



## **CONTRACTS PROCEDURE RULES**

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Version 3.4

# CONTRACTS PROCEDURE RULES

## Section and Procedure Rule

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## **A. INTRODUCTION**

1. These Contract Procedure Rules (“these Rules”) form a part of the Constitution of Hart District Council; accordingly:
  - 1.1 These Rules must be interpreted in accordance with other appropriate provisions of that Constitution; and
  - 1.2 All Council employees or any agent engaged by the Council to manage and supervise a Council Contract must comply with the requirements of these Rules.
2. These Rules govern all contracts, except Contracts of Employment, including Contracts with Employment Agencies relating to the employment of temporary staff, entered into by the Council. These Rules form an integral part of the Council’s Constitution. Such contracts may include, but are not limited to:
  - 2.1 works contracts;
  - 2.2 leasing and rental agreements;
  - 2.3 the hire of plant and equipment;
  - 2.4 the provision or purchase of consultancy services;
  - 2.5 the acquisition and disposal of land and its fixtures;
  - 2.6 the acquisition and disposal of goods and materials, including computer hardware;
  - 2.7 the acquisition and disposal of intellectual property, including computer software;
  - 2.8 Any sub-contract- where the sub-contractor is to be nominated by the Council.
3. The purpose of these Rules is to ensure that goods, and services purchased by the Council are:
  - 3.1 Appropriate for the purpose for which they are acquired; and
  - 3.2 Purchased on terms which provides an acceptable balance between quality and cost; and
  - 3.3 Produced ethically and in accordance with policies determined by the Council

## B. INTERPRETATION

4. In these Rules the following words and phrases shall have the following meanings:

- 4.1 **Approved List** – A list of Contractors, who have been approved by the Full Council, or any properly authorised Committee of the Council to supply generic types of goods or services within a specified Contract Limit applicable to these goods and services from which limited lists of tenders can be drawn.
- 4.2 **Best Value** – The achievement of an optimal combination of value and cost, such an achievement must include an assessment of efficiency in delivery.
- 4.3 **Bond** – Any security for the due performance of a Contract.
- 4.4 **Cabinet Member** – In the context of these Rules means the member of the Cabinet to whom the Council has allocated responsibility for the Service. In the absence of the responsible Cabinet member this responsibility shall devolve upon the Leader of the Council and references to Cabinet Member shall be construed accordingly.
- 4.5 **Commission of the European Union** – Shall include any previous supranational organ whose powers have been subsumed into that of the Commission of the European Union.
- 4.6 **Committee** – Any Committee of the Council, which is elsewhere specified in the Constitution to hold responsibility for the Service.
- 4.7 **Connected Party** – Any entity in which the Principal has a significant degree of managerial control or influence, or an entity, which has a significant degree of managerial control or influence over the Principal.
- 4.8 **Consortium** – A venture in which a number of parties including the Council join together to jointly purchase, or supply goods and services.
- 4.9 **Contract** – Any voluntary but legally binding agreement entered into by the Council and any other party. This shall therefore include but not be limited to Contracts recognised by Common Law.
- 4.10 **Contract Sum** – The amount of expenditure or income specified in the Contract or Order.

- 4.11 **Contract Value** – The estimated total value of an individual Contract or series of connected Contracts (either income generative or incurring expenditure or both). This figure shall be calculated in accordance with Contract Procedure Rule 13.
- 4.12 **Corporate Director** – The Corporate Director responsible for the Contract, this responsibility may be devolved in accordance with the Scheme of Delegation. In such instances the officer holding that devolved responsibility.(see also ‘Head of Service’)
- 4.13 **EU Threshold** – The European Union threshold values for advertisement under the EU Procurement Rules. The current values of these are shown in the Financial Appendix, and the categories of goods and service to which these thresholds are applicable are to be found in the Financial Appendix to these Rules and it shall be the responsibility of the s151 officer to update these in accordance with the method statement which is separately appended.
- 4.14 **Head of Service** – The Head or Service with responsibility for the Contract, or an officer with authority, under the Scheme of Delegation to act on behalf of that Head of Service in relation to the Contract.
- 4.15 **Land acquisition** – Any acquisition of a legal or equitable interest in land or fixtures attached to land.
- 4.16 **Land disposal** – any disposal of a legal interest in land or fixtures by way of the freehold, or the disposal of any interest in land or fixtures attached to land by way of a lease for a term in excess of seven years.
- 4.17 **Most Economically Advantageous Offer** – A tender which provides the Best Value for the Council having regard to both cost and any other evaluation criteria determined to be relevant to the Contract.
- 4.18 **Negotiated Procedure** – A procedure whereby the Council negotiates with one or more potential providers of goods or services.
- 4.19 **Order** – A written, priced, and signed document authorised and signed in accordance with these Rules whereby the Council enters into a Contract with an outside party for the provision of specified goods or services.
- 4.20 **Open Tender** – A procedure whereby all potential, qualifying contractors responding to advertisement are invited to tender for the Contract.

