options is illustrated under Appendix A.
- 7.2 Any of the tendering methods listed under 8.1 can be used in a formal tendering process.

## 8. TENDERING OPTIONS

- 8.1 Directors shall select one of the following tendering methods unless they are going through an EU procedure when Appendix B applies. 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 quotation or 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. These procedures are generally only for Contracts over £50,000 where value justifies more rigorous process.

<b><u>Tender Option</u></b>		<b>Requirement</b>
A	<b>Open tender</b>	This process should be used e.g. when there is evidence that only a small number of suppliers are able to compete for the business. .
B	<b>Restricted tender</b>	This process should be used if there is a large number of suppliers' competing for the business. It involves pre-qualifying suppliers as part of a short listing process prior to the tender.
C	<b>Serial Tenders Repeat contracts</b>	The proposed contract shall form part of a serial programme. The

		<p>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 should only be used for tenders with an aggregate value under the current EU threshold limit and is subject to the prior written approval of the Director responsible, and the Director of Internal Services.</p>
D	Single Tenders	<p>A single tender or quotation may be obtained when:</p> <ol style="list-style-type: none"> <li>1. 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.</li> <li>2. Specialist consultants, suppliers, agents or professional advisors are required and <ul style="list-style-type: none"> <li>- there is no satisfactory alternative; or</li> <li>- evidence indicates that there is likely to be no genuine competition; or</li> <li>- it is in the Council's best interest to engage a particular</li> </ul> </li> </ol>

		<p>consultant, supplier, agent or advisor.</p> <p>This option is subject to the prior written approval of the Director responsible and the Director of Internal Services.</p>
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- 8.2 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 conditions or variations near to the Council's standard terms found on official orders. Some contracts require the Council to agree to the supplier's standard contract. Acceptance of unduly onerous terms and conditions can have a negative impact on the Council so it is recommended that advice is sought through Legal Services and such advice cannot be sought for contracts over £50,000 or where the contract is for more than 12 months. Tenders and quotations shall be based on a definite written specification.

## 9. CONTRACTOR SELECTION

- 9.1 It is not a requirement to advertise for expressions of interest for any contract below £50,000, however it is recommended that in cases where open advertising is appropriate that Supply 2 Gov – [www.supply2.gov.uk](http://www.supply2.gov.uk) is used.
- 9.2 For contracts between £50,000 and the EU threshold, it is a requirement to advertise in Supply 2 Gov – [www.supply2.gov.uk](http://www.supply2.gov.uk) and also on the Council's website Newspapers and trade journals should also be used where this will enhance competition.
- 9.3 All contracts of EU value and above must be advertised in the OJEU (<http://simap.europa.eu>) and where appropriate through the Council's website and in newspapers and trade journals.
- 9.4 Any short listing 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

short listing contractors is transparent and fair. Where references are sought at the pre-qualification stage they should not be sought again at the invitation to tender stage. If the tendering process being used is an open procedure, references should be sought following receipt of tenders.

- 9.5 Prior to being invited to tender (unless an open tender is selected), all tenderers must be technically and financially appraised. Health and Safety policies are generally required for contracts for works and services and Equalities. They are not generally required for contracts for services. The official order or contract terms should require compliance with Health and Safety and Equalities Legislation. Technical appraisal is not necessarily required e.g. if product supplied meets ISO standard. Evidence of adequate Health and Safety and Equalities 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).
- 9.6 All contractors shall be required to protect the Council's data and personal data, to enable the Council to comply with freedom of information and provide accurate data and information when requested.

## **10. EXCEPTIONS TO TENDERING PROCEDURES**

### **Framework Contracts**

- 10.1 If the Director responsible, in consultation with the Director of Internal Services, determines it is appropriate to award contracts to suppliers through an approved purchasing consortium/framework agreement where fixed unit pricing has been pre-agreed under a consortium framework agreement, the tendering procedures in these Procurement Regulations will not apply.

10.2 Such consortia include Hertfordshire Business Services, the Central Buying Consortium, the Office of Government Commerce Buying Solutions (including S-CAT and G-CAT), and Eastern Shires Purchasing Organisation 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 Procurement Regulations. Mini-tendering within framework agreements are required where there is an opportunity to get better value.

10.3 If a Director believes that by following one of the procurement options detailed in 4.5 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. Prior to proceeding with the procurement, the Director shall produce a written procurement report that shall be approved by the Chief Executive in consultation with the relevant Portfolio Holder for contracts under £50,000 or contracts over £50,000 the approval of the Executive must be sought.

