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CONTRACT PROCEDURE RULES

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1.0 The Scope of the Contract Procedure Rules

- 1.1 These Contract Procedure Rules must be followed every time the Council enters into a contract or arrangement for works, goods, land or services.
- 1.2 European Union Regulations and Directives and English Law must also be followed where appropriate - See Appendix A for Guidance on Contracts Subject to the European Union Regulations.
- 1.3 In these Contract Procedure Rules:
- 1.3.1 "Directors and Heads of Services" means the Chief Executive or Head of Finance or Director of Business or a Head of Service of the Council;
- 1.3.2 "Contract" includes any arrangement under which the Council pays or receives money for work, goods, land, or services, including contracts, agreements, partnership arrangements, private finance initiatives, joint ventures, contracts with Consultants and Service Level Agreements with partners, including voluntary organisations. It includes where the Council is acting as an "Accountable Body" for any government funding;
- 1.3.3 "Contract Conditions" means the Council's standard terms and conditions as amended from time to time ~~includes the Contract Conditions mentioned in Paragraph 22 below;~~
- 1.3.4 "Council" means Rossendale Borough Council;
- 1.3.5 "Executive Team" means the Chief Executive, Director of Business, the Director of Customers and Communities, the Head of People and Policy and the Head of Finance;;
- 1.3.6 "Goods" includes materials, equipment and non-land assets;
- 1.3.7 "Head of Service" means the Head of the relevant Council Service or any person authorised by him or her to act on his or her behalf;
- 1.3.8 "Land" includes premises and buildings;
- 1.3.9 "Most financially favourable tender "or" most economically advantageous tender" means, subject to Paragraph 13.3, the lowest tender or quote if payment is made by the Council and the highest if payment is made to the Council;
- 1.3.10 "Procurement Strategy" means the Council's Procurement Strategy as agreed by the Council from time to time;
- 1.3.11 "Supplier Selection Form" shall mean the relevant Form – See Appendix B - to be completed in the case of a contract for the supply of goods or services;

- 1.3.12 "Tender" includes all offers, quotations, quotes proposals, submissions or other bids for contracts.
- 1.4 The highest standards of probity are required of all Member and Officers involved in the procurement, award and management of Council contracts. At all times during the procurement process all Members and Officers shall consider and implement the principles of non-discrimination, equal treatment and transparency.
- 1.5 These Contract Procedure Rules are intended to help and inform Officers making purchasing decisions. Advice on their use is available from the Director of Business and the Corporate Procurement ~~Assistant~~ Officer. Any Officer can contact Internal Audit if he or she believes that the provisions of these Contract Procedure Rules are not being followed in a particular case.
- 1.6 The use of e-procurement technology (for example, e-auctions) does not negate the requirement to comply with all elements of these Contract Procedure Rules.

2. Exceptions

- 2.1 The Executive Team can allow exceptions to these Contract Procedure Rules regardless of contract value after considering a ~~report~~ Scheme of Delegation by ~~a~~ Directors and Heads of Services; the Executive Team shall then inform Internal Audit and report the decision to the Cabinet for information.
- 2.2 These Contract Procedure Rules shall not apply if:
- i) the Head of Service, in consultation with the Head of Finance, is satisfied that there is no genuine competition, for example, where:
 - a) the goods are proprietary articles or are sold only at a fixed price and no satisfactory alternative is available;
 - b) the price of goods or services are wholly controlled by trade organisations or government order;
 - c) the goods or services are required for repairing or servicing existing specialist plant or equipment;
 - d) the work is to be carried out by public service providers, ~~for example, gas, water, electricity.~~

Where there appears to be no genuine competition, advice must be sought from the Director of Business and the Corporate Procurement Officer as to the options available. ~~the Head of Service, in consultation with the Head of Finance shall obtain written tenders from contractors and, where appropriate, shall negotiate to obtain the most financially favourable tender or the most economically advantageous tender for the Council prior to awarding any contract.~~

- ii) the proposed contract for the execution of work forms part of a serial programme, the terms having been negotiated with the contractor on the basis of the rates and prices contained in an initial contract awarded competitively following an invitation to tender in accordance with the provisions of these Contract Procedure Rules;
- iii) the Head of Service, in consultation with the Head of Finance, considers it desirable in the best interest of the Council that a tender be invited for the execution of work from a contractor selected by the Council or negotiated with a contractor already engaged by the Council;
- iv) the goods, materials or services are required due to an emergency;
- v) the Head of Service and the Head of Finance agree that significant financial loss may be incurred if the letting of the contract is delayed.

2.3 In cases (iv) and (v) above, the Head of Service may obtain verbal quotations provided that they are subsequently confirmed in writing.

2.4 If the Head of Service and the Head of Finance are of the opinion that any of these Contract Procedure Rules should not apply to a contract, then a report shall be submitted to the Executive Team – See Paragraph 2.1.

2.5 Where the Council carries out work using a Standard Form of Contract (for example, the Institution of Civil Engineers' Conditions of Contract) procedural requirements may differ to those laid down in these Contract Procedure Rules.

3. Estimating Contract Values

3.1 Contract values shall be calculated on a total overall basis, for example, where a contract is for £10,000 per year for five years the contract value will be £50,000. Particular elements of the contract shall not be split in an attempt to avoid these Contract Procedure Rules. Where the length of a contract is not known the Head of Service shall use his or her best estimate.

4. Pre-Procurement Procedure

4.1 Before commencing a procurement, it is essential that the Head of Service leading the procurement has identified the needs and fully assessed all options for meeting those needs. Consideration shall be given to the Procurement Strategy as appropriate. Before undertaking a procurement the Head of Service shall where appropriate:

- i) Establish a business case for the purchase, including ensuring that there are sufficient funds in the relevant budget to cover the cost of the purchase;
- ii) Plan out the time period to deal with all aspects of the purchase;
- iii) Consider all means of satisfying the needs, including **environmental sustainability** issues;
- iv) Consult the Corporate Procurement ~~Officer~~^{Assistant} to ascertain whether there is an appropriate Framework Agreement ~~or Preferred Supplier~~ that

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- should be used or whether there are options available to purchase collaboratively with other Authorities;
- v) Consider the form of the contract in consultation with the Director of Business;
 - vi) Choose a course of action which must represent best value for money to the Council;
 - vii) Consult with users of the service;
 - viii) Prepare a written specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
 - ix) Ensure the tender documents are available in electronic format;
 - x) Prepare project initiative documents where appropriate.

4.2 When any Officer of the Council or any employee of a service provider may be affected by any transfer arrangements, the Head of Service shall ensure that Transfer of Undertaking (Protection of Employment) ('TUPE') issues are considered and obtain advice from the Director of Business and the Head of People and Policy before proceeding to invite tenders.

4.3 Tenders received by facsimile or other electronic means (for example, e.mail) shall be rejected, unless they have been sought in accordance with an electronic tendering system approved by the Director of Business and the Head of Finance.

5. **Framework Agreements ~~and Preferred Suppliers Lists~~**

5.1 Where an appropriate Framework Agreement ~~or Preferred Supplier List~~ exists, ~~(i.e. a call off contract with a preferred supplier or e-purchasing system) this must may~~ be used, ~~up to a contract value of £50,000.~~ The Framework Agreement number must be included on all purchase orders for Freedom of Information purposes.