- 4.21 **Preferred Bidder** - a contractor who having submitted a tender for a contract has been selected by the Council for final negotiation of a contact
- 4.22 **Qualifying Contractor** – any entity that has been approved by the Council, either retrospectively or prospectively, to bid for the contract.
- 4.23 **Select List** - a limited list of tenders for a Contract selected following advertisement, expression of interest, application, and evaluation.
- 4.24 **Tender** – A sealed bid submitted by a Contractor by a specified date and time in accordance with the Contract terms specified by the Council.
- 4.25 **Term Sheet** - A financial schedule provided by a contractor indicating the source and application of the financing of the contract.

## **C. GENERAL REQUIREMENTS**

### **5. All Contracts must comply with:**

- 5.1 These Rules; and
- 5.2 The Councils Budget; and
- 5.3 The Council's Scheme of Delegation; and
- 5.4 Any other applicable part of the Council's Constitution; and
- 5.5 Any Statutory Provision; and
- 5.6 Government regulations, including Regulations issued by the Commission of the European Union; and
- 5.7 Directives and Decisions issued by the Commission of the European Union; and
- 5.8 The established and applicable Case Law of the English Courts, including the settled jurisprudence of the European Court of Justice, the European Court of First Instance and of the European Court of Human Rights.

### **6. Partnership Working:**

- 6.1 Where the Council acts as an agent for another public authority

these Rules shall apply, unless the partner has already chosen the Contractor using its own procedure rules in accordance with Procedure Rule 46.4.

- 6.2 These Rules shall apply to all Contracts in which Hart District Council is a consortium member unless such derogation from these Rules is authorised by affirmative resolution by the Council.
7. The requirements for the validity of any Contract entered into by the Council shall include:
  - 7.1 In respect of the size of the Contract Value:
    - 7.1.1 Where the Contract Value does not exceed that found in the Financial Appendix then the Contract may be entered into on a standard order form, or a written contract complying with the legal formalities to comply with the contractual requirements of Common Law,
    - 7.1.2 Otherwise the Contract shall be reduced to writing in a form approved by the Chief Solicitor and shall be sealed with the Common Seal of the Council.
  - 7.2 Every formal written Contract shall include and recite:
    - 7.2.1 The purpose of the Contract; and
    - 7.2.2 The nature of the supply to the Council; and
    - 7.2.3 The amount to be paid by the Council, and this shall include any terms for deductions, discounts, and penalties; and
    - 7.2.4 The duration of the Contract; and
    - 7.2.5 The Council's requirements in respect of relevant Council Policy; and
    - 7.2.6 Any requirement that the supply must comply with International, European, or British specification and the series number, or numbers of any such specifications; and
    - 7.2.7 Any such additional conditions, terms or warranties that the Head of Service or Corporate director may determine; and
    - 7.2.8 That the contractor may not assign the contract to a third party; and

7.2.9 That a change of control of the Contractor may terminate the Contract; and

7.2.10 The method of determination of the contract and the consequences of such a determination.

7.3 Any Contract entered into by the Council shall be terminated with immediate effect and the Contractor liable for consequent damages if:

7.3.1 To give any person a gift or consideration of any kind as either an inducement or a reward for any action to show favour or disfavour to any person in respect of the Contract or any other Contract with the Council; or

7.3.2 The Contractor, or his agent, does anything otherwise improper in respect of the award of a Contract by the Council; or

7.3.3 The Contractor commits an offence under the Prevention of Corruption Acts 1889-1912, or the Local Government Act s117(2)

## 8 Bonds, Guarantees, Insurance and other forms of Security

8.1 If the Contract Value exceeds the figure indicated in the Financial Appendix then a Bond shall be required unless the Head of Finance, after consultation with the Head of Service, considers that a Bond is inappropriate; but a Bond may be required for any contract if the Head of Finance considers it necessary.

8.2 The nominal value of the Bond shall be the Contract Value.

8.3 The terms of a Bond including provision for its release shall be approved by the Chief Solicitor.

8.4 A parent company Guarantee or a Letter of Comfort from the parent company may be required as an alternative or in addition to a Bond where the Head of Service, after consultation with the Head of Finance officer, considers it appropriate.

