

## **9.12 Contract Procedure Rules**

- 9.12.1 These Contract Procedure Rules (CPRs) have been issued in accordance with Section 135 of the 1972 Local Government Act and adopted by East Herts Council to give consistency to procurement across the council.
- 9.12.2 Procurement is the process by which the council manages the acquisition of all goods, services and works. It includes the identification of need, consideration of options and the actual procurement process. For the purposes of these CPRs any procurement that is not identified as out of scope in paragraph 9.14 below is a “Relevant Contract” and these CPRs apply to it.
- 9.12.3 Officers responsible for purchasing on behalf of the council (herein terms ‘Officers’ within this section of the Constitution) must comply with these CPRs. They provide the minimum requirements although a more thorough procedure may be appropriate for specific contracts.
- 9.12.4 These CPRs provide a framework for the procurement of all goods, services and works for the council. They are designed to ensure that all procurement activity is conducted with openness, probity and accountability. These CPRs are designed to ensure that the council obtains Value for Money and the required level of quality and performance in all contracts.
- 9.12.5 These CPRs must be read in conjunction with the relevant provisions of the council’s Constitution including the Financial Procedure Rules and the Procurement Strategy.

9.12.6 The disposal of assets and the acquisition, use and disposal of land and buildings are not covered by these CPRs.

9.12.7 For the purposes of these CPRs there is a requirement for all communication to be in writing except where otherwise specified. This shall be deemed to include electronic communication, use of e-procurement and hard copy.

9.12.8 In the event of doubt as to the interpretation of the CPRs, take advice from the Monitoring Officer.

### 9.13 **Basic principles**

9.13.1 The following EU Treaty Principles **MUST** be upheld in any procurement notwithstanding the withdrawal of the UK from the EU:

- (a) transparency – contract procedures must be transparent and contract opportunities must generally be publicised;
- (b) equal treatment and non-discrimination – potential suppliers must be treated equally;
- (c) proportionality – procurement procedures and decisions must be proportionate; and
- (d) mutual recognition – giving equal validity to qualifications and standards from other Member States, where appropriate.

9.13.2 It is essential to observe the EU framework and principles

underlying the public procurement regime (the procurement procedures, financial thresholds, etc.), as they have continued to apply following Brexit. The EU financial thresholds (“relevant thresholds”) for the purposes of the application of the Public Contracts Regulations 2015 (as amended) remain relevant and must be adhered to. Upon the implementation of any new procurement rules and laws, these CPRs will be updated accordingly to reflect any relevant changes in UK law.

9.13.3 As of 1<sup>st</sup> January 2021 the council must publish all new public procurement notices (including a Contract Award notice) above the relevant (EU) financial threshold in the new UK e-notification service, Find a Tender, in place of the Official Journal of the European Union’s Tenders Electronic Daily (OJEU/TED). The council must also continue to follow the requirements for publication on Contract Finder as applicable. In relation to procurement procedures that were launched prior to 1<sup>st</sup> January 2021 and new contracts awarded under frameworks or dynamic purchase systems that were established prior to 1<sup>st</sup> January 2021, the previous arrangements for the publication of notices still apply.

9.13.3 In addition to the above public procurement regime requirements, all procurement must:

- (a) comply with the council’s Procurement Strategy, support the council’s corporate and departmental aims, strategies, policies and procedure;
- (b) achieve value for public money spent;
- (c) be consistent with the highest standards of integrity;
- (d) comply with relevant legal requirements;

- (e) be undertaken in a timely fashion;
- (f) ensure that Non-Commercial Considerations do not influence any Contracting Decision; and
- (g) be conducted in a sustainable manner, taking environmental impact into account.

## 9.14 **Exclusions**

9.14.1 All Relevant Contracts must comply with these CPRs but some contracts which the council enters into are not defined as Relevant Contracts and so these CPRS do not automatically apply. These exclusions include:

- (a) the making of grant payments which are covered by the Financial Procedure Rules;
- (b) contracts of employment which make an individual a direct employee of the council;
- (c) the engagement of counsel/advocates or other experts by the Legal Services Manager where such engagement falls outside an existing framework for the provision of legal services;
- (d) agreements regarding the acquisition, disposal, or transfer of land. Further guidance must be sought from the Head of Strategic Finance and Property;
- (e) the lending and borrowing of money, or
- (f) the purchase or sale by auction or at public fairs and markets;

- (g) the purchase of works of art or museum specimens, or
- (h) agreements in relation to performers and artists at festivals and arts programming; and
- (i) agreements under section 106 of the Town and Country Planning Act 1990 (as amended).