~~5.2 Contracts over £50,000 must follow the appropriate procedure — See Paragraph 6 — irrespective of whether there is a Framework Agreement or Preferred Supplier List in place.~~

~~5.3 The term of a Framework Agreement must not exceed four years and, while an Agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number~~

5.24 Contracts based on Framework Agreements shall be awarded by either:

- i) applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or
- ii) where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:

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- a) inviting the organisations within the Framework Agreement which are capable of executing the subject of the contract to submit ~~written Tenders~~ a mini competition;
- b) fixing a time limit which is sufficiently long to allow ~~Tenders bids~~ for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;
- c) awarding each Contract to the ~~tenderer bidder~~ who has submitted the best ~~Tender bid~~ on the basis of the Award Criteria set out in the specifications of the Framework Agreement.

~~5.5 Lists of Preferred Suppliers shall be developed by the Head of Service – See Paragraphs 7.7 and 7.8 – and maintained by the Corporate Procurement Assistant; the Lists shall be subject to review and market testing on a three year rolling programme – See Paragraph 7.7.6~~

6. Levels of Contract Values – Quotes or Tenders

6.1 Where values appear in these Contract Procedure Rules, these exclude VAT and are subject to annual inflation increases in line with the annual increase in the Retail Price Index (to the nearest £100). Contract values thresholds are as follows:-

Low Value – up to £10,000
 Medium Value – over £10,000 and up to £60,000
 High Value – Over £60,000

6.1.2 The value or amount of the contract shall in the following cases be calculated as follows:-

- a) Where periodical payments are to be made by the Council, by reference to the maximum total amount that the Council may be obliged to pay under the terms of the contract,
- b) Where there is an undefined quantity under the terms of the contract, by reference to an estimate by the Head of Service of the total value of the contract.

6.1.3 Heads of Service shall ensure that, where proposed Contracts, irrespective of their value, might be of interest to potential contractors located in other Member States of the European Union, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other Member States, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- i) the Council's Website;
- ii) portal websites specifically created for contract advertisements;
- iii) National Official Journals; or
- iv) the Official Journal of the European Union (OJEU)/Tenders Electronic Daily (even if there is no requirement within the EU Procedure).

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6.2 Contracts under £10,000

6.2.1 For contracts estimated to be under £10,000, the Head of Service shall consider the following:

- i) Best value for money shall be obtained, including full life costs;
- ii) Use of existing Framework Agreements;
- ~~iii) Use of suppliers on a Preferred Supplier List;~~
- iii*) Use of the e-purchasing system;
- iv) Alternative written quotes;
- v) Use of Purchasing Cards.

6.2.2 There is no obligation to obtain tenders or quotes, but Heads of Service shall be responsible for ensuring best value for money is obtained.

6.2.3 Use of specific Contract Conditions shall be included as relevant – See Paragraphs 22, 24, 25, 28, 29 and 30.

6.2.4 Should any clarification be required then the Director of Business and the Corporate Procurement ~~Officer~~Assistant shall be contacted.

6.3 Contracts between £10,000 and £60,000

6.3.1 Existing Framework Agreements ~~and Preferred Suppliers Lists~~ must be used where appropriate – See Paragraph 5.2

6.3.2 In other cases, three written tenders or quotes shall be obtained, including at least one from a local supplier, if possible, and, in the case of a contract for the supply of goods or services, the reasons for the choice of supplier documented on the Supplier Selection Form – See Appendix B.

6.3.3 As an exception, where three written tenders or quotes cannot be obtained, for example, due to time constraints, the specialist nature of the contract ~~or use of an existing Preferred Supplier~~ or the most financially favourable tender or the most economically advantageous tender has not been selected then, in the case of a contract for the supply of goods or services, this must be explained on the Supplier Selection Form - See Appendix B.

~~6.3.4 Use of specific Contract Conditions shall be included as relevant – See Paragraphs 22, 24, 25, 28, 29 and 30.~~

6.3.45 A file note shall be made of suppliers invited to tender or quote but who failed to tender or quote.

6.4 Contracts between £60,000- £100,000

6.4.1 A minimum of four written tenders ~~or quotes~~ shall be obtained and, in the case of a contract for goods or services, the Supplier Selection Form - See Appendix B – shall be authorised by the Head of Service and Corporate Procurement ~~Officer~~Assistant. ~~Four written tenders or quotes shall be~~

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~~obtained even when there is a Framework Agreement or Preferred Supplier List in place.~~

6.4.2 As an exception, where four written tenders ~~or quotes~~ cannot be obtained, for example, due to time constraints or the specialist nature of the contract or the most financially favourable tender has not been selected the Head of Service shall explain this, in the case of a contract for goods or services, on the Supplier Selection Form - See Appendix B.

~~6.4.3 Use of specific Contract Conditions must be included as relevant - See Paragraphs 22, 24, 25, 28, 29 and 30.~~

6.4.34 A file note shall be made of suppliers invited to tender or quote but who failed to tender or quote

6.5 **Contracts over £100,000**

6.5.1 For contracts valued at above £100,000 written tenders ~~or quotes~~ shall be required. In the case of a contract for goods or services, the Corporate Procurement ~~Officer~~ ~~Assistant~~ must also be involved from the commencement of the project and must sign the Supplier Selection Form – see Appendix B.

6.5.2 However, if there is a ~~Central Government Contract Framework Agreement~~ available, advice shall first be taken from the Director of Business and the Corporate Procurement ~~Officer~~ ~~Assistant~~ about whether it is more appropriate to use that Agreement - See Paragraph 10.

6.5.3 Prior approval to seek tenders ~~or quotes~~ shall be obtained from the Executive Team ~~and Cabinet~~.

~~6.5.4 Use of specific Contract Conditions shall be included as relevant - See Paragraphs 22, 24, 25, 28, 29 and 30.~~

6.5.45 The Council's Legal Section must approve ~~and sign~~ all contracts.

6.5.56 Prior to the commencement of the purchasing process, approval of the proposed contract award procedure including the pre-qualification and/or evaluation criteria to be applied shall be sought by the Head of Service from the Directors and Heads of Services and the Corporate Procurement ~~Officer~~ ~~Assistant~~.

6.5.67 Heads of Service shall ensure that sufficient time is allowed for the preparation of tenders, having regard to the value and complexity of the project. This shall normally be not less than four weeks. Invitations to tender shall be sent out by the Head of Service who shall record:

- i) the name and nature of the contract,
- ii) the number of tender invitations,
- iii) the closing date and time for receipt of tenders.

- 6.5.78 Heads of Service shall be responsible for judgements regarding any sub-division of work or supplies into packages, for example, to enable separate contracts to be let, with a view to seeking effective competition and to secure satisfactory service delivery.
- 6.5.89 A current financial appraisal and a company search shall be carried out of all contractors, in a form determined by the Head of Finance.
- 6.5.940 Should the contract value be over European Union (EU) Thresholds, one of the Procedures shall be used as appropriate for the procurement – See Appendix A.
- 6.5.104 Should the contract value be under the EU Thresholds then one of the Open or Selective Procedures shall be used - See Paragraph 7.
- 6.5.112 A file note shall be made of suppliers invited to tender or quote but who failed to tender or quote.