8.5 A tender or quotation for work in excess of the figure included in the Financial Appendix cannot normally be accepted unless the Contractor also provides documentary evidence of:

8.5.1 Employer's liability insurance for the figure shown in the Financial Appendix; and

- 8.5.2 Public liability insurance for the figure shown in the Financial Appendix; and
  - 8.5.3 In the instance of a Contract for the supply of goods, product liability insurance for the figure shown in the Financial Appendix; and
  - 8.5.4 In the instance of the supply of professional services, professional indemnity insurance for the figure shown in the Financial appendix; and
  - 8.5.5 Such other forms of insurance that the Head of Service may require after consultation with the Head of Finance and the Chief Solicitor.
- 8.6 The Head of Service may, after consultation with the Head of Finance and Chief Solicitor decide in writing to accept a Tender where the Contractor can only offer a lower level of insurance, under any or all of the categories listed elsewhere in section 8.5.
- 9. Formalities to be observed for the Sealing of Contracts
  - 9.1 A decision of the Cabinet or a Committee, or the exercise of any power delegated to any officer in relation the contract is sufficient authority for sealing any document required to give effect to that decision.
  - 9.2 Where, in the opinion of the Chief Solicitor, a document must be sealed to give effect to a decision taken in accordance with these Rules then it shall be, and he shall so attest.
- 10. No works shall be commenced, or goods or services supplied until a Contract has been completed or an Order issued unless the corporate Director approves otherwise.
- 11. Officers of the Council owe a fiduciary duty to the Council and this requires that:
  - 11.1 Officers shall declare to the Chief Solicitor their interests, and the Chief Solicitor shall both maintain a Register of Officers' Interests. It is the duty of the Officers to keep the Chief Solicitor informed as to changes in their interests; and
  - 11.2 Officers are required to declare their interest in a Contract if the matter arises; at any meeting at which they are present and withdraw from the meeting.

## **D. FINANCIAL LIMITS FOR QUOTATIONS OR TENDERS**

12. The Contract Value determines whether quotation or tendering requirements apply. All Contract Values are calculated exclusive of Value Added Tax and are calculated both for income generated for the Council or expenditure by the Council.
13. The Contract Value shall be calculated as follows, and a record kept of the calculation:
  - 13.1 In the instance of a fixed term Contract it shall be the larger of either the estimated total value of the Contract, or of a series of connected Contracts; or
  - 13.2 In the instance of a Contract which shall be of an indefinite duration the estimated average monthly value multiplied by 48.
14. If the Contract Value is less than the figure shown in the Financial Appendix then there are no requirements other than that the Head of Service shall use his best endeavours to obtain Best Value.
15. If the Contract Value exceeds that determined by Contract Procedure Rule 14 but is less than that prescribed in the Financial Appendix then it is required that at least one written quotation be obtained. The procedure for obtaining such quotations is set out in Section E.
16. If the Contract Value exceeds that determined by Contract Procedure Rule 15 but is less than that prescribed in the Financial Appendix then it is required that at least three one written quotations be obtained. The procedure for obtaining such quotations is set out in Section F.
17. If the Contract Value exceeds that determined by Rule 16 then tenders are invited in accordance with the procedure set out in Section F.
18. If an officer knowingly, deliberately, or is recklessly a party, to the fragmentation of a Contract so that the provisions of any part of these Rules are evaded then this amounts to misconduct and may lead to disciplinary action against the officer and may also result in the consequences of Rule 7.4.2 being applied.
19. No individual external Contractor shall be awarded work exceeding the Contract Value set out in the Financial Appendix in any one financial year, on the basis of a single written quotation. The following provisions are to be applied:
  - 19.1 Connected Parties are, for the purposes of this Rule, to be aggregated together; and
  - 19.2 Allocation of work above the applicable limit shall only be made

on the basis of at least three written quotations or five tenders being invited.

## **E. QUOTATIONS**

20. Unless otherwise required by law, or pursuant to an exception set out in Section I, the financial limits relating to quotations are set out in the Financial Appendix.
21. Quotations shall be invited from:
  - 21.1 Contractors to be found on the Approved List; or
  - 21.2 In the absence of an approved list, providers of the required goods or services identified by the Head of Service.
22. Requests for written quotations shall themselves be made in, or confirmed in writing. A written record shall be kept of all such request, receipts and acceptances of quotations.
23. The written quotations need not be received or considered at the same time but:
  - 23.1 The Council owes a duty of commercial confidentiality to Contractors, and therefore no part of the content of any Quotation shall be divulged to any other Contractor; and
  - 23.2 No Quotation shall be accepted unless it is within an approved revenue or capital budget, and
  - 23.3 All relevant circumstance shall be taken into account when evaluating quotations. Where the accepted quotation is, in the instance of cost, not the lowest, or in the instance of revenue not the highest, the reasons for acceptance must be recorded in writing. Quotations may be accepted as follows:
    - 23.3.1 If the Contract Value does not exceed the sum set out in the Financial Appendix then by the Head of Service after consultation with the s151 Officer.
    - 23.3.2 If the Contract Value exceeds that determined by Rule 23.3.1 but is less than that set out in the Financial Appendix by the Head of Service after Consultation with the s151v Office and the Cabinet Member.
24. Where a minimum of three written quotations have been solicited but fewer than three have been received then the Head of Service, after consultation with the s151 Officer and the Cabinet Member may accept one of those received after having made a considered judgement that

the quotation is suitable and inviting further quotations is unlikely to achieve greater value for money.

