

## 14. CONTRACT PROCEDURE RULES

### Introduction

This Appendix sets out the Council's arrangements for the procurement of all goods, works and services and shall apply to all procurement exceeding £2,000. For procurement below £2,000 see the procurement manual.

### CONTRACT PROCEDURE RULES

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## 1 Scope

- 1.1 These Procedure Rules (including annexes) and the guidance in the [Procurement Manual](#) apply to all procurement for works and the Supply of goods and services including Professional and consultancy services to the Council. They equally apply to all Contracts entered into by High Peak Community Housing on behalf of High Peak Borough Council, unless varied in accordance with sub clauses 1.10 to 1.15 below. They also apply to all Contracts with third parties and to all sub-Contracts where a sub Contractor is specified by the Council to a Contractor. They do not apply to:
- Contracts of employment;
  - Contracts relating to interests in land; and
  - Contracts relating to Treasury Management.
- 1.2 In these Procedure Rules, unless otherwise stated, references to a Director are to the Director of the service responsible for the Contract in question or such other officer of that service to whom the Director may have delegated in writing in accordance with the Council's Authorised Signatory List.
- 1.3 The Monitoring Officer shall have authority to make minor and consequential changes to these Rules.
- 1.4 The financial limits specified in European Union (EU) Directives are presently reviewed by the EU every two years.
- 1.5 In these Procedure Rules:
- (a) "Supply" includes obtaining by purchase, lease, hire, rental or any form of credit arrangement.
  - (b) "Tendering" means a formal procedure for obtaining written, offers (tenders) for Supply. Under these Procedure Rules there are five Tendering procedures as detailed in Annexes 2-6.
  - (c) "Contract" means the documents listed in the council's acceptance letter, including the Conditions and the Specification. In case of discrepancy between these Conditions and other documents forming part of the Contract, these Conditions shall prevail unless otherwise agreed in writing.
  - (d) A "Continuous Contract" means a Contract that fixes the offered terms of Supply but does not involve the Supply of goods, works or services, nor any Contractual commitment, until an order for Supply is placed.
  - (e) "Contract Sum / Value" means the price or prices payable to the Contractor by the Council under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract;
  - (f) "Contractor" means the principal / main person (including any successors) appointed by the Council to Supply the goods / services.
  - (g) "The Chief Executive" means the Officer appointed by the Council as the Head of Paid Service pursuant to Section 4 of the Local Government and Housing Act 1989.

- (h) "The Monitoring Officer" means the Officer appointed by the Council pursuant to Section 5 of the Local Government and Housing Act 1989 (and any Regulations issued under the Local Government Act 2000).
- (i) "Chief Finance Officer" means the Officer appointed by the Council as the Chief Financial Officer pursuant to Section 151 of the Local Government Act 1972 and Section 112 of the Local Government Finance Act 1988, and is the Officer responsible for financial administration pursuant to Section 6 of the Local Government and Housing Act 1989.
- (j) "Operation Managers" shall be interpreted as meaning any of the following as appropriate: -
- Chief Executive, Executive Director, Head of Service / Business Manager or Service Manager
- (k) "Written Approval" means a written statement handwritten or computer generated that also bears the signature of the authorising officer (this excludes computer generated / facsimile signatures).
- (l) "Nominated Sub Contractor" means where the Council has specified who the principal / main Contractor shall use for certain elements of the Contract.
- (m) "Non Nominated Sub Contractor" means where the Council has not nominated the sub Contractor. In such instances the principal Contractor nominates the sub Contractor to the Council for approval
- (n) "Professional" at Annex 1 means lawyers, accountants and specialists in a particular field.

1.6 These Procedure Rules give effect to the [Council's Procurement Policy](#) and in accordance with that Policy the Council's [Procurement Manual](#), which can be found, on the Council's Intranet site. Directors shall have due regard to the content of the manual in coming to any decision on procurement.

1.7 Where any proposal is envisaged, other than expenditure for which there is a budget provision, which would require a Contract or Contracts under these Rules a written report shall be presented by the Operational Manager to the Executive, or appropriate Committee. The Monitoring Officer, the Chief Finance Officer and the Procurement Manager must be consulted. The report shall state the nature of the proposal, an estimate of the anticipated direct and indirect costs thereof and the implications of the proposal upon the Capital Programme and Revenue Budget as appropriate of the Council. Recommendations as to the way in which the proposal should be carried out (including recommendations as to the mode of Tendering, whilst conforming with Public Contracts Regulations 2006 and EU threshold limitations) shall also be included. The proposal shall not proceed without the approval of the Executive or appropriate non scrutiny Committee.

1 The duration of each Continuous Contract shall not exceed three years with an option to extend for a maximum of a further two years. There shall be no extensions beyond five years.

1.9 The limits for tenders and quotations shall be:  
(Where insufficient numbers of quotations / tenders, can be / are received, reasons shall be recorded)

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- Under £2,000 Contract Procedure Rules do not apply, but a minimum of three written quotations should be obtained **where practical** in order to achieve best value. For clarity and as an example, it may not be practical to obtain three quotations for a software upgrade as this may be limited to one supplier.
- £2,000 - £25,000 at least three written quotations sought and the outcome recorded in writing.
- £25,001+ at least four written tenders sought.

All values over £10,000 must be advertised through Source Derbyshire and directed through the Procurement Manager.

The above shall be subject to the rules below.

- 1.10 For procurement between £2,000 and £25,000 see Annex 2 for the Rules on obtaining quotations. Rules 8 –12 below shall not apply to quotations or procurement with a value of less than £2,000.
- 1.11 Any officer considering purchasing land and / or property (or any part thereof) shall do so in liaison with the Estates Manager. The Estates Manager shall ensure that the Asset Register is amended as necessary.

