

HAMBLETON DISTRICT COUNCIL

Report To: Audit, Governance and Standards Committee
30 October 2013

From: Director of Corporate Services

Subject: **PROCUREMENT PROCEDURE RULES**

All Wards

1.0 BACKGROUND:

- 1.1 The Council's Constitution contains Procurement Procedure Rules (PPR) which govern how the Council undertakes procurements leading to contracts for the undertaking of works or the supply of goods and services.
- 1.2 This report asks the Committee to recommend to Council amendments to the PPR.

2.0 THE PROCUREMENT PROCEDURE RULES:

- 2.1 The proposed amended PPR are attached as an Annex to this report.
- 2.2 The significant changes are as follows:-

- | | |
|--------------------|---|
| Rule 4(2) | - the thresholds for application of the Rules have been increased (supply and services contracts from £50k to £80k and works contracts from £100k to £125k). This means that contracts below these values are not subject to the strict requirements of these Rules. They are, however, still covered by Guidance which requires openness, transparency and consistency in approach to procurement. |
| Rule 5(iii) to (v) | - this makes it clear that contracts can be let through the framework agreement, dynamic purchasing system and central purchasing body systems. |
| Rule 6 and Rule 7 | - a number of contractual requirements (need for insurance, indemnities, liquidated damages, etc.,) have been removed and will be dealt with in separate guidance on the content of contracts. |
| Rule 15(1)(b) | - no longer requires that tenders may be submitted electronically. This gives officers the flexibility to require paper tenders only. |
| Rule 27 | - makes all procurements subject to the Procurement Manual or other guidance approved by the Chief Executive from time to time. |
| Other | - former Clause 27 (Cancellation of Contracts) has been deleted. This is a contractual provision that is better dealt with in separate guidance. |

3.0 CONCLUSION:

- 3.1 The PPR remain largely the same as previously. The raising of financial thresholds increases flexibility. Other changes are largely intended to “tidy up” the Rules.
- 3.2 There are a number of other guidance documents covering procurement which are not contained in the Constitution.

4.0 RECOMMENDATION:

- 4.1 That Council is asked to adopt the revised Procurement Procedures Rules in the Annex to the report.

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Background papers: None

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Procurement Procedure Rules

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INTERPRETATION:

1. In these Rules:-

"to award" means to accept an offer made in relation to a proposed contract;

"central purchasing body" means a body which:-

- (a) acquires goods or services intended for one or more other bodies;
- (b) awards public contracts intended for one or more other bodies; or
- (c) concludes framework agreements for work, works, goods or services intended for one or more other bodies;

"competitive dialogue procedure" means a procedure:-

- (a) in which any tenderer may make a request to participate; and
- (b) whereby the Council conducts a dialogue with the tenderers admitted to that procedure with the aim of developing one or more suitable alternative solutions capable of meeting its requirements and on the basis of which the tenderers chosen by the Council are invited to tender;

"contract documents" means the invitation to tender for or to negotiate a contract, the descriptive document (if any), the proposed conditions of contract, the specifications or descriptions of the goods, services, work or works required by the Council and of the materials or goods to be used in or for such work or works, and all documents supplementary thereto;

"dynamic purchasing system" means a completely electronic system of limited duration which is:-

- (a) established by the Council to purchase commonly used goods, work, works or services; and
- (b) open throughout its duration for the admission of tenderers which:-
 - (i) satisfy the selection criteria specified by the Council; and
 - (ii) submit an indicative tender to the Council or person operating the system on its behalf which complies with the specification required by the Council or person;

"electronic auction" means a repetitive electronic process for the presentation of prices to be revised downwards or of new and improved values of quantifiable elements of tenders, including price, which:-

- (a) takes place after the initial evaluation of tenders; and
- (b) enables tenders to be ranked using automatic evaluation methods;

"electronic means" means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

"financial year" means, unless the context otherwise requires, the period of 12 months ending on the date in any year in respect of which the accounts of any person are prepared;

"framework agreement" means an agreement or other arrangement between one or more bodies and one or more tenderers which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the tenderer will enter into one or more contracts with a body in the period during which the framework agreement applies;

"indicative tender" means a tender prepared by a tenderer seeking admission to a dynamic purchasing system which sets out the terms on which it would be prepared to enter into a contract with the Council should the Council propose to award a contract under the system;

"negotiated procedure" means a procedure leading to the award of a contract whereby the Council negotiates the terms of the contract with one or more tenderers selected by it;

"open procedure" means a procedure leading to the award of a contract whereby all interested tenderers may tender for the contract;

"restricted procedure" means a procedure leading to the award of a contract whereby only interested tenderers selected by the contracting authority may submit tenders for the contract.

APPLICATION:

2. These Rules apply whenever the Council seeks offers in relation to a proposed public supply contract, public works contract, public services contract, framework agreement or dynamic purchasing system other than a contract, framework agreement or dynamic purchasing system excluded from the application of these Rules by Rules 3 or 4.