25. Where written quotations have been invited on an estimate made in good faith which indicated that the Contract Value would not exceed that determined by Rule 23.3.2 then:

25.1 If the quotation recommended for acceptance exceeds that limit by less than 20%, then it may be accepted by the Cabinet or a Committee if seeking tenders would not, in the considered judgement of the Head of Service lead to the achievement of greater value for money; but

25.2 If the quotation exceeds the limit by more than 20% then the work shall be put out to tender in accordance with Section F.

## **F. TENDERS**

26. Tenders will be invited for Contracts in the following circumstances:

26.1 Tenders must be invited if the Contract Value exceeds that identified in the Financial Appendix unless the exceptional circumstances identified in Section I exist.

26.2 Tenders may be invited if the likely Contract Value is close to the threshold identified in the Financial Appendix.

26.3 Tenders may be invited where the Contract Value is less than this threshold if, in the judgement of the head of Service, it is likely to lead to better value for money.

27. Unless the Council decides, or the law determines otherwise, Heads of Service shall select which of the following tender procedures is in the best interests of the Council:

27.1 Approved list – further described in s29; or

27.2 Select List – further described in s30; or

27.3 Open Tender – further described in s31; or

27.4 (Provided written approval has been granted by the Corporate director, the Monitoring Officer, and the s151 Officer) Negotiated Procedure – further described in s32.

28. In selecting Contractors invited to tender or in awarding a Contract, Heads of Service shall evaluate the suitability of the Contractors.

29. The Procedure to be adopted when the **Approved List** is to be used is set out as follows:

- 29.1 Tenders shall be invited from at least five Contractors on the Approved List for Contracts of the Type and Value in question.
- 29.2 The five Contractors shall include:
  - 29.2.1 At least one Contractor from the Approved List selected by rotation; and
  - 29.2.2 Up to two Contractors from the Approved List who have satisfied the Head of Service that they have previously provided value for money to the Council for a similar Contract.
- 29.3 Tenders for which no applicable Approved List has been maintained by Hart District Council may be invited from at least five contractors on the Government's Construction List database.
- 30. The Procedure to be adopted when the **Select List** is to be used is set out as follows:
  - 30.1 Invitation for inclusion on a Select List shall be advertised in:
    - 30.1.1 A local newspaper, unless the Head of Service is satisfied that this would neither provide additional competition, nor is required by law; and
    - 30.1.2 An appropriate professional or trade journal; and
    - 30.1.3 The Official Journal of the European Union when required, or otherwise thought appropriate.
  - 30.2 Contractors responding to such advertisements may be required to complete a pre-tender questionnaire to provide the basis for selection.
  - 30.3 Tenders shall be invited from at least five Contractors who have responded to the advertisements identified under s30.
  - 30.4 Where fewer than five Contractors have expressed an interest, the Head of Service may:
    - 30.4.1 Repeat the Select List procedure; or
    - 30.4.2 Follow an alternative tender procedure; or
    - 30.4.3 Seek instructions from the Cabinet or a Committee.
- 31. The Procedure to be adopted when an **Open Tender** is to be used is set out as follows:

- 31.1 The Contract shall be advertised in:
  - 31.1.1 A local newspaper, unless the Head of Service is satisfied that this would neither provide additional competition, nor is required by law; and
  - 31.1.2 An appropriate professional or trade journal; and
  - 31.1.3 The Official Journal of the European Union when required, or otherwise thought appropriate.
- 31.2 Tenders shall be invited from all Contractors responding to the advertisement.
- 31.3 Where fewer than five Contractors have expressed an interest, the Head of Service may:
  - 31.3.1 Repeat the Open Tender procedure; or
  - 31.3.2 Follow an alternative tender procedure; or
  - 31.3.3 Seek instructions from the Cabinet or a Committee
- 32. The Procedure to be adopted when a **Negotiated Procedure** is to be used is set out as follows:
  - 32.1 This procedure may be applied when the Head of Service considers it appropriate to negotiate with one or more potential Contractors and specifies the terms under which the Contract shall be performed. The use of such a procedure is subject to the approvals identified in s27.4. The conditions precedent for such a Negotiated Procedure are further explained in s46.8
  - 32.2 Where the Contract Value exceeds that identified in the Financial Appendix the Negotiated Procedure shall only be used if:
    - 32.2.1 When irregular, or unacceptable tenders have been received in response to one of the other procedures outlined in ss29, 30, and 31. Irregularity or unacceptability may include tenders which are not in compliance with the terms and conditions indicated in any advertisement placed by the Council; or.
    - 32.2.2 The terms and conditions of the Contract can not be specified with sufficient precision to enable the fixed pricing of tenders.
  - 32.3 The Contract shall be advertised in:

32.3.1 A local newspaper, unless the Head of Service is satisfied that this would neither provide additional competition, nor is required by law; and

32.3.2 An appropriate professional or trade journal; and

32.3.3 The Official Journal of the European Union where required or appropriate.

32.4 On receipt of expressions of interest the Cabinet or a Committee may either:

32.4.1 Select a short list a number of potential contractors with whom the Head of Service may then negotiate further before identifying a Preferred Bidder, or

32.4.2 Select a Preferred Bidder.

32.5 After the identification of a Preferred Bidder the Head of Service shall then carry out further negotiations with the Preferred Bidder before awarding the contract. Should these negotiations be unsuccessful the Negotiated Procedure may be repeated in part or in total until a successful completion is achieved.