### **High Peak Community Housing**

- 1.12 All Contracts entered into by High Peak Community Housing on behalf of the Council shall be approved by the relevant chief officer on behalf of the Council.
- 1.13 Reports recommending the successful tenderer shall be made in writing to the relevant chief officer clearly showing the awarding criteria and how the decision was reached.
- 1.14 The Contract shall be prepared / approved by the Council's Legal Section. Contracts shall be between the Council and the Contractor with High Peak Community Housing acting as the Contract administrator on behalf of the Council
- 1.15 Contracts entered into by High Peak Community Housing on behalf of the Council shall be tendered for, opened, assessed, awarded and monitored to a standard that is at least as robust as those contained in the Council's Contract Procedure Rules this includes financial limits not being exceeded and Contracts being awarded for a maximum of three years with possible extensions for another two years (Rule 1.7 above)
- 1.16 High Peak Community Housing shall administer on behalf of the Council all Contracts entered into on behalf of the Council.
- 1.17 The following shall apply to variations to Contracts:

- If the Contract is under £50,000, High Peak Community Housing can issue variation orders if the value is below £2,000 or 10% of the overall Contract (whichever is greater)
- If the Contract is between £50,000 and £250,000, High Peak Community Housing can issue variation orders if the value is below £10,000 or 10% of the overall Contract (whichever is greater)
- if Contract is over £250,000, the ALMO must report the variation to the Council if the value is over 5% of the overall Contract

Above these levels High Peak Community Housing shall refer variations to the Council for approval through the Head of Environment and Housing as per Rule 23.6 below. The above figures are collective levels

E.g. Contract Value £50,000

Variation 1 £3,000 no need to seek approval

Variation 2 £1,300 no need to seek approval

Variation 3 £1,400 would need to seek approval as collective value of variations being £5,700 is greater than 10% (£5,000) of the Contract value.

## 2 Legal Requirements

- 2.1 Every Contract made by a Director on behalf of the Council shall:
- (a) comply with all relevant statutory or other legal requirements including those of the EU;
  - (b) comply with these Procedure Rules unless specifically authorised otherwise (See rule 3); and
  - (c) comply with the Council's Financial Regulations.
- 2.2 Every Contract to which these Contract Procedure Rules apply shall: -
- (a) be in writing;
  - (b) be in such form as the Monitoring Officer may require; and
  - (c) either be sealed on behalf of the Council or signed on behalf of the Council in accordance with the provisions of [Rule 14](#).
- 2.3 Subject to rule 2.2, a Director may, after consultation with the Monitoring Officer as necessary, decide the final form of all Contracts and tender documentation but shall not decide on such documentation in a form to which the Monitoring Officer objects.
- 2.4 In relation to a Contract or sub-Contract which is governed by nationally negotiated Conditions of Contract under the auspices of one or more Professional institutions, any provision of these Procedure Rules which is inconsistent with a provision contained in those Conditions of Contract, may, at the discretion of the Director concerned in consultation with the Monitoring Officer, be suspended in relation to that Contract.

- 2.5 The Director shall include a copy of the Council's General Conditions of Contract (see Procurement Manual)) in the documentation sent to prospective Contractors/tenderers prior to the Contract being made. Unless in the opinion of the Director in consultation with the Monitoring Officer some other form of Contract conditions are deemed more appropriate.
- 2.6 No increase in the amount payable by the Council will be permitted except as specifically provided for in the Contract subject to [Rules 23](#) and [25](#).
- 2.7 A Director shall not, without the Written Approval of the Chief Finance Officer, enter into a Contract for the Supply of goods or services under any lease, hire, rental or any other credit arrangements where the Contract value exceeds £25,000

### **Freedom of Information Act (See also the Council's Freedom of Information Act Policy)**

- 2.8 Clear statements must be made to parties contracting with the Council to make sure they are aware of our obligations to disclose under the Freedom of Information Act.
- 2.9 The Council will refuse to include contractual terms that restrict the disclosure of information held by us. Unless an exemption applies information must be disclosed.
- 2.10 In very exceptional circumstances it may be necessary to include a non-disclosure provision in a contract. In this case the Council will investigate the option of agreeing a schedule that clearly identifies the information that should not be disclosed. Even so such restrictions could potentially be overridden by the Act. Such action must be capable of being justified to the Information Commissioner.

### **3 Special Exemptions**

- 3.1 Directors may, in
- a) A genuine emergency:
    - A genuine emergency is one where:
      - Something has to be done immediately in order to maintain a service;  
or
      - Rectify something that needs to be addressed immediately due to an unforeseen event having occurred
        - E.g. collapsed culvert or severe storm damage to the town hall roof;
    - A genuine emergency is not when something has been left to the last minute to seek tenders (e.g. banking contract expires in 4 weeks and there is not enough time to seek, evaluate, award and have new banking arrangements in place).
- or
- b) Where an alternative approach to tendering a particular Contract is being proposed:

- E.g. telephone tenders for the price of energy;
- E.g. reverse tender e-auctions.

seek Written Approval for exemption to seek tenders from these Procedure Rules from the Chief Executive provided that such a request does not contravene any statutory or EU requirements. Where practical authorisation from the Chief Executive shall be sought prior to the Tendering process being entered into or action being taken.

3.2 In every case where approval is obtained from the Chief Executive under 3.1 above, the relevant Director shall report in writing that fact and the reason therefore to the relevant Executive Portfolio holder or to the relevant Non Scrutiny Committee (as the case may be) within two weeks in writing.

