

**HUNTINGDONSHIRE DISTRICT COUNCIL**

<b>Title/Subject Matter:</b>	Review of Code of Procurement
<b>Meeting/Date:</b>	Corporate Governance Committee – 27 March 2019
<b>Executive Portfolio:</b>	Cllr J Gray, Executive Member for Resources
<b>Report by:</b>	Procurement Manager
<b>Ward(s) affected:</b>	All

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**Executive Summary:**

The Code of Procurement is regularly reviewed to ensure that they reflect current legislation and the changing needs of the Council. Both Codes provide the necessary regulatory framework as well as basic guidance on “Best Practice”.

The changes to the Code of Procurement are proposed to ensure social value is considered and sought in all invitations to tender for services and works. Improving the delivery of social value should bring wider benefits, such as employment, community or environment benefits, to the District

The Code of Procurement underpins governance of procurement in the Council and is an annex to the Council’s constitution.

**RECOMMENDATION**

The Corporate Governance Committee is invited to comment on the proposed amendments to the Code of Procurement.

## **1. PURPOSE OF THE REPORT**

- 1.1 To approve the updated Code of Procurement.

## **2. BACKGROUND**

- 2.1 The roles and responsibilities of Members and Officers are set out within the Council's Constitution. The purpose of the Code of Procurement is a framework of guidance for Officers in compliance with Public Procurement Regulations and prevailing best practice.

## **3. THE CODE OF PROCUREMENT**

- 3.1 The Code has been revised to include Social Value (SV) following approval of a SV policy by Cabinet on 14<sup>th</sup> February. Although introduced in 2013, the Social Value Act only applied to above EU threshold competitions for services resulting little benefit delivered. The policy extends the scope to all tenders (>£100k) for services and works. SV deliverables, such as employment, community or environment benefits have to be delivered within the District and have to be relevant to the subject of the contract.
- 3.2 There are other minor changes, including removal of references to the e-marketplace which has been replaced by the TechOne Financial Management System.

## **4. KEY IMPACTS**

- 4.1 Lost opportunity to deliver additional social value benefits within the District.

## **5. LINK TO THE CORPORATE PLAN, STRATEGIC PRIORITIES AND / OR CORPORATE OBJECTIVES**

- 5.1 The Code of Procurement supports the Council's objective of efficient use of resources by seeking Value for Money through best practice and appropriate regulation.

## **6. CONSULTATION**

- 6.1 None

## **7. LEGAL IMPLICATIONS**

- 7.1 None.

## **8. RESOURCE IMPLICATIONS**

- 8.1 None

## **9. REASONS FOR THE RECOMMENDED DECISIONS**

- 9.1 The Code of Procurement supports the internal governance framework of the Council, it also forms part of the Council's constitution. This annual review seeks to ensure that it continues to be relevant and up-to-date, reflecting any new statutory regulations of changes in local management and practice.

**10. LIST OF APPENDICES INCLUDED**

Appendix 1 – Proposed changes to the Code of Procurement

Appendix 2 - Draft amended Code of Procurement

**11. BACKGROUND PAPERS**

None

**12. CONTACT OFFICER**

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### PROPOSED AMENDMENTS TO THE CODE OF PROCUREMENT

1. This briefing note provides an explanation of the proposed changes to the Code of Procurement.

#### **Social Value**

2. A new paragraph 9.5 has been added to ensure incorporation of social value requirements into future invitations to tender requests in line with the policy approved by Cabinet on 14<sup>th</sup> February. Application of social value requirements to invitations to tender seeks to enhance the delivery of benefits from contracts beyond the traditional Best Value approach of compliance with the specification and cost.
3. The aim is to increase the delivery of wider benefits such as employment opportunities and training, support for community and voluntary organisations or environment measures. The benefits offered by potential contractors have to be delivered within the District in order to be considered in the overall scoring. This potentially creates a competitive advantage for local businesses, especially if supported by training co-ordinated through local business organisations such as the local Chamber of Commerce and Federation of Small Businesses.

#### **Minor Changes**

5. Paragraph 2.1 has been amended to clarify the reporting of new requirements. In practice, the scrutiny by the Finance & Procurement Governance Board provides early warning of new requirements.
6. Paragraph 9.4 has been amended to clarify and distinguish between mandatory and desirable evaluation criteria.
7. References to the now defunct e-Marketplace have been deleted. Access to corporate framework contracts is now available through the TechOne Financial Management System.