7. Procedures for Inviting Tenders

7.1 Open Procedure

- 7.2 ~~Open Procedure tendering is generally undesirable (as it may involve too many contractors in abortive tendering) and shall only be used where no Select List exists.~~—The Council advertises its intentions, including a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers. All contractors expressing an interest are invited to tender. The advertisement shall be published ~~in the local press,~~ on the Council's website, and, if appropriate, ~~in the national press and/or~~ trade journal in order to target the relevant market for the particular contract.
- 7.3 The advertisement shall contain details of the proposed contract, including a description of the Council's requirements in sufficient detail to enable the submission of competitive offers, and specify a time limit within which interested parties may express an interest in tendering. The advertisement shall, subject to Paragraphs 7.5 ~~and 7.8.2,~~ give a closing date ~~of at least seven days.~~
- 7.4 The Head of Service shall send an Invitation to Tender (ITT) within three working days to any party expressing an interest; the ITT must state a date and time by which the Tender is to be returned - See also Paragraphs 11 and 12.
- 7.5 The Head of Service shall invite tenders for High Value Contracts by advertising on the Council's website and, if appropriate, the national press and/or trade journal and/or Official Journals, and where the value is above the EU Threshold shall also advertise in the appropriate Official Journal – See Appendix A. The advertisement shall include:

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- i) the nature and purpose of the contract, including a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- ii) where further details may be obtained and where applications shall be submitted.
- iii) the last date and time when tenders shall be received;

7.6 ~~and be placed at least 14 days before the closing date.~~
The Head of Service shall be satisfied with the financial standing and technical capability of the successful contractor before any contract is awarded.

7.7 Selective Procedure

7.7.1 The Council publishes its intentions as above – See Paragraphs 7.2 and 7.5–~~however only those suppliers selected by the Head of Finance, the Head of Service, the Head of Finance and the Director of Business are invited to tender.~~ Short-listed suppliers shall be selected on the basis of clear pre-qualification/evaluation criteria that are ~~either published in the advertisement or available from the Head of Service.~~ The reasons to include or exclude suppliers from the tender process must be documented by the Head of Service and must relate to the pre-qualification criteria.

7.7.2 Pre-qualification/evaluation criteria shall include the following as appropriate to the individual contract being tendered i.e. potential suppliers shall be asked to demonstrate:

Evidence of financial standing shall be provided from some or all of the following sources and evaluated by the Head of Finance:

- i) financial standing – including Audited Accounts and Credit Rating;
- ii) bankers' references;
- iii) balance sheets;
- iv) statements of turnover (both overall and for the work or services for which a contract may be let);
- v) for services, evidence of professional risk indemnity ;
- vi) the provision of bonds and guarantees;
- vii) any other information considered appropriate, providing adequate notice is given regarding the additional information sought.

Minimum technical capacity as to skills, efficiency, experience and reliability shall include an assessment of :

- i) applicants' qualifications and those of the personnel who it is proposed shall do the work;
- ii) statements of the plan, equipment and specialist services available;
- iii) average manpower for each of the last three years;
- iv) numbers of managerial personnel during the same period;

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- v) for works, a list of the works carried out in the last five years, supported by certificates of satisfactory completion (which may be obtained direct from clients);
- vi) technical capacity, including the contractors' quality management systems, human resources, health and safety, environmental management systems and equality and diversity policies where relevant to the performance of the contract;
- vii) for services, a list of the principal contracts carried out in the last three years with their values;
- viii) the proportion of the work which applicants intend to subcontract.

7.7.3 The appraisal process may also include taking up references and inviting applicants to attend for interview.

7.7.4 If there are fewer selected to tender than the required number – See Paragraphs 6.3.2 and 6.4.1 then all those considered suitable shall be asked to tender.

~~7.7.5 The Select List shall identify for each contractor the type of work and maximum value of contracts which may be undertaken by that contractor. The Select List shall be available for reference by members of the public on request.~~

~~7.7.6 Heads of Service shall review the Select List at least once every three years and shall request contractors to submit accounts for reappraisal as appropriate. This will provide an incentive for those included on the Select List to maintain the necessary standard. If it is considered that an up to date financial appraisal is necessary for a contractor chosen from the Select List, the Head of Service shall request contractors to submit their latest accounts for reappraisal in sufficient time prior to invitations to tender being sent out. The reviewed Select List shall be available for reference by members of the public on request.~~

~~7.7.7 Heads of Service shall inform contractors if it is decided to exclude them from the Select List, and also if any request to be asked to tender is refused. If a contractor applies in writing for the reasons within 15 working days of being given such a decision, the reasons shall be provided in writing within a further 15 working days. Where the reason is an unsatisfactory reference, this fact must be stated but not its nature nor the name of the referee.~~

7.7.58 Heads of Service shall maintain a register of all current contracts to include expiry dates and timescales for renewal and supply a copy of the register to the Head of Finance.

7.8 Ad Hoc Approved List Tendering

~~7.8.1 The case for compiling an approved list on an ad-hoc basis for a specific contract, as opposed to inviting contractors from a Select List, shall depend on the size, nature and continuity of the Council's relevant spending programme.~~

~~7.8.2 The Head of Service shall in respect of Medium Value Contracts and High Value Contracts invite contractors to be placed on a list for a specific contract~~

~~by advertising as above — See Paragraphs 7.2 and 7.5. The advertisement shall include:~~

- ~~i) the nature and purpose of the contract, including a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers;~~
- ~~ii) where further details may be obtained and where applications shall be submitted;~~
- ~~iii) the last date and time when tenders shall be received;~~

~~and be placed at least 14 days before the closing date.~~

~~7.8.3 The Head of Service must be satisfied with the contractors' financial standing, technical resources and ability to complete the contract satisfactorily before they are placed on the Approved Ad Hoc List.~~

~~7.8.4 The Head of Service, the Head of Finance and the Director of Business shall select contractors to be invited to tender which may include some or all of the Contractors on the Council's Select Lists.~~

8. Preparation of Tender Documents

8.1 Tender documentation shall consist of one or more of the following, as appropriate:

- i) drawings;
- ii) a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- iii) bills of quantity;
- iv) conditions of contract;
- v) instructions to tenderers;
- vi) the form of tender

8.2 Other information may need to be made available to ensure that contractors' bids reflect service requirements and are competitively priced, including the following:

- i) an outline of the tender pre-qualification/evaluation criteria in descending order of importance;
- ii) the terms and conditions under which assets etc. shall be made available;
- iii) workforce information required for the purpose of assessing prospective liability in relation to the possible transfer of an undertaking; to ensure consistency of provision of information, this shall be provided by the Head of Service and not by an existing contractor;
- iv) the amount of work likely to be available under the contract.

8.3 The Head of Service shall ensure that:

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- i) ambiguities and contradictions do not occur between documents and information provided;
- ii) any locally prepared variations to standard documentation are clear and use generally accepted terms;
- iii) Contract Conditions and specifications are in the best interest of the Council in respect of quality, cost and performance;
- iv) independent scrutiny of tender documentation occurs at this stage, as errors may eventually prove costly.

8.4 To ensure consistency and to aid understanding by the Tenderer, tender documentation shall be collated by an experienced officer who shall obtain the advice and approval of the Director of Business.

9. Joint Procurement, Collaborative and E-Procurement Arrangements

9.1 Any joint procurement arrangements with other Local Authorities, ~~such as the East Lancashire E-Partnership~~, or public bodies including membership or use of Purchasing Consortia shall be approved by the Head of Finance and the Director of Business prior to the commencement of any procurement by the Council.