GENERAL EXCLUSIONS:

3. These Rules do not apply to the seeking of offers in relation to a proposed contract, framework agreement or dynamic purchasing system for the purchase or sale of land or any interest in land, for the lending or borrowing of money or for the employment of any officer of the Council.

THRESHOLDS:

4. (1) These Rules (with the exception of Rule 27) do not apply to the seeking of offers in relation to a proposed contract, framework agreement or dynamic purchasing system where the estimated value of the contract, framework agreement or dynamic purchasing system (net of value added tax) at the relevant time is less than the relevant threshold.
 - (2) For the purposes of paragraph (1) the relevant threshold is £125,000 in the case of a works contract, £80,000 in the case of a supply contract and £80,000 in the case of a services contract.
 - (3) For the purposes of paragraph (1) the estimated value of a contract shall be the value of the total consideration payable, net of value added tax (calculated in accordance with this regulation), which the Council expects to be payable under the contract.
- 4) For the purposes of paragraph (1) the estimated value of a supply contract for the hire of goods is:-
 - (a) the value of the consideration which the Council expects to be payable under the contract if the term of the contract is fixed for more than 12 months; or

- (b) the value of the consideration which the Council expects to be payable under the contract if the term of the contract is fixed for 12 months or less; or
 - (c) the value of the monthly consideration payable under the contract multiplied by 48 if the term of the contract is indefinite or uncertain at the time the contract is entered into.
- (5) For the purposes of paragraph (1) the estimated value of a services contract which does not indicate the total price is:-
- (a) the aggregate of the value of the consideration which the Council expects to be payable under the contract if the term of the contract is fixed for 48 months or less; or
 - (b) the value of the consideration which the Council expects to be payable in respect of each month of the period multiplied by 48 if the term of the contract is fixed for more than 48 months, or over an indefinite period.
- (6) Where the Council has a single requirement for goods or services or for the carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfil that requirement, the estimated value for the purposes of paragraph (1) of each of those contracts is the aggregate of the value of the consideration which the contracting authority expects to be payable under each of those contracts.
- (7) Where the Council intends to provide any goods to the contractor awarded a works contract for the purpose of carrying out that contract, the value of the consideration of the works contract for the purposes of paragraphs (3) and (6) shall be taken to include the estimated value at the relevant time of those goods.
- (8) The relevant threshold for the purposes of paragraph (1) for a framework agreement or a dynamic purchasing system is the threshold for:-
- (a) a works contract, where the framework agreement or dynamic purchasing system relates to the carrying out of work or works;
 - (b) a services contract, where the framework agreement or dynamic purchasing system relates to the provision of services; or
 - (c) a supply contract, where the framework agreement or dynamic purchasing system relates to the purchase or hire of goods.
- (9) The estimated value of a framework agreement or dynamic purchasing system is the aggregate of the values estimated in accordance with this regulation of all the contracts which could be entered into under the framework agreement or dynamic purchasing system.
- (10) The relevant time for the purposes of paragraph (1) means the date on which a decision is made to enter into a contract.

SELECTION OF CONTRACT AWARD PROCEDURES:

5. For the purpose of seeking offers in relation to a proposed contract, the Council shall use:-
- (a) the open procedure in accordance with Rule 6; or
 - (b) the restricted procedure in accordance with Rules 7 or 8;

in all circumstances, except where it may use:-

- (i) the negotiated procedure in accordance with Rule 8, 9 and 18; or
- (ii) the competitive dialogue procedure in accordance with Rule 10; or
- (iii) a framework agreement in accordance with Rule 11; or
- (iv) a dynamic purchasing system in accordance with Rule 12; or
- (v) a central purchasing body in accordance with Rule 14.

OPEN PROCEDURE:

- 6. (1) This Procedure Rule shall have effect whenever a contract is being dealt with under the open procedure.
- (2) Contracts shall be subject to a tendering procedure in accordance with this Procedure Rule. Quotations are not acceptable. In the case of Capital expenditure specific Cabinet approval must be obtained.
- (3) Public notice is to be given in local and national procurement websites and where appropriate in one or more local newspapers or professional/trade journals, setting out the particulars of the contract and inviting persons to tender.
- (4) Expressions of interest from prospective tenderers shall be accompanied by documents that confirm:-
 - (a) the quality of recent work;
 - (b) suitable and relevant experience;
 - (c) technical competence; and
 - (d) financial standing;
 - (e) the standard of health and safety arrangements

RESTRICTED PROCEDURE:

- 7. (1) This Procedure Rule shall have effect whenever a contract is being dealt with under the restricted procedure.
- (2) Contracts shall be subject to a tendering procedure in accordance with this Procedure Rule. Quotations are not acceptable. In the case of capital expenditure specific Cabinet approval must be obtained.
- (3) Public notice shall be given in one or more local newspapers circulating in the district and in one or more newspapers or journals circulating among such persons as undertake such contracts setting out the particulars of the contract and inviting persons interested to apply within a period, being at least 10 working days from the publication of the notice, to receive permission to tender.
- (4) Expressions of interest from prospective tenderers shall be accompanied by documents that confirm: -
 - (a) the quality of recent work;
 - (b) suitable and relevant experience;
 - (c) technical competence; and
 - (d) financial standing;

- (e) the standard of health and safety arrangements.
- (5) After the expiration of the period specified in the public notice, invitations to tender for the contract shall be sent to at least 4 of the persons who applied for permission to tender, or, if fewer than four persons have applied and are considered suitable, to all such persons if approved by the Leader of the Council.