**33. Invitations to Tender - formalities:**

33.1 Invitations to Tender shall:

33.1.1 Include copies of all Contract documents, which shall be incorporated into the Contract, including any standard explicit terms and conditions; and

33.1.2 Give instructions to tenderers, including the latest date, time, and place for the delivery of tenders; and

33.1.3 State that the tender must be delivered in the tender envelope or packet supplied by the council, and that such an envelope or packet, which will be marked externally by the Council with the words – “Tender – Do Not Open”, and the name of the project.

33.1.4 Specify that no other external marking of the packet or envelope may be permitted to disclose the identity of the tenderer; and

33.1.5 State that the Council are not bound to accept any tender received.

33.2 The Head of Service may respond to request for further

information from tenderers – either supplementary to that contained in the contract documents or clarification of the information contained therein. Should such a request be received the further information will be supplied to all responding tenderers, unless no discernible competitive advantage would thereby be obtained by the requesting recipient.

34. **Receipt and Opening of Tenders – formalities**
- 34.1 Tender envelopes received shall:
- 34.1.1 Not be opened on receipt (and if opened the circumstances of this event shall be reported, in writing, to the Monitoring Officer); and
  - 34.1.2 Be marked at the time of receipt with the date and time of receipt and the initials of the officer receiving the tender; and
  - 34.1.2 Be retained by Committee Services who shall be responsible for their safe custody until they are opened.
- 34.2 Tenders shall be opened at a meeting convened by Committee Services; and only in the presence of
- 34.2.1 A member of Committee Services; and
  - 34.2.2 A Councillor, who shall be a member of the Scrutiny Committee.
- 34.3 Tenders shall be recorded on the Council's Standard Tender Report Form with the full names of the Contractors tendering and the Contract Value of their tenders.
- 34.4 Any tender not received by the Council in accordance with s33.1.3, or s33.1.4 shall be returned to the tenderer. The tender may be opened to disclose the address of the tenderer but no cognisance of any other details shall be taken.
35. Alterations to the Contract Value and Post-tender Negotiation must comply with the following requirements:
- 35.1 Any corrections due to arithmetical errors in the Contract Value, errors of interpretation, or otherwise caused by ambiguities in the Contract documentation shall be permitted provide a written record is kept of the relevant information and any other relevant circumstances.
  - 35.2 Post tender negotiations shall only be permitted if:

35.2.1 They otherwise comply with the requirements of s27.4;  
and

35.2.2 Such negotiations are not anti-competitive, or otherwise  
contrary to law; and

35.2.3 Such negotiations will not prejudice the effectiveness of  
future tendering exercises; and

35.2.4 Two officers, or one officer with a consultant engaged by  
the council are present at all stages of such negotiation  
and a written minute of such negotiations is maintained.

36. Acceptance of tenders - No tender shall be accepted unless:

36.1 The Head of Service has considered if the tenderer has the  
requisite capabilities, including the financial strength, to perform  
the Contract. Such financial consideration may include the  
requirement for the tenderer to post any of the securities  
indicated in s8.

36.2 Where the Contract Value does not exceed

36.2.1 The sum indicated in the Financial Appendix where there  
is no element of the Contract relating to the disposal of  
land; or

36.2.2 The sum indicated in the Financial Appendix where there  
is an element of the Contract relating to the disposal of  
land;

then the Head of Service shall have authority to accept the  
tender which has the lowest Contract Value where the Contract  
requires the Council to make payment, or the highest Contract  
Value where the Contract requires the Contractor to make  
payment to the council, and a written minute of such  
negotiations is maintained, provided the Officer is satisfied that  
Best Value has been achieved

36.3 Where the Contract Value exceeds the figure shown in the  
financial appendix then the tender shall be referred to the  
Cabinet or a Committee for acceptance with full details of the  
evaluation procedure, unless acceptance in an alternative  
procedure has been previously authorised.

36.4 Acceptance following post-tender negotiations specified at s35.2  
must comply with the following formalities:

36.4.1 If the contract value is less than the sum identified in the  
Financial Appendix then acceptance may be made by the

Corporate director after consultation with the relevant Cabinet Member; but

36.4.2 Otherwise acceptance must be made by the Cabinet or Committee.

If any of the conditions required by s36.2.3, 36.2.4, or 36.2.5 are not fulfilled then the Head of Service shall either re-tender the contract or seek instructions from the Cabinet or a Committee;

36.5 Records of Tenders and a Register and post tender notification shall comply with the following formalities:

36.5.1 A written record shall be kept of all invitations and acceptances of tender; and

36.5.2 A record shall be kept of the receipt and opening of Tenders; and

36.5.3 The successful tenderer shall be informed in writing of his success, subject to the requirements of ss35.2 and 36.1; and

36.5.4 Unsuccessful tenderers shall be given written notification, but a failure to inform shall not create any obligation on the part of the Council.