**Huntingdonshire District Council**

**CODE OF  
PROCUREMENT**

**March 2019**

# CODE OF PROCUREMENT

## 1. INTRODUCTION

- 1.1 The Code of Procurement defines the regulatory and legal framework for procurement. It has been adopted in accordance with the requirements of Section 135 (2) of the Local Government Act 1972.
- 1.2 Throughout the Code, reference to Manager shall mean Managing Director, Corporate Director, Head of Service or Budget Manager as appropriate. A Manager shall be responsible for procuring all goods and services that require the quotation or tender procedures as set out in this Code to be followed.
- 1.3 No **Officer** shall procure any goods or services valued at £5,000 or more unless they have attended training provided by the Procurement Manager and consider themselves to have such detailed knowledge and understanding of this Code and how it shall be applied in respect of the total value of the procurement being considered.
- 1.4 This Code applies to the procurement, commissioning, hire, rental or lease of -
  - ◆ land and buildings, roads or other infrastructure;
  - ◆ vehicles or plant;
  - ◆ equipment, furniture and fittings;
  - ◆ construction and engineering works;
  - ◆ information and communication technology - hardware and software;
  - ◆ goods, materials and services;
  - ◆ repairs and maintenance;
  - ◆ consultants, agents and professional services.
- 1.5 This Code does not apply to purchases made from internal management units or 3Cs partners.
- 1.6 The Code also applies to the disposal of assets and goods by the Council. Where the appropriate Manager estimates that the assets or goods to be worth less than £1,000, then the goods or assets may be donated to a recognised Charity. If disposal to Officers is proposed, then the goods or assets shall be advertised internally to all Officers and sealed bids sought. Where the value is estimated as exceeding £1,000, fair market value must be sought.
- 1.7 The Council includes the Cabinet, Panels, Committees or other body or person(s) acting in accordance with delegated authority on behalf of the Council.
- 1.8 All procurements or sales made by or on behalf of the Council shall comply with this Code, subject to any overriding requirements of the Council's Rules of Procedure or Code of Financial Management or British or European Union law or regulation or [applicable](#) Crown Commercial Services' Procurement Policy Notices.
- 1.9 Throughout the Code, reference to contractor(s) or sub-contractor(s) shall mean any person, company or supplier who has -

- (a) requested to be on an approved or ad-hoc approved list of tenderers; or
- (b) been approached to provide a quotation or tender; or
- (c) provided a quotation or tender; or
- (d) been awarded a contract in accordance with the provisions of this Code.

1.10 The Corporate Director (Services) shall annually review all the financial values contained in the Code to take account of the impact of inflation. The Corporate Director (Services) shall inform all Managers of any amendments to the values prior to the 1st April from which they shall be operative.

## 2. REPORTING AND ADVERTISING

2.1 [Heads of Service shall provide the Procurement Manager details of new or additional requirements likely to meet or exceed £100,000 as they arise.](#)

2.2 The Public Procurement Regulations 2015 (Statutory Instrument no. 102 2015) requires that contracts above EU threshold are advised in the Official Journal of the European Union and that any contract opportunity above £25,000 is advertised in the Cabinet Office's portal "Contracts Finder". For requirements estimated as above £5,000 Managers shall advertise in the Contracts Register where needed to stimulate competition and obtain best value. There is no requirement to advertise competitions run using frameworks or approved lists.

Media	Threshold		
	Supplies and Services	Works and Concessions	Light Touch Regime Services
Contracts Register	£5,000	£5,000	£5,000
Contracts Finder	£ 25,000	£ 25,000	£25,000
Official Journal of the European Union (OJEU)	£ 181,302	£ 4,551,413	£615,278

(1 January 2018)

## 3. 'BEST VALUE' AND SOURCING POLICY

3.1 The Council seeks 'Best Value' in all procurement activity. 'Best Value' being:

- ◆ The opportunity to obtain leverage (better prices and) for volume.
- ◆ Transparent and efficient procurement processes.
- ◆ Appropriate social, environmental and equality outcomes
- ◆ Regulatory compliance.
- ◆ Minimum procurement overhead.

3.2 Achieving 'Best Value' needs valid competition and valid competition is dependent on the existence of an 'open' market with the selected contractors having the interest, capability and capacity for the work or business being offered.

Wherever possible a minimum of three competitive tenders or quotations shall be sought. In selecting contractors to provide a tender or quotation Managers shall ensure that wherever possible -

- (a) the selection process used is fair and equitable, and that no favouritism is shown to any one contractor (e.g. the requirement is not an extract of a contractor's product specification).
- (b) checks are made to ensure that contractors are interested in this type of business;
- (c) repeat or 'automatic' invitations to the 'same' contractor or group of contractors are avoided, particularly where previously invited to bid and had failed to do so;
- (d) 'new' contractors are sought and invited to tender or quote;
- (e) the geographic area of the search for potential contractors is widened; and
- (f) 'no-bids' are checked for the reasons for a contractor's failure to bid.