3.3 Directors shall not be required to obtain tenders where:

- a) No contravention of any statutory or EU requirement will arise; and
- b) The Director is satisfied that the requirements of the relevant rule as detailed at [Annex 1](#) are met in relation to the Contract in question.

The Director shall report full details of the Contract in question to the relevant Executive Member or the relevant non-Scrutiny Committee (as the case may be) within two weeks in writing

3.4 Where exemption from these rules is being sought for any other reason than that shown in 3.1 or 3.3 above the relevant Director shall seek authority from The Executive Portfolio holder who shall then submit the report to the next Executive meeting. A full and balanced report must be prepared giving details of the nature of the procurement, why exemption from the Rules is being sought (including if appropriate why tenders were not sought in a timely manner) and details where relevant of any financial or contractual consequences resulting from the tendering process not being applied.

#### **4. Centrally Negotiated Continuous Contract Arrangements / Framework Agreements**

4.1 Where Continuous Contract arrangements exist for the Supply of goods, works or services, Directors must use those arrangements. Such Contracts shall not exceed five years.

4.2 Provided that orders for Supply under Continuous Contract arrangements are placed using approved Council procedures and any special ordering requirements stated in the appropriate purchasing catalogues are met, the Director may obtain goods and services in that way without further reference to these Procedure Rules.

## 5. When Tenders are Required

5.1 A Director must always obtain tenders prior to awarding a Contract for works or the Supply of goods and services unless:

- (a) The value of the Contract is less than £25,000 (See [Annex 2](#)); or
- (b) An exemption from a requirement to tender has been obtained under [Rule 3.1](#), or
- (b) The Contract falls within an exemption under [Rule 3.3](#), or
- (c) The goods or services are supplied under a centrally negotiated Continuous Contract arrangement. / framework agreement; or
- (d) The goods or services are procured under [Rule 16](#) below

## 6. Contract Values

6.1 Where the Contract is for the purchase of a single item, which is unrelated to the purchase of other items, the Contract is worth the price, or estimated price of that item.

E.g. The following is an example for the procurement of unrelated items. Refurbishment of the Council Chamber. Cost of Carpet £10,500, re-upholstery of chairs £9,000, decorating £7,000 and lighting £1,500. This project has a total value of £28,000, which is above the tender limit, however the individual components except for being related to the same project are distinct and are not dependant upon each other. Therefore the carpets, chairs and decorating would be subject to quotations as they are above the quotation threshold but below the tender threshold and may be classed as individual entities.

6.2 Where the Contract is for the purchase of a related group of items, the Contract is worth the total price, or estimated total price, of the group.

E.g. The following is an example of related items. The replacement of roof tiles and roof timbers where each element has a value of £15,000 giving a total value of £30,000. The same Contractor would normally undertake this work and therefore to split it into the two component parts (timber and tiles) to avoid Tendering would be contrary to these Contract Procurement Rules these are therefore related items.

6.3 Where the Contract is for goods to be provided by way of short-term hire, the Contract is worth the capitalised value of the goods to be provided. The capitalised value is obtained by multiplying the periodic payment to be made to the Hirer by the minimum number of payments agreed to be made under the Contract.

E.g. Rent of refuse freighter. Lease £2,000 per month for five years (60 months) gives a Contract value of £120,000. It is the £120,000 that determines that the tender rules will apply in this instance.

6.4 Where the Contract is continuous, it is worth the amount, which the Director expects to be the total value of goods or services, which will be taken by the Council under the Contract during the lifetime of the Contract.

E.g. Mail delivery service. Contract is agreed for 3 years at £50,000 per year giving a total of £150,000. The tender rules would apply and also this value would be over EU threshold limits.

6.5 Contract figures shall be reckoned exclusive of VAT unless the VAT cannot be recovered.

6.6 Procurement with a value in excess of £10,000 shall:

- a) Be directed through the Procurement Manager in the first instance
- b) Advertised on the Source Derbyshire website
- c) Be subject to a contract being put in place; and
- d) Details of the contract being entered into the Council's Contracts Register

### **Partnering Arrangements**

6.7 Where the Council wishes to enter into a partnering arrangement with a Contractor factors that need to be taken into account may include:

- Comparison of overheads and required profit of the Contractor
- Past performance measured against industry benchmarks and / or key performance indicators

6.8 In addition to the above the potential Contractor will need to be assessed in accordance with the requirements at Rule 12 below.

6.9 The partnership agreement will be awarded to the party that offers best value to the Council and the procedures in these Contract Procedure Rules shall be observed to identify this party.

## **7. Tendering Procedures**

7.1 Depending upon the circumstances of a Contract, one of the Tendering procedures below shall be used by a Director:

- (a) the Director Discretionary Tendering Procedure ([Annex 2](#));
- (b) the Abbreviated Tendering Procedure ([Annex 3](#));
- (c) the Approved List Tendering Procedure ([Annex 4](#));
- (d) the Full Tendering Procedure ([Annex 5](#));
- (e) the EU Tendering Procedure ([Annex 6](#)).

## **8. Seeking Tenders**

8.1 Where tenders are being sought other than from an approved list the following shall apply for all tenders over £25,000.

- 8.2 At least fourteen days public notice shall be given by the Procurement Manager in:
- (a) Primarily the Source Derbyshire website;
  - (b) local newspapers;
  - (c) journals circulating among persons or bodies as undertaking such Contracts; and
  - (d) if appropriate in the Official Journal of the European Union. (See [Annex 6](#))

The scale of advertising shall take account of the value and nature of the Contract any decision not to advertise in accordance with 8.2a-d above shall be recorded in writing stating the reasons for the decision reached and shall be approved by the relevant Head of Service / Business Manager.