## **11. NOMINATED SUB-CONTRACTORS AND SUPPLIERS**

11.1 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 Regulations.

## **12. WAIVERS**

12.1 Provision in these regulations may be waived under exceptional circumstances but only where EU legislation permits such waiver. 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
- A Director, in consultation with the Director of Internal Services, if the contract value is £50,000 or less.
- The Chief Executive activating the Council's 'Emergency Plan' or the Business Continuity Plan.

12.2 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 Procurement Regulations 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

12.3 A record of the decision and the reasons for it must be kept by the Head of Democratic & Legal Support Services. Waivers which have been submitted to extend contracts or for reasons of extreme urgency must have a timetable attached to highlight when the procurement process is going to be undertaken within the framework of the Procurement Regulations.

### **13. RECEIPT OF TENDERS**

- 13.1 Contractors must be informed 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.
- 13.2 Such envelopes shall be addressed impersonally to the Head of Democratic and Legal Support Services.
- 13.3 Tenders 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.
- 13.4 Tenders which do not meet the requirements of this Standing Order may only be considered if:
- i) failure to comply is the Council's fault; or
  - ii) to the satisfaction of Director of Internal Services the failure was a result of force majeure which the tenderer could not reasonably have predicted
- 13.5 In all other cases late tenders shall not be considered, but shall be opened to ascertain the name of the sender.
- 13.6 All envelopes received shall be kept securely and shall not be opened or accessed until the time appointed for their opening.
- 13.7 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.
- 13.8 The date and time of a tender opening shall be published in the OJEU contract notice for any EU Open Tendering Procedure.



## **14. OPENING OF TENDERS**

- 14.1 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.
- 14.2 Any Member of the Council has the right to be present if they wish at the opening of tenders to which paragraph 14.3 applies, but is only entitled to receive prior notification of the time and place if a specific request has previously been made to the Head of Legal and Democratic Services.
- 14.3 At least 3 officers must be present when tenders are opened.
- 14.4 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 the Director /Head of Service and at least one other officer. The tender opening record shall be signed by all officers present at the opening and retained in the custody of the Director of Internal Services.
- 14.5 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)**

- 14.5 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.

**15. ACCEPTANCE OF TENDERS AND QUOTATIONS**

- 15.1 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 15.2 and 15.3 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 C.
- 15.2 For contracts over £5000 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.

15.4 Where post tender negotiations have been undertaken in accordance with Paragraph 16.2 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.

## **16. ARITHMETIC ERRORS AND POST TENDER NEGOTIATION**

### **Arithmetic Errors**

16.1 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 affect 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**

16.2 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.

16.3 Post tender negotiations shall not be used to degrade the original specification unless all acceptable tenders exceed the available capital or revenue budget., or the appropriate Director considers that changed circumstances subsequent to the start of the tender process allow a lower specification to be accepted but these changes are not so as to require a retender . This process must not put other tenderers at a disadvantage, distort competition or affect adversely trust in the competitive tendering process.

16.4 The appropriate Director shall ensure that all post-tender negotiations are recorded in writing 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.

## **17. PURCHASE ORDERING**

17.1 Orders for Council related work, goods and services will be placed through the Council's E-Marketplace solution. Official orders and Council contracts must not be raised or used for any personal or third party purchases other than where the Council is acting as an authorised agent.

17.2 Each electronic order raised through the Council's marketplace system must have a commitment raised and a satisfactory audit trail. Orders will be completed in sufficient detail to identify accurately the materials, work or service required and will specify where applicable the contract agreement number and name, the price agreed and the approved budget expenditure code against which costs will be charged.

17.3 In cases where goods, works or services are required urgently and where delay would cause either loss to the Council or endanger public health or safety then the order may be placed orally by an

authorised officer. All such orders must be confirmed within two working days by the creation of an official E-Marketplace order.

- 17.4 An authorised officer shall enter the budget expenditure codes. The order will be approved by a different officer with the appropriate level of authority for the transaction amount.
- 17.5 Details of any new creditor should be set up by completing a new supplier form before an order is raised. The supplier will then be entered on the E-Marketplace and Powersolve by the Accountancy section.
- 17.6 The Corporate Management Team will ensure that ordering officers have due regard to the Council's Procurement Strategy, the need to obtain value for money (taking into account current Council functions and considering procurement options for future service delivery) and any current requirements to obtain goods/services by electronic means.
- 17.7 Every officer and Member of the Council has a responsibility to declare any links or personal interests they may have with suppliers or contractors if they are engaged in contractual or purchasing decisions on behalf of the Council, in accordance with appropriate codes of conduct.