USE OF THE NEGOTIATED PROCEDURE:

- 8.(1) The Council may use the negotiated procedure with the prior publication of a contract notice in accordance with Rule 9 and Rule 18 in the following circumstances:-
- (a) subject to Rule 8(2)(a)(1), in the event that the procedure leading to the award of a contract by the Council using the open procedure, the restricted procedure or the competitive dialogue procedure was discontinued because of:-
 - (i) irregular tenders; or
 - (ii) unacceptable tenders following an evaluation

but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered in the negotiated procedure;
 - (b) exceptionally, when the nature of the work or works to be carried out, the goods to be purchased or hired or the services to be provided under the contract or the risks attaching to them are such as not to permit prior overall pricing;
 - (c) in the case of a public services contract, when the nature of the services to be provided, in particular in the case of intellectual services, such as services involving the design of work or works, is such that specifications cannot be established with sufficient precision to permit the award of the contract using the open procedure or the restricted procedure; or
 - (d) in the case of a public works contract, when the work or works are to be carried out under the contract solely for the purpose of research, testing or development but not with the aim of ensuring profitability or to recover research and development costs.
- 8.(2) The Council may use the negotiated procedure without the prior publication of a contract notice in the following circumstances:-
- (a) in the case of any contract:-
 - (i) when the Council is using the negotiated procedure in accordance with Rule 8(1)(a) and invites to negotiate the contract every tenderer which submitted a tender following an invitation made during the course of the discontinued open procedure or restricted procedure (not being a tender which was excluded through irregularity or unacceptability);
 - (ii) in the absence of tenders, suitable tenders or applications in response to an invitation to tender by the Council using the open procedure or the restricted procedure but only if the original terms of the proposed

contract offered in the discontinued procedure have not been substantially altered in the negotiated procedure.

- (iii) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the public contract may be awarded only to a particular economic operator;
 - (iv) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by, and not attributable to, the Council, it is not practicable to use the open or restricted procedures;
 - (v) when the circumstances in Rule 18 apply.
- (b) in the case of a supply contract:-
- (i) when the goods to be purchased or hired under the contract are to be manufactured solely for the purpose of research, experiment, study or development but not when the goods are to be purchased or hired with the aim of ensuring profitability or to recover research and development costs;
 - (ii) when the goods to be purchased or hired under the contract are required by the Council as a partial replacement for, or in addition to, existing goods or an installation and when to obtain the goods from a supplier other than the supplier which supplied the existing goods or the installation would oblige the Council to acquire goods having different technical characteristics which would result in:-
 - (aa) incompatibility between the existing goods or the installation and the goods to be purchased or hired under the contract; or
 - (bb) disproportionate technical difficulties in the operation and maintenance of the existing goods or installation;
 - (iii) for the purchase or hire of goods quoted and purchased on a commodity market;
 - (iv) to take advantage of particularly advantageous terms for the purchase of goods in a closing down sale;
- (c) in the case of a services contract, when the rules of a design contest require the contract to be awarded to the successful contestant or to one of the successful contestants, provided that all successful contestants are invited to negotiate the contract;
- (d) in the case of a works contract or a services contract:-
- (i) when the Council wants a tenderer which has entered into a public works contract or a public services contract with the Council to carry out additional work or works or provide additional services which were not included in the project initially considered or in the original works contract or services contract but which through unforeseen circumstances have become necessary, and such work, works or services:-

- (aa) cannot for technical or economical reasons be carried out or provided separately from those under the original contract without major inconvenience to the Council; or
 - (bb) can be carried out or provided separately from those under the original contract but are strictly necessary to the later stages of the performance of that contract; and
- (ii) when the Council wants a tenderer which has entered into a works contract or a services contract with the Council to carry out new work or works or provide new services which are a repetition of the work or works carried out or the services provided under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into.

THE NEGOTIATED PROCEDURE:

- 9.(1) Subject to paragraph (2) When the Council uses the negotiated procedure it shall comply with this Rule.
- (2) When the Council uses the negotiated procedure in accordance with Rule 8(2) it need only comply with paragraph (6) of this Rule and where it uses the procedure in accordance with Rule 18 it need not comply with this Rule.
- (3) The Council shall indicate whether the negotiated procedure will take place in successive stages:-
- (a) in the contract notice; or
 - (b) in that notice and the contract documents.
- (4) The date which the Council fixes as the last date for the receipt by it of requests to be selected to negotiate shall be specified in the contract notice.
- (5) The Council shall take account of all the circumstances, in particular, the complexity of the contract when fixing time limits for the receipt by it of requests to be selected to negotiate the contract.
- (6) The Council may exclude a tenderer from those tenderers from which it will make the selection of tenderers to be invited to negotiate the contract only if the tenderer fails to satisfy the minimum standards required of tenderers by the Council of:-
- (a) economic and financial standing; or
 - (b) technical or professional ability.
- (7) The Council shall ensure that the number of tenderers invited to negotiate is:-
- (a) sufficient to ensure genuine competition; and
 - (b) at least equal to the minimum number specified by the Council in accordance with its contract notice.

