

CARLISLE CITY COUNCIL

Report to:- **Carlisle City Council**

Date of Meeting:- **9 November 2010**

Agenda Item No:-

Public

Title:- **REVIEW OF THE CONTRACT PROCEDURE RULES**

Report of:- **Assistant Director (Governance) / Assistant Director (Resources)**

Report reference:- **RD.47/10**

Summary:-

This report recommends a revision of the Council's Contract Procedure Rules.

Recommendation:-

Council is requested to:

- i. Consider and approve the proposed changes to the Contract Procedure Rules and the consequential amendments to the Council's Constitution.

Contact Officer: Mark Lambert

Ext: 7019

M D Lambert

Assistant Director (Governance)

28 October 2010

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None



REPORT TO EXECUTIVE

PORTFOLIO AREA: GOVERNANCE AND RESOURCES

Date of Meeting: 11 October 2010

Public

Key Decision: No

Recorded in Forward Plan:

No

Inside/Outside Policy Framework

Title: REVIEW OF THE CONTRACT PROCEDURE RULES

Report of: Assistant Director (Resources)/Assistant Director
(Governance)

Report reference: RD47/10

Summary:

This report recommends a revision of the Council's Contract Procedure Rules.

Recommendations:

The Executive are requested to:

- i. note and approve the proposed changes to the Contract Procedure Rules;
- ii. forward this report to Council for consideration and approval.

Contact Officer: Malcolm Mark

Ext: 7353

1.

CITY OF CARLISLE

To: The Executive
11 October 2010

RD47/10

1. INTRODUCTION

- 1.1 The following report was submitted to and approved by the Audit Committee on 24th September 2010. The Executive are requested to consider the content and if acceptable forward to full Council on the 9th November 2010 for consideration and approval.
- 1.2 The Rules of Governance for the Audit Committee, which were agreed by Council at the meeting on 2nd May 2006 (Report LDS./11/06 refers), state that as part of the Regulatory Framework, the Audit Committee will maintain an overview of (inter alia) the Authority's Financial Procedure Rules (FPRs) and Contract Procedure Rules (CPRs).
- 1.3 The CPRs are reviewed on an annual basis, in order to ensure that they reflect changes in legislation, Government and Council Policy, changes in the Council's financial practices, structural organisation etc.
- 1.4 Appendix A is a full revision to the existing CPRs and contains a number of amendments reflecting the legislative and procedural changes that have occurred in the recent past.

2. Changes to the Contracts procedure Rules.

- 2.1 The revised CPR serves to illustrate the applicable legislative and mandatory Directives of the European Union (EU) its contract thresholds and methods of procurement. The main change to the existing CPRs relates to the introduction of e-Tendering (Electronic Tendering), e-Auctions (Electronic Auctions) plus the incorporation of basic rules relating to Framework Agreements.
- 2.2 The introduction of electronic procedures is designed to provide greater efficiency, promote greater competition and reduce the costs and burdens of advertising. The implementation of electronic processing changes fundamentally the Council's existing paper- based, manual procedures although these will remain available to the Council as a procurement tool.

- 2.3 An electronic tendering solution facilitates the complete tendering process from the advertising of the requirement through to the placing of the contract and includes the exchange of relevant documents in electronic format.
- 2.4 These changes will enable suppliers of goods, services and works to receive and submit documentation on-line at no cost and enable them to track and monitor the progress of their submission. A significant change will be that those bidding for a contract will no longer be required to provide tenders in hard copy. This, in turn, will save the Council the process of physically receiving, opening and evaluation of tender documentation.
- 2.5 A framework agreement is a general term for agreements with providers that set out terms and conditions under which specific purchases (call-offs) can be made through the term of the agreement. Public Sector Procurement directives define a framework agreement as an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies. In essence, by participating in a framework agreement the Council is able to simply 'call-off' a contract at any time without actually going through the procurement process. Companies will already have gone through the procurement process to earn a place on the framework agreement. This methodology provides a significant time and cost saving to the Council.
- 2.6 An e-auction is an electronic tool that partly automates the contract award procedure and increases competition. The procurement process as a whole is largely unchanged. The Contract Notice is advertised as usual, but with an additional statement declaring the use of an e-auction. Initial tenders are then submitted according to the relevant procedure (open or restricted) and are evaluated as usual. If a supplier's initial tender meets the specification requirements, they are invited to take part in the e Auction. The e Auction is a timed one-day event that uses a process similar to eBay, expect that suppliers enter increasing lower bids. The monetary value of each supplier's bid will be combined with the quality rating their bid has been given in the Council's evaluation of their initial tender. Bids will then be ordered based on this price/quality combination. Suppliers will be able to see whether or not they are the winning bidder at all times. However, they will not see the details of other participating suppliers, or other suppliers' bids.