3.3 Sourcing policy is determined by the needs of 'Best Value' and in order of preference is:

- (a) Adopted catalogues or framework contracts. An adopted catalogue or framework is the preferred contract for the Council's business within a defined category (a type or group of goods or service). The Procurement Manager shall make available adopted catalogues or framework contracts on the [TechOne FMS e-marketplace](#) or publish details of the contract or framework in Procurement Protocols & Guidelines. Managers shall ensure that orders for such categories are placed through the [TechOne FMS e-marketplace](#) using appropriate 'adopted' catalogue or framework contract. The Procurement Manager shall keep under review the continued suitability of any such catalogues, contracts or framework agreements.
- (b) Collaborative procurements with other public bodies or authorities.
- (c) Council let corporate contracts.

3.4 Some categories are managed corporately by specialist areas. The Procurement Manager shall provide a list of specialist categories and Managers shall ensure all requirements for such categories are referred to the relevant specialist.

## **Market Sounding**

3.5 Market engagement is encouraged to help achieve Best Value though trying to understanding the market, the suppliers, their business models and their costs

3.6 Supplier Meetings/Briefings. To avoid the risk of unfair competitive advantage, any such meeting should be structured as an open event; all questions and answers recorded and with a minimum of 2 officers present. If pre-competition a minimum of 3 suppliers shall be invited and during a competition, all participating contractors shall be invited.

## **4. METHODS OF ORDERING**

4.1 All orders shall be placed through one of the following recognised methods:

- ◆ A purchase order raised on the TechOne Financial Management System (FMS).
- ◆ ~~An order raised on the e-marketplace.~~

- ◆ A procurement card order.
- ◆ A manual purchase order.

4.2 Where there is an exception requirement and the relevant Corporate Director or Head of Service considers that the work is of an emergency nature necessary to enable the service to continue and none of the ordering methods are suitable, the relevant Corporate Director or Head of Service shall record the details of the exceptional requirement and the action taken for future audit.

## 5. CONTRACTS REGISTER

5.1 In compliance with the Local Government Transparency Code 2013, Managers shall keep a record using the Contracts Register, for all tenders and quotes greater than £5,000 (and subsequent contract extensions); of:

- ◆ the reasons (if appropriate) for not advertising on the Council's 'Latest Opportunities' internet site;
- ◆ all those contractors that were requested to quote or tender;
- ◆ the reasons why those particular contractors were selected to quote or tender;
- ◆ if applicable, the reasons why less than three contractors were selected to quote or tender;
- ◆ if the selected contractor is a Small or Medium Enterprise, voluntary or third sector organisation or charity;
- ◆ if the selected contractor is VAT registered;
- ◆ contract renewal date (if appropriate);
- ◆ summary details of a single tender/quote (if appropriate), and
- ◆ file or other reference to the contract and location of the documents and contract.

5.2 Any procurement estimated to exceed £100,000, which is not covered by the exceptions in paragraph 6 below, must be referred to the Procurement Manager before the procurement process is commenced. If a Manager does not wish to accept the Procurement Manager's advice on any significant aspect the matter will be determined by the relevant Corporate Director. The discussion will cover:

- ◆ Scope and objectives of the procurement;
- ◆ Budget and costing;
- ◆ Tender methods;
- ◆ Product and market information;
- ◆ Timescales; and
- ◆ Deliverables.

5.3 Where there is no adopted contract or framework, Managers shall, wherever practicable, seek to maximise contract values with other Managers to secure lower costs. The Council nevertheless wishes to balance the effort of going to the market with the effort and efficiency of the procurement process. Managers after determining the proposed contract's total value shall then follow one of the

procurement procedures detailed below. These procedures shall be used in all procurements or sales bar those exceptions at paragraph 6.

	<b>Procedure</b>	<b>Estimated Total Value of Procurement</b>	<b>Requirement</b>
(a)	Estimate	Up to £5,000	At least 1 written estimate or offer ( <del>e-marketplace</del> , email, web or paper) shall be sought and recorded.
(b)	Request for Price (Informal Quote)	£5,000 up to £25,000	At least 3 written estimates or offer ( <del>e-marketplace</del> , e-tendering, email or headed paperwork) shall be sought.
(c)	Request for Quote (Formal Quote)	£25,000 to £100,000	Formal quotations sought from all contractors expressing interest following advertisement in accordance with paragraph 2.2. A formal written contract prepared in accordance with paragraph 13.1(f) if justified by potential risk or specialist subject matter.
(d)	Tender	£100,000 to EU Procurement Threshold	Competitive tenders shall be obtained using one of the tendering options in this Code, and a formal written contract prepared in accordance with paragraph 13.1(f).
(e)	EU tender	The EU Threshold and above	The appropriate EU procurement directive shall be complied with.

5.4 Total value is the cost of all elements of the procurement (e.g. installation, testing, training, maintenance, etc). The Manager shall ensure that a procurement is not split or otherwise disaggregated and may choose to competitively tender requirements less than £100,000.

5.5 A Manager shall not invite quotations or tenders from any contractor or sub-contractor who has participated in the preparation of documentation or were involved in other preparatory work for the contract, unless they have, in writing, explained to the Monitoring Officer why this does not constitute an unfair competitive advantage or a conflict of interest and obtained agreement, in writing, that the contractor/sub-contractor may compete in the quote/tender process.