- (8) Where the Council:-
- (a) carries out a selection; and
 - (b) the number of tenderers selected to be invited to negotiate is less than the minimum number specified by the Council in the contract notice;
- the Council may continue the award procedure with the tenderers which have been selected, provided that any tenderer not selected or which did not request to participate is not included.
- (9) The Council may require a tenderer to satisfy minimum levels of:-
- (a) economic and financial standing; and
 - (b) technical or professional ability.
- provided that those minimum levels are specified in the contract notice and are related to and proportionate to the subject matter of the contract.
- (10) The Council shall send invitations in writing simultaneously to each tenderer selected to negotiate and the invitation shall:-
- (a) be accompanied by the contract documents;
 - (b) specify the internet address which offers unrestricted and full direct access by electronic means to the contract documents; or
 - (c) where the contract documents are held by an entity other than the Council, specify the address to which requests for contract documents should be sent including any final date for making such requests and the amount and any method of payment of any fee which may be charged for supplying that information.
- (11) Where the contract documents are held by an entity other than the Council, the Council shall ensure that the contract documents are sent to tenderers by the most rapid means of communication possible.
- (12) The Council shall include in the invitation:-
- (a) the final date for the receipt by it of replies, the address to which they must be sent and the one or more languages in which they must be drawn up;
 - (b) a reference to the contract notice published in accordance with paragraph (3);
 - (c) an indication of the information to be included with the reply which the Council may require to be provided; and
 - (d) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if this information was not specified in the contract notice published in accordance with paragraph (4).
- (13) The Council or entity referred to in paragraph 10(c) shall supply to a tenderer such further information relating to the contract documents as may be reasonably

requested by that tenderer provided that the request for such information is received in sufficient time to enable the Council to supply it:-

- (a) not less than 6 days before the date specified in the invitation to tender as the final date for the receipt of it by tenders
 - (b) in the case of urgency not less than 4 days before the date specified in the invitation to tender as the final date for the receipt by it of tenders.
- (14) The Council shall extend the time limit for receipt by it of tenders in order that all the information necessary for the preparation of a tender is available to all tenderers where:-
- (a) a tenderer requests the contract documents in sufficient time to allow the Council to respond in accordance with paragraph (13) and, for whatever reason, the contract documents are not supplied in accordance with that paragraph; or
 - (b) it is necessary that the tenderers be given the opportunity to inspect the site or premises or documents relating to the contract documents.
- (15) During any negotiations which take place in accordance with this Rule, the Council shall ensure equal treatment among all tenderers and in particular, shall not provide information in a discriminatory manner which may give some tenderers an advantage over other tenderers.
- (16) The Council may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract documents.
- (17) Where the Council provides for the negotiated procedure to take place in successive stages in accordance with paragraph (16), it shall ensure that the number of tenderers to be invited to negotiate the contract at the final stage is sufficient to ensure genuine competition to the extent that there is a sufficient number of tenderers to do so.

THE COMPETITIVE DIALOGUE PROCEDURE:

10.(1) In this Rule:-

"particularly complex contract" means a contract where the Council is not objectively able to:-

- (a) define the technical means capable of satisfying its needs or objectives; or
- (b) specify either the legal or financial make up of a project or both; and

"participant" means a tenderer selected by the Council using the procedure referred to in paragraph (2) to participate in the competitive dialogue procedure.

- (2) Where the Council wishes to award a particularly complex contract and considers that the use of the open or restricted procedure will not allow the award of that contract, the Council may use the competitive dialogue procedure.

- (3) Where the Council uses the competitive dialogue procedure it shall comply with the following paragraphs of this Rule.
- (4) The Council shall specify its needs and requirements in the contract notice and shall define those needs and requirements:-
 - (a) in the contract notice; or
 - (b) in the descriptive document; or
 - (c) in both those documents.
- (5) The Council shall indicate that it may provide for the competitive dialogue procedure to take place in successive stages:-
 - (a) in the contract notice; or
 - (b) in that notice and the descriptive document.
- (6) The date which the Council fixes as the last date for the receipt by it of requests to be selected to participate shall be specified in the contract notice.
- (7) The Council shall take account of all the circumstances, in particular, the complexity of the contract when fixing time limits for the receipt by it of requests to be selected to participate in the dialogue.
- (8) The Council may exclude a tenderer from those tenderers from which it will make the selection of tenderers to be invited to participate in the dialogue only if the tenderer fails to satisfy the minimum standards of:-
 - (a) economic and financial standing; or
 - (b) technical or professional ability.
- (9) The Council shall ensure that the number of tenderers invited to participate in the dialogue is sufficient to ensure genuine competition.
- (10) The Council will require a tenderer to satisfy minimum levels of:-
 - (a) economic and financial standing; or
 - (b) technical or professional ability.and those minimum levels will be specified in the contract notice and related to and proportionate to the subject matter of the contract.
- (11) The Council shall send invitations in writing simultaneously to each tenderer selected to participate in the dialogue and the invitation shall:-
 - (a) be accompanied by the contract documents;
 - (b) specify the internet address which offers unrestricted and full direct access by electronic means to the contract documents; or