At the end of the timed e-auction the Council will know which supplier has offered the best bid based on price and quality.

4. **RECOMMENDATIONS**

The Executive is requested to:

- i. note and approve the proposed changes to the Contract Procedure Rules;
- ii. forward this report to Council for consideration and approval.

5.0 **Reasons for Recommendations**

The proposed revisions to the Councils CPRs take advantage of different tendering methodologies that are now available to the Council through changes in technology and new legislation. The changes will make procurement more efficient and cost effective and also lead to best competition between providers of services.

6.0 Implications

- Staffing/Resources – Not Applicable
- Financial – Included in the report.
- Legal – Included in the report
- Corporate – SMT have been consulted on the issues set out in the report and the report was originally submitted to the Audit Committee on 24th September 2010.
- Risk Management – Not applicable.
- Environmental – Not Applicable.
- Crime and Disorder – Not applicable.
- Impact on Customers – Will improve access to Council tender opportunities for suppliers
- Equality and Diversity – As above.

Impact assessments

Does the change have an impact on the following?

Equality Impact Screening	Impact Yes/No?	Is the impact positive or negative?
Does the policy/service impact on the following?		
Age	No	N/A
Disability	No	N/A
Race	No	N/A
Gender/ Transgender	No	N/A
Sexual Orientation	No	N/A
Religion or belief	No	N/A
Human Rights	No	N/A
Social exclusion	No	N/A
Health inequalities	No	N/A
Rurality	No	N/A

If you consider there is either no impact or no negative impact, please give reasons:

This report summarises the changes to the Council's Contract Procedure Rules and gives an explanation of the major changes and has no direct impact on the above.

If an equality Impact is necessary, please contact the P&P team.

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Assistant Director (Resources)

Mark Lambert
Assistant Director (Governance)

Contact Officer: Malcolm Mark

Ext: 7353

CARLISLE CITY COUNCIL CONTRACT PROCEDURE RULES

STANDING ORDERS

1) Application of Standing Orders

- a)** These Contract Procedure Rules (alternatively referred to as “Standing Orders”) are subject to all applicable legislation and mandatory Directives of the European Union (EU) and national implementing legislation, in particular the Public Contract Regulations 2006, as amended by the Public contract Regulations (Amendment) Regulations 2009 (“the Regulations”). References to legislation include any subsequent re-enactment or amendment thereof.
- b)** All contracts entered into by the Council (which for the purposes of Standing Orders means the Council, its Executives, any Committees or Sub-Committees or any Officer acting under delegated power) must, except as hereinafter provided, be entered into in accordance with Standing Orders and the Council's Constitution (of which Standing Orders form part).
- c)** When procuring any work(s), supplies or services the Council may use any particular procedure or process as provided for in Standing Orders or any relevant legislation and or directives of the European Union which may be in force at that time.
- d)** Exemption from any of the following provisions of these Contracts Procedure Rules may be made by direction of the Executive or a Member of the Executive exercising delegated powers in that behalf, and any exemption so given may be subject to such conditions as the Executive or said Executive Member deem to be appropriate, and always provided that any exemption is in compliance with the Regulations.
- e)** Exemption from any of the following provisions of these Contracts Procedure Rules may also be made where in the opinion of the Town Clerk and Chief Executive after consultation (where practicable) with the Assistant Director (Resources) an emergency exists requiring expenditure to be undertaken urgently prior to the meeting of the Executive in order to protect persons or property or in any way safeguard the interests of the Council and such urgent expenditure as is required to remove such immediate risks may be undertaken without complying with these Contracts Procedure Rules provided that:

