

**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, Manager, Service Manger or Team 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 Manager shall procure any goods or services valued at ~~£5,000~~ **10,000** 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.
- 1.6 The Code applies also to the sale of assets and goods by the Council where the appropriate Manager estimates that the assets, goods or services to be sold exceed £1000. Where the value is estimated to be less than £1000 then the 'Sale of Equipment' procedures contained within the Inventory procedures shall be followed.
- 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 and Code of Financial Management and British or European Union law or regulation.
- 1.9 Throughout the Code, reference to contractor(s) or sub-contractor(s) shall mean any person, company or supplier who has -
- ◆ requested to be on an approved or ad-hoc approved list of tenderers;
  - ◆ been approached to provide a quotation or tender;

- ◆ provided a quotation or tender; or
- ◆ 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 PROCEDURES AND EU COMPLIANCE

2.1 EU Procurement Directives require the Council, to report procurements likely to exceed EU thresholds, both at the start of the year and on an ad-hoc basis as new or changed requirements arise. The EU thresholds (as at 1 January 2014) are:

Threshold	Supplies and Services	Works
£ Sterling	£ 172,514	£4,322,012
€ Euro	€ 207,000	€ 5,186,000

### 2.2 Financial Year Start Reporting

No later than the 1 April each year, Managers shall:

- ◆ provide the following information to the Procurement Manager -
  - Details of each contract expected to be advertised in the following year;
  - An estimate of the total value for each discrete procurement area where the spend is likely to exceed £100,000;
- ◆ advertise very brief details of each contract expected to be advertised in the following year. The advertisement shall take the form of a Prior Indicative Notice (PIN). The publishing of a PIN does not commit the Council, but can reduce timescales if the requirement is subsequently advertised through Official Journal of the European Union (OJEU).

A PIN is also required if the estimate of the aggregated value of the contracts for a given coding class exceeds the published PIN thresholds:

Threshold	Supplies and Services	Works
£ Sterling	£ 625,050	£4,322,012
€ Euro	€ 750,000	€ 5,186,000

### 2.3 Through Year Reporting

Managers shall report, using a PIN where time permits, new or additional requirements likely to meet or exceed EU thresholds as they arise.

### 2.4 End of Year Reporting

Where a Manager has placed a notice in the Official Journal of the European Union, they shall provide the Procurement Manager by the 30 April each year with the following details for contracts placed through OJEU procedures -

- ◆ Common Procurement Vocabulary (CPV) code. (The CPV is a standardised single classification system for public procurement to identify the subject of a contract and is detailed on the OJEU notice);
- ◆ Provider (contractor) Nationality;
- ◆ Award Procedure (from the OJEU notice);
- ◆ Justifications if Negotiated procedure; and
- ◆ Value.

### **3. CONTRACTS REGISTER**

3.1 Managers shall keep a record using the Contracts Register, of all tenders and quotes greater than £5 10,000; 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;
- ◆ 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.

### **4. METHODS OF ORDERING**

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

- ◆ An order raised on the e-marketplace.
- ◆ A procurement card order.
- ◆ A manual purchase order.
- ◆ A purchase order raised on the financial management system.

4.2 Where there is an exception requirement and the relevant [Corporate Director](#) or Manager 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 Manager shall record the details of the exceptional requirement and the action taken for future audit.

### **5. 'BEST VALUE' AND SOURCING POLICY**

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

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

5.2 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 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 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.

5.3 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.

5.4 **Tenders.** Nothing in this Code shall require tenders to be sought: -

- (a) for purchases made from a Purchasing Agent (ESPO, [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;
  - ◆ 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;
  - ◆ for purchases made at public auction;
  - ◆ where the relevant [Corporate Director](#) or Manager -
  - ◆ considers that the work is of an emergency nature or is necessary to enable the service to continue; or
  - ◆ with the [Corporate Director \(Services\)](#) 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. The relevant [Corporate Director](#) or Manager shall report details of all work awarded under 5.4 d above to:
    - i. the Head of Legal & Democratic Services who shall make a record in a register kept for that purpose; and
    - ii. the next meeting of Cabinet.