9.2 All purchases made via a local authority purchasing and distribution Consortium are deemed to comply with these Contract Procedure Rules and no exception is required. However, purchases above the EU Threshold – See Appendix A – must be let under the EU Procedure, unless the Consortium has satisfied this requirement already by letting their contract in accordance with EU Procedures on behalf of the Council and other consortium members.

9.3 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed which complies with the Contract Procedure Rules of the leading organisation, shall be deemed to comply with these Contract Procedure Rules and no exemption is required. However, advice must be sought from the Director of Business and the Corporate Procurement ~~Officer~~Assistant.

9.4 Where appropriate electronic procurement, such as E-Ordering, E-Tendering, E-Marketplace and E-Auctions, may be used with the requirement to comply with all aspects of these Contract Procedural Rules and the Council's Financial Regulations.

10. Central Government Contracts

10.1 The Office of Government Commerce (OGC) has in place various Framework Agreements that have already been tendered through EU Procedures and therefore can be used by Councils without the need for re-tendering. The Director of Business and the Corporate Procurement ~~Officer~~Assistant shall be contacted for guidance. Details can be found on the OGC website: www.ogcbuyingsolutions.gov.uk

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11. The Invitation to Tender (ITT)

11.1 The ITT shall include details of the Council's requirements for the particular contract including:

- i) A description of the works to be undertaken, the goods or services being purchased, including a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers, including any ~~environmental—management systems~~sustainability issues;
- ii) The procurement timetable including the tender return date, which shall allow a reasonable period for the applicants to prepare their tenders subject to legislative requirements;
- iii) Information on whether any variations are permissible;
- iv) The Council's terms and conditions of contract or main contract clauses as relevant ~~—See Paragraphs 22, 24, 25, 28, 29 and 30~~;
- v) The pre-qualification/evaluation criteria including any weightings, for example, price, quality service, quality of response, understanding of requirements, successful track record;
- vi) Pricing formats or mechanisms and instructions for completion;
- vii) Whether the Council is of the view that TUPE will apply;
- viii) Form and content of Method Statements to be provided;
- ix) Rules for the submission of Tenders;
- x) Any further information which shall inform or assist tenderers

12. Submitting and Opening Tenders

12.1 Submitting Tenders

- 12.1.1 Tenders shall be considered only if they are delivered to the Committee and Member Services Manager in a plain, securely sealed envelope, or in any special envelope provided by the Council for the purpose. Such envelopes shall in no way indicate the identity of the sender.
- 12.1.2 The outside of the envelope shall be marked "Tender" and with the name of the contract to which the tender relates.
- 12.1.3 On receipt of each tender the envelope shall be endorsed with the date and time of arrival.
- 12.1.4 Tenders received by hand shall be receipted on request.
- 12.1.5 All tenders received shall remain unopened in the secure custody of the Committee and Member Services Manager or such other Officer appointed by him or her for that purpose until the appointed time for opening.

12.2 Opening of tenders

- 12.2.1 Tenders shall be opened at the designated time in the presence of at least:

- i) the Committee and Member Services Manager or his or her representative;
- ii) the Head of Service or his or her representative ~~(not being a person who has been involved in the tender process);~~
- iii) the Corporate Procurement ~~Officer~~Assistant for all goods and services contracts; or
- iv) the Head of Finance for all contracts above the EU threshold,

~~The Leader or Deputy Leader shall also be invited to attend the opening, but do not have to be present at the opening.~~

12.2.2 Tenders shall be numbered by the Committee and Member Services Manager or his or her representative as they are opened.

12.2.3 The Committee and Member Services Manager shall immediately prepare a list of tenders received in a Tender Book detailing the names of tenderers and the tender sums and this shall be certified by those present as a true record.

12.2.4 A record shall also be made in the Tender Book of any contractors invited to tender but who failed to tender.

13. Evaluation of Tenders and Correction of Errors

13.1 Tenderers must complete all tender documentation or parts thereof. Any omissions shall render a tender null and void, with no further consideration given, save for omissions which are of an insignificant nature, any such omissions being recorded in the Tender Book.

13.2 Tenders subject to EU Regulations shall be evaluated in accordance with the relevant EU Regulations and the pre-qualification/evaluation criteria set out in the ITT. All other tenders shall be evaluated in accordance with the pre-qualification/evaluation criteria set out in the ITT.

13.3 All contracts shall be awarded on the basis of the most financially favourable tender or the most economically advantageous tender for the Council. This means that the Council is not obliged to accept a tender just because it is the lowest price. Other non-price elements ~~must~~may also be taken into account such as quality, service, references, professionalism, sustainability, local economic benefits, environmental management systems etc. The pre-qualification/ evaluation criteria shall be prepared by the Head of Service and shall be listed in the ITT documentation. In addition, the criteria shall be strictly observed (and remain unchanged) at all times throughout the Contract Award Procedure.

13.4 All tenderers shall be compared impartially using the same criteria with a view to securing the most financially favourable tender or the most economically advantageous tender with the same degree of security and confidentiality as at all stages of the tendering process.

13.5 All tenders shall be checked for arithmetical accuracy, including the correct extension and summation of rates tendered in the bill of quantities.

- 13.6 At least the most financially favourable tender or the most economically advantageous tender received shall be evaluated; particular attention shall be given to rates and prices, percentage adjustments, balancing items, ambiguities, qualifications and alternative offers.
- 13.7 If a tender is found to contain ambiguities or arithmetical errors, the tender total shall be corrected and the tenderer notified accordingly. If, in the opinion of the Head of Service, any tendered rate is considered unrealistic, the tenderer may be given the opportunity of confirming the rate or withdrawing the tender. In order to preserve parity of tendering, amendment to tender rates after submission of tenders shall not be permitted. If the tenderer withdraws or the revised tender is no longer the most competitive, the next most competitive shall be examined and dealt with in the same way. Where the Council has made an error in a tender then all bidders shall be informed and given the opportunity to amend their tender.
- 13.8 The Head of Service must keep a written record of all amendments.
- 13.9 There shall be no significant changes in specification in any dealings with tenderers after tenders have been opened. Where post-tender negotiations are necessarily undertaken, no tenderer shall be given an opportunity to reconsider a tender on the original specification, unless similar opportunities are given to all tenderers.
- 13.10 Any changes which affect the original tendered sum(s) shall be notified to the Committee and Member Services Manager for inclusion in the Tender Book which shall be signed by the Committee and Member Services Manager or his or her representative and the Head of Service or his or her representative.
- 13.11 The Head of Service shall compile a report on the evaluation of the tendered amounts with the original estimate; this report shall form the basis for acceptance of the preferred tender.

14. Late or Incomplete Tenders

- 14.1 Late or incomplete tenders shall not be considered but shall be opened by the Committee and Member Services Manager or his or her representative to ascertain the name of the tenderer so that the tender may be promptly returned, subject to Paragraph 32.2 below.

15. Acceptance of tenders

- 15.1 Subject to the provisions below, the Head of Service shall accept the most financially favourable tender or the most economically advantageous tender received on behalf of the Council, provided that:-
- i) It is within the approved estimate; in all cases, the Head of Service shall document and sign a file note recording the preferred tenderer, along with the names of all Members and Officers involved in the decision

making process, and complete a Supplier Selection Form and Scheme of Delegation where appropriate;

- ii) The contract is awarded using the tender pre-qualification/evaluation criteria.