## **G. LAND**

37. These Rules shall apply to all transactions in Land and its fixtures except those:

37.1 Entered into in virtue of any statutory obligation laid upon the council; or

37.2 Where the tenant has a right to renew a lease; or

37.3 Under a confirmed compulsory purchase order; or

37.4 Under a scheme previously approved by the Council for the disposal of more than one piece of land, or more than one building.

38. Disposals of any interest in surplus land or buildings with an estimated value of up to the figure shown in the Financial Appendix may be authorised by the Head of Finance after consultation with the relevant Head of Service. Any disposal in excess of his value must be authorised by the Cabinet or Council. When disposing of an interest in land or its fixtures, the Head of Finance, Cabinet or Full Council, as

provided for in elsewhere in this section must consider a report setting out relevant information, this information shall include:

- 38.1 The planning history of the land and its surroundings; and
  - 38.2 Its potential use; and
  - 38.3 Current or proposed development potential; and
  - 38.4 Its estimated current value.
39. Any disposal of an interest in land or its fixtures in excess of the estimated value set out in the Financial Appendix must be by tender in accordance with the procedure set out in Section F, unless agreed in writing by the s151 Officer and the Monitoring Officer.
40. Valuation requirements:
- 40.1 For all land disposals a valuer holding a qualification validated by the Royal Chartered Institute of Surveyors must provide an initial valuation.
  - 40.2 For any proposed disposal where the value is estimated to exceed that identified in the Financial Appendix then a second valuation must be obtained from an external valuer holding a qualification validated by the Royal Institute of Chartered Surveyors.
41. All disposals of land shall be at best financial terms unless otherwise approved in writing by the s151 Officer after consultation with the Cabinet Member. No land may be disposed at less than open market value unless consent, either general or specific, has been obtained from the Secretary of State.
42. Heads of Service may enter into negotiations for the disposal and acquisition of land provided that:
- 42.1 All necessary consents, budgetary approvals, and Cabinet, council, and Committee decisions are obtained, and that these Rules are complied with.
  - 42.2 Any other procedures adopted by the Council relating specifically to the disposal of land or its acquisition are complied with
- The Council may not be legally committed unless the provisions of s42. and 42.2 are complied with
43. No Officer shall permit any party to take up occupancy, or otherwise

acquire an interest in any Council-owned land until a transfer, lease, licence, mortgage, or easement approved by the Chief Solicitor has been completed.

44. Any acquisition or disposal of any interest in land to or from any member of the Council or a Connected Party must be approved at a full meeting of the Council. Such a proposed transfer shall create an irrebutable presumption that the member has a personal and prejudicial interest.

#### **H. SURPLUS GOODS**

45. Heads of Service shall follow the requirements of these Rules and of the Financial Procedure Rules when disposing of any surplus or obsolete goods. Heads of Service can however have discretion to informally dispose of any such stock or item provided that the value of them does not exceed the figure shown in the Financial Appendix.

#### **I. EXCEPTIONS**

46. Tenders or quotations will not be required in the following circumstances:

- 46.1 **Urgency** - In the event that immediate action is required to let a Contract to prevent serious loss to the council, or to avert danger, injury, or serious hardship to any person, the best practicable means of obtaining Best Value in the selection of a Contractor shall be used. This means:

- 46.1.1 The use of the Approved List whenever practicable; but

- 46.1.2 If this is impracticable then the Cabinet Member shall be consulted; and

- 46.1.3 If the Contract Value exceeds that set out in the Financial Appendix then the Cabinet Member must be consulted; and

- 46.1.4 If the Contract Value exceeds that set out in the Financial Appendix then any action taken must be reported to the Cabinet and the Overview and Scrutiny Committee.