## 6. TENDER AND REQUEST FOR QUOTATION PROCEDURES

6.1 **Exceptions.** Nothing in this Code shall require tenders/quotes to be sought: -

- (a) for purchases made from a Public Purchasing Body (ESPO, PRO5, Crown Commercial Service) where:
  - ◆ there is a single supplier 'call-off contract' or catalogue created with fixed prices, or
  - ◆ the contract is created to our requirements;
- (b) for purchases through local authority, government body or agency, police, health or other similar public authority, where the procurement rules of that organisation have been approved by the Procurement Manager and the contract is created in co-operation, agreed joint requirements or partnership;
- (c) for purchases made at public auction.

6.2 Provided that a compliant procurement process is underway a contract may be extended to complete procurement and contract negotiations by up to 3 months subject to agreement of the Procurement Manager.

6.3 **Single Tenders/Quotes.** All single tenders/quotes shall be reported to and recorded by the Procurement Manager in a register kept for that purpose.

6.4 **Head of Service Approval.** A Head of Service can approve a single tender/quote:

- (a) if the Head of Service considers that the work is of an emergency nature or is necessary to enable the service to continue and is reported to the next meeting of Cabinet.
- (b) for ongoing maintenance of propriety IT systems or where work to be executed or goods, services or materials to be supplied consist of repairs to or the supply of parts of existing proprietary machinery, equipment, hardware or plant and the repairs or the supply of parts cannot be carried out practicably by alternative contractors provided:
  - ◆ there is evidence that it is a propriety system;
  - ◆ the initial contract award was compliant with this Code;
  - ◆ the renewal is for a period not greater than 4 years (this is the time interval the EU uses to calculate contract value for ongoing contracts);
  - ◆ the total ongoing value does not exceed the EU threshold.
- (c) where a single expression of interest is received for a competition run in accordance with the quote procedures (paragraphs 5.3 (a) & (b)) provided that:
  - ◆ a clear description of the requirement has been advertised (paragraph 2.2) for an adequate period;
  - ◆ the sole prospective supplier is kept unaware of their status;
  - ◆ the process for seeking the quote is compliant.

- (d) where a new extension is proposed to a contract awarded under quote procedures (paragraphs 5.3 (a) & (b)) provided:
  - ◆ the value of the proposed and all previous extensions to the contract are:
    - a. not greater than 10% of the advertised requirement for goods and services, or
    - b. or not greater than 15% of the advertised requirement for works;
  - ◆ the extension does not materially change the nature of the contract;
  - ◆ the initial contract award was compliant with this Code.
  - ◆ the extension is recorded in the Contracts Register.
  
- (e) where the HoS considers a single quote is in the Council's best interest and:
  - ◆ the total value is less than £25,000; and
  - ◆ the details and justification are reported to the next quarterly Corporate Governance Committee.

6.5 **Monitoring Officer Approval.** A Head of Service after consulting the Monitoring Officer may obtain a single tender or quotation when no satisfactory alternative is available:

- (a) Prices are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available.
- (b) Specialist consultants, agents or professional advisers are required and
  - ◆ here is no satisfactory alternative; or
  - ◆ evidence indicates that there is likely to be no genuine competition; or
  - ◆ it is in the Council's best interest to engage a particular consultant, agent or adviser.
- (c) Products are sold at a fixed price, and market conditions make genuine competition impossible.
- (d) With the Monitoring Officer's agreement, considers that it is in the Council's best interest in negotiating a further contract for works, supplies or services of a similar nature with a contractor who is currently undertaking such work and is reported to the next meeting of cabinet.
- (e) For reasons of interoperability/interchangeability or substantial duplication of costs.

6.6 If the single quote/tender option is used, the Manager shall:

- (a) seek approval of the Monitoring Officer; and
- (b) retain records that demonstrate that the best price or value for money has been obtained from the negotiations with the contractor.

## **7. LIST OF APPROVED TENDERERS**

7.1 Tenders shall be invited from at least three contractors selected from an approved list established in accordance with this paragraph of the Code. Vetting is not normally required as the contractor was vetted to join the list.

7.2 The Council uses 2 types of list of approved contractors:

(a) Third party vetted lists of contractors that are compiled and maintained by an external organisation. Only external organisations approved by the Procurement Manager, after consultation with other relevant Manager(s) shall be adopted. The Procurement Manager shall ensure that the external organisation and approved list of contractors is detailed in Procurement Protocols & Guidelines.

(b) Ad-hoc list of approved tenderers. If a Manager believes that the approved list of tenders does not allow him to obtain sufficient competition for 'Best Value', the Manager shall write to the Procurement Manager seeking approval to source additional contractors or create an ad-hoc list of approved tenderers.