15.2 The successful tenderer shall be notified promptly following the decision to accept the tender.

15.3 Where the most financially favourable tender or the most economically advantageous tender is outside the approved estimate provision, the Head of Service shall either:

- i) write to all tenderers explaining the situation and giving them the opportunity to lower their tenders to within the approved estimate; or
- ii) report to the Cabinet requesting an increase in the estimate provision; or
- iii) report to the Cabinet requesting authority to revise the specification and seek new tenders. If it is decided to re-tender, all previous tenderers shall be asked to tender again, and no tenderers shall be given any information about any of the first tenders.

15.4 No tender other than the most financially favourable tender or the most economically advantageous tender shall be accepted until the Executive Team has considered a report from the Head of Service which shall include the comments of the Director of Business as Monitoring Officer. There may be sound commercial reasons why the Head of Service considers that work shall not be awarded to the lowest tenderer, such as:

- ~~i) differences in method, timing or perceived performance, which have not been eliminated by specification;~~
- ii) a tender which is too low to be credible;
- iii) the potential ability of the tenderer to complete on time.

15.5 For all Low Value Contracts up to ~~£6,000~~£10,000 the decision to award a contract shall be made by the Head of Service.

15.6 For all Medium Value contracts ~~£6,000~~£10,000 - ~~£50,000~~£60,000 the decision to award a contract shall be made by the Head of Service and, in the case of contracts for the supply of goods and services, evidenced on the Supplier Selection Form for Order Values ~~£6,000~~£10,000 - ~~£50,000~~£60,000 - See Appendix B.

15.7 For all High Value Contracts ~~£50,000~~£60,000 - £100,000 the decision to award a contract shall be made by the Head of Service and authorised by the Head of Finance if four tenders have not been obtained or the most financially favourable tender selected and evidenced, in the case of contracts for the

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supply of goods or services, on the Supplier Selection Form for Tender Values ~~£50,000~~£60,000 - £100,000 - See Appendix B.

- 15.8 For all contracts over £100,000 the decision to award a contract shall be made by the Head of Service and approved by the Head of Finance and, in the case of contracts for the supply of goods or services, evidenced on the Supplier Selection Form for Tenders over £100,000, signed by the Corporate Procurement ~~Officer~~Assistant who shall keep the Form on file. (The Executive Team shall have given prior approval to such tenders and may request final approval of relevant contracts).
- 15.9 Only Full Council can accept a tender that would require an increase in the Council's total revenue or capital budget.
- 15.10 Once the contract has been let, all unsuccessful tenderers shall be notified of the results, and may be informed of the successful price on request. The letter of acceptance shall not seek to qualify the terms and amounts previously tendered by the contractor.
- 15.11 The letter of acceptance establishes a legally binding contract which shall be subsequently supported by a deed if the contract is to be under seal.
- 15.12 A proforma questionnaire shall be sent to contractors who did not tender inviting them to give reasons for their failure to tender.
- 15.13 Heads of Service shall keep written records of contractors for a period of six years; however, written documents which relate to unsuccessful contractors may be microfilmed or electronically scanned or stored by some other suitable method after 12 months from award of a contract, provided there is no dispute about the award.

~~16.~~ **Post-Tender Negotiation**

- ~~16.1 For Contracts under £100,000 price negotiation shall be allowed but the Head of Service must consider and implement the principles of non-discrimination, equal treatment and transparency. If the contract value requires completion of a Supplier Selection Form See Schedule B then any price negotiations must be recorded on the Form. The Head of Service shall seek clarification on specifications and assistance from the Director of Business and the Corporate Procurement Assistant.~~
- ~~16.2 For Contracts over £100,000 then price negotiation shall only be allowed with the prior approval of the Executive Team.~~
- ~~16.3 If a Contract is subject to EU Regulations then price negotiation shall never be permissible when using the Open or Restricted Procedures.~~

~~16.7.~~ **Letters of Intent / Payments Prior to the Signing of a Contract**

- ~~16.7.1~~ No payments shall be made to any supplier, partner or consultant prior to the signing of a contract or, in exceptional circumstances, a letter of intent has been issued. Any letter of intent shall only be issued with the agreement of the

Director of Business and then only after a risk assessment has been considered.

178. Contract Extension

- 178.1 Any contract may be extended by the Head of Service in accordance with its terms. Where the terms do not expressly provide for extension then, subject to any legal constraints, the contract may be extended by negotiation. The Head of Service shall always be satisfied that the extension shall achieve best value for money and is reasonable in all the relevant circumstances.
- 178.2 All such extensions shall be notified to the Director of Business and the Corporate Procurement ~~Officer~~Assistant.
- 178.3 Once a contract has expired it cannot then be extended.

189. Contracting with the Not for Profit Sector

- 189.1 These Contract Procedure Rules shall also apply in full to any Contracts or Service Level Agreements made between the Council and any Not for Profit Organisation.
- 189.2 Where the Council is acting as an Accountable Body for any government funding then these Contract Procedure Rules shall also apply in full.

1920. Form of Contracts

- 1920.1 All contracts shall be in writing, which can be a formal document or an official order or a letter, and signed by both parties.
- 1920.2 All Low Value, Medium Value and High Value Contracts shall be in writing and (subject to Paragraph 23 below) signed by the Director of Business ~~or by any other Officer of the Council duly authorised to sign such contracts by the Director of Business.~~ Contracts may also be in an electronic format and must include, as a minimum:
- i) The work to be undertaken, or the goods or services etc. to be supplied;
 - ii) The price and any discounts;
 - iii) The place of supply and/or delivery of goods or services;
 - iv) Any specific time scales to be achieved.

204. Nominated Sub-Contractors and Suppliers

- 204.1 If a Sub-Contractor or Supplier is to be nominated or named to a main Contractor, quotations or tenders shall be invited in accordance with these Contract Procedure Rules and the terms of the invitation shall be compatible with the main contract.

212. Contract Conditions

~~212.1 The Council's standard terms and conditions must be used together with any special terms and conditions as the contract requires. Advice should be sought from the Director of Business as necessary. Below is a selection of Contract Conditions which are to be used in different types of contract. Those that are appropriate must be selected and if in doubt advice as to their use obtained from the Director of Business.~~

~~22.2 HEALTH AND SAFETY~~

~~"The contractor, their sub-contractor(s) and any self-employed person(s) engaged for the purposes of the contract shall comply fully with:~~

- ~~i) Their obligations under the Health and Safety at Work etc. Act 1974 and all relevant statutory provisions;~~
- ~~ii) The Council's general and specific health and safety policies and procedures, including any local, or site-specific health and safety requirements in force for the time being, and;~~
- ~~iii) Any other reasonable requirements, specified to them, in writing or otherwise, by the Council's competent person appointed for the purpose of health and safety assistance".~~

~~**Uses:** This should be in all contracts for the provision of works and most contracts for services to, or on behalf of, the Council where health and safety could possibly be an issue.~~

~~22.3 INDEMNITY~~

~~"The contractor shall indemnify the Council against any claim for bodily injury, loss of life or damage to property of third parties provided always that this indemnity shall not apply where the bodily injury, loss of life or damage to property results from any act or default of the Council, its Officers or agents or other Contractors (not being employed by the Contractor).~~

~~The Contractor shall effect and maintain insurance policies which provide full cover in respect of such claims and shall when required by the Council or its Officers produce satisfactory evidence that it is insured against such liability".~~

~~**Uses:** In all works and services contracts where there is any possibility of an injury to persons or property arising.~~