- 46.2 **Unforeseen Circumstances** – when a contract has been let and circumstances which were not in the contemplation of either party and could not have been foreseen arise then variations in the Contract or a new contract to remedy the revealed deficiencies in the existing contract may be negotiated subject to the following conditions:

- 46.2.1 The purpose of the terms and conditions of the original contract are sought to be achieved; and
  - 46.2.2 The Contract Value of the revision or new contract does not exceed 25% of the original Contract Value; and
  - 46.2.3 The variation follows any method of variation specified in the original Contract; and
  - 46.2.4 The cost remains within budgetary provision; and
  - 46.2.5 If the Contract Value exceeds the sum identified in the Financial Appendix then the Cabinet Member is informed; and
  - 46.2.6 If the Contract Value exceeds the sum identified in the Financial Appendix then any action taken must be reported to the Cabinet and the Scrutiny Committee.
- 46.3 **Proprietary Articles** – If goods, or services, are proprietary, or are sold through a single supplier, or if the price is wholly controlled by Government Order and there is no reasonably satisfactory alternative available.
- 46.3.1 In s46.3 “single supplier” shall be interpreted to include any entity and its connected parties, or an entity and its licensees.
  - 46.3.2 In s46.3 “goods and services” shall include contracts for the maintenance, servicing, and repair supplied goods, or intellectual property.
- 46.4 **Specialist Contracts** – If goods, or services, are of such a specialised nature that quotations or tenders are unobtainable, or if available can not be obtained from sufficient contractors to satisfy the normal requirements of these Rules. The spirit of these Rules must still be observed in these circumstances and best value must still be sought.
- 46.5 **Local Authorities and Statutory Undertakers** – if the services are provided by a body with a statutory monopoly
- 46.6 **Consortium** – if tenders have been invited by a consortium, joint venture, or similar body of which the Council is a member following that body’s own procedures or these Rules.
- 46.7 **Agency Agreements** -if the council is acting as an agent for another party and that party has prescribed the use of alternative procedures, or where the contractor has been pre-selected.

- 46.8 **Direct Negotiations** - where it is impractical to invite tenders and where direct negotiations with one or more Contractors is the only way to award the Contract, the Head of service may decide that for any of the following reasons a Contract may be awarded by direct negotiation in accordance with the procedures set out in s35.1:
- 46.8.1 **No Tender** – If a competitive tendering exercise results in no tender, or only non compliant tenders being received, but in these circumstances the conditions of the contract are not to be substantially altered.
- 46.8.2 **Technical Compatibility** – If purchasing goods from a different manufacturer would result in technical difficulties, or the equipment being incompatible with installed equipment.
- 46.8.3 **Experiment** – if the goods supplied are to be manufactured purely for research, experiment, study, development, or demonstration purposes.
- 46.8.4 **Continuation Contracts** – If further goods or services (but not to a greater value than 50% of the Contract Value of the Initial Contract) are needed on a project and these cannot be carried out by a different Contractor without financial or technical difficulties, or are strictly necessary to the implementation of a projects. All such Continuation Contracts must be approved in writing by the s151 Officer and notified to Scrutiny Committee 46.3.
- 46.8.5 **Serial Contracts** – If at the time of awarding a Contract by a Competitive Tender notice was given that a further Contract would be awarded to the successful tenderer subject to negotiation. Only one Contract may be awarded on this basis, and the negotiation procedure must commence within three, and be concluded within four years of the date of the original contract.
- 46.8.6 **Design Competition** If the rules of a design competition specify that the winning design will be awarded a Contract. If the rules specify that the contract will be awarded to one of the acceptable designs then the authors of all acceptable designs must be invited to preliminary negotiations from which a Preferred Bidder will be selected.
- 46.8.7 **Authorised Exceptions** – other exceptions may be authorised by an affirmative resolution of the Cabinet.

## **47. FINANCIAL APPENDIX TO THE CONTRACTS PROCEDURE RULES**

**This Financial Appendix is an integral part of the Contracts Procedure Rules and is therefore subject to the provisions of other parts of the Constitution including, for example, Standing Orders**

### **FA.1 Introduction**

In this Contracts Procedure Rules a number of sections refer to specific purchase limits before different procedures apply; for example, obtaining an estimate versus going to formal tender. The purpose of this appendix is to identify the size of these purchase limits, and FA.3 contains a table clearly identifying for each contract procedure rule the level of this limit.

The reason that this appears in an appendix rather than the main text of the Rules is that this table can be readily updated on an annual basis to take account of changes in the general price level and this appendix also explains how these limits are to be recalculated on an annual basis.

It should be noted that the Head of Finance should produce a revised set of these limits annually to be published in conjunction with the proposed budget for the forthcoming municipal year. This is a delegated power specifically granted to the Head of Finance and to no other head of service.

Finally it should be noted that this is a recalculation of the limits to take account of changes in the general price level. It is therefore recognised that there are circumstances in which the limits could decline.

### **FA.2 Updating Procedure – Method Statement**

Each limit is referenced to a base datum and the retail price index (all items). The base datum refers to the operational limits for the 2006/7 municipal year. The updating procedure consists of multiplying this notional figure for that municipal year by the ratio of the RPI for November of the previous year with that for November 2005. These new limits are then rounded to two significant figures.

An example illustrates the method.. The notional limit under this scheme in the municipal year 2006/7 for decisions delegated under s26.1 is £50,000. The RPI for November 2005 was 193.6. Suppose, for illustrative purposes that the RPI for November 2010 is 219.6. (RPI data are published to one decimal place by the Office for National Statistics, normally about three weeks after the end of the month, and are NEVER revised). The following calculation then gives us an unrounded figure for the Scheme of Delegation's financial limit for decision taken under s7.30 for the municipal year 2011/12:

$$£56.714.88 = (219.6/193.6) \times £50,000$$

This is then changed to £56,000, which equates to the precise figure rounded to the nearest thousand pounds, and it is the rounded figure which provides the new limit.