## **18. ORDER APPROVAL**

- 18.1 Orders will be approved electronically through the E-marketplace system by the appropriate Head of Service, nominated budget holder or other authorised senior officer. The Internal Audit and Business Improvement Manager will receive and retain an up to date list of specimen authorised signatures and will be immediately notified of any changes.

## **19. ENGAGEMENT OF CONSULTANTS**

- 19.1 For the purposes of these Regulations "consultant" means a person or organisation retained on a time limited basis to undertake a specific piece of advisory work for a fee. It excludes

the engagement of individuals to fill vacant posts, cover maternity, illness or other long term absences of staff which are subject to recruitment arrangements. It is important that value for money 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.

19.2 Financial thresholds apply equally for the competitive process to be followed in 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.

19.3 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 Regulations 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.

19.4 Appendix F provides further guidance on the engagement of consultants.

## **20. PAYMENT PROCEDURES**

20.1 No tender or quotation shall be accepted or contract entered into unless the necessary approval, sanction and consent have been obtained.

20.2 The Director of Internal Services shall be informed of all contracts and contract extensions by relevant departments having a value in excess of £5000. The Director of Internal Services shall maintain a Contract Register showing all contracts **having a contract value of £5,000 or more**, 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.

20.3 Payment to contractors on account of construction, civil engineering and similar contracts for works to land and buildings should only be made on a certificate issued by the supervising engineer or architect. Subject to the provisions of the contract, any variations must be authorised in writing by the supervising engineer or architect.

20.4 The Council's normal payment terms will be within 30 days of receipt of goods, satisfactory completion of services, or stage payment certificate. Payment will be by BACS. Variation of payment terms including retentions may be approved by the Director of Internal Services.

### **Final Certificates**

20.5 Directors shall be responsible for ensuring adequate checks on contractor's final accounts – is this just for works contracts? The officer managing the contract and a representative of Internal Audit who has had no previous involvement should carry these out for contracts over £50,000.

20.6 The final payment certificate shall not be issued until after:

- a) the detailed final statement of account and supporting documents have been submitted to the Internal Audit and Business Improvement Manager; and
- b) the Internal Audit and Business Improvement Manager has, to the extent considered necessary, examined the contract final account and will be entitled to make all such enquiries and receive such information and explanations as required, in order to be satisfied as to the accuracy of the accounts; and
- c) the Internal Audit and Business Improvement Manager has confirmed in writing that the final payment certificate may be issued.

20.7 The appropriate Head of Service will be responsible for issuing a formal memorandum authorising final certificate payment.

### **Reporting of excess costs**

20.8 If during the course of any contract there are indications that costs are likely to exceed the approved annual contract sum by £5000 or more, the Director of Internal Services and Chief Executive will be informed immediately. The budget effect will be reported in accordance with Financial Regulations.

20.9 Where the Council has approved a contract sum all cases where final costs have exceeded the approved contract sum will be reported in accordance with Financial Regulations

## **21. VARIATIONS**

21.1 If the terms of a contract allow for an extension and there is adequate budgetary provision and the extension would be value for money, then a Director may, with the agreement of the Director of Internal Services and the relevant portfolio holder, agree to such an extension for a period of up to one year. In all other cases the approval of the Executive will be sought prior to any extension.



- 21.2 A Director may, with the agreement of the Director of Internal Services and the relevant portfolio holder, authorise variations to the scope or other terms of a contract as provided for in that contract and within existing budgets where variation provides value for money
- 21.3 Variations which increase costs are subject to the approval and reporting requirements set out in Financial Regulations
- 21.5 Variation orders issued verbally on site must be confirmed in writing within two working days.

## **22. CONTRACT DOCUMENTS**

- 22.1 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 supplier's terms of business, warranties, specifications and any obligations placed on the Council must be retained. The Director of Internal Services shall be consulted on the need for a written contract procedure.
- 22.2 Contracts for the supply of goods, materials, or services, or the execution of works in excess of £50,000 in amount or value and 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.
- 22.3 Proof of adequate insurance cover must be provided and signed by both parties prior to any contract commencing. Any exceptions are to be reported to the Executive, together with the reasons for this omission.
- 22.4 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 will be sealed.