- (c) where the contract documents are held by an entity other than the Council, specify the address to which requests for contract documents should be sent including any final date for making such requests and the amount and any method of payment of any fee which may be charged for supplying that information.
- (12) The Council shall open with the participants a dialogue, the aim of which shall be to identify and define the means best suited to satisfying its needs.
- (13) During the competitive dialogue procedure, the Council:-
 - (a) may discuss all aspects of the contract with the participants selected;
 - (b) shall ensure equality of treatment among all participants and in particular, shall not provide information in a discriminatory manner which may give some participants an advantage over others; and
 - (c) shall not reveal to the other participants solutions proposed or any confidential information communicated by a participant without that participant's agreement.
- (14) The Council may provide for the competitive dialogue procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria in the contract notice or in the descriptive document.
- (15) Where the Council provides for the competitive dialogue procedure to take place in successive stages in accordance with Rule 10(14), it shall ensure that the number of tenderers to be invited to participate at the final stage is sufficient to ensure genuine competition to the extent that there is a sufficient number of tenderers to do so.
- (16) The Council may continue the competitive dialogue procedure until it can identify one or more solutions, if necessary after comparing them, capable of meeting its needs.
- (17) Where the Council declares that the dialogue is concluded, it shall:-
 - (a) inform each participant that the dialogue is concluded;
 - (b) request each participant to submit a final tender containing all the elements required and necessary for the performance of the project on the basis of any solution presented and specified during the dialogue; and
 - (c) specify in the invitation to submit a tender the final date for the receipt by it of tenders, the address to which they must be sent and the language or languages in which they must be drawn up.
- (18) The Council may request a participant to clarify, specify or fine-tune a tender referred to in paragraph 17(b), but such clarification, specification, fine-tuning or additional information shall not involve changes to the basic features of the tender or the call for tender when those variations are likely to distort competition or have a discriminatory effect.
- (19) The Council shall assess the tenders received on the basis of the award criteria specified in the contract notice or descriptive document and shall award the

contract to the participant which submits the most economically advantageous tender.

- (20) The Council may request the participant identified as having submitted the most economically advantageous tender to clarify aspects of that tender or confirm commitments contained in the tender provided that this does not have the effect of modifying substantial aspects of the tender or of the call for tender and does not risk distorting competition or causing discrimination.

FRAMEWORK AGREEMENTS:

11. (1) If the Council intends to conclude a framework agreement it shall comply with this Rule.
- (2) Where the Council intends to conclude a framework agreement, it shall:-
- (a) follow one of the procedures set out in Rule 6 or 7 up to (but not including) the beginning of the procedure for the award of any specific contract set out in this Rule; and
 - (b) select a tenderer to be party to a framework agreement in accordance with criteria which meet Rule 17.
- (3) Where the Council awards a specific contract based on a framework agreement it shall:-
- (a) comply with the procedures set out in this Rule; and
 - (b) apply those procedures only to the potential contractors which are party to the framework agreement.
- (4) When awarding a specific contract on the basis of a framework agreement neither the Council nor the contractor shall include in that contract terms that are substantially amended from the terms laid down in that framework agreement.
- (5) Where the Council concludes a framework agreement with one contractor:-
- (a) it shall award any specific contract within the limits of the terms laid down in the framework agreement; and
 - (b) in order to award a specific contract, the Council may consult in writing the potential contractor which is party to the framework agreement requesting that potential contractor supplement its tender if necessary.
- (6) The Council shall not conclude a framework agreement for a period which exceeds 4 years except in exceptional circumstances approved by Cabinet, in particular, circumstances relating to the subject of the framework agreement.

DYNAMIC PURCHASING SYSTEMS:

- 12.(1) If the Council uses a dynamic purchasing system it shall comply with this Rule.
- (2) If the Council establishes a dynamic purchasing system it shall comply with the requirements of regulation 44(2) to (7) of The Public Contract Regulations 2006 and shall use only electronic means to:-