7.3 Subject to approval as required in paragraph 7.2(b) the Manager shall:

(a) issue a public notice inviting applications for inclusion on a specific approved list for the supply of goods, services or materials.

(b) vet (as detailed at paragraph 9.1) all contractors replying to the public notice or who have requested within the previous 12 months to be considered for work of a similar nature;

(c) only include contractors satisfactorily completing the checks;

(d) tell all potential suppliers how the approved list operates

(e) ensure the ad-hoc list shall only be used for seeking tenders for the supply of goods, services or materials specifically detailed within the original public notice;

7.4 The Procurement Manager in conjunction with the relevant Managers shall review the continued suitability of any List of Approved Tenderers periodically and at least prior to the third anniversary of its initial or further adoption.

## **8. FRAMEWORKS**

8.1 All contractors on the framework (or lot if split into lots) shall be invited to submit a tender or quotation unless:

(a) the framework explicitly permits direct award;

(b) the proposed award is less than the tender threshold (£100,000); and

(c) the Head of Service can show both objective reasons for the selection of a supplier and evidence of best value.

8.2 No public notice is required and general Terms & Conditions are set in the original framework contract but additional Terms & Conditions specific to the requirement may be permitted. Vetting is not normally required as the contractor was vetted as part of the original framework competition.

- 8.3 When advertising any contract or framework, Managers shall name any wholly publicly owned Local Authority Trading Company (LATC) (eg: "Huntingdonshire Ventures").

## **9. COMPETITION**

### **9.1 Shortlisting and Restricted Tenders**

- (a) Restricted (shortlisting) tenders are not permitted for competitions below the EU threshold.
- (b) Where allowed, the Manager shall undertake sufficient vetting to ensure that all contractors:
- ◆ comply with minimum standards of Insurance;
  - ◆ have the necessary Health & Safety policy and performance and (where applicable) membership of the Contractor's Health and Safety Scheme or equivalent health and safety standard;
  - ◆ are financially viable based on a risk based assessment;
  - ◆ have an appropriate environmental policy;
  - ◆ comply with equalities legislation and policy; and
  - ◆ possess the experience and capacity required.
- (c) The Procurement Manager shall provide an appropriate questionnaire for the purpose of vetting contractors.

### **9.2 Open Tenders/Quotes**

- (a) Provided the Manager complies with paragraph 2.2 and is satisfied that Expressions of Interest received represent contractors with genuine interest and capacity, then no further public notice is required. Otherwise public notice may be given in one or more newspapers and/or in an appropriate trade journal. The notice shall state the nature and purpose of the contract, where further information and documentation can be obtained, and state the closing date for the process.
- (b) An Invitation to Tender (ITT) or Request to Quote (RFQ) shall be sent to all contractors expressing an interest. ITTs and RFQs may include an appropriate suitability questionnaire. The Procurement Manager shall provide a suitable questionnaire.

### **9.3 Invitations to Tenders (ITT) and Requests for Quotations (RFQ)**

Managers shall ensure that all ITTs and RFQs include;

- (a) approved contract terms in accordance with paragraph 13.1 of this Code;
- (b) a clear statement that explains if the bid is to be evaluated on the basis of the most economically advantageous tender (best value).

#### **9.4 Evaluation Criteria**

Except where the Cabinet decides otherwise, all formal quotations or tenders that are being sought shall:

- (a) state explicitly all essential/mandatory/minimum requirements or award criteria. Any single failure or non-compliance with these requirements or criteria will result in rejection of the tender;
- (b) list all desirable award criteria together with specific weightings applied to each; and
- (c) if appropriate, include a requirement for a performance bond and liquidated damages.

#### **9.5 Social Value**

All tenders that are being sought for services or works shall include a relevant social value requirement, such as:

- (a) employment measures:
  - ◆ new work opportunities including work experience, training and apprenticeships,
  - ◆ back-to-work support (interviews skills, CV advice, and careers guidance),
  - ◆ employment of disadvantaged groups (care leavers or ex-military or ex-offenders).
- (b) community measures (including assisting community, voluntary and third-sector groups) by:
  - ◆ contributing practical business support (eg: financial, legal, HR advice, etc).
  - ◆ providing access to facilities and premises
  - ◆ supporting the creation of new volunteering opportunities
- (c) promoting environmental sustainability:
  - ◆ improved environmental performance including low energy and water
  - ◆ reducing the amount of waste generated
  - ◆ the elimination (or reduced consumption) of substances hazardous to health,

5% of the marks available to any tender shall be for social value, provided the social value benefit is relevant to the subject matter of the contract and delivered within the District.

#### **9.6 Non-Traditional Procurement**

If a Manager believes that by following one of the procurement procedures detailed in paragraph 9 above that the procurement process will not provide him with the most appropriate method of delivery, the most competitive prices, allow for continuous improvements in delivery, or stifle innovation, then they may suggest alternative procurement strategies.