- i) the Executive Member holding the relevant spending portfolio is, where practicable, first consulted in the case of expenditure exceeding £10,000 but not exceeding £35,000;
 - ii) in addition to the Executive Member specified in sub-paragraph (i) above, the Leader of the Council and the Leader of the major opposition Political Group are first consulted where practicable in the case of expenditure exceeding £35,000;
 - iii) in all cases there is compliance with any requirement set out in the Council's Constitution relating to the taking of emergency or urgent decisions;
- f) any expenditure in the circumstances mentioned in (d) (i) or (ii) above must be reported to the next ordinary meeting of the Executive and the report shall specify the emergency by which the exemption shall have been justified.
- g) Express note of any exception from any of the provisions of these Contracts Procedure Rules and of the emergency (if any) by which the exception shall have been justified shall be recorded in the Minutes of the Executive.
- h) The provisions of these Contracts Procedure Rules shall not in any event apply where they are incompatible with the requirements of any Government Department or other Statutory Authority for which the Council is acting as agent.

2) Exceptions

The foregoing provisions of Standing Orders shall be subject to the following exceptions:

- a) Purchases or sales by auction or at public fairs or markets.
- b) Purchase of implements and materials for the construction by direct labour, of works sanctioned, by the Council.
- c) Purchase of goods or materials under an agreement made under Section 1 of the Local Authorities (Goods and Services) Act 1970, and participation in general contracting arrangements with or between other public bodies.
- d) The foregoing provisions of this Contracts Standing Order shall not apply to contracts for the supply of goods or materials or to any other contract between the Council and its own direct labour force, provided that the conditions of the "Teckal"/"in-house exemption are met. In circumstances where the Council is not lawfully obliged to seek tenders the supervising Assistant Director for the contract in question shall place the contract with the Council's own direct labour force,

subject to being satisfied that the contract arrangements negotiated with the Council's direct labour force are in his/her opinion fair and reasonable.

- e) In accordance with Regulation 22 of the Public Contracts Regulations 2006 (as amended) the Council may purchase work(s), goods or services from or through a central purchasing body. The Council will be deemed to have complied with the said Regulations and these Standing Orders to the extent that the central purchasing body has complied with them.

3) Principles

- a) Advice on procurement methodology is available at any time from the Council's Procurement Team. Written guidance is available on the Council's intranet. The guidance and best practice should be followed at all times.
- b) The procurement methodology used in any particular circumstance should be the most appropriate in that particular case. Factors to be taken into account include value for money, costs of the procurement exercise and convenience to the Council.
- c) All procurement must be open and transparent and provide best value for the Council.
- d) All procurement must be non-discriminatory and the highest standards of probity are required from all Members and Officers.
- e) The value of contracts must be properly estimated. Advice is available as per (a) above. Values, supplies, services and goods must not be disaggregated in order to avoid the applicability of Standing Orders or the EU Procurement Thresholds.
- f) A register of tenders opened shall be kept by the Town Clerk and Chief Executive or the appropriate Assistant Director and shall be signed by the officers in whose presence the tenders are opened.

4) Authorisation

- a) The appropriate authority required for the entry into any particular contract must be obtained prior to any contract being called-off or advertised.
- b) Strategic Directors and Assistant Directors may delegate authority in accordance with the Constitution.

5) Framework Agreements

- a)** The Council may participate in any suitable and relevant Framework Agreement made pursuant to the Regulations. For the avoidance of doubt this means that the Council may conclude a Framework Agreement itself or participate in such a Framework Agreement arranged by another party or parties. The procedures in regulation 19 of the Regulations apply.
- b)** The Council may enter into contracts called-off from any such Framework Agreement.
- c)** The Procurement Team is responsible for maintaining an up to date schedule of all Framework Agreements to which the Council is a party and able to participate.
- d)** Where the Council intends to conclude a Framework Agreement, it shall follow one of the standard procedures set out in regulation 15, 16, 17 or 18 of the Regulations up to, but not including, the beginning of the procedure for the award of any specific contract (i.e. it must follow one of the stated procedures in order to set up the Framework Agreement itself but not the subsequent call-offs) and select an economic operator to be a party to a Framework Agreement by applying the award criteria in Regulation 30. (“Economic Operator” means a contractor, a supplier or services provider – Regulation 4.)
- e)** When awarding a specific contract on the basis of a Framework Agreement, the Council and economic operator shall not include terms that are substantially amended from the terms of the Framework Agreement.
- f)** Where the Council concludes or participates in a Framework Agreement with a single economic operator, specific contracts will be awarded within the limits as set out in the Framework Agreement and in order to award a specific contract, the Council can request that the economic operator supplement its tender if necessary.
- g)** Where the Council concludes or participates in a Framework Agreement with multiple economic operators (minimum of 3), subject to conditions, a specific contract may be awarded either by an application of the terms which were included in the Framework Agreement (where all terms are laid down in the framework) or where no, or incomplete, terms were included, competition will reopen between the economic operators that are party to the Framework Agreement and capable of performing the proposed contract.