- (a) establish that system; and
 - (b) award contracts under it.
- (3) The Council shall use the open procedure in accordance with Rule 6 to establish a dynamic purchasing system up to the beginning of the procedure for the award of contracts under the system set out in this Rule.
- (4) When establishing a dynamic purchasing system, the Council shall produce a specification which indicates:-
 - (a) the nature of the goods, work, works or services intended to be purchased under that system; and
 - (b) information concerning the purchasing system, the electronic equipment to be used in its operation, the arrangements for technical connection to the system, the rules governing its operation and any other necessary information relating to the system.
- (5) Where the Council establishes a dynamic purchasing system it shall:-
 - (a) offer unrestricted, direct and full access to the specification and to any additional documents by electronic means from the date of publication of the contract notice to the date when the system ceases to be operated; and
 - (b) indicate in the contract notice the internet address at which those documents may be examined.
- (6) Throughout the duration of the dynamic purchasing system, the Council shall give any tenderer the opportunity to:-
 - (a) submit an indicative tender; and
 - (b) be admitted to that system under the conditions referred to in paragraph (7).
- (7) The Council shall admit to the dynamic purchasing system each tenderer which satisfies the selection criteria and has submitted an indicative tender which complies with the specification and any additional documents produced by the Council when establishing the system.
- (8) The Council shall as soon as possible notify a tenderer of its admission to a dynamic purchasing system or of the rejection of its indicative tender.
- (9) A tenderer which is admitted to a dynamic purchasing system may improve its indicative tender at any time provided that the improved tender complies with the specification described in paragraph (4).
- (10) The indicative tenders received shall be evaluated by the Council for admittance to the dynamic purchasing system before it proceeds with the issue of invitations to submit tenders in relation to any contract to be awarded under the dynamic purchasing system to a tenderer admitted to the system.
- (11) The Council shall invite all tenderers admitted to the dynamic purchasing system to submit a tender for each contract within a time limit specified by the Council.
- (12) For each contract to be awarded under the dynamic purchasing system, the Council:-

- (a) shall award the contract to the tenderer which submits the tender which best meets the award criteria specified in the contract notice for the establishment of the dynamic purchasing system; and
 - (b) may, if appropriate, formulate those award criteria more precisely in the invitation to submit tenders.
- (13) A dynamic purchasing system established by the Council shall not be operated for more than 4 years, unless there are exceptional circumstances.
- (14) The Council shall not use a dynamic purchasing system improperly or in such a way as to prevent, restrict or distort competition.

ELECTRONIC AUCTIONS:

- 13.(1) If the Council holds an electronic auction it shall comply with this Rule.
- (2) Subject to paragraph (3), the Council may hold an electronic auction when using:-
- (a) the open procedure;
 - (b) the restricted procedure;
 - (c) the negotiated procedure;
 - (d) the re-opening of competition among the parties to a framework agreement;
or
 - (e) on the opening of competition for contracts to be awarded under a dynamic purchasing system.
- (3) The Council may only hold an electronic auction to precede the award of a contract when the contract specification can be established with precision.
- (4) The Council shall base an electronic auction on:-
- (a) price alone where the contract is to be awarded on the basis of the lowest price; or
 - (b) price or the values of quantifiable elements of tenders indicated in the contract specification, where the contract is to be awarded on the basis of the offer which is the most economically advantageous.
- (5) Where the Council intends to hold an electronic auction it shall state this in the contract notice.
- (6) A contract specification prepared by the Council in relation to a contract the award of which is to be preceded by an electronic auction shall include:-
- (a) the quantifiable elements of tenders capable of expression in figures or percentages which will be the subject of the electronic auction;
 - (b) any limitations on the values for the quantifiable elements of tenders (resulting from the contract specification) which may be submitted in the electronic auction;

- (c) the information to be made available to tenderers during the electronic auction and, where appropriate, an indication of when it will be made available to them;
 - (d) a description of the electronic process;
 - (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which may be required when bidding; and
 - (f) all relevant information concerning:-
 - (i) the electronic system to be used in the electronic auction; and
 - (ii) the arrangements for and technical specifications relevant to connection to the electronic system to be used.
- (7) Before proceeding with an electronic auction the Council shall:-
- (a) make an initial evaluation of the tenders in accordance with the award criteria specified and with any weighting fixed for them; and
 - (b) by electronic means simultaneously invite all the tenderers which have submitted admissible tenders to submit new prices or new values in the electronic auction.
- (8) The Council shall include in the invitation referred to in paragraph (7)(b):-
- (a) all relevant information concerning individual connection to the electronic system to be used in the electronic auction;
 - (b) the date and time of the start of the electronic auction;
 - (c) the number of phases in the electronic auction;
 - (d) the mathematical formula to be used in the electronic auction to determine automatic re-ranking of tenders on the basis of the new prices or new values submitted by tenderers and incorporating the weighting of all the criteria set to determine the most economically advantageous tender;
 - (e) where variant bids are authorised by the Council, a separate mathematical formula for each variation; and
 - (f) the basis on which the electronic auction is to be closed.
- (9) During each phase of an electronic auction, the Council:-
- (a) shall instantaneously communicate to all tenderers participating in the auction at least sufficient information to enable them to ascertain their relative rankings in the auction at any time;
 - (b) may communicate to each tenderer other information concerning prices or values submitted by other tenderers provided that this has been stated in the contract specification; and

- (c) may disclose the number of tenderers participating in that phase of the auction.
- (10) During any phase of an electronic auction, the Council shall not disclose the identity of any tenderer participating in the auction.
- (11) the Council shall close an electronic auction:-
- (a) at the date and time fixed for closure in the invitation referred to in paragraph (7)(b);
- (b) when it receives no further new prices or new values which meet the requirements concerning minimum differences; or
- (c) when the number of phases in the electronic auction specified in the invitation referred to in paragraph 7(b) has been completed.
- (12) After closing an electronic auction the Council shall award the contract on the basis of the results of the electronic auction.