## 9.15 **Exemptions**

- 9.15.1 Where a contract is not excluded under these CPRs, that is, where the CPRs are applicable, the council may still decide that all or part of these CPRs do not apply to a particular contract. If the council makes such a decision, this is termed an exemption from the CPRs. By granting an exemption the council can only waive the rules established by it as set out in the Constitution. The council cannot waive UK law.
- 9.15.2 It must be noted that if the value of a proposed contract is likely to exceed the relevant EU/relevant financial threshold then the council cannot apply any exemptions to these CPRs.
- 9.15.3 Exemptions are permissible if the value of a proposed contract is likely to be below the EU/relevant financial threshold, but such exemptions must only be sought in exceptional circumstances. Any such exemption must be recorded as it counts as a Contracting Decision.
- 9.15.4 Exemptions relating to proposed contracts with a likely value of between £10,001 and the EU/relevant threshold

must be approved by the Procurement Manager, the Head of Strategic Finance and Property or the Monitoring Officer. A record of all exemptions requested and approved will be kept by the Procurement Manager.

9.15.5 The officer requesting an exemption must produce evidence to support the request for any exemption. If the exemption is agreed the resulting contract must be recorded on the Central Contracts Register by completing an Award Notification Form.

9.15.6 Exemptions to any of the council's rules must be sought in advance of any contractual agreement, placement of an order, use of works, services or purchase of supplies.

9.15.7 Exemptions are likely only to be granted in the following circumstances:

- (a) an unforeseeable emergency involving immediate risk to persons or property, or serious disruption to council services;
- (b) the goods or services are supplied at a fixed price or the prices are wholly controlled by trade organisations and the relevant Head of Service is satisfied that no satisfactory alternative is available;
- (c) Where exceptional circumstances clearly show it is the best interests of the Council to negotiate a new contract with an existing supplier;
- (d) the items to be supplied consist of goods or services which are currently in use and are required for the purposes of standardisation;

- (e) the specialised nature of the goods, services to be supplied or the works to be executed means that only one suitable supplier has been identified or is available;
- (f) emergency action is required and/or immediate repairs are required to buildings, structures and other assets damaged by fire, flood or vandalism; or
- (g) unforeseen works or circumstances where delay will adversely impact on the service delivery for the council or access to external funds.

9.15.8 If an exemption is sought which is not for any of the above reasons, advice must first be obtained from the Monitoring Officer in order to determine whether such an exemption can be applied. Exemptions for reasons not listed above will be acceptable only in exceptional circumstances.

## **9.16 Procurement thresholds and key requirements**

9.16.1 Where the Total Value for procurement, for the whole contract length including any options of extensions (if there is no specific length, assume 4 years) is within the values in the first column below, the Award Procedure in the second column and the key requirements in the third column must be followed:

<b>Total Value (excluding VAT)</b>	<b>Award Procedure</b>	<b>Key Requirements</b>

Up to £10,000	Go ahead (see section 9.1)	<ul style="list-style-type: none"> <li>• If assured of value for money; buy it from a supplier that can provide the requirement.</li> </ul>
OR if a saving of more than the cost of the procurement might be achieved	Quick Quotation Procedure (see section 9.2)	<ul style="list-style-type: none"> <li>• Using In-Tend e-procurement recommended</li> <li>• Invite email or written quotations from a minimum of three suppliers</li> <li>• No requirement to use</li> </ul>
£10,001 - £75,000	Formal Quotation Procedure (see section 9.3)	<ul style="list-style-type: none"> <li>• Use of In-Tend e-procurement mandatory</li> <li>• Invite a minimum of three Quotations from three suppliers</li> <li>• Use Formal Quotation</li> </ul>
£75,001 – EU /Relevant Threshold	Formal Tender Procedure (see section 9.4)	<ul style="list-style-type: none"> <li>• Use of In-Tend e-procurement mandatory</li> <li>• Use Formal Tender template (alternative templates for works may be used with approval from the procurement manager)</li> </ul>

above EU/Relevant Threshold	EU Tender Procedure subject to the new requirements on publication of notices for new procurement	<ul style="list-style-type: none"> <li>• Must always consult the Procurement Manager and the Legal Services Manager</li> <li>• Use of In-Tend e-procurement mandatory.</li> </ul>
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## 9.17 Officer responsibilities