- h) Where the competition is reopened between the economic operators, the competition will be on the same or more precisely formulated terms and where appropriate other terms referred to in the contract document based on the Framework Agreement.
- i) Where the competition is reopened, for each specific contract to be awarded the Council shall consult with the economic operators in writing and invite them within a specified time limit to submit a mini-tender in writing for each specific contract to be awarded. The Council must keep each tender confidential until the expiry of the time limit for the receipt of tenders. The contract will be awarded on the basis of the best tender on the basis of the award criteria specified in the contract documents based on the Framework Agreements.
- j) The Framework Agreement must not exceed 4 years except in exceptional circumstances.
- k) These Standing Orders are subject to the Regulations.

6) Electronic Tendering (e-tendering)

- a) The Council may participate in any suitable and relevant Dynamic Purchasing System (e-tendering) pursuant to the Public Contracts Regulations 2006 ("the Regulations"). For the avoidance of doubt this means that the Council may arrange its own e-tendering system ("the System") or participate in such a system arranged by another party or parties. The procedures in regulation 20 of the Regulations apply.
- b) The Council may enter into contracts procured by an e-tendering system.
- c) The Procurement Team is responsible for operating any e-tendering system to which the Council is a party and able to participate.
- d) The open procedure (as defined by the Regulations) must be used to establish the System and a standard form OJEU notice must be published.
- e) A specification must be produced indicating the nature of supplies, services or works to be purchased under the System and all technical information about the System.
- f) Access to information about the procedure must be by electronic means and must be unrestricted and the internet address for such access must be set out in the OJEU notice.
- g) To be placed on the System any economic operator must be allowed to submit an indicative tender and satisfy the selection criteria.

- h) The Council must evaluate the tender within 15 days from the date of its submission or such longer period as the Council determines if no tender is issued within the 15 day period.
- i) The Council must notify, as soon as possible, an economic operator of its admission to the System or the rejection of its indicative tender.
- j) An economic operator that is admitted to the System may improve its offer at any time provided the tender still complies with the specification.
- k) Once the System is established and the Council wishes to award a contract it must publish a simplified OJEU notice, inviting operators to submit an indicative tender not less than 15 days from the date of despatch of the simplified notice.
- l) The indicative tenders received in the relevant period shall be evaluated for admittance to the System before the Council proceeds with the issue of invitations to tender in relation to any specific contract to be awarded under the System to an operator on that System.
- m) The Council must invite all operators admitted to the System to submit a tender for each contract within a time limit to be set by the Council.
- n) For each contract awarded under the System, the Council shall award the contract to the operator who submits a tender which best meets the award criteria specified in the notice for the establishment of the System; and may, if appropriate, formulate those award criteria more precisely in the invitation to tender.
- o) The Council may not charge for admission to the System or, in relation to an established System, for any aspect of that System.
- p) A System established in accordance with regulation 20 shall not be operated for more than 4 years, unless there are exceptional circumstances.
- q) The Council shall not use the System improperly or in such a way as to prevent, restrict or distort competition.
- r) These Standing Orders are subject to the Regulations.

7) Electronic Auctions

- a) The Council may participate in any suitable and relevant Electronic Auction (e-auction) pursuant to the Public Contracts Regulations 2006 ("the Regulations"). For the avoidance of doubt this means that the Council may arrange its own e-auction or participate in such an auction arranged by another party or parties. The procedures in regulation 21 of the Regulations apply.