The Manager shall produce in accordance with guidance issued by the Procurement Manager and prior to proceeding with the procurement, a written acquisition strategy that shall be approved by the Monitoring Officer and the Cabinet.

## **10. SUB-CONTRACTS AND NOMINATED SUPPLIERS**

- 10.1 Quotations or tenders for sub-contracts to be performed or for goods, services or materials to be supplied by nominated sub-contractors shall be invited in accordance with this Code.
- 10.2 The relevant Manager is authorised to nominate to a main contractor a sub-contractor whose quotation or tender has been obtained in full accordance with this Code.

## **11. RECEIPT AND OPENING OF TENDERS AND QUOTATIONS**

- 11.1 Contractors shall be notified that tenders or formal quotations are invited in accordance with this Code. No tender or formal quotation will be considered unless -
- (a) it has been received via the e-tendering ~~or e-marketplace~~ 'sealed quote' facility; or
  - (b) it is contained in a plain envelope/packet which shall be securely sealed and shall bear the word "Tender" or "Quotation", the Unique Reference Number (URN) from the Contracts Register; and the envelope shall not bear any distinguishing matter or mark intended to indicate the identity of the sender. Such envelope shall be addressed
    - ◆ impersonally to the 3Cs Head of Legal Practice if it contains a "Tender", or
    - ◆ the appropriate Manager if it contains a "Quotation"; or
  - (c) RFQs (Formal Quotations) may be sent electronically to a specific e-mail address, which the appropriate Manager shall obtain from the IMD Service Manager. The IMD Service Manager shall ensure that the e-mail address is secure.
- 11.2 All Officers shall comply with the procedure note 'Procedure for the Receipt of Tenders and Formal Quotations' which can be found on the Procurement internet pages.
- 11.3 All tenders or quotations upon opening shall be recorded in writing on either a tender or quotation opening record unless the [e-tendering system](#) or Contracts Register is being completed contemporaneously. The format of the opening record shall have been previously agreed with the Monitoring Officer and 3Cs Head of Legal Practice.
- 11.4 Any tenders or quotations received after the specified time may in exceptional circumstances be accepted by 3Cs Head of Legal Practice, otherwise they shall be returned promptly to the contractor by the 3Cs Head of Legal Practice or his nominated officer in respect of tenders, or by the appropriate Manager or his nominated officer in respect of a formal quotation.
- 11.5 Late tenders shall be rejected once any other tender/quotation has been opened. The tender or quotation may be opened to ascertain the name of the contractor but no details of the tender or quotation shall be disclosed.

## **12. ACCEPTANCE OF TENDERS AND QUOTATIONS**

12.1 The appropriate Manager shall evaluate all the tenders or quotations received in accordance with the award criteria set out in the bid documentation and shall accept, subject to the provisos set out in this paragraph, the most economically advantageous tender or quotation, as evaluated against the award criteria.

12.2 Tenders or quotations exceeding the approved estimate may only be accepted once approval to further expenditure is obtained.

12.3 If the most economically advantageous quotation exceeds £100,000 but -

- (a) is within 15% of the original estimate and budget, the appropriate Head of Service may accept the quotation without seeking further competition; or
- (b) is in excess of 15% of the original estimate then the Head of Service shall consult the Procurement Manager and obtain the approval of the Monitoring Officer that the quotation can be accepted otherwise a competitive tender exercise in accordance with paragraph 9.1 above shall be carried out.

12.4 A tender or quotation shall not be accepted -

- (a) where payment is to be made by the Council and it is not the most economically advantageous tender or quotation in accordance with the award criteria set out in the tender or quotation documentation; or
- (b) if payment is to be received by the Council and the tender or quotation is not the highest price or value;
- (c) unless –
  - ◆ the Cabinet have considered a written report from the appropriate Head of Service/Service Manager, or
  - ◆ in cases of urgency, the Monitoring Officer has consulted and obtained the approval of the relevant executive councillor. Tenders or quotations accepted in this way shall be reported by the appropriate Manager to the next meeting of the Cabinet.

### **12.6 Arithmetical Errors and Post-Tender Negotiations**

(a) Contractors can alter their tenders or quotations after the date specified for their receipt but before the acceptance of the tender or quotation, where examination of the tender or quotation documents reveals arithmetical errors or discrepancies which affect the tender or quotation figure. The contractor shall be given details of all such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing his offer.

(b) Post-tender negotiations shall not be used to degrade the original specification unless:

- ◆ the capital or revenue budget is exceeded; or
- ◆ other special circumstances exist;
- ◆ in which case the Monitoring Officer and Procurement Manager shall decide which of those contractors who originally submitted a tender or quotation shall be given the opportunity to submit a further bid based upon a degraded specification. This decision shall be recorded in writing.