22.5 Quotation or tender scoring criteria and methods shall be decided and included in contract documentation prior to quotations or tenders being issued. In cases of urgency and with the prior approval of the relevant Director and the Director of Internal Services criteria may be determined after quotations or tenders are sought but in all cases prior to receipt of quotations or tenders. Scoring sheets shall also be prepared before contract documentation is issued.

All contracts should have regard to data protection particularly where access to personal and/or other confidential information is a clearly identifiable part of delivering the contractual requirement. In these types of contract specific provision should be made to limit access, use and disclosure of such information to maintain confidentiality. Legal Services and the Information Manager's advice must be obtained on the form of contract required.

22.6 All contracts should have regard to promotion of equalities and as a minimum the statutory responsibilities imposed on the Council. Advice on equalities can be sought from the Council's Community Project Officer (Equalities).

22.7 The Council's Disclosure (Whistle blowing) Code will be included in the tender documents and applies equally to contractors, sub-contractors, suppliers and agency staff. The Code 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.

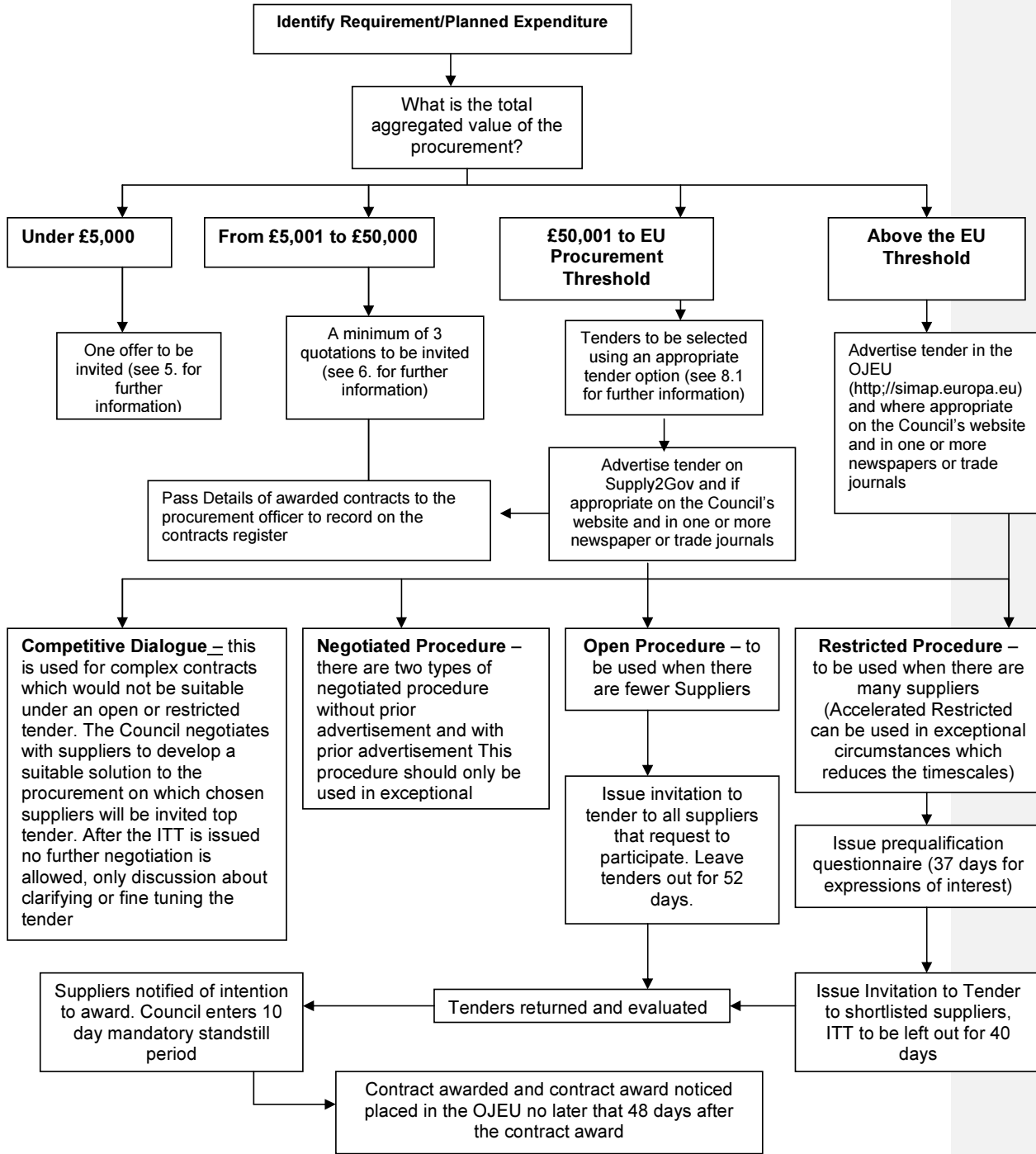
## **23. POST CONTRACT AWARD**

23.1 Directors shall ensure that arrangements are in place to monitor a contractor and that the Council meets its obligations under the contract and that procedures are in place to respond to breach or potential breach by either party. Once a contract has been awarded it must be monitored with regular review meetings to an agreed timetable to raise concerns and issues from both parties.

Written records of review meetings shall be kept for the benefit of East Herts and the contractor.

- 23.2 Financial checking and spot checks of contractors' risk assessments for all contracts over the EU threshold must be carried out biennially] and results reported to the Director of Internal Services.

**APPENDIX A – FLOWCHART TO SHOW TENDERING OPTIONS**



Pass details of awarded contracts to the procurement officer to record on contracts register

## **APPENDIX B - EU DIRECTIVES AND REGULATIONS**

### **1) INTRODUCTION**

The European Union law requires that all firms in EU states can tender for contracts anywhere within the EU. In addition, EU member states require that public sector organisations adopt procurement methods that increase competition. These rules require transparency and fairness in the procurement process.

The EU Procurement Directives have been implemented into national law in the UK by Regulations. The latest regulations are:

#### **Public Contracts Regulations (SI 2006 No. 5)**

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

#### **Public Contracts Amendment Regulations (SI 2009 No.2992)**

The Public Contract Regulations have been updated with the Remedies Directive from 20<sup>th</sup> December 2009 which includes updated rules applying to the standstill period.