- b)** The Council may enter into contracts procured by an e-auction system.
- c)** Electronic auctions may only be held to precede the award of a contract when the contract specification can be established with precision, and not where the subject is intellectual performance, such as design works.
- d)** Electronic auctions can be held when using the open procedure; the restricted procedure; the negotiated procedure in circumstances referred to in regulation 13(a) (discontinued procedures – with a notice) and 14(1)(a)(i) (discontinued procedures - without a notice); the reopening of competition in relation to a framework agreement, set out in regulation 19(7)(b); or the opening of competition in relation to a dynamic purchasing agreement, set out in Regulation 20.
- e)** The electronic auction shall be based either on price alone where the contract is awarded to the lowest bid price; or on the basis of the offer which is most economically advantageous.
- f)** If the Council wishes to hold an electronic auction, it must be stated in the contract notice.
- g)** Regulation 21(7) sets out what the Council must include in the contract specification where an electronic auction is to be used, including a description of the process and the relevant technical information to access the process.
- h)** Before proceeding with an electronic auction the Council must make an initial evaluation of the tenders in accordance with the award criteria and invite, by electronic means, all the economic operators who have submitted admissible tenders to submit new prices or new values in the electronic auction.
- i)** Where the contract is to be awarded on the basis of which is most economically advantageous, each electronic invitation shall include the outcome of the evaluation of the tender submitted by the economic operator. Regulation 21(10) includes other information which the Council must include including start date and time of the auction.
- j)** At least 2 working days must elapse between the date on which the electronic invitation is sent and the electronic auction.
- k)** During each phase of an electronic auction, the Council shall instantaneously communicate, to all economic operators participating in the auction, sufficient information to enable them to ascertain their relative ranking in the auction at any time. They may communicate to each of the economic operators other information concerning prices or values submitted by other economic operators

provided that this has been stated in the contract specification. The Council may disclose the number of economic operators participating in that phase of the auction but at no stage can the Council disclose the identity of any of the economic operators in the auction.

- l)** The auction will close at either: the date and time fixed for closure in the invitation; when the Council receives no further new prices or new values which meet the requirements concerning minimum differences; or when the number of phases in the electronic auction, as specified in the invitation, has been completed.
- m)** The contract will be awarded in accordance with the rules on award criteria on the basis of the results of the electronic auction.
- n)** An auction must not be used improperly or in such a way as to prevent, restrict or distort competition or to change the subject matter of the contract referred to in the contract notice and defined in the specification.
- o)** These Standing Orders are subject to the Regulations.

8) FINANCIAL LIMITS RELATING TO CONTRACTS

From time to time, the Council shall determine financial limits for the following Contracts Procedure Rules relating to contracts:

9	Estimates
10	Invitation to Tender
12	Tenders in Plain Envelopes
13	Opening of Tenders
15	Contracts to be in Writing
18	British and EU Standards
20	Failure to Execute Contract
21	Nominated Sub-Contractors and Suppliers

9) ESTIMATES

- a)** Before entering into a contract for the execution of any work of a value exceeding £10,000, the Executive or the appropriate officer shall obtain an estimate in writing of the probable expense of executing the work in a suitable manner or the buying of goods or materials and of the annual expense of maintaining them and, where appropriate, of providing for their subsequent replacement.

10) INVITATION TO TENDER

- a) Except as otherwise provided in Contracts Procedure Rules 1, 5, 6, 7 and 11, or in this Contracts Standing Order, no contract for the supply of goods or materials or for the execution of works or the provision of services whether to be supplied or executed at any one time or during a specified period:
 - i) the estimated amount or value of which exceeds £70,000 shall be made unless at least ten days' public notice inviting tenders has been given in one or more local newspapers circulating in the district and, ideally (where there is a potential interest by suppliers based in other EU member states to bid for the contract), an EU-wide accessible tool, such as the OJEU or the Council's website. Additionally, whenever the estimated amount or value of the contract exceeds £150,000, in one or more newspapers or journals circulating among such persons as undertake such contracts as well as a publishing a notice in an EU-wide accessible tool, such as the OJEU or the Council's website;
 - ii) the estimated amount or value of which exceeds £35,000 but does not exceed £70,000 shall be made unless an invitation to tender has been given in writing to at least three persons, firms or companies selected by the appropriate Assistant Director;
 - iii) the estimated amount or value of which exceeds £10,000 but does not exceed £35,000 shall be made unless quotations in writing from at least three persons, firms or companies have been obtained by the appropriate Assistant Director, having regard where appropriate to any lists maintained under Contracts Standing Order 5.
- b) In the case of a contract for the supply of goods or materials of a specialised nature or the execution of work of a specialised nature the appropriate Assistant Director may for supplies up to £35,000 and with the approval of the Executive for supplies over £35,000 but up to £70,000, invite tenders from two or more persons, firms or companies usually engaged in the performance of contracts of a nature similar to that proposed.
- c) if it appears to the appropriate Assistant Director that there is only one possible contractor or supplier in respect of any given contract, he may, for supplies up to £35,000 and with the approval of the Executive for supplies over £35,000 but up to £70,000, invite and accept a tender from a single person, firm or company.