5.5 Any procurement estimated to exceed £50,000, which is not covered by the exceptions in paragraph 5.4 above, 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.

5.6 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 5.4.

Estimated Total Value of Procurement	Requirement
Up to £1,000	At least 1 written estimate or offer (e-marketplace, email, web or paper) shall be sought and recorded.
£1,000 up to £10,000	At least 3 written estimates or offer (e-marketplace, email or headed paperwork) shall be sought and recorded.
£10,000 to £50,000	At least 3 formal quotations or offers shall be invited, unless the Manager has complied in full with paragraph 6.1e of this Code. The Manager will consider whether the nature of the procurement is such that a full competitive tendering would be likely to be beneficial to the Council by reducing cost (by more than the cost of tendering) or risk.
£50,000 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 11.2.
The EU Threshold and above	The appropriate EU procurement directive shall be complied with.

5.7 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 £50,000.

5.8 Achieving 'Best Value' needs valid competition and valid competition is dependant 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 -

- ◆ the selection process they are using 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).
- ◆ checks are made to ensure that contractors are interested in this type of business;
- ◆ 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;
- ◆ 'new' contractors are sought and invited to tender or quote;
- ◆ the geographic area of the search for potential contractors is widened; and;
- ◆ 'no-bids' are checked for the reasons for a contractor's failure to bid.

5.9 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.

5.10 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 Head of Legal and Democratic Services 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 FORMAL QUOTATION PROCEDURES

### Tendering and Formal Quotation Options

6.1 Managers shall select one of the following procedures. If any alternative procedure is proposed then approval of the Cabinet is required before the proposed procedure is followed.

Option	Requirement
(a) <b>Framework</b>	All contractors on the framework (or lot if split into lots) shall be invited to submit a tender or quotation. 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 (paragraph 6.3) is not normally required as the contractor was vetted as part of the original framework competition.
(b) <b>List of Approved Tenderers</b>	Tenders shall be invited from at least three contractors selected from an approved list established in accordance with paragraph 7 of this Code. Vetting (paragraph 6.3) is not normally required as the contractor was vetted to join the list.

<p>(c) <b>Open Tenders</b></p>	<p>Public notice shall 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. Where the Manager is satisfied that Expressions of Interest received from a Contracts Register Notice represent contractors with genuine interest and capacity, then no further public notice is required.</p> <p>An Invitation to Tender (ITT) or Request to Quote (RFQ) is sent to all contractors expressing an interest. All ITTs and RFQs shall include an appropriate questionnaire to permit vetting of contractors in accordance with paragraph 6.3 of this Code.</p>
<p>(d) <b>Restricted Tenders &amp; Quotations</b></p>	<p>The requirement to advertise is the same as paragraph 6.1 (c) above. ITTs or RFQs are <i>restricted</i> to a shortlist of contractors selected after vetting in accordance with paragraph 6.3 of this Code.</p>
<p>(e) <b>Single Tenders or Quotations</b></p>	<p>A Manager after consulting the Head of Legal &amp; Democratic Services may obtain a single tender or quotation when:</p> <ol style="list-style-type: none"> <li>a. Prices are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available.</li> <li>b. 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.</li> <li>c. Specialist consultants, agents or professional advisers are required and <ul style="list-style-type: none"> <li>◆ there is no satisfactory alternative; or</li> <li>◆ evidence indicates that there is likely to be no genuine competition; or</li> <li>◆ it is in the Council's best interest to engage a particular consultant, agent or adviser.</li> <li>◆ Products are sold at a fixed price, and market conditions make genuine competition impossible</li> </ul> </li> <li>d. The proposed contract shall form part of a serial programme. The contract terms shall be negotiated with a contractor, using as a basis for negotiation the rates and prices contained in an initial contract that was awarded following a competitive tendering process that complied with this Code. No more than two serial contracts shall be negotiated from an initial contract.</li> <li>e. No satisfactory alternative is available. If the single quote/tender option is used, the Manager</li> </ol>