CENTRAL PURCHASING BODIES:

- 14.(1) The Council may purchase work, works, goods or services from or through a central purchasing body.
- (2) Where the Council makes purchases in accordance with paragraph (1), it shall be deemed to have complied with these Rules to the extent that the central purchasing body has complied with them or similar rules.

INVITATION TO TENDER:

- 15.(1) All invitations to tender shall clearly state:-
- (a) That all physical tenders shall: -
- Be in a sealed envelope (bearing the distinctive label supplied with the tender forms);
 - Devoid of any mark or wording which might identify the sender;
 - Addressed to the Chief Executive;
 - Sent by post, courier or delivered by hand to his office.
- (b) Whether tenders may be submitted electronically.
- (c) That failure to comply with any of the foregoing requirements will render a tender liable to disqualification.
- (d) The closing date and time for the receipt of tenders (Allowing a reasonable period for the applicants to prepare their tenders)
- (e) Tenders received after that date and time will not be considered.
- (2) The invitation shall also state: -
- (a) A description of the works, supplies or services being procured;
- (b) The specification and instructions on whether any variants are permissible;

- (c) The evaluation criteria including any weightings as considered appropriate;
- (d) Pricing mechanism and instructions for completion;
- (e) The terms and conditions of contract;
- (f) Whether the Council is of the view that TUPE may apply;
- (g) The form and content of method statements to be provided;
- (h) Any further information which will inform or assist tenderers in preparing tenders.

RECEIPT, STORAGE AND OPENING OF TENDERS:

16. (1) All tenders shall be dated and timed (and physical tenders initialled) upon receipt and paragraphs (2) to (6) shall apply.
- (2) Electronic tenders shall be kept in a separate folder under the control of the ICT department and shall not be opened until the deadline has passed for the receipt of tenders.
- (3) All tenders for any contract shall remain in the custody of the Committee and Member Support section until the time appointed for their opening. They shall:
- (a) be opened at one time, as soon as possible after the closing time fixed for the receipt of such tenders and
 - (b) in the presence of a panel of two officers representing separate sections.
- (4) Any written tender inadvertently opened before the closing time fixed for the receipt of such tenders shall be immediately passed to the Chief Executive with a written explanation of the circumstances. The Chief Executive shall then decide whether the tender will be considered.
- (5) When tenders are to be opened, the panel will open and certify the tenders received.
- (6) In no case will a panel include an officer employed within the section directly concerned with any tender that is to be opened.

TENDER EVALUATION:

- 17.(1) The aim of the tender evaluation process is to secure best value for money (the most economically advantageous tender under EU law) and is defined as:
- “The optimum combination of whole life costs and benefits to meet the customer’s requirements”. Contracts should not be awarded on the basis of lowest price alone. There must always be an assessment of quality and the costs that will be incurred throughout the life of the asset or contract period.
- (2) Examples of other costs to be considered are:
- Delivery and installation,
 - Operative resources,

- In-house management resources,
 - Consumables,
 - Spare parts,
 - Licences,
 - Taxes,
 - Maintenance,
 - Energy consumption,
 - Depreciation,
 - Disposal.
- (3) Tenders subject to the EU procurement regulations shall be evaluated in accordance with the relevant regulations and the evaluation criteria set out in the Notice of Invitation to Tender. All other tenders are to be evaluated in accordance with the criteria set out in the Notice of Invitation to Tender.
- (4) The details of the evaluation criteria shall be determined prior to the publication of, and included in, the invitation to tender. The criteria shall be strictly observed at all times throughout the contract award process.
- (5) All evaluations should be conducted by a panel of at least two officers and all tenders received shall be subject to the tender evaluation process. The panel will be responsible for recording the details of evaluation process and they shall keep adequate records of the decisions being taken.
- (6) The Corporate Finance section is to be involved in the evaluation and any follow-up clarification of all tenders originally estimated to cost over £250,000. This figure is the estimated cost over the whole life of the contract.
- (7) All post tender clarifications are to be undertaken by someone other than the officer leading the tender evaluation.

POST TENDER NEGOTIATIONS:

- 18.(1) Post tender negotiations may only take place where the procurement is not subject to the Public Contract Regulations and if:-
- (a) all/any tender(s) received are in excess of the budget provision; or
 - (b) the appropriate Director, after consultation with the Director of Resources, considers that the analysis of the tenders indicates that additional financial or other benefits may be obtained for the Council through post-tender negotiation.
 - (c) If post tender negotiations are proposed, then the opportunity for such post tender negotiation shall be extended to all tenderers. All tenderers shall be invited to submit their best and final offers at the conclusion of the negotiations under the same terms and conditions as Procurement Procedure Rules 6 or 7. (The best and final offers are to be evaluated by revisiting the objective scoring process and revising the scores as appropriate).
 - (d) Where post-tender negotiations are appropriate then a panel containing at least 2 suitable officers shall be present and a written record shall be kept of all negotiations, including notes of all meetings, phone calls, attendees etc together with any letters, information provided/received, emails etc.