9.17.1 Officers responsible for procurement must comply with these CPRs, Financial Procedure Rules, the Officers' Code of Conduct, and with all UK and European Union binding legal requirements. Currently the EU framework and principles underlying the public procurement regime continue to apply notwithstanding the withdrawal of the UK from the EU. Officers must ensure that any Agent, Consultants and contractual partners acting on the council's behalf also comply.

9.17.2 Before requesting Quotations or inviting Tenders the officer must:

- (a) explore whether there is an alternative to buying the goods, services or works;
- (b) check with the Procurement Manager whether a relevant East Herts contract exists before seeking to enter into a further contract; if such a relevant contract exists, this must be used unless there is an auditable reason not to;
- (c) check with the Procurement Manager whether a suitable Framework Agreement is available from any Contracting Authority or a Professional Buying

Organisation before starting a new procurement; where a suitable Framework Agreement exists, consideration must be given to procure from it unless there is an auditable reason not to;

- (d) confirm that there is approval for the expenditure;
- (e) seek timely procurement, legal, financial, and other professional advice;
- (f) keep records of all Contracting Decisions taken; and
- (g) include consideration of the carbon footprint within (a) the determination of whether to procure, (b) the specification for good and/or services to be procured and (c) the quality assessment of competing Tenders.

9.17.3 The Officer must ensure that timely advice is sought from the Head of Legal and Democratic Services when any officer either of the council or of a service provider may be affected by the Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE) issues before proceeding with inviting Tenders or Quotations.

## **9.18 Contract formalities**

9.18.1 All contracts shall be in writing and based on the council's Standard Terms and Conditions unless the council's standard contracts are deemed unsuitable. In some circumstances it may be appropriate for the council to contract on a contractor's or supplier's Standard Terms and Conditions. If a contractor or a supplier requires that the contract is entered into based on its standard terms of

business, legal advice must be sought first on the suitability of these terms and any amendments that might be necessary.

9.18.2 A contract signed by both parties (or sealed by the council) must be put in place upon the completion of all procurement exercise. Every contract novation, contract extension or contract variation must be effected in writing using an appropriate agreement. Please refer to the Procurement Team or Legal Service for such templates and guidance.

9.18.3 Advice from the Procurement Manager and Legal Service must be sought for the following contract types:

- (a) where the Total Value exceeds the EU Threshold;
- (b) those involving leasing arrangements; or
- (c) where it is proposed to use a supplier's own terms and conditions.

9.18.4 As a minimum all contracts shall clearly specify:

- (a) what is to be supplied, that is: the works, supplies, materials, services, matters or things to be furnished, acquired or done;
- (b) the provisions for payment, that is, the price to be paid and when;
- (c) whether the price stated is inclusive or exclusive of Value Added Tax;
- (d) the time, or times, within which the contract is to be

performed;

- (e) a start and end date and details of any extension options permissible; and
- (f) the applicable terms and conditions, including, though not limited to, the provisions for the council to terminate the contract.

## **9.19 Procedure**

### 9.19.1 Specification and Award Criteria

The officer must prepare a specification document that describes the council's requirements in sufficient detail to enable the submission of competitive offers before starting a procurement process. The specification document must include performance targets and/or the criteria for acceptance and must be outcome or output based.

9.19.2 Consideration must also be given by the officer to economic, environmental and social benefits of any proposed procurement to include consulting stakeholders where appropriate. Further information and advice can be obtained from the Procurement Manager.

9.19.3 The Officer must define Award Criteria and any sub criteria that are appropriate to the procurement and designed to secure an outcome giving Value for Money for the council. The basic criterion should be:

- (a) 'lowest price'; or
- (b) 'most economically advantageous', where

considerations such as quality other than price also apply.