- 8.3 The public notice shall:
- (a) express the nature and purpose of the Contract;
  - (b) state where further details may be obtained;
  - (c) invite expressions of interest;
  - (d) state the period of the Contract;
  - (e) state the last date and time when Tenders will be received; and
  - (f) Approximate value of the Contract.

## 9. Tender Documents

The procurement manual will contain the necessary standard documentation for quotation and tender documents, in addition to the alternative procurement approaches available. However in general the following principles apply;

### 9.1 Pre tender

The following invitation to Apply for Permission to tender must be used where the tender sum exceeds £50,000 (unless the Director determines a lower sum shall apply):

- (a) prior to the tender all those whom it is proposed to invite to tender shall be sent a supplier evaluation questionnaire to complete as per the [procurement manual](#).
- (b) the pre tender documentation to be sent with the supplier evaluation questionnaire shall give brief details of:
  - (i) the nature and purpose and, where applicable, the duration of the Contract;
  - (ii) an outline of the specification of the goods or services or works to be supplied or performed;
  - (iii) a statement as to the Council's procedures for obtaining tenders;
  - (iv) a requirement for the applicant to provide information about the technical, commercial, and financial standing of the applicant if such information is not already held by, or is readily available to, the Council;
  - (v) a closing date for receipt of applications.
  - (vi) the criteria for inclusion in any subsequent tender process.
- (c) upon receipt these shall be evaluated and only those who meet the pre-determined criteria shall be invited to tender.

## 9.2 Invitation to tender:

Every invitation to tender shall include the following:

- (a) the nature, purpose, commencement date and period of the Contract;
- (b) the detailed specification and quantities of the goods or services or works to be supplied or performed;
- (c) the time(s) at or within which and the place(s) at which the goods or services or works are to be supplied or performed;
- (d) a copy of the conditions of Contract with which the successful Contractor(s) will be required to comply;
- (e) unless already provided at rule 9.1 (a), a requirement for the tenderer to provide information about the technical, commercial and financial standing of the tenderer if such information is not already held by, or is readily available to, the Council;
- (f) a copy of any formal Contract document which the successful Contractor will be required to sign or execute.
- (g) the criteria for the award of the Contract.
- (h) where and when (latest date and time) the tender is to be returned.
- (i) where appropriate the need to comply with British or EU Standard specifications or Codes of Practice
- (j) In the case of tenders let in accordance with the European Union tendering procedures the tender documents must state that between the date that the decision is reached with regard to the successful tender and all parties have been notified that ten calendar days must expire before the award of the contract. This is known as the standstill period. ([See Annex 6](#))

## 10. Obtaining Tenders

10.1 A Director shall send to not less than four persons or bodies (Where fewer than four apply or are considered suitable, all shall be sent the tender documentation and reasons why less than four are requested shall be recorded in writing), who applied for permission to tender, and who satisfy the requirements of rule 9.1 the tender documentation shown at 9.2 above and a returnable tender form, which indicates:

- (a) the tenderer's offer price (or prices) for the goods or services sought;
- (b) the tenderer's signature or seal;
- (c) that the tender form is to be returned to the Procurement Manager at the Council offices Chapel-en-le-Frith.
- (d) that the Council does not bind itself to accept the lowest or any tender;
- (e) that every tender must be submitted in an unmarked envelope bearing the word "TENDER" followed by the subject to which the tender relates and the closing date and time for the receipt of tenders; the envelope shall not indicate who the tenderer is;
- (h) that tenders submitted by Fax or E-mail will not be considered, without valid reason.
- (i) that electronic tenders will only be accepted if requested and submitted using the Council's authorised e-tendering system.

All tenders must be returned by the appointed date and time to the Procurement Manager at the Council's officers Chapel-en-le-Frith in an envelope, which does not indicate who the originator, is.

## 11. Opening Tenders

- 11.1 The Procurement Manager shall make arrangements for every tender received to be retained in secure custody unopened until the time appointed for its opening. During this period, tenders must be retained by a person not connected in any way with the subsequent evaluation of tenders. The date and time of receipt of each tender shall be endorsed on the unopened tender envelope/package and a record kept of when they were received.
- 11.2 Tenders received after the specified date and time shall be marked as such and left unopened.
- 11.3 Those tenders which are not received in the specified format shall be excluded e.g. received but not in the form required at 10.1 e above. i.e. in an envelope not marked tender and / or bearing the name of the tenderer. A record shall be kept of these tenders in the tender register.
- 11.4 Tenders shall not be opened before the appointed closing date and time.

### Manual Tenders

- 11.4.1 They shall be opened at one time only by two members of staff independent of the tender process (i.e. not from the same area responsible for requisitioning, evaluating or managing the works, goods or services to be procured) designated in writing for the purpose by the Director of Corporate Support. At least one member of staff shall be of at least manager level or for Contracts in excess of £250,000 a director or member.

### Electronic Tenders

- 11.4.2 Where the tender is received through the Council's approved e-tendering system the following shall apply. Tenders can be opened by an appropriate officer approved by the Procurement Manager. However for Contracts in excess of £250,000 a director or member shall be present.
- 11.5 The designated person must, on opening each tender, immediately and separately record:
- (a) the name of all firms invited to tender;
  - (b) each firm who tendered;
  - (c) date tenders opened;
  - (d) the value of the tenders;
  - (e) reasons if any given for firms not Tendering; and
  - (f) who opened the tenders and their initials.