ACCEPTANCE OF TENDERS:

- 19.(1) A Director may accept the most economically advantageous tender if payment is to be made by the Council or the highest tender if payment is to be received and the sums are within budget. If any other tender is to be accepted it shall only be:-
- (a) after consultation with the Leader; and
 - (b) if the sum is still within the agreed budget.
- If the Leader so wishes, the tenders shall be submitted to the Cabinet for determination.
- (2) Where the price of the preferred tender exceeds the budget provision by more than 5% or £10,000, whichever is the lower, the Director shall be empowered to accept the tender if payment is to be made by the Council (or the highest if payment is to be received by the Council), subject to the concurrence of the Leader. If the Leader so wishes Cabinet will consider a report from the appropriate Director before the tender is accepted. The minutes of the meeting shall indicate which tender is to be accepted and the reason(s) therefore.
- (3) In all other circumstances acceptance of tenders shall be considered by Cabinet.

ALTERATIONS:

- 20.(1) Where examination of tenders reveals errors or discrepancies which would affect the tender figure(s) in an otherwise successful tender, the tenderer is to be given details of such errors and discrepancies and afforded an opportunity of confirming or withdrawing his offer. If the tenderer withdraws the next tender in competitive order is to be examined and dealt with in the same way. An exception to this procedure may be authorised only by Cabinet after consideration of a report by the Director concerned.

OFFICERS AUTHORISED TO SIGN CONTRACTS:

- 21.(1) Contracts shall only be signed by officers with the appropriate delegated authority. For the purpose of these procedure rules a contract can range from an official order with a value of a few £ to a more formal contract worth several £million.
- (2) Officers are empowered to sign contracts to various limits. The following £limits will apply unless covered by specific authorisation or delegation: -
- (a) Directors to budget limit;
 - (b) Section heads to £10,000 or budget limit, whichever is the lower;
 - (c) All other staff to the value specified on their delegated authority forms.

CONTRACTS PAYMENTS – ON ACCOUNT AND FINAL:

- 22.(1) The Director of Resources shall be informed as soon as possible of all contracts, agreements, awards or other instruments involving the payment or receipt of money on behalf of the Council.

- (2) Payment to contractors on account of contracts shall be authorised only on a certificate signed by the Director or other duly authorised officer of the appropriate department showing the total amount of the contract, the value of work executed to date, retention of money, amount paid to date, VAT and tax and the amount now certified.
- (3) Every variation on a contract for building or construction works shall be authorised in writing by the appropriate Director or other responsible officer nominated by him in writing for that purpose. A copy of the variation shall be forwarded to the Director of Resources promptly.
- (4) When variations result in an overall increase in the amount of an accepted tender or estimate by 5% or £10,000 whichever is the lower, this shall be reported to Cabinet by the Director as soon as possible with an estimate of the probable new total cost.
- (5) The final certificate on a contract or accepted estimate shall not be issued by the appropriate Director until he has produced a detailed statement of account together with such vouchers and documents as the Director of Resources may require relating to prime cost items and particulars of additions and omissions, and the Director of Resources shall have approved the amount to be certified.
- (6) The duties of a Director under this Regulation shall be exercised by any Architect, Engineer or Surveyor, when employed by the Council as a Consultant, where the circumstances require it.

POST PROJECT EVALUATION AND REPORTING:

- 23.(1) All Capital schemes with a value of over £250,000 shall be subject to a review using the project evaluation template. The report shall be considered by the Capital Programme Working Group and reported on to Members, either through the Members' Bulletin or a Cabinet report subject to the nature and conclusions of the review.

NOMINATED AND NAMED SUB-CONTRACT/SUB-CONTRACTORS:

- 24.(1) In these Procedure Rules any reference to a contract shall, where appropriate, also be taken to include a sub-contract.
- (2) The appropriate Director or person nominated by him shall, regardless of the value of the sub-contract, be authorised to nominate to the main contractor the person whose tender or quotation is, in his opinion, the most satisfactory, provided that where it is other than the most economically advantageous, the tender or quotation shall be referred to the Cabinet for consideration prior to any nomination being made.
- (3) 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.

EXTERNAL SUPERVISING OFFICERS:

- 25.(1) 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 these Procedure Rules as if he were a Director of the Council.

SPECIFICATION OF GOODS, MATERIALS AND WORKMANSHIP:

- 26.(1) Where an appropriate British or European Standard Specification, British or European Standard Code of Practice or Government Departmental specification is current at the date of tender, every contract shall require that, as the case may be, all goods and materials used or supplied and all workmanship shall be at least in accordance with that standard or specification.

PROCUREMENT MANUAL:

- 27.(1) All those involved in conducting procurements on behalf of the Council shall have regard to the guidance in any Procurement Manual or other Guidance current at the time of the procurement and approved by the Chief Executive.