	<p>shall:</p> <ul style="list-style-type: none"> <li>◆ seek approval of the Head of Legal &amp; Democratic Services who shall make a record in a register kept for that purpose;</li> <li>◆ retain records that demonstrate that the best price or value for money has been obtained from the negotiations with the contractor.</li> </ul> <p>f. A Manager can approve a single tender for ongoing maintenance of propriety systems provided:</p> <ul style="list-style-type: none"> <li>◆ there is evidence that it is a propriety system;</li> <li>◆ the initial contract award was compliant with this Code;</li> <li>◆ 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);</li> <li>◆ the total ongoing value does not exceed the EU threshold; and</li> <li>◆ the direct award is recorded in the single tender register.</li> </ul>
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## 6.2 Invitations To Tenders and Requests for Quotations

Managers shall ensure that all ITTs and RFQs include;

- (a) approved contract terms in accordance with paragraph 11.2 of this Code;
- (b) the following statement regarding Freedom of Information Act 2000 compliance:
 

“All information supplied to the Authority will be subject to the provisions of the Freedom of Information Act 2000 and as such may be disclosed by the Authority when required to do so under the Act. When such disclosure is necessary the Authority shall use reasonable endeavours to consult with the provider of the information prior to disclosure.”
- (c) a clear statement that explains if the bid is to be evaluated on the basis of lowest price or the most economically advantageous basis (best value).

## 6.3 Selection Criteria

- (a) 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 financial 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.
- (b) The Procurement Manager shall provide an appropriate questionnaire for the purpose of vetting contractors.
- (c) Managers wishing to have a Pre-Qualification Questionnaire returned in electronic format (Excel) must tell bidding suppliers to use the designated email address “procsupport@huntingdonshire.gov.uk” and inform the Procurement Manager of the closing date. The Procurement Manager shall forward the Pre-Qualification Questionnaires to the Manager after the closing date.

#### 6.4 Evaluation Criteria

Except ~~where to the extent that the Cabinet in a particular case or specified categories of contract~~ decides otherwise, all formal quotations or tenders that are being sought shall:

- (a) be based on a definite written specification, which shall include consideration (where relevant to the requirement) of:
  - ◆ environmental performance including low energy and water consumption and the elimination of substances hazardous to health and the environment.
  - ◆ **delivery of social benefit (for services only)**
  - ◆ **inclusion of Small & Medium sized Enterprises**
- (b) include award criteria,
- (c) include specific weightings applied to individual award criteria, and
- (d) if appropriate, include a requirement for a performance bond and liquidated damages

#### 6.5 Non-Traditional Procurement

If a Manager believes that by following one of the procurement procedures detailed in paragraph 5.6 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 procurement innovation, then he may suggest alternative procurement strategies.

The Manager shall produce in accordance with guidance issued by the Head of Legal & Democratic Services and prior to proceeding with the procurement, a written procurement strategy that shall be approved by the **Corporate Director (Services)** and the Cabinet.

### 7. LISTS OF APPROVED TENDERERS

7.1 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 Head of Legal & Democratic Services, after consultation with the **Corporate Director (Services)** and the 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 Head of Legal & Democratic Services and the Procurement Manager seeking approval to source additional contractors or create an ad-hoc list of approved tenderers.

7.2 Subject to approval as required in paragraph 7.1(b) the Manager shall:

- ◆ issue a public notice inviting applications for inclusion on a specific approved list for the supply of goods, services or materials.
- ◆ vet (as detailed at paragraph 6.3) 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;
- ◆ only include contractors satisfactorily completing the checks;
- ◆ tell all potential suppliers how the approved list operates
- ◆ 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;

7.3 The Head of Legal & Democratic Services in conjunction with the **Corporate Director (Services)** and 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. SUB-CONTRACTS AND NOMINATED SUPPLIERS**

8.1 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.