- 11.6 Every tender received shall be stamped with the date of opening and initialled by those present at the opening. In those instances where the amount of the tender is not immediately apparent, both members of staff shall sign and date each page containing pricing schedules. A note shall be made on the record of the number of tenders, if any, are not opened and the reason(s) for not opening them.
- 11.7 Where the circumstances so warrant, a Director may postpone for a reasonable period the closing time and date for receipt of tenders, provided that all persons from whom tenders have been invited are notified by the same method and that no tenders have been opened. The powers contained in this rule shall not be delegated otherwise than to a Head of Service / Business Manager nominated by a Director.
- 11.8 No substantive alteration or amendment shall be permitted to any tender received.
- 11.9 Details of the tenders received shall be recorded in the Council's tender register.
- 11.10 All Contracts with a value in excess of £10,000 shall be recorded in the Council's Contracts Register.

## **12. Assessment of Tenders**

- 12.1 The assessment of tenders shall be based upon the criteria for award set out in the tender documents and where appropriate, published in an EU notice.
- 12.2 No Contract shall be entered into until the terms and conditions have been approved by the Monitoring Officer.
- 12.3 Where there are financial implications for future years capital and revenue budgets the Chief Finance Officer shall be required to verify in writing that the financial consequences have been properly determined.
- 12.4 Before any Contract in excess of £10,000 is entered into, Internal Audit whose advice shall be taken into account by the Operational Manager shall evaluate the financial viability of the proposed Contractor. Where the Operational Manager does not wish to take the advice of Internal Audit they shall obtain in writing the agreement of their Head of Service / Business Manager before any Contract is entered into.
- 12.5 The criteria for the assessment of tenderers shall include the matters raised in the supplier evaluation questionnaire (see Procurement Manual) including the adequacy of insurance, health and safety, discrimination and environmental issues.

## **13. Acceptance of Tenders / Quotations**

- 13.1 The acceptance of tenders / quotations is subject to the limits as shown in the Council's [Authorised Signatory List](#).

13.2 The tender that offers best value to the Council shall be accepted, best value does not necessarily mean the cheapest. The criteria and reasons for selecting the successful tender shall be recorded in writing. This could be achieved through the use of a matrix to assess the tenders.

13.3 The effect of the above Rules can be seen in table below:

Authorisation →	Any officer authorised by their Director	Authorised Manager	Head of Service / Business Manager	Director
Tender sum to be accepted ↓				
Lowest	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
Where the tender to be accepted is not the lowest:				
Up to £25,000		<b>X</b>	<b>X</b>	<b>X</b>
Over £25,001				<b>X</b>

13.4 A Director or other approved manager or delegated officer may negotiate with the successful tenderer for the reduction of the tender with the assistance of the Procurement Manager.

The approval of the Executive or any Committee designated for the purposes of this Rule shall be required to the seeking or acceptance of a tender where the tender, or the estimated cost of it, together with all relevant fees and costs, exceeds the original estimate by £10,000 or 10% whichever is the greater.

13.5 Where a contract has been let in accordance with the European Union tendering procedures all tenders must be informed of the outcome of the tender and there must be a period of 10 days between this date and entering into a contract in order to allow for any objections from unsuccessful tenderers (See Annex 6).

## 14. Signature of Contracts

14.1 (a) the provisions of rules 14.2, 14.3, and 14.4 below are subject to the provisions of rule 2.2 above and to the Council's Authorised Signatory List  
 (b) in exercising delegated powers under 14.2, 14.3, and 14.4 the Director must in each case be satisfied that in the circumstances it is not necessary or in the best interests of the Council for the Contract to be executed under seal.

14.2 A Manager may authorise any contracts in accordance with the Councils authorised signatory list.

- 14.3 Any Contract under seal shall be signed on behalf of the Council by the Monitoring Officer or any other officer in accordance with Authorised Signatory List to Officers.
- 14.4 The Contractor shall sign all Contracts. Where the Contract value exceeds £75,000 both parties shall sign the Contract under seal, except where the Director and the Monitoring Officer is satisfied that in the circumstances it is not necessary or in the best interests of the Council for the Contract to be executed under seal such reasons shall be recorded in writing.
- 14.5 Where a Contract exceeds £75,000 in amount or value the Contractor shall give sufficient security acceptable to the Chief Exec following consultation with the Chief Finance Officer for the due performance of the Contract.
- 14.6 In the case of works Contracts the Contractor shall not be allowed on site until the Contract has been signed.
- 14.7 Every Contract must specify:
- (a) the work, materials or services to be provided;
  - (b) the price to be paid, with a statement of discounts or other deductions if any;
  - (c) where applicable, the time or times at or within which the Contract is to be performed; and
  - (d) any health and safety, discrimination environmental matters that are relevant.

## **15. Register of Contracts**

- 15.1 A register of all Contracts over £10,000 placed by the Council shall be maintained by the Procurement Manager. The register shall be open to inspection by any member or officer of the Council and shall be available on the Council's Intranet site it shall specify the:
- (a) name of the Contractor; and
  - (b) works to be executed or the goods, materials or services to be supplied;
  - (c) Contract value or amount;
  - (e) Operational Manager responsible;
  - (f) Period of the Contract (if relevant). And
  - (g) Responsible officer
  - (h) Contract start and finish date
  - (i) Lead in time for renewal of tender

## **16. Procurement through another Body**

- 16.1 Where the proposed Contract is one to which the Council will be a party in common with other local, public authorities or the private sector as part of a consortium, the Operational Manager and the Procurement Manager may agree to enter into such contracts. This shall only be done if they are satisfied that to do so is in the best interests of the Council and

that the Tendering and Contract procedures of one of the other authorities (which are at least as rigorous as that contained in these Procedure Rules) are to be followed. The decision shall be recorded in writing.