9.19.4 Award Criteria must not include:

- (a) considerations that are in conflict with the principles of effective procurement as laid out in section 2 above;
- (b) matters which discriminate against suppliers signatories to the Government Procurement Agreement; nor
- (c) other Non-Commercial Considerations.

9.19.5 Good practice requires that quoted prices or tendered prices must not be altered without justification. However where there is a risk that a priced document may be subject to computational errors then the officer must decide, at the time that the specification is agreed, how such errors will be treated and this should be detailed within the specification. Further advice can be obtained from the Procurement Manager.

9.19.6 Advertisement of Quotation or Tender opportunities

Officers shall ensure that a sufficiently accessible advertisement is published to generate the appropriate level of interest in the contract. In addition to advertisement through Contracts Finder, advertising may utilise:

- (a) portal websites specifically created for contract advertisements;

- (b) Construction Line or similar specialist portal websites created for contract advertisements;
- (c) the council's website;
- (d) the council's Twitter account;
- (e) national official journals; and
- (f) the new UK e-notification service, Find a Tender (FTS)

9.19.7 The Officer must ensure Bidders have an adequate time period in which to prepare and submit a quotation or Tender consistent with the complexity of the contract requirement. Advice must be sought from the Procurement Manager but the following are recommended:

Quick Quotation	10 Calendar Days
Formal Quotation	28 Calendar Days
Formal Tender	28 Calendar Days
EU Tender	The timescales are prescribed and vary according to procedure utilised

9.19.8 No Quotation or Tender received after the date and time indicated in the request for Quotation or Invitation to Tender shall be accepted or considered, other than in exceptional circumstances and the officer must consult with the Monitoring Officer and Procurement Manager.

## **9.20 Award Procedure and detailed requirements**

Go ahead may be used (Up to £10,000)

9.20.1 Where the estimated value of goods, works or services to be supplied is less than £10,000 the officer must be satisfied

that the arrangements made secure the best available terms for the council, and that due consideration has been made to paragraph 9.17.

#### Quick Quotation procedure (Up to £10,000)

- 9.20.2 Where it is believed that a saving can be achieved by putting a requirement out to Quote then the quick quote process should be used
- 9.20.3 Officers should aim to contract under the council's terms and conditions if market conditions allow.
- 9.20.4 Officers are encouraged to use the In-Tend e-procurement portal.
- 9.20.5 If e-procurement has not been used then the officer must ensure that:
  - (a) the date and time of receipt of each Quotation is suitably recorded;
  - (b) the details of the Quotation are not disclosed to any interested party;
  - (c) there are no changes or amendments to the Quotation after submission; and
  - (d) all Quotations are evaluated at the same time and that each Bidder is simultaneously advised in writing of the outcome.

#### Formal Quotation procedure (£10,001- £75,000)

- 9.20.6 The request for a Formal Quotation shall be issued through the In-Tend e-procurement portal using the council's

standard template as appropriate for supplies, services or works, making clear the appropriate terms and conditions of contract as agreed with the council's Legal service. This approach will make clear that no Formal Quotation will be considered unless it is received by the date, time and method stipulated.

- 9.20.7 All organisations invited to provide a Quotation must be issued with the same information at the same time and subject to the same conditions.
- 9.20.8 A minimum of three Formal Quotations shall be invited where the officer is satisfied that competitive Quotations will be received from those three. Where the officer is unsure of the market, consideration may be given to using an open process provided the officer is satisfied that this will not generate an excessive volume of responses. It is vital that at least two compliant bids are received to evidence appropriate invitations to Quote where made.
- 9.20.9 Providing Clarification of a request for a Quotation to a Bidder is permitted and is provided for within In-Tend e-procurement.
- 9.20.10 The officer must consult with the Procurement Manager concerning the allocation of roles within the In-Tend e-procurement.
- 9.20.11 For the receipt and opening of a Formal Quotation there must be strict compliance with the requirements of In-Tend e-procurement.

9.20.12 If you believe the market will not support or respond to a Formal Quotation you may request authority from the Procurement Manager to use the quick quote process as an alternative.