8.2 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.

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

9.1 Contractors shall be notified that tenders or formal quotations are invited in accordance with this Code no tender or quotation will be considered unless -

- (a) the tender or quotation has been received via the e-marketplace 'sealed quote' facility; or
- (b) contained in a plain envelope 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 Head of Legal and Democratic Services if it contains a "Tender", or
  - ◆ the appropriate Manager if it contains a "Quotation"; or

- (c) it has been 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.

9.2 All envelopes or e-mails received shall be kept securely and shall not be opened or accessed until the time appointed for their opening except at the request of the Head of Legal & Democratic Services or officers specifically appointed by him.

9.3 All tenders or quotations invited in accordance with this Code shall be opened at one time only and by at least two officers -

- ◆ Tenders shall be opened by officers nominated by the Head of Legal & Democratic Services and by the appropriate Head of Service/Service Manager. The Procurement Manager shall be notified of the time and place appointed for the opening.
- ◆ Quotations shall be opened by the appropriate Manager and/or his nominee(s) and one other Officer. The Internal Audit Manager shall be notified of the time and place appointed for the opening.

9.4 All tenders or quotations upon opening shall be recorded in writing on either a tender or quotation opening record unless the Contracts Register is being completed contemporaneously. The format of the opening record shall have been previously agreed with the Head of Legal & Democratic Services and **Corporate Director (Services)**. The Form of Tender or Quotation and any accompanying documentation shall be marked with the date of opening, and signed by all officers present at the opening. The tender or quotation opening record shall be signed by at least two officers present at the opening and record the method that has been selected to evaluate the bids received. If the Contracts Register has been completed, then all of the required fields will be completed as per the guidance issued by the Procurement Manager.

9.5 The original opening record shall be retained by the Head of Legal and Democratic Services in respect of tenders, and the relevant Manager in respect of quotations. A copy of the opening record shall be provided to the Internal Audit Manager.

9.6 Any tenders or quotations received after the specified time **may in exceptional circumstances be accepted by Head of Legal and Democratic Services** otherwise they shall be returned promptly to the contractor by the Head of Legal and Democratic Services or his nominated officer in respect of tenders, or by the appropriate Manager or his nominated officer in respect of a quotation.

9.7 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.

## 10. ACCEPTANCE OF TENDERS AND QUOTATIONS

10.1 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, either -

- ◆ the lowest priced tender or quotation; or

- ◆ the most economically advantageous tender or quotation, as evaluated against the award criteria.
- 10.2 Tenders or quotations exceeding the approved estimate may only be accepted once approval to further expenditure is obtained.
- 10.3 If the lowest priced, or most economically advantageous quotation exceeds £50,000 but -
- ◆ is within 15% of the original estimate, the appropriate Manager may accept the quotation without seeking further competition; or
  - ◆ is in excess of 15% of the original estimate then a competitive tender exercise in accordance with paragraph 6.1 above shall be carried out, unless the appropriate Manager has consulted and obtained the approval of the Head of Legal and Democratic Services, the Procurement Manager and relevant Executive Councillor that the quotation can be accepted.
- 10.4 A tender or quotation shall not be accepted -
- (a) where payment is to be made by the Council and –
    - ◆ it is not the lowest priced tender or quotation, or
    - ◆ 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 Head of Legal and Democratic Services 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.
- 10.5 Where post-tender negotiations have been undertaken in accordance with paragraph 10.6 below, the appropriate Manager shall only accept the lowest priced tender received. A tender other than the lowest shall not be accepted until the Cabinet have considered a written report from the appropriate Head of Service/Service Manager, and recommended acceptance of a tender other than the lowest.
- 10.6 **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 Head of Legal and Democratic Services 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 Head of Legal and Democratic Services and **Corporate Director (Services)** consider additional financial or other benefits may be obtained which over the period of the contract shall exceed the cost of the post-tender negotiation process;
  - ◆ be conducted by a team of officers approved in writing by the Head of Legal and Democratic Services and **Corporate Director (Services)**;
  - ◆ be conducted in accordance with guidance issued by the Head of Legal and Democratic Services; 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.