- d) Any public notice or written invitation to tender shall describe the nature and purpose of the proposed contract, invite tenders for its execution and either the public notice or written invitation or a subsequent written communication to the tenderers shall state the last date when tenders will be received.
- e) Any public notice inviting tenders shall be issued by the Town Clerk and Chief Executive.
- f) Any public notice or written invitation to tender shall state that the Council does not bind itself to accept the lowest or any tender.
- g) The foregoing provisions of this Contracts Standing Order shall be subject to the following exceptions:
 - i. Purchases or sales by auction or at public fairs or markets.
 - ii. Purchase of implements and materials for the construction by direct labour, of works sanctioned, by the Council.
 - iii. Purchase of goods or materials under an agreement made under Section 1 of the Local Authorities (Goods and Services) Act 1970, and participation in general contracting arrangements with or between other public bodies.
 - iv. The concluding of, participation in or purchase of goods, supplies or services from or via any framework agreement or electronic procurement (including dynamic purchasing systems and E-auctions) pursuant to the Public Contracts Regulations 2006 or any subsequent re-enactment or amendment thereof.
 - v. The foregoing provisions of this Contracts Standing Order shall not apply to contracts for the supply of goods or materials or to any other contract between the Council and its own direct labour force, provided that the conditions of the "Teckal"/"in-house exemption are met. In circumstances where the Council is not lawfully obliged to seek tenders the supervising Assistant Director for the contract in question shall place the contract with the Council's own direct labour force, subject to being satisfied that the contract arrangements negotiated with the Council's direct labour force are in his/her opinion fair and reasonable.

11) SELECTIVE TENDERING

- a) This part of this Contracts Standing Order shall have effect where the Council has determined that a list or lists shall be kept of persons to be invited to tender

for contracts of specified categories, values or amounts for the execution of work, the supply of goods or materials, or for services.

- b) The said list or lists shall:
 - i) be compiled and maintained by the appropriate Assistant Director;
 - ii) contain the names of all persons who are approved by the Council;
 - iii) indicate whether a person whose name is included in it is approved for contracts for all, or only some, of the specified categories or values or amounts.
- c) At least four weeks before a list is first compiled, notices inviting application for inclusion in it shall be published in one or more local newspapers circulating in the district and in one or more newspapers or journals circulating among such persons as undertake contracts of the specified categories or values or amounts.
- d) The said list shall be amended as required from time to time and shall be revised at intervals not exceeding five years. At least four weeks before each review each person whose name appears in the list shall be asked whether he wishes his name to remain therein and notices inviting applications for inclusion in the list shall be published in the manner provided by paragraph (c) hereof.
- e) Where by virtue of a decision of the Council invitation to tender for a contract is limited to persons whose names appear on the list or lists maintained under this part of this Contracts Standing Order, an invitation to tender for that contract shall be sent to at least five of those persons who shall be selected in a manner determined by the Executive, the appropriate Committee or Sub-Committee or Assistant Director concerned either generally or in relation to a particular contract or category of contracts and whose names appear in the said list or lists as being approved for a contract of that category or for that value or amount. If there be fewer than five such persons in the list, an invitation shall be sent to all such persons.
- f) The said list or lists shall be deemed to include the names of all contractors for the time being approved by a Government Department for contracts of a particular category, class or amount.
- g) This part of this Contracts Standing Order shall have effect where by virtue of a decision of the Council invitation to tender for a particular contract is to be limited to persons who reply to a public notice.
 - i) Public notice shall be given in one or more local newspapers or journals circulating among such persons as undertake such contracts (and, where

there is a potential interest by suppliers based in other EU member states to bid for the contract, on the Council's website or any other EU-wide accessible tool) setting out particulars of the proposed contract and inviting persons interested to apply, within such period, being not less than ten days, as may be specified for permission to tender. A copy of the notice may also be sent to all persons whose names appear in a list maintained under Part (a) of this Contracts Standing Order as being approved for the contract in question.