It is very important to note that this figure is not, generally, the figure that would be calculated by successive updating of the limit for each successive year using successive November RPIs and then rounding. Given the low level of inflation and a targeted inflation of 2% CPI (estimated to approximate to a 2½% p.a. rise in the RPI) the limits would never change and over even quite a short number of years they would therefore become increasingly overly restrictive.

### FA.3 Limits for the Current Municipal Year

Section	Limits
7.1.1	£50,000
8.1	£500,000
8.5	£50,000
8.5.1	£5,000,000
8.5.2	£10,000,000
8.5.3	£5,000,000
8.5.4	£5,000,000
14	£1,000
15	£5,000
16	£50,000
19	£50,000
20	£1,000 to £5,000 -Minimum of one written quotation to be obtained.  £5,001 to £50,000 - Minimum of three written quotations to be invited
23.3.1	£10,000
23.3.2	£50,000
26.1	£50,000
26.2	£50,000
36.2.1	£50,000
36.2.2	£50,000
36.2.4	£50,000
36.2.8	£50,000
36.3	£50,000
36.4.1	£50,000
38	£10,000
39	£25,000
40.2	£100,000
45	£1,000
46.1.3	£10,000
46.1.5	£50,000
46.2.6	£50,000
46.2.7	£100,000

## **48. EUROPEAN REGULATIONS APPENDIX TO THE CONTRACTS PROCEDURE RULES**

**This EU Regulations Appendix is an integral part of the Contracts Procedure Rules and is therefore subject to the provisions of other parts of the Constitution including, for example, Standing Orders**

### **ER.1 Introduction**

ER. 1.1 In this Contracts Procedure Rules a number of sections refer to specific European Union threshold values for advertisement under the EU Procurement Rules. The current values of these are shown in ER.2, and the categories of goods and service to which these thresholds are applicable are detailed in ER.3.

ER. 1.2 It should be noted that the Head of Finance should produce a revised set of these limits annually to be published in conjunction with the proposed budget for the forthcoming municipal year. This is a delegated power specifically granted to the Head of Finance and to no other head of service.

### **ER.2 European Union Threshold Values**

The EU Public Procurement Regulations only apply if the estimated value of the Contract is more than the thresholds (financial limits) set out below:

ER. 2.1 Supplies £144,371

ER. 2.2 Services £144,371

ER. 2.3 Works £3,611,319

### **ER.3 Categories of goods and services**

ER3.1 EU Public Procurement regulations may apply to some Contracts for works, goods and services. It depends on what the Contract is for and its estimated value. It also involves advertising in the Official Journal of the European Union and following set time limits for the different stages of the procurement process.

#### **ER 3.2 What the EU Public Procurements Regulations apply to.**

ER 3.2.1 The EU Public Procurement Regulations apply to the following:

- i. supplying and installing goods and equipment;

- ii. supplying gas, electricity, oil and so on;
- iii. providing the services set out below (known as **Part A services** under the EU Public Procurement Regulations), **including consultancy services**;
- iv. Carrying out building and civil engineering work.

ER3.2.2 The EU Public Procurement Regulations only apply if the estimated value of the Contract is more than the thresholds (financial limits) set out in ER.2

### **Part A Services**

The full EU Public Procurement Regulations apply to the following services when the value of the whole Contract is more than the threshold:

- i. Accounting, auditing and bookkeeping services
- ii. Advertising services
- iii. Air transport services
- iv. Architectural services, engineering services and integrated engineering services, urban planning and landscape architectural services, related specific and technical consulting services, and technical testing and analysis services
- v. Computer and related services
- vi. Financial services
- vii. Insurance services
- viii. Banking and investment services
- ix. Land transport services
- x. Maintenance and repair services (mainly vehicle)
- xi. Management consultant services and related services
- xii. Market research and public-opinion polling services
- xiii. Property-management services and services for cleaning buildings
- xiv. Publishing and printing services for a fee or under contract
- xv. Research and development services
- xvi. Sewage and refuse disposal services, sanitation and similar services
- xvii. Telecommunications services
- xviii. Transporting mail.

### **Part B Services**

The full EU Public Procurement Regulations do not apply to the following services. However, the requirements relating to issuing tender documents and publishing a Contract award notice do apply:

- i. Education and vocational education Services

- ii. Health and social services
- iii. Hotel and restaurant services
- iv. Investigation and security services
- v. Legal services
- vi. Personnel placement and supply services
- vii. Rail transport services
- viii. Recreational, cultural and sporting services
- ix. Supporting and patient transport services
- x. Water transport services.