- 16.2 Where the proposed Contract is one that has already been let by another public sector body (including local government, national government or and the NHS) or the private sector, the Operational Manager and the Procurement Manager may agree to enter into such contracts. This shall only be done if they are satisfied that to do so is in the best interests of the Council and that the Tendering and Contract procedures of other public sector body (which are at least as rigorous as that contained in these Procedure Rules) have been followed. The contract shall have been let out to tender within the last 36 months. The decision shall be recorded in writing.

## **17. The Appointment of Consultants**

- 17.1 Any consultant who is responsible to the Council for the preparation and/or supervision of a Contract on its behalf shall:
- (a) comply with these Procedure Rules as though he were a Director subject to the modification that the procedure to be followed for inviting, opening and accepting tenders shall be approved in advance by the Director concerned; and
  - (b) at any time during the carrying out of the Contract, produce on request to the Chief Finance Officer or any officer authorised by the Council all the records maintained by him in relation to the Contract; and
  - (c) on completion of a Contract, transmit all such records to the Director concerned.
- 17.2 The terms of engagement of any architect or of any engineer, surveyor or other consultant (not being an officer of the Council) who is to be responsible to the Council for the supervision of a Contract on its behalf shall be set down in writing in a form approved by the Monitoring Officer.

## **18. Public Agency Contracts on behalf of other bodies**

- 18.1 In relation to a Contract or sub-Contract which is being let on behalf of another body any provision of these Procedure Rules which is inconsistent with the expressed requirements of that body, may, at the discretion of the Director concerned, be suspended in relation to that Contract upon receipt of a written request from that agency.

## **19. Prevention of corruption**

- 19.1 There shall be inserted in every Contract exceeding £1,000 in value or amount a clause empowering the Council to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an

inducement or reward for doing or forbearing to do or having done or foreborne to do any action in relation to the obtaining or execution of the Contract or any other Contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Council, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor), or if in relation to any Contract with the Council, the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or any statutory modification or re-enactment thereof, or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972 or any statutory modification or re-enactment thereof.

## **20 Officers' Interests in Contracts**

- 20.1 The Monitoring Officer 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 and the book shall be open during office hours to inspection by any Member or officer of the Council. Members and officers shall respect the confidentiality of the contents of the book of interests and not disclose it to a third party without the consent of the Monitoring Officer.

## **21. Sub Contractors**

No Sub Contractor Nominated:

- 21.1 The Contractor shall seek approval of the Council for any sub Contractor used before contracting with them such approvals shall be recorded in writing.

Nominated Sub Contractor

- 21.2 Where the Council is nominating a sub Contractor then tenders shall be invited by the Council from Nominated Sub Contractors in accordance with these Procedure Rules.

## **22. Production of documents**

- 22.1 In the case of every Contract for the execution of works, the following clause or a clause having like effect shall be inserted:

“The Contractor shall make available for inspection any vouchers, records, receipts and other documents, samples of materials and any other information or thing which may be reasonably required by any Officer of the Council in order to ascertain whether or not the terms of the Contract are being complied with.”

4/14/16

## **23. Variation of Contracts**

- 23.1 Subject to the provisions of this Rule, the Operational Manager shall have delegated power on behalf of the Council to approve any variation to a Contract, which does not materially change the character of the subject matter of the Contract.
- 23.2 In the case of variations to a Contract up to £50,000 in value or amount, the Operational Manager may approve variations up to a total value or amount of £2,000 or 10% of the value or amount of the Contract whichever is greater.
- 23.3 In the case of variations to a Contract exceeding £50,000 and up to £250,000 in value or amount, the Operational Manager in consultation with the Procurement Manager may approve variations up to a total value or amount of £10,000 or 10% of the value or amount of the Contract whichever is greater.
- 23.4 In the case of variations to a Contract exceeding £250,000 in value or amount, the Operational Manager may approve Variations up to a total value or amount of 5% of the value or amount of the Contract.
- 23.5 The above figures are cumulative. Above these limits rule 23.6 below shall apply  
E.g. Contract Value £50,000  
Variation 1 £3,000 no need to seek approval  
Variation 2 £1,300 no need to seek approval  
Variation 3 £1,400 would need to seek approval as collective value of variations being £5,700 is greater than 10% (£5,000) of the Contract value.
- 23.6 Any variation to a Contract not falling within rules 23.2, 23.3 or 23.4 shall require the approval of the Council, Executive or appropriate non scrutiny Committee, provided that:
- (a) if in the opinion of the Operational Manager the approval of a variation is a matter of urgent necessity to avoid additional costs to the Council or for any other practical reason, he/she may after such consultations as he/she considers necessary (including consultations with the Monitoring Officer and Procurement Manager and Chief Finance Officer he/she may approve such a variation subject to the Council, Executive or appropriate Committee being informed of such approval at the earliest practicable opportunity.
  - (b) in the case of a Contract exceeding £250,000 in value or amount if a variation is such as to materially change the character of the subject matter of the Contract, the approval of the Executive

or the appropriate non scrutiny Committee shall be required.

23.7 No Officer shall give any instructions to a Contractor, which materially varies or changes the Contract without confirming first the financial and/or legal effect.

#### **24.1 Early termination of Contracts**

24.1 No Contract which has been entered into by the authority of the Council, the Executive or the appropriate non scrutiny Committee shall be terminated either by agreement or by unilateral action on the part of the Council without the authority of the Council, the Executive or the appropriate non scrutiny Committee which shall first consider the full financial, legal and other effects of such termination upon the progress of any scheme or other activity of the Council and shall, if such termination is likely to have the effect of exceeding the Council's approved Estimates or alter substantially the Council's approved Capital Programme, proceed with termination only by way of recommendation to the Council, Executive or the appropriate non scrutiny Committee.