9.20.13 A contract under the EU/Relevant threshold for the purposes of the PCR will not need advertising in Find a Tender, but will generally need to be advertised in Contracts Finder if the contract is above £25,000 unless exceptions apply.

Formal Tender procedure (£75,001- EU /Relevant Threshold)

9.20.14 All procurement above £75,000 shall be conducted in accordance with advice from the Procurement Manager and shall involve seeking offers through a tender process in line with an open procurement approach and in line with publication requirements for contracts above £25, 000.

9.20.15 The In-Tend e-procurement system must be used.

## **9.21 Tender procedure**

9.21.1 The exact procedure will vary depending on the procurement method employed, however, all stages of the process will be conducted through the In-Tend e-procurement portal and shall specify the supplies, services or works that are required together with the appropriate terms and conditions of contract. It should be made clear that no submission will be considered unless it is submitted via the In-Tend e-procurement portal.

9.21.2 All organisations invited to participate in the procurement process must be issued with the same information at the

same time and subject to the same conditions. All dialogue with Bidders during the process must be dealt with and/or recorded using the In-Tend e-procurement portal.

9.21.3 Providing Clarification of any matter within the procurement process is permitted and is provided for within the In-Tend e-procurement.

9.21.4 For the receipt, opening and/or handling of any submission made within the procurement process, there must be compliance with In-Tend e-procurement.

9.21.5 The officer must ensure that any contract is awarded in line with the delegated authority levels set out in the Financial Procedure Rules.

EU (European Union) Tender Procedure (above EU Threshold)

9.21.6 All procurement above the EU/Relevant Thresholds shall be conducted in accordance with Public Contracts Regulations 2015 (as amended) (**the PCR**) and the advice given in section 9.20.14 above, save that additional options are available under the PCR, these being:

- open tender;
- restricted tender;
- competitive dialogue; or
- competitive dialogue with negotiation.

9.21.7 Furthermore, no procurement above the EU/Relevant Thresholds shall proceed until the Procurement Manager

has approved the proposed procedure process. Provisions, such as those relating to the receipt and opening of Tenders, must be followed exactly in accordance with the legislation.

- 9.21.8 All transactions exceeding the EU/Relevant Thresholds must be conducted in accordance with the PCR and must be advertised in the new UK e-notification service, Find a Tender (FTS) . Strict rules govern the process in relation to timescales, descriptions and selection procedures and these are in addition to these contract procedure rules. Breaches of the PCR are subject to harsh penalties for the council. Advice must be sought from the Procurement Manager and Legal Service Manager in all circumstances where there is a likelihood of the value of a proposed contract exceeding the EU/Relevant Thresholds.

## **9.22 Collaborative arrangements**

- 9.22.1 In order to secure Value for Money, the council may enter into collaborative procurement arrangements. The officer must consult with the Procurement Manager in these circumstances.
- 9.22.2 All procurement made via a local authority procurement consortium or a Professional Buying Organisation (PBO) is deemed to comply with these CPRs and no exemption is required. However, procurements above the EU/Relevant Threshold must be let in accordance with the PCR, unless the consortium has satisfied this requirement already by letting its contract in accordance with the PCR on behalf of the council and other consortium members.
- 9.22.3 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive

process has been followed that complies with the CPRs of the leading organisation, will be deemed to comply with these CPRs and no exemption is required. However, advice must be sought from the Procurement Manager.

## **9.23 Framework Agreements**

9.23.1 A Framework Agreement may be entered into with one provider, or, where an agreement is concluded with several organisations, there must be at least three providers. Advice must be sought from the Procurement Manager when a Framework Agreement is being considered. Contracts based on Framework Agreements may be awarded by either:

- (a) direct call off – applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or
- (b) mini competition – where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition.

9.23.2 Framework Agreements that have been established by other public sector bodies that are lawfully accessible to the council should be used strictly in accordance with the terms and conditions of the relevant Framework Agreement. When using frameworks set up by other public sector bodies, Officers must undertake due diligence with assistance from the Procurement Manager before using a framework.