- (c) In evaluating tenders, the appropriate Manager may invite one or more contractors who have submitted a tender to submit a revised offer following post-tender negotiations.
- (d) All post-tender negotiations shall:
  - ◆ only be undertaken where permitted by law and where the appropriate Manager and Monitoring Officer and 3Cs Head of Legal Practice consider additional financial or other benefits may be obtained which over the period of the contract shall exceed the cost of the post-tender negotiation process;
  - ◆ be conducted by a team of officers approved in writing by the Monitoring Officer and 3Cs Head of Legal Practice;
  - ◆ be conducted in accordance with guidance issued by the 3Cs Head of Legal Practice; and
  - ◆ not disclose commercially sensitive information supplied by other bidders for the contract.
- (e) The appropriate Manager shall ensure that all post-tender negotiation meetings are properly minuted with all savings and benefits offered clearly costed. Following negotiations but before the letting of the contract, amendments to the original tender submitted shall be put in writing by the contractor(s) and shall be signed by him.

### **13. TERMS OF BUSINESS AND THE FORM OF CONTRACTS**

- 13.1 All orders less £100,000 placed by the Council shall be on the Council's Standard Terms and Conditions (T&Cs) except for:-
  - (a) Any purchase at a public auction.
  - (b) Any framework or contract formally adopted by the Council.
  - (c) Purchasing Agency (e.g. ESPO, Crown Commercial Service) arranged contracts and orders.
  - (d) Orders of a total value of less than £ 25,000 where the goods or service are purchased on a 'retail' basis on terms available to the general public.
  - (e) Orders for software where the licence is for a 'standard' product but not where any form of modification, customisation, development or on-site service is required for the 'standard' product.
  - (f) Where agreed by the Procurement Manager that there is potential detriment to performance, cost or delivery; or the procurement relates to a specialist category (eg: works, IT, professional services, concessions).
- 13.2 Any contract where the estimated total value exceeds £100,000 shall be in writing in a form agreed by the 3Cs Head of Legal Practice. Managers shall ensure that advice of the 3Cs Head of Legal Practice is sought at a stage as early as practicable (normally before the issue of an Invitation to Tender).
- 13.3 Managers shall not use Contractor's documentation to order, acknowledge, instruct to proceed or make any other commitment where the documentation makes any reference to the Contractor's T&Cs. Except where permitted at

paragraph 13.1, if a contractor formally insists on trading on T&Cs other than the Council's T&Cs, the Procurement Manager shall be informed.

- 13.4 In the case of any contract likely to exceed £100,000 for the execution of works or for the supply of goods, services or materials, the Manager after consulting with the Procurement Manager and the Monitoring Officer shall consider whether the Council should require security for its due performance and shall either certify that no such security is necessary or shall specify in the specification of tender the nature and amount of the security to be given. In the latter event, the Council shall require and take a bond or other sufficient security for the due performance of the contract.
- 13.5 Managers shall produce the final version of all contracts in 2 copies. Where the total value of a contract exceeds £100,000 both copies shall be presented to the Head of Resources for signature. Once signed by the contractor, the signed contract, all original documents, including specifications, drawings, tender documents and correspondence relating to shall be forwarded by the 3Cs Head of Legal Practice. Where the total value of the contract is less than £100,000 the relevant Manager shall make arrangements for the retention of all the original documentation.
- 13.6 Managers shall maintain a record (in the form detailed in the Procurement Protocols & Guidance) for their area of each contract or agreement (both written and verbal agreements).
- 13.7 Managers shall include one of the specific T&Cs listed in the Procurement Home Page in all contracts. Where a Manager considers a term or condition inappropriate they shall seek advice of the 3Cs Head of Legal Practice on the modification or deletion of the term or condition.

#### **14. LETTERS OF INTENT**

- 14.1 Letters of intent provide a contractor with the authority to proceed prior to the award of a contract. However, letters of intent have two main disadvantages:-
- (a) if the contract is not awarded the contractor is entitled to payment regardless as to whether the work was actually needed;
  - (b) the Council's negotiating position is weakened as the contractor may believe actual award of contract is a formality and therefore, the contractor may refuse to accept conditions that are seen as disadvantageous.
- 14.2 Managers shall ensure that:-
- (a) all letters of intent are in a form approved by the 3Cs Head of Legal Practice; and
  - (b) all letters of intent are signed by the appropriate Budget Manger with sufficient authority for either the value of the intended contract or the estimated value of any 'extension' period defined in the letter of intent if below £100,000 , otherwise by the Head of Resources.

#### **15. POST-COMPETITION DEBRIEFS**

- 15.1 For all contracts greater than £25,000, Managers shall maintain records of selection and evaluation scoring and where requested by participating suppliers, provide a suitable post-tender debrief in writing. For contracts greater than

£100,000 , unsuccessful tenderers shall be advised in writing of the winning supplier, the value of the contract awarded and the strengths and weaknesses of their tender and the advice of the Procurement Manager shall be sought on the format and scope of the debrief.