#### **25. Negotiated Additional Contracts (Extension to existing Contracts)**

25.1 Where an Operational Manager proposes to extend a Contract to include additional works, services, goods or materials similar to those included in the original Contract he shall only do so in accordance with Rules 1.6 and only where all of the following criteria apply:

- (a) The original Contract has been undertaken to a satisfactory standard;
- (b) The proposed additional works, services, goods or materials are substantially similar to those included in the original Contract;
- (c) The original Contractor has submitted a further offer to the Council for the proposed additional works, services, goods or materials and that tender does not exceed the value or amount of his original successful tender by more than £5,000 or 10% whichever is the greater;  
E.g. Original value of Contract £100,000 extension can be up to a value of £110,000 giving a total final Contract value of £210,000
- (d) The original Contract has not been performed more than eighteen months prior to the submission of the further offer;
- (e) Tenders were invited for the performance of the original Contract and the Contractor's tender provided the best value for the Council;
- (f) The original Contract has not previously been extended under this Rule.
- (g) The duration of any Contract including extensions shall not exceed five years as per 1.7 above.

25.2 An extension to a contract under this Rule (25) shall not be made more than once and the total length of the contract including the extension shall not exceed five years. (See 25.1 f and g above)

25.3 Approval to extend the Contract shall be given in writing by the relevant director and must be recorded within the contract register.

25.4 The Procurement Manager shall be involved in the process.

## **26. Conclusion of Contracts**

26.1 Within three months of the conclusion of a Contract with a value of over £50,000, other than a Contract for routine expenditure, the Operational Manager shall report to his Director at an appropriate time(s):

- (a) the success or otherwise of the Contract;
- (b) the total of all payments made or received by the Council under the Contract; and
- (c) the extent to which the actual direct and indirect costs of the Contract have exceeded or are less than the original estimated direct and indirect cost.

26.2 In any case where the actual direct and indirect costs of a Contract have exceeded the original estimated direct and indirect costs by £5,000 or 10% whichever is the greater, the Operational Manager shall make the report referred to in Rule 26.1 to the Executive or appropriate non scrutiny Committee.

## **27. Sales**

27.1 The Director, subject to compliance with Financial Regulations may sell surplus goods and materials belonging to the Council.

27.2 Where sales are proposed the procedures set out in these Procedure Rules for the purchase of goods shall be followed, but "highest" shall be substituted for "lowest".

27.3 Any officer considering selling land and / or property (or any part thereof) shall do so in liaison with the Estates Manager. The Estates Manager shall ensure that the Asset Register is amended as necessary.

## **Annex 1**

### **MISCELLANEOUS EXEMPTIONS FROM REQUIREMENT TO TENDER**

**The Contract Procedure Rules above relating to the obtaining of tenders shall not apply when:**

1. The goods or services to be purchased are offered to the Council at a price substantially less than the lowest price at which the Director would reasonably expect by the invitation of tenders ordinarily to be able to purchase the said goods or services.
2. The goods to be purchased or sold can in the best interests of the Council be obtained at a public auction conducted in accordance with generally accepted principles.
3. The goods to be purchased or the works or services to be executed can in the best interests of the Council only be purchased from, or executed by, a statutory undertaker in which case the Director may negotiate with that undertaker for the best terms reasonably obtainable.
4. The Director may arrange for the purchase of the goods or the Supply of the works or services if the proposed Contract is for goods or works or services which:
  - (a) are an emergency requirement whose necessity could not reasonably have been foreseen; and
  - (b) are required to avert, alleviate or eradicate the effects or potential effects of any emergency or disaster which involves or is likely to involve risk of serious damage to or destruction of property or risk of injury or danger to health or life.
5. The goods are only available from one supplier or can only be purchased from one supplier in order to maintain a warranty.
6. The Director may purchase the goods from one supplier without Tendering where it can be clearly demonstrated that such action prevents significant problems with regard to possession and/or reduces the possibility of disputes with Contractors concerning ownership/responsibility.
7. For Professional Services and the use of Consultants.  
Where the Director wishes to use a Contractor / consultant on further work for an existing scheme or where the knowledge of that Contractor / consultancy from previous work undertaken on that or a similar scheme is considered to be invaluable and will provide best value to the Council; then work can be awarded to that Contractor / consultant up to the limits and constraints shown in Rule 25 above. The Contractor / consultant shall have been given the work in the first instance through a competitive Tendering exercise.

**In all the cases above a written record must be kept of the reasons why a decision was taken.**

## **Annex 2**

### **THE DIRECTOR DISCRETIONARY TENDERING PROCEDURE**

#### **When Applicable:**

**(a) Procurement up to the value of £25,000 only.**

#### **Description of Procedure**

Under this procedure, a Director is empowered to exercise an element of discretion as to the method by which goods or works or services are obtained, but in so doing, must be able to demonstrate that value for money has been achieved and must be aware of the requirement to use centrally negotiated Continuous Contract arrangements.

Notwithstanding this element of discretion, Directors are required to:

- (a) for sums between £2,000 and £5,000 obtain at least three verbal quotes, confirmed in writing (email confirmation is acceptable);
- (b) for sums £5,001 and £25,000 obtain at least three written quotations.

In these instances Directors shall make arrangements for the receipt, custody, opening and evaluation of quotations received.

Where it is not considered appropriate to seek at least three quotations a record must be made of the reasons why three quotations were not sought and this must be agreed with the relevant Head of Service / Business Manager or Director.

Where three quotations are not received a written record shall be made of the reasons why.