## **9.24 Records and safekeeping**

9.24.1 It is essential that for every procurement exercise a record is kept by the officer. Where the In-Tend e-procurement has been used then the system retains the records from after the request to Quote or Invitation to Tender has been issued up to the Contract Award.

9.24.2 Where the Total Value does not exceed £750,000, the following records must be kept:

- (a) request to Quote and Quotations (including name of Bidder and price);
- (b) any exemption and the reason for them;
- (c) any Clarification question and the answer;
- (d) Award Criteria if the award is most economically advantageous;
- (e) written records or communications with the successful Bidder or an electronic record if written record of the transaction would normally not be produced; and
- (f) award notification form to be completed and sent to the procurement team to enable the central contracts Register to be updated. Also a copy of the final contract to be provided to procurement for safekeeping.

9.24.3 Where the Total Value exceeds £75,000 the officer must record:

- (a) the method for obtaining bids;
- (b) pre-Tender market research;

- (c) any Contracting Decision and the reasons for it;
- (d) any exemption together with the reasons for it;
- (e) the Award Criteria in descending order of importance and any sub criteria;
- (f) the Invitation to Tender sent to and received from the Bidder;
- (g) Clarification and post-tender negotiation (to include minutes of meetings);
- (h) the contract documents;
- (i) post-contract evaluation and monitoring;
- (j) communications with the Bidder and with the successful contractor throughout the period of the contract; and
- (k) award notification form to be completed and sent to the procurement team to enable the Central Contracts Register to be updated. Also a copy of the final contract to be provided to procurement for safekeeping.

9.24.4 Records which relate to an unsuccessful Tender must be kept for a minimum period of one year from the start of the Contract.

9.24.5 Contracting Decisions and Post Tender Negotiation with the successful Bidder must be retained for one year after the term of the contract has expired whilst all other records

must be retained for six years after the term of the contract has expired unless the contract is under seal when they must be retained for 12 years after the term of the contract has expired.

9.24.6 Details of all contracts with a value over £5,000 shall be held on a contracts register by the Procurement Manager to include:

- (a) the title of the contract and reference number;
- (b) the parties to the contract;
- (c) the name of the service and contract manager primarily responsible for the contract;
- (d) the estimated Total Value of the contract;
- (e) a description of the good, services and/or works provided;
- (f) the start date, end date, review dates and any date to which the contract may be extended; and
- (g) the procurement method to include details of any Framework Agreement.

9.24.7 The original executed and completed copy of all contracts over the value of £75,001 and all contracts over the EU/Relevant Threshold shall be passed to the council's Legal Service for safe-keeping.

9.27.8 Heads of Service shall be responsible for the safekeeping of all other contracts falling within their designated functions.

9.27.9 Officers shall provide the Procurement Manager with a scanned copy of any completed contract as soon as practicable.

## **9.28 Evaluation, award of contract, and debriefing Bidders**

9.28.1 Apart from the debriefing required or permitted by these CPRs, the confidentiality of Quotations, Tenders and the identity of Bidders must be preserved at all times and information about one Bidder's response must not be given to another Bidder.

9.28.2 Contracts must be evaluated and awarded in accordance with the Award Criteria. During this process, Officers shall ensure that submitted prices are compared with any pre-process estimates and that any discrepancies are examined and resolved satisfactorily.

9.28.3 The arithmetic in compliant Quotations or Tenders must be checked. If arithmetical errors are found in the lowest or most economically advantageous bid, then advice must be sought from the Procurement Manager before they must be notified to the Bidder. Further the request to Quote or Invitation to Tender must be reviewed to ascertain the procedure in these circumstances.

9.28.4 Officers may accept the receipt of Quotations and Tenders in respect of proposed contracts, provided that they have been sought and evaluated fully in accordance with these CPRs and they do not exceed the Budget provision. Unless all Tenders are required to be vetted as part of the selection process, only the successful Bidder will be subject to the appropriate financial checking.

9.28.5 Where the Total Value is above the EU/Relevant Threshold,

the officer must notify all Bidders simultaneously and as soon as possible of the intention to award the contract to the successful Bidder. The officer must provide unsuccessful Bidders with a period of time in line with the requirements of the Public Contracts Regulations 2015, typically at least ten days, in which to challenge the decision before the officer awards the contract. If the decision is challenged by an unsuccessful Bidder, then the officer shall not award the contract and shall immediately seek the advice of the Legal Services Manager.