#### **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 -	£3,927,260
Contracts for Services -	£ 156,442
Contracts for Supplies -	£ 156,442

(Correct at 1/01/2010 and subject to biennial review)

#### **Public Sector Directive**

The Public Sector Directive 2004 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, ESPO

## 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 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 Regulations. 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 can be accessed by going to <http://simap.europa.eu>). 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 called CPV's (Common Procurement Vocabulary Codes) 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 following a pre-qualification process.

### 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.

All open tenders of EU value must detail the date and time of the tender opening on the OJEU notice.

### **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.

<b>Procedure</b>	<b>Date of dispatch of notice (restricted and negotiated)</b>	<b>Date of dispatch of notice (open)</b>	<b>Tendering period (restricted and negotiated)</b>	<b>Contract Award Notice</b>
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
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\* 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).

### **Standstill Period**

Before a contract can be awarded East Herts must allow a 10 day standstill period which allows a supplier to challenge the procurement decision. The standstill period must be built into the procurement timetable and immediately follows the notification to the suppliers of the intention to award listing the successful contractor.

### **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](http://www.ogc.gov.uk)

The European Commission Procurement Website <http://ec.europa.eu/>

## **APPENDIX C - MOST ECONOMICALLY ADVANTAGEOUS TENDER**

As stated in 15.1 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).

This Appendix does not provide comprehensive or exhaustive procedures for the application and evaluation of tenders using the MEAT criteria. It aims to provide officers with practical advice on evaluation methods to ensure that the aims of the Council can be achieved and demonstrated taking into account value for money.

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 Business Improvement Manager should be consulted when considering the assessment criteria and weighting to be used.

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. All scoring and the score sheets will be prepared before any tender or quotation is issued in line with 22.6. The officers involved in the quotation/tender evaluation team should be appointed before the quotation/tenders are issued if possible.

#### Scoring of price and quality

The relative weighting of price and quality factors is a significant decision. The council expects the majority of its contract award criteria to fall within the following scoring parameters

	High	Low
Price	80	50
Quality	50	20

The approval of the Director of Internal Services should be sought where criteria fall outside these limits.