## **16. PUBLISHING CONTRACT AWARDS**

16.1 Contract Award Notices shall be published within 90 days of contract award in the appropriate online system:

- ◆ Contracts Register if greater than £5,000, and.
- ◆ Contracts Finder if greater than £25,000 (including awards under mini-competition using a framework) or if advertised in Contracts Finder, and
- ◆ The Official Journal of the European Union if greater than the promulgated EU threshold.

## **17. LOCAL GOVERNMENT ACT – COMMUNITY RIGHT TO CHALLENGE**

The Local Government Act permits relevant bodies (charities, community bodies, town & parish councils and staff) to submit Expressions of Interest to provide Council services. The Procurement Manager shall maintain and publish a timetable for the submission of Expressions of Interest. All Expressions of Interest received from relevant bodies should be forwarded to the Policy, Performance and Transformation Manager (Scrutiny).

## **18. RETENTION OF DOCUMENTS**

18.1 Managers shall ensure that every contract or quotation is assigned the Unique Reference Number (URN) from the Contract Register, which is to be used in all correspondence. Any Division or reference may be included in addition to the URN shall comprise abbreviation for the Division and year. Formal amendments to a contract or order should also be given unique numbers showing the order in which the amendments were made.

18.2 Documentation retention periods are dictated by the Statute of Limitations and (where applicable) EU requirements. The following rules apply:-

- (a) retention for 12 years from the date of completion of the contract for contracts made under deed;
- (b) retention for 6 years from the date of completion of the contract:-
  - ◆ Contract Documents
  - ◆ Hire/Rental Agreements
  - ◆ Successful Tenders
  - ◆ Summary of Tender Opening
  - ◆ Disposal Board papers
  - ◆ All selection and evaluation scoring and reports
  - ◆ Goods Received Notes
  - ◆ HM Customs and Excise Import documentation

- ◆ Invitations to Tender/Quotation Requests
  - ◆ Maintenance/Software licence agreements
  - ◆ Specifications
  - ◆ Successful Quotations
  - ◆ Suppliers' Advice Notes;
- (c) retention for 3 years after the last entry:-
- ◆ Stock and Purchase Record Cards or Registers
- (d) retention for 2 years after the financial year to which the document relates:-
- ◆ Unsuccessful Quotations.
  - ◆ Unsuccessful Tenders.

## **19. FREEDOM OF INFORMATION ACT 2000 (FOIA)**

Managers shall ensure that the handling of requests for procurement information complies with the detailed guidance published as Procurement Protocols & Procedures and the general FOIA guidance published by the Council's Freedom of Information Officer.

## **20. CONFLICTS OF INTEREST**

20.1 Where a potential conflict is declared by an officer or otherwise recognised, the HoS shall ensure the relevant company and businesses areas are identified. Other business areas are exempt from the procedure.

20.2 The following procedure is applied according to value:

- (a) Low value (less than £100,000)
- ◆ HoS shall arrange for specifications/evaluation criteria written by the affected officer to be independently vetted;
  - ◆ HoS shall appoint 2 independent officers to evaluations were the relevant company participates; and
  - ◆ HoS shall ensure independent vetting of evaluations were the relevant company becomes the preferred bidder.
- (b) High Value (greater than £100,000). Where the relevant company bids or is considered likely to bid the HoS shall ensure participation by the affected officer is limited to providing specialist advice.

20.3 If a conflict of interest becomes apparent once a procurement is underway but before contract award the HoS shall seek the advice of the Procurement Manager and 3Cs Head of Legal Practice on how to proceed. If discovered after contract award, the HoS shall refer the matter to the Monitoring Officer.

## **21. Interims, Consultants and Contractors**

21.1 The Manager responsible for appointing any Interim, Consultant or Contractor (ICC) shall:

- (a) if engaged through an agency, provide the agency with any information requested about the role.

- (b) if engaged directly, use the HMRC's online employment status tool to check the ICC's tax status and record the outcome. If the ICC is deemed an employee then HR shall be provided with the details of the engagement.

22.2 If the ICC will be responsible to the Council for the management or supervision of a contract on its behalf, then the Manager shall provide the ICC with a copy of this Code and ensure that it shall be a condition of the engagement that the ICC shall:

- (a) comply with this Code; and
- (b) at any time during the carrying out of the contract produce to the appropriate Manager, on request, all the records maintained in relation to the contract; and
- (c) on completion of the contract transfer all records produced or received that relate to the contract to the appropriate Manager.

## **22. PROCUREMENT TRAINING**

22.1 The Procurement Manger shall create, maintain and arrange the delivery of training for Officers undertaking procurement duties.

22.2 Managers shall ensure that all Officers routinely undertaking purchasing or procurement duties where the gross value of the procurement is £5,000 or more shall have undertaken appropriate training.