## **Annex 3**

### **THE ABBREVIATED TENDERING PROCEDURE**

#### **When Applicable:**

- (a) Contracts up to the value of £25,000 (if the Director so requires i.e. [Annex 2](#) does not apply).**
- (b) Contracts between the value of £25,00 - £50,000 in the event that the Approved List Tendering Procedure or Full Tendering Procedure are not used.**

#### **Description of Procedure**

Under this procedure, tenders need not be invited by public notice so long as tenders are invited in writing from not less than three persons together with any Business Unit of the Council if it can itself provide the goods or services being sought. The requirements of Contract Procedure Rules 9, 10, 11, 12, and 13 must be met. On those occasions where it is possible to find only one or two persons to tender (e.g. where specialist work/equipment is involved), the Head of Service / Business Manager nominated by the Director must record the steps taken to establish that no other persons could be found to tender.

## **Annex 4**

### **The Approved List Tendering Procedure.**

#### **When Applicable:**

**Use of this procedure is applicable in the following circumstances:**

- (a) Contracts up to the value of £25,001 (if the Director so requires).**
- (b) Contracts between the value of £25,001- £300,000 in the event that the Abbreviated Tendering Procedure ([Annex 3](#)) or the Full Tendering Procedure([Annex 5](#)) are not used.**

#### **Description of Procedure:**

##### **Maintenance of the Approved List (Supplier Database)**

Under this procedure, the Procurement Manager shall prepare and maintain a list of persons eligible to be invited to tender for any specified category of Contracts. Notices inviting applications for inclusion in it shall be published by the Procurement Manager, via the Council website and at other times by discretion through:

- Source Derbyshire
- newspapers circulating in the Borough
- in one or more appropriate trade journals if the Procurement Manager considers it desirable.

The list shall be reviewed in accordance with the dates suppliers have last updated their supporting information which should be at least once every three years.

The general notice shall invite persons to apply for inclusion of their names on the Supplier Database. Application should be made by completion of the appropriate online process requiring completion of the Supplier Evaluation Questionnaire.

The Procurement Manager shall consider all applications for inclusion in the Supplier Database and shall approve any application in consultation with Business Managers and Heads of Service if appropriate.

Any applicant for inclusion in an Approved List who is aggrieved by the decision not to be included or is deleted from an Approved List, shall be referred to the appropriate Director for decision.

#### **Invitation to Tender**

The Supplier Database may be used to approach registered suppliers for quotation requests providing the expected value of the contract is less than £10,000 and there are at least three registered suppliers in a suitable category. Additional suppliers must be sought from alternative methods to ensure a minimum of three are approached.

## **Annex 5**

### **THE FULL TENDERING PROCEDURE**

#### **When Applicable:**

**Such a procedure may be used in the following circumstances:**

- (a) Contracts up to the value of £50,000 if the Director so requires i.e. procedures in Annexes 2 – 4 have not been applied.**
- (b) Contracts in excess of £50,001 in value in the event that the Approved List Tendering Procedure is not used and the Contract is not subject to the requirements of EU Directives (See [Annex 6](#)).**

#### **Description**

Under this procedure, tenders may be invited for the Contract itself or applications may be invited for permission to tender.

#### **Permission to tender leading to invitation to tender**

Notice inviting persons to tender shall be given in Source Derbyshire and / or one or more newspapers circulating in the Borough or in one or more appropriate trade journals, or both, as the Director shall consider desirable.

The Director shall after the closing date consider all applications received in response to the public notice and shall select any application from any Business Unit of the Council if it can itself provide the goods or services being sought together with not less than three other applicants, who fulfil the Council's technical and financial requirements or all applicants if fewer than three. The selection of applicants to be invited to tender shall not be delegated otherwise than to a Head(s) of Service nominated by the Director. Following selection of the appropriate number of applicants, the requirements of Procedure Rules 9, 10, 11, 12, and 13 must be met.

#### **Invitation to tender**

Notice inviting persons to tender shall be given in one or more newspapers circulating in the Borough and on the Source Derbyshire web site or in one or more appropriate trade journals, or all, as the Director shall consider desirable. The requirements of Contract Procedure Rules 9, 10, 11, 12, and 13 must be met.

## Annex 6

### EUROPEAN UNION TENDERING PROCEDURES

#### When Applicable:

**EU requirements apply to certain Contracts for the procurement of goods and supplies, services, and works. Those requirements are prescribed by threshold values (which differ according to the Contract to be procured) and by the nature of what is being procured. The thresholds above which the procurement of those Contracts requires compliance with EU Directives are revised every two years and must be adhered to (See the Procurement Manual).**

#### Description

The European Union Directives for goods and supplies, services and works specify certain procedures and time scales that must be followed, which include advertisement in the Official Journal of the European Community; the procedures can vary according to the circumstances of the proposed Contract.

#### Letting the Contract

Where a contract has been let in accordance with the European Union tendering procedures the successful and unsuccessful contractors must be informed of the outcome of the tender, and that a contract cannot be entered into for a period of 10 clear calendar days pending any objections to the award of the contract this is known as the standstill period.

The "standstill" period is the period between choosing the winning bid and awarding the contract. The purpose is to give the losing parties a reasonable time – a minimum of 10 calendar days – to challenge the proposed award of the contract. The Council has to write to the winning bidder saying they have won the tendering exercise but that the award of a contract is conditional on there not being a successful challenge to it during the standstill period. The losing parties must be notified of the award and given any scores achieved in the tendering exercise. The losers will also be entitled to a fuller de-brief within the standstill period.

Further details on EU procurement can be found in the Procurement Manual.

**Advice must be sought from the Monitoring Officer and / or Procurement Manager in all cases where compliance with EU requirements is, or may be, required. Private Finance Initiative and Public/Private Partnership Contracts will almost always be within the scope of one or more EU Directives.**