- ii) After the expiration of the period specified in the public notice invitations to tender for the contract shall be sent to not less than five of the persons who applied for permission to tender, selected in the manner determined by the Council or if fewer than five persons have applied and are considered suitable to all such persons.

12) TENDERS IN PLAIN ENVELOPES

- a) Where in pursuance of these Contracts Procedure Rules invitation to tender is required, every notice of such invitation shall state that no tender will be received except in a plain sealed envelope which shall bear the word "Tender" followed by the subject to which it relates, but shall not bear any name or mark indicating the sender and that for items the estimated amount or value of which exceed £10,000 such envelopes shall be addressed to the Town Clerk and Chief Executive and remain in his custody until the time appointed for their opening. This Rule does not apply to tenders where either the Rules or the Regulations require that tenders are to be submitted by electronic means.

13) OPENING OF TENDERS

- a) Tenders for items, the estimated amount or value of which exceeds £35,000 shall be opened at one time and only in the presence of the Chairman or Deputy Chairman of the Council, or the Leader of the Council, or such Member or Members of the Executive as may have been designated for the purpose by the Leader of the Council together with the Town Clerk and Chief Executive or an officer of the Council designated by him. This Rule does not apply to tenders where either the Rules or the Regulations require that tenders are to be submitted by electronic means.
- b) Other tenders shall be opened by the appropriate Assistant Director if the estimated value of the tenders exceeds £10,000 but does not exceed £35,000 or an officer of suitable seniority in the relevant directorate designated by him who shall not be below Service Manager level.

14)ACCEPTANCE OF TENDERS

- a) An Officer, the Executive or any Committee or Sub-Committee may in exercise of any power vested in them by law or so delegated by the Council accept any tender provided that (i) the sum to be expended or received is within estimate provision previously approved by the Council and (ii) in the event of other than the lowest tender being accepted (if payment is to be made by the Council) or other than the highest tender being accepted (if payment is to be made to the Council) the facts and opinion relevant to the matter should be considered prior to acceptance.

15)CONTRACTS TO BE IN WRITING

- a) Every contract which exceeds £10,000 in amount or value shall be in writing and shall specify:
 - i) the work, material, matter or things to be furnished, had or done;
 - ii) the price to be paid with a statement of discounts or other deductions;
 - iii) if appropriate, the time or times within which the contract is to be performed; and
 - iv) such other conditions as the Assistant Director (Governance) may consider necessary.
- b) Every such Contract must either:
 - i) be signed by at least two Officers of the Council who shall be at Service Manager level or above from the directorate concerned; or
 - ii) made under the common seal of the Council attested by at least one officer.

16)PROHIBITION UPON ASSIGNMENT OR SUB-LETTING OF CONTRACTS

- a) Every written contract for the supply of goods or materials or for the execution of work or the provision of services whether to be supplied or executed at any one time or during a specified period shall contain a clause prohibiting the contractor from transferring or assigning, directly or indirectly, to any person or persons whatsoever, any portion of his contract without the permission of the Council or from sub-letting any portion of his contract other than which may be customary in the trade concerned.

17)BONDS

- a) The provision or otherwise of a bond or surety for the due performance of a contract and its amount shall (subject to any statutory provision applicable thereto) be at the discretion of the Council or Officer authorised to accept the tender relevant to the contract in question.

18)BRITISH AND EU STANDARDS

- a) Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution or any other equivalent standard of any EU country is current at the date of the tender, every contract which exceeds £10,000 shall require that, as the case may be, all goods and materials used or supplied and all workmanship shall either be in accordance with that standard, or of a higher standard.

19)CANCELLATION OF CONTRACTS

- a) In every written contract a clause shall be inserted to secure that the Council shall be entitled 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 for having done or forborne 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 contracts or any other contract with the Council, or if the like acts shall have been done by the 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 Bribery Act 2010 or shall have given any fee or reward, the receipt of which is an offence under Section 117 of the Local Government Act 1972.