~~22.4 ANTI-CORRUPTION (Gifts or Rewards to Councillors or Officers)~~

~~The Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or refrain from doing or for~~

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~~having done or refrained from doing any action in relation to the obtaining or execution of the Contract or any other Contract with the Council or for showing or refraining to show favour or disfavour to any person in relation to the Contract or any other Contract with the Council, or if the like acts shall have been done by any person employed by him or her or acting on his or her behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the Council the Contractor to or any person employed by him or her or acting on his or her behalf shall have committed any offence under the Prevention of Corruption Act 1889 to 1916 or shall have given any fee or regard the receipt of which is an offence under the subsection (2) of section 117 of the Local Government Act 1972.~~

~~Uses: All contracts.~~

~~22.5 HUMAN RIGHTS, EQUALITY AND DISCRIMINATION~~

- ~~a) Comply with the Human Rights Act 1998;~~
- ~~b) Comply with all equality and anti-discrimination legislation including the provisions of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 1995 as amended by the Disability Discrimination (Amendment Act) 2005, the Equal Pay Act 1975, the Sex Discrimination Act 1975, the Gender Reassignment Regulations 1999, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations (2006) and the Equality Act 2006 and accordingly will not treat one group of people less favourably than others because of their colour, race, nationality, religion, ethnic origin, gender, sexual orientation, age, disability or otherwise in the decision to recruit, train, promote, discipline or dismiss its personnel and will have regard to the need to eliminate unlawful discrimination and to promote equality and diversity;~~
- ~~c) Observe all equality and anti-discrimination codes of practice including the Commission for Racial Equality's Code of Practice in employment as approved by Parliament in 1983 and the Disability Rights Commission and the Equal Opportunities Commission Code of Practice issued in 2003;~~
- ~~d) Comply with the Council's own policies on equality and anti-discrimination;~~
- ~~e) Maintain and promote an equality policy with the aim of ensuring an environment free from discrimination and set this out in instructions to those concerned with recruitment, training and promotion; in documents available to its personnel recognised trade unions or other representative groups of its personnel; and in recruitment advertisements and other literature;~~
- ~~f) On request provide the Council with examples of the instructions and other documents, recruitment advertisements and such other literature as the Council may reasonably request for the purpose of assessing the Contractor's compliance with this clause;~~

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- ~~g) Monitor and review the representation within its workforce and provide the Council with a breakdown of job applicants and workforce of; colour, race, nationality, ethnic origin, religion or belief, gender, sexual orientation, age or disability having regard to the Council's own procedures for monitoring representation among its own employees;~~
- ~~h) On request attend meetings to review and discuss the Contractor's compliance with equality and anti-discrimination requirements;~~
- ~~i) In the event of any investigation or legal proceedings (whether civil or criminal) brought against the Contractor relating to its obligation under this clause shall provide details to the Council and the steps taken to remedy the situation;~~
- ~~j) Indemnify the Authority in the case of any finding under any anti-discrimination legislation arising out of the contractor's acts or omissions; and~~
- ~~k) Impose the same obligations on any sub-contractor.~~

~~Uses: In all contracts where:~~

- ~~i) The contractor's staff work on Council premises or alongside the Council's employees; or~~
- ~~ii) Services are provided to the public on behalf of the Council or as a joint or consortia arrangement; or~~
- ~~iii) The contract consists of major capital works; or~~
- ~~iv) Labour costs are a major cost of the overall project.~~

~~22.6 FREEDOM OF INFORMATION~~

~~"The Freedom of Information Act 2000 ("the Act") gives a general right of public access to all types of recorded information (subject to exemptions) held by the Council or on behalf of the Council by another party, and places a number of obligations on the Council with regard to disclosure of information. The Contractor will accept the Council's duty to comply with the Act and will cooperate in providing information held on behalf of the Council to enable the Council to meet its statutory obligations. The Council shall undertake to consider the application of exemptions with respect to any information supplied by the contractor to the authority".~~

~~Uses: All contracts.~~

~~22.7 THIRD PARTY RIGHTS~~

~~"Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement"~~

~~Uses: All contracts where a person who is not a party to the contract might feasibly claim that they were affected by a term in the contract, for example, a person~~

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~~discriminated against by the contractor might try to use the anti-discrimination clause in the contract to claim that the Council should compensate them for the actions of the Contractor.~~

~~22.8 DATA PROTECTION~~

~~"The Council shall comply with the Data Protection legislation in respect of the use of all personal data arising from the performance of the contract, whether supplied by the Council or otherwise obtained"~~

~~**Uses:** All contracts where the Contractor holds or uses information (or works on information held by the Council) about individuals, whether they are members of the public or employees — this shall therefore be required in most contracts where services are provided to the public, software contracts with consultants who are working on the Council's computer network etc.~~

~~22.9 DISPUTE RESOLUTION~~

~~"In the first instance, the parties will use reasonable endeavours and act in good faith to resolve any disputes or claims that may arise in connection with this Contract through both parties negotiating. If these negotiations should fail to resolve the dispute within 28 days, both parties will attempt to resolve the dispute through mediation.~~

~~The decision as to who shall act as mediator is to be agreed between the parties. Failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of a mediator, the mediator must be appointed by the Centre for Dispute Resolution within 14 days of the appointment of the mediator, the parties must meet the mediator to agree the procedure to be adopted for the mediation.~~

~~All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.~~

~~If the parties agree on a resolution of the dispute, the agreement shall be put in writing and once signed by the parties, will be binding on them.~~

~~If the parties fail to resolve the dispute within two months of the mediator being appointed (or longer period by agreement) or if either party withdraws from the mediation procedure then either party may exercise any remedy it may have under or in connection with the contract through the English courts.~~

~~Neither party shall be prevented, by the inclusion of this mediation clause, from applying at any time to the English courts for such interim or conciliatory measures (including but not limited to preservation of property) as may be considered appropriate".~~

~~**Uses:** All contracts over £10,000 unless a standard RIBA or ICE Contract is used, or some other professional body contracts which has its own dispute resolution mechanism.~~

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223. SEALING OF DOCUMENTS

- 223.1 The Legal Section must approve all contracts - See Paragraph 6.5.5 - and will arrange to seal Medium Value Contracts and High Value Contracts, thereby providing the Council with a longer time period in which to sue for breach of contract.
- 223.2 The persons authorised to witness the application of the Seal are the ~~Head of Finance or the~~ Director of Business or any other person authorised by either of them from time to time.
- 223.3 Details of the sealing are recorded in the Council's Seal Book and signed by the person witnessing the seal.

234. LIQUIDATED DAMAGES

- 234.1 Provision shall be made in all contracts, where appropriate, for payment of liquidated damages by the contractor where there is a failure to complete the contract within the time specified.
- 234.2 The amount of liquidated damages shall be determined by the appropriate Head of Service in consultation with the Director of Business.

245. PERFORMANCE BONDS

- 245.1 Where the estimated amount of a contract exceeds £250,000 the Head of Service shall normally require the contractor to provide a bond or other security. Any decision not to require a bond will be recorded on the appropriate file.
- 245.2 If a bond or other security is deemed necessary, the amount shall be at least 10% of the contract sum.

256. INSURANCE

- 256.1 Prior to letting a contract the Head of Service shall ensure that the contractor holds adequate insurance policies to include, where appropriate, Professional Indemnity insurance which shall protect the Council's interest and cover all potential losses that may arise. An adequate level of insurance shall be determined in consultation with the Council's Insurers.
- 256.2 The Head of Service shall make and record such checks as are necessary from time to time to ensure that the contractor's insurance policies remain in force.