Points awarded for price will be as follows:

Lowest price		Maximum price points
Other prices	$\frac{\text{Lowest Price}}{\text{Other tender price}} \times$	Maximum price points



Points awarded for quality will be as follows:

Highest score		Maximum quality score
Other scores	$\frac{\text{Other tender score}}{\text{Highest score}}$	X Maximum quality score

The approval of the Director of Internal Services should be sought where an alternative scoring method is proposed.

## **APPENDIX D - LEGAL PROVISIONS**

This Appendix is not a comprehensive list of all provisions required for all contracts. It provides 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 relevant to the contract.

In all cases departments must consult the Head of Democratic and Legal Support Services prior to issue of any documentation.

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 (once the procurement process has been undertaken) 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) The scoring criteria of the contract
- (v) Such other conditions and stipulations as may in any particular case be necessary or desirable. These to include but not limited to: - provisions with regard to retention money; defects liability period; insurance by the contractor; subcontracting; licensing; liquidated damages and the circumstances in which the contract shall be determinable.
- (vi) 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.

### **Indexation of contract prices**

Service or works contracts for periods of more than a single year will normally include a provision to re set prices annually by reference to changes in an index published by a government department or UK National Statistics

The choice of the index to be used can significantly impact on future prices. For some services there may be industry specific indices usually broken down to labour, plant and equipment, materials and consumables. The indexation applied to the contract price may form a weighted basket of labour, equipment, and consumable indices.

Where there is no suitable index the default should be to CPI the index of consumer prices which is the governments preferred measure of inflation.

Where contracts are to run for up to three years consideration should be given to requesting a fixed price to provide budget certainty. Where contracts are to run for more than 3 years the provider should be expected to share efficiency gains with the Council. Such contracts must

include a 1% per year reduction from the preferred index; for example "CPI- 1" so that a 3% increase in CPI triggers a 2% increase in contract price. This requirement may be varied with the approval of the relevant Director in consultation with the Director of Internal Services.

### **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 and/ or parent company guarantees 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 may not be required.

### **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**

Clauses providing for extension of the contract at the option of the Council or by agreement may provide useful flexibility but should not be included only to defer a retender. Provision to extend by more than one year should be exceptional and included only with the approval of the Director of Internal Services and the relevant portfolio holder.

### **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**

Materials or processes 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 the Council's promotion of equalities.

All contractors will be expected to evidence that they will meet all statutory equality standards that apply to the Council.

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.

When tendering for contracts, officers should be mindful of all religious festivals during the procurement process.

## **APPENDIX E – OFFICERS' INTERESTS IN CONTRACTS**

### **Relations with Contractors**

By virtue of their position, staff involved in the placing, supervision or overall control of contracts could be particularly vulnerable to criticism unless relationships and dealings with contractors are transparent. The following are minimum requirements and staff should declare to their

Director any circumstances which might be seen as casting any doubt on the integrity of the Council or a contractor.

### **Private Interests**

No contract may be let to an officer of the Council, or to any organisation (whether for profit or not) owned, managed, influenced or controlled by the officer or any member of their close family 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. "Close family" means a natural or by adoption parent or parent in law, sibling or sibling in law, child, spouse or unmarried partner, plus any person resident at the same address as any of such family members.

No officer may accept a directorship in any company (or equivalent management position in another organisation), without the written 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 an organisation in which they or a member of their close family have an interest must disclose this interest to their Director prior to taking action or decision on 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 unless the contract with the provider makes express provision for all Council employees to participate as an employment benefit.

## **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 that 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 F - GUIDANCE FOR THE ENGAGEMENT OF CONSULTANTS**

Procurement Regulations should be followed in the engagement of consultants.

This guidance sets out good practice in engaging and managing consultants; it complies 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.

### **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 Regulations, 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, where 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 Regulations.

**"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 Procurement Regulations, 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 Procurement Regulations, 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 Procurement Regulations, the term supplier includes contractors, consultants and service providers.

## **APPENDIX H - CONTACT OFFICERS**

### **Procurement Officer**

Tracey Sargent Ext. 2112

### **Legal**

George Robertson Ext. 2193

### **Internal Audit**

Chris Gibson Ext. 2073

### **Committee Services**

Jeff Hughes Ext. 2170

### **Finance**

Simon Chancellor Ext. 2050

### **Risk & Insurance**

Graham Mully Ext. 2166

### **Health & Safety**

Peter Dickinson Ext. 1636

### **Equalities**

Marianne McWhinnie Ext. 1595