9.28.6 The Officer shall debrief in writing all those Bidders who submitted a Tender about the characteristics and relative advantages of the leading Tenderer. No information, other than the following, must be given without taking the advice of the Procurement Manager:

- (a) how the Award Criteria was applied; and
- (b) the prices or range of prices submitted, in either case not correlated to Bidders' names.

9.28.7 If a Bidder requests in writing the reasons for any Contracting Decision (to include those deselected in any pre-Tender shortlisting process) the officer must give the reasons in writing within 15 days of receipt of the request. Guidance must be sought from the Procurement Manager.

## **9.29 Post-Tender negotiation may only be used on Quotes and Tenders below the EU/Relevant Threshold where appropriate**

9.29.1 Post-Tender negotiation refers to discussions with a Bidder, or a number of Bidders, and can be a useful tool in making

improvements to Quotations or Tenders. It can ensure that the council obtains Value for Money by purchasing an acceptable finished product at a competitive but fair market price, within the time stipulated. It can also ensure that potential suppliers have no misunderstandings as to their exact obligations under the terms of any contract. However, the council must at all times act transparently, in accordance with its published procurement documents and without discrimination.

9.29.2 Advice must be obtained from the Procurement Manager prior to entering into any post-tender negotiations. Where post-tender negotiation results in a material change to the specification (or contract terms) the contract must not be awarded and must be re-tendered.

9.29.3 Negotiations must not take place unless the Formal Quotation or Tender specifically reserves the right to do so. Any negotiations will occur following the closing date for receipt of Quotations or Tenders but before award of the contract.

### **9.30 Variations and Extensions of Contracts**

9.30.1 In certain circumstances it is possible to modify or extend an existing contract that is subject to the PCR (that is above the EU/Relevant Threshold) without triggering a new procurement exercise. Any such modification of a contract must be in accordance with Regulation 72 of the PCR, which permits an amendment, extension or renewal of an existing contract where:

- (a) the original procurement documents contain provisions for a variation or extension of the contract in a "clear, precise and unequivocal review clause" (providing the overall nature of the contract

is not be altered as a result of the change);

- (b) there is a need to purchase new services, supplies and works from the provider and a change of provider cannot be realistically made for economic or technical reasons and would cause significant inconvenience or substantial duplication of the council's costs. (This is subject to the condition that each change does not increase the original value of the contract by more than 50 per cent);
- (c) circumstances have arisen which the council could not reasonably have foreseen and that require an amendment to the existing contract. (In this case the proposed change cannot alter the overall nature of the contract and any increase to the original value of the contract as a result of the change must not exceed 50 per cent);
- (d) a new provider is required to replace the original provider under the contract as a result of corporate restructuring, including takeover, merger, acquisition or insolvency leading to a universal or partial succession of the original provider, or because this change was envisaged in a review clause in the contract;
- (e) the value of the variation is both below the EU/Relevant Thresholds and less than 10 per cent of the original value of the contract in the case of a supplies or services contract or less than 15 per cent of the original value of the contract for a works contract. (One or more changes may be made under this provision provided the total value of the variations does not exceed the EU/Relevant Threshold); and

(f) the proposed variations are insubstantial.

9.30.2 A contract variation is not permissible if the contract has been extended beyond the approved extension period; and if:

(a) the contract would become materially different;

(b) the scope of the contract would extend considerably;

(c) the outcome of the original procurement exercise (e.g. the identity of the successful Bidder) would have been different had the variation been implemented at that time of the procurement;

(d) the economic balance would shift in favour of the provider; or

(e) a new provider would replace the original provider for any reason other than those already identified in paragraph 14.1.5 above.

9.30.3 Advice must be sought from Procurement and Legal Services prior to varying or extending a contract to confirm that the lawful circumstances set out above can be relied upon. Officers must also ensure that authority to vary the contract is obtained in line with the delegated authority levels set out in the Financial Procedure Rules.

9.30.4 A Contract Variation Notice must be published on Find a Tender.