## 11. TERMS OF BUSINESS AND THE FORM OF CONTRACTS

11.1 All orders placed by the Council shall be on the Council's Terms and Conditions (T&Cs). 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. Where a contractor formally insists on trading on T&Cs other than the Council's T&Cs, the Procurement Manager shall be informed, except for -

- ◆ Any contract where the estimated total value is likely to exceed £50,000, paragraph 11.2 shall apply.
- ◆ Any framework or contract formally adopted by the Council.
- ◆ Purchasing Agency (e.g. ESPO, Crown Commercial Service) arranged contracts and orders.
- ◆ Orders of a total value of less than £ ~~10~~5,000 where the goods or service are purchased on a 'retail' basis on terms available to the general public.

- ◆ Orders for software where the licence is for 'standard' product but not where customisation, development or on-site service is required for the 'standard' product.
- 11.2 Every contract that exceeds £50,000 in value shall be in writing in a form approved by the Head of Legal and Democratic Services who shall also determine the format of any contract for a lesser value. Managers shall ensure that advice of the Head of Legal and Democratic Services is sought at a stage as early as practicable (normally before the issue of an Invitation to Tender).
- 11.3 In the case of any contract for the execution of works or for the supply of goods, services or materials, the Manager after consulting with the **Corporate Director (Services)** and the Head of Legal and Democratic Services 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.
- 11.4 Managers shall produce the final version of all contracts in 2 copies and present both to the Authorised Officer for signature. Once signed by the contractor, the signed contract, all original documents, including specifications, drawings, tender documents and correspondence relating to a contract exceeding a total value of £50,000 shall be forwarded by the Head of Legal and Democratic Services. Where the total value of the contract is less than £50,000 the relevant Manager shall make arrangements for the retention of all the original documentation.
- 11.5 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).
- 11.6 Managers shall include the specific T&Cs listed in the Procurement Protocols & Guidance in all contracts. Where a Manager considers a term or condition inappropriate they shall seek advice of the Head of Legal and Democratic Services on the modification or deletion of the term or condition.

## **12. LETTERS OF INTENT**

- 12.1 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.
- 12.2 Managers shall ensure that:-
  - (a) all letters of intent are in a form approved by Head of Legal and Democratic Services; and

- (b) all letters of intent are signed by an Authorised Officer 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.

### **13. POST-COMPETITION DEBRIEFS**

- 13.1 For all contracts greater than £105,000 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 £50,000, the advice of the Procurement Manager shall be sought on the format and scope of the debrief.

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

14.1 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 Information and Research Officer.

## **15. RETENTION OF DOCUMENTS**

15.1 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.

15.2 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.

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

16.1 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.



## 17. CONSULTANTS

17.1 It shall be a condition of the engagement of any consultant, agent or professional adviser who is to be responsible to the Council for the management or supervision of a contract on its behalf, that in relation to that contract he shall -

- ◆ comply with this Code as though he were an employee of the Council;
- ◆ at any time during the carrying out of the contract produce to the appropriate Manager, on request, all the records maintained by him in relation to the contract; and
- ◆ on completion of the contract transmit all records that he has produced or received that relate to the contract to the appropriate Manager.
- ◆ **that the terms and conditions of their contract indemnifies the Council against any costs arising from the consultant being classified an 'employee' under Inland Revenue rules.**

17.2 The Manager responsible for appointing any consultant, agent or professional adviser under paragraph 17.1 shall provide them with a copy of this Code.

## 18. PROCUREMENT TRAINING

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

18.2 Managers shall ensure that all Officers routinely undertaking purchasing or procurement duties where the gross value of the procurement is £105,000 or more shall have undertaken appropriate training.

18.3 LGSS HR and Payroll Services shall arrange to record the details of staff that have completed suitable procurement training.