20)FAILURE TO EXECUTE CONTRACT

- a) In every written contract which exceeds £10,000 for the execution of work or the supply of goods or materials a clause shall be inserted to secure that, should the contractor fail to execute the work or deliver the goods or materials or execute or deliver any portion thereof within the time or times specified in the contract, the Council, without prejudice to any other remedy for breach of contract, shall be at liberty to determine the contract either wholly or in part or to the extent of such default and to provide for the execution of the work by other means or to purchase other goods or materials, as the case may be to make good:
 - i) such default; or
 - ii) in the event of the contract being wholly determined the unexecuted work or the goods or materials remaining to be delivered.

- b) The clause shall further secure that the amount by which the cost of providing for the execution of the work by other means or the purchasing of other goods or materials exceeds the amount which would have been payable to the contractor had he executed the contract or portion thereof within the time or times specified therein, shall be payable by the contractor.

21)NOMINATED SUB-CONTRACTORS AND SUPPLIERS

- a) Where a sub-contractor or supplier is to be nominated to a main contractor, the following provisions shall have effect:
 - i) Where the estimated amount of the sub-contract or the estimated value of goods to be supplied by the nominated supplier exceeds £10,000 but does not exceed £35,000 then unless the Assistant Director concerned is of the opinion in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders:
 - ii) the Assistant Director concerned shall invite tenders for the nomination in accordance with Contracts Standing Order 10(a)(iii). The terms of the invitation shall require an undertaking by the tenderer that if he is selected he will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his own obligations under the main contract in relation to the work or goods included in the sub-contract;
 - iii) the tenders shall be opened at one time and only in the presence of the Assistant Director concerned, or an officer designated by him;
 - iv) the Assistant Director concerned shall maintain a record of all such tenders received;
 - v) the Assistant Director concerned, or an officer designated by him, shall nominate to the main contractor the person whose tender is, in his opinion, the most satisfactory one, provided that, where the nominated tender is other than the lowest received, the circumstances shall be reported to the next meeting of the Executive, or the appropriate Committee or Sub-Committee.
- b) When the estimated amount of the sub-contract or the estimated value of goods to be supplied by a nominated supplier exceeds £35,000 then unless the Executive or appropriate Committee or Sub-Committee determine in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders:
 - i) tenders for the nomination shall be invited in accordance with Contracts Procedure Rules 10 and 11 as the case may be, and Contracts Standing

Order 12 shall apply, as if the tender were for a contract with the Council. The terms of the invitation shall require an undertaking by the tenderer that if he is selected he will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his own obligations under the main contract in relation to the work or goods included in the sub-contract;

- ii) the tenders shall be opened in accordance with Contracts Standing Order 13;
- iii) the Town Clerk and Chief Executive shall maintain a record of all such tenders received;
- iv) the Assistant Director concerned, or an officer designated by him shall nominate to the main contractor the person whose tender is, in his opinion the most satisfactory.
- v) Provided that, where the tender is other than the lowest received, the circumstances shall be reported to the next meeting of the Executive, or the appropriate Committee or Sub-Committee.
- c) It shall be a condition of the employment by the Council of any person (not being an officer of the Council) to supervise a contract that, in relation to such contract, he shall comply with the requirements of paragraphs (1) and (2) of this Contracts Standing Order as if he were a Director of the Council.
- d) Subject to this Contracts Standing Order, the provisions of Contracts Procedure Rules relating to invitations to tender shall apply to the nomination of sub-contractors or suppliers where the context so permits.

22) EXERCISE OF POWERS

- a) Any power or function under these Contracts Procedure Rules which is exercisable by the Town Clerk and Chief Executive may also be exercisable by the Assistant Director (Governance).

23) EU Procurement Thresholds

- a) Standing Orders are subject to all governing legislation.
- b) From time to time the European Union publishes procurement thresholds applicable when contracting authorities such as the Council are procuring work(s), supplies and services. Up to date figures should be obtained from the Procurement Team.
- c) Any such work(s), supplies and services which are properly estimated to exceed the relevant threshold must be procured in accordance with the statutory

procedures enshrined in the Public Contracts Regulations 2006 and any relevant guidance.