267. AVOIDANCE OF RESTRICTIVE PRACTICES

- 267.1 All contractors submitting a tender or a request for inclusion ~~on a Select List or Ad Hoc List shall~~ must sign a declaration that:

- i) they shall not communicate the amount of the proposed tender to anyone except the Council;
- ii) they shall not receive details of a proposed tender from any other contractor;
- iii) they shall not adjust the amount of a proposed tender as a result of an arrangement with any person other than the Council;
- iv) they shall not agree with any other person:
 - a) the amount of the proposed tender;
 - b) not to tender.

~~267.2~~ If the contractor is in breach, the Directors and Heads of Services shall be informed so that relevant action can be taken to include reporting to the Cabinet.

~~278.~~ ASSIGNMENT AND SUB-LETTING

~~278.1~~ All contracts shall include clauses preventing:

- i) the assignment of contracts except with the prior written permission of the Council;
- ii) the sub-letting of any part of the work contained in the contract except with the prior written approval of the Head of Service.

~~289.~~ CANCELLATION AND DETERMINATION

~~289.1~~ The following clause shall be included in every written contract:

“The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf does any of the following:

- a) offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other council contract (even if the Contractor does not know what has been done); or
- b) commits an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117 (2) of the Local Government Act 1972; or
- c) commits any fraud in connection with this or any other Council contract whether alone or in conjunction with Council Members, Contractors or Officers. Any clause limiting the contractor’s liability shall not apply to this clause.

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~~289.2~~ In the event of it being necessary to consider the termination of a contract, the Head of Service shall discuss the proposed course of action with the Director of Business

~~2930.~~ COMPLIANCE WITH BRITISH STANDARDS

~~2930.1~~ All contracts shall require that all works carried out or goods supplied conform to the current British Standard Specification or Code of Practice, if such exists.

~~2930.2~~ Reference shall be made in contract documentation to specific British Standards as appropriate to define more clearly the scope of the contract.

~~304.~~ ENGAGEMENT OF CONSULTANTS

~~304.1~~ Consultants shall only be used if in the opinion of the Head of Service, in consultation with the Head of Finance, the work cannot be handled by Council Officers. ~~A Select List of Consultants compiled under Paragraphs 7.7 or 7.8 shall be maintained and reviewed every three years.~~ The appropriate professional institution or trade association shall be contacted to verify a Consultant's qualifications ~~before being included on the Select List.~~

~~304.2~~ ~~The Cabinet must have resolved to support the actual project in principle before Consultants are appointed.~~ A note shall be placed on each project's file stating:

- i) why it was necessary to use an external consultant;
- ii) the brief for the project;
- iii) the brief for selecting the consultant and how this was met;
- iv) which Officers were involved in the selection process.

~~304.3~~ Where Consultants are employed by the Council, the Head of Service shall ensure that the requirements of Paragraph ~~22.421 – Conditions of Contract~~ above are written into the terms of their engagement and shall verify that this has been done.

~~304.4~~ Any Consultant who is to be responsible for supervising any stage of the contract process on behalf of the Council shall:

- i) comply in all aspects with these Contract Procedure Rules and the Council's Financial Regulations;
- ii) hold, where appropriate, an adequate level of Professional Indemnity Insurance to cover any potential loss that may arise;
- iii) produce all records maintained by him or her relating to the contract to the Head of Service or his or her representative whenever requested during the period of the contract;

iv) pass all records to the Head of Service on completion of the contract.

304.5 There may be instances where use of these Contract Procedure Rules for the engagement of Consultants would be inappropriate, for example, in the case of the engagement of a barrister ~~or other consultant where quality of performance is more important than the lowest tender~~. In such instances, Consultants shall be appointed as follows:

- i) Low Value: appointed by a Head of Service;
- ii) Medium Value: appointed by the Head of Service;
- iii) High Value: appointed by the Head of Service and Director;

The Head of Service shall:

- i) ensure that consultancies can be properly funded, within an approved budget and expenditure code;
- ii) consider the nature of the contract and how payments shall be made;
- iii) draw up a written contract with any consultants employed;
- iv) ensure that all documentation relating to a proposed consultancy is collated by an experienced officer in consultation with the Director of Business.

304.6 When grants are awarded to outside bodies for feasibility studies, the organisation concerned shall be responsible for appointing and monitoring the Consultants. Grant funded projects agreed by the Council shall proceed without any variation to the brief which would result in the Council incurring extra costs.

312. DISPOSAL OF LAND BY THE COUNCIL

312.1 Land transactions and related negotiations shall only take place at the explicit consent of the Head of Finance acting as Corporate Property Officer and Director of Business, having consulted the Head of Service and Ward Members. Such transactions and related negotiations may include disposals, acquisitions, exchanges of land, leases and other means of transaction.

312.2 Where the Head of Finance acting as Corporate Property Officer and the Director of Business decides that land shall be disposed of by way of a formal open market competitive tender then:

- i) The procedure for the receipt, custody and opening of tenders and for dealing with late tenders shall be in accordance with these Contract Procedure Rules, except that:

- a) a defined range of uses which may be acceptable to the Council shall be provided in the tender documentation;
 - b) any late tenders received shall be opened in the same way and a decision made by the Head of Finance as Corporate Property Officer whether or not the tender should be considered;
 - c) any letters sent out to successful tenderers shall contain a statement that in the event of any late tenders or further offers being received prior to the exchange of contract then these will be considered by the Head of Finance as Corporate Property Officer.
- ii) All persons by whom or on whose behalf a tender is submitted shall declare on the form of tender whether they are Members or Officers of the Council or whether they are related to a member or employee of the Council. Failure to make such a declaration or the making of a false declaration shall invalidate the tender and render voidable at the option of the Council any contract entered into as a result of the tender
 - iii) A tender may be accepted in accordance with these Contract Procedure Rules provided that in the event of there being a proposal to accept a tender from a Member or Officer of the Council or a relative of such a person this shall be referred to the Cabinet for consideration.

β12.3 Where the Directors and Heads of Services decides that land shall be disposed of at auction, then the Directors and Heads of Services shall have the necessary authority to appoint and instruct independent auctioneers. Reserve prices shall be agreed between the Director of Business and the auctioneers instructed in conjunction with the Head of Finance. A schedule of land disposed of, auctioneers used, reserve prices and achieved receipts shall be reported retrospectively to the Cabinet on an annual basis.

β12.4 Where there is a proposal to dispose of land to a Member or Officer of the Council other than by a competitive tender and the disposal is in the opinion of the Chief Executive not a routine disposal, the proposal shall be referred to the Cabinet for consideration and a full report shall be made by the Directors and Heads of Services on the proposal.

β12.5 For the purpose of this Contract Procedure Rule persons shall be deemed to be related if they would be so deemed for the purposes of the Officer Employment Procedure Rules Rule 1.

β12.6 For the purpose of this Contract Procedure Rule 'Officers' includes any person who receives remuneration directly from the Council.

β12.7 In the case of minor disposals of land (less than £10,000 (this value to be index linked on an annual basis)), the Council's Property Services Manager shall have the authority to decide whether or not to treat with an individual on a transaction and shall be empowered to advise any interested parties that a particular property shall not be considered for disposal for any period up to

one year unless exceptional circumstances cause a dramatic increase in value.

β~~12~~.8 The Directors and Heads of Services shall have regard at the outset to matters of Value Added Tax on the acquisition and disposal of land; guidance can be sought from the Head of Finance and the Corporate Procurement ~~Officer~~Assistant.

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β~~23~~. RISK ASSESSMENT, CONTINGENCY PLANNING AND BUSINESS CONTINUITY

β~~23~~.1 A business case must be prepared for all procurements with a potential value over the EU Threshold Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

β~~23~~.2 For all High Value Contracts, Heads of Service must:

- i) maintain a risk register during the contract period;
- ii) undertake appropriate risk assessments and for identified risks;
- iii) ensure contingency measures and business continuity plans are in place.

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Appendix A

Contracts Subject to the European Union Regulations

The Director of Business may be contacted for further details of the EU Procedures and up to date Thresholds.

Where an estimated value of a contract exceeds the current EU Threshold, the contract shall be tendered in accordance with the Regulations. ~~Under the Regulations, the contract may be tendered under the Open, Restricted Negotiated or the Competitive Dialogue. Procedures; tenders shall also be advertised in the local press and on the Council's Website; standstill Procedures shall also apply.~~

Appendix B – Supplier Selection Forms

**SUPPLIER SELECTION FORM FOR TENDER VALUES ~~£6,000~~10,000 -
£50,00060,000**

Service			
Officer undertaking supplier selection			
Description of goods or services to be purchased:			
Suppliers selected for tenders: (please keep tenders with this form)			
Supplier Name		Tender Value (£)	
1			
2			
3			
Please document rationale for selecting these suppliers			
Have you obtained tenders or quotes from at least three suppliers?		Yes	No
If not, please document the reasons why not, for example, Framework Agreement in place			
Successful Supplier:			
Please state your reasons for selecting this supplier. If the most financially favourable tender or quote or the most economically advantageous tender or quote has not been selected, please explain why.			
AUTHORISATION			
In authorising this order, I confirm that: The value of this order is within my prescribed authorisation limits; and I confirm there are sufficient financial resources available within my budget to fund the purchase.			

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Head of Service (please print name)		Job Title	
Signature		Date:	
Where: Three tenders or quotes have not been obtained; or The most financially favourable tender or quote or the most economically advantageous tender or quote has not been selected Then: The Head of Service must authorise this form.			
Head of Service (please print name)		Date:	
Signature			

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SUPPLIER SELECTION FORM FOR TENDER VALUES £50,000 - £100,000

Service			
Officer undertaking supplier selection			
Description of goods or services to be purchased:			
Suppliers selected for tenders: (please keep quotations with this form)			
Supplier Name		Tender Value (£)	
1			
2			
3			
Please document rationale for selecting these suppliers			
Have you obtained tenders or quotes from at least four suppliers?		Yes	No
If not, please document the reasons why not			
Successful Supplier:			
Please state your reasons for selecting this supplier. If the most financially favourable tender or quote or the most economically advantageous tender or quote has not been selected, please explain why.			
AUTHORISATION			
In authorising this order, I confirm that: The value of this order is within my prescribed authorisation limits; and I confirm there are sufficient financial resources available within my budget to fund the purchase.			

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Head of Service (please print name)			
Signature			
Where: <ul style="list-style-type: none"> • Four tenders have not been obtained; or • The most financially favourable tender or quote or the most economically advantageous tender or quote has not been selected Then : The Head of Finance must also authorise this form.			
Head of Finance (please print name)		Date:	
Signature			

SUPPLIER SELECTION FORM FOR TENDERS OVER £100,000

This report should be completed for all tenders with an expected contract value over £100,000. It demonstrates good procurement practice and compliance with these Contract Procedure Rules. Please attach other documentary support as necessary. The form should be completed fully and kept on file by the Corporate Procurement Officer/Assistant.

Description of goods or services etc. to be purchased:

Head of Service - Name

Telephone Number

Pre Tender

Has the approval of the Executive Team been obtained Yes No

Was an Office of Government Commerce or Consortia Contract used?
 Yes No

If yes then please give details of OGC or Consortia Contract:

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Tender

If a tender was required which procedure was used? OPEN / SELECTIVE / EUROPEAN UNION REGULATIONS

If Selective Procedure then what Pre-Qualification/Evaluation criteria were used, i.e. what criteria were used to decide which of the suppliers who expressed an interest were actually asked to submit a tender?:

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Which companies were asked to tender?

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Which of the following pre-qualification/evaluation criteria were used to determine the successful supplier?

(Please indicate which of the following apply - if any)

- Technical suitability
- Health and safety
- Equal opportunities
- Delivery dates
- Financial stability
- Experience
- Past performance
- Aesthetic/functional characteristics
- Technical/after-sales service
- Quality
- Costing/pricing
- Customer care
- Environmental Issues
- Others (Please list)

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Is the successful bid within budget? Yes No

Do the Executive Team need to validate the decision? Yes No

What, if any, Post Tender Negotiation was carried out?

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Which supplier was successful and why?

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What is the duration of the contract? years

Which Contract Conditions have been included?

Health and Safety

Indemnity

Anti-Corruption

Human Rights, Equality and Discrimination Freedom of Information

Third Party Rights

Data Protection

Dispute Resolution

What costs savings, if any, have been made?

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Any other relevant information?

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Signed by the Head of Service

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Date

Approved by the Head of Finance

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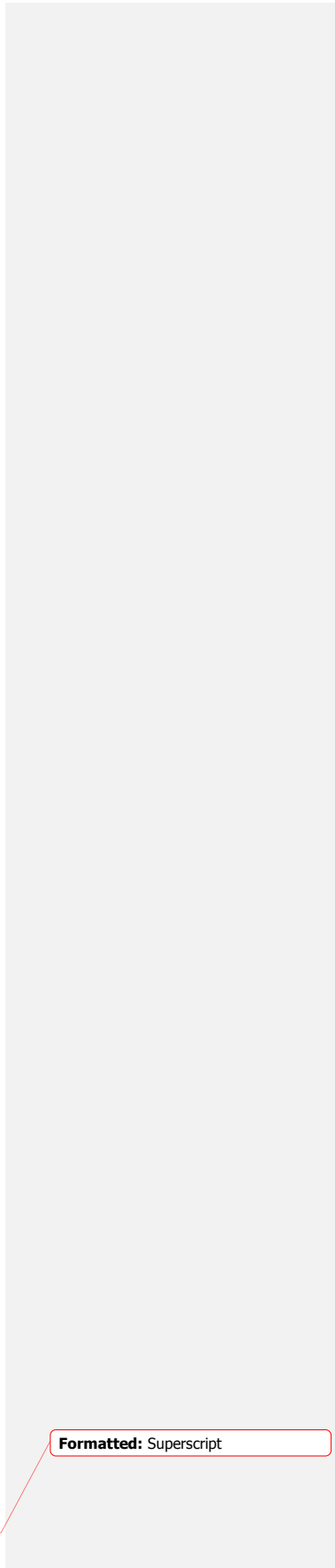
Date

Corporate Procurement ~~Officer~~ ~~Assistant~~

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Date

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SUPPLIER SELECTION FORM FOR QUOTE/TENDER VALUES UP TO £10,000

<u>Service</u>			
<u>Officer undertaking supplier selection</u>			
<u>Description of goods or services to be purchased:</u>			
Suppliers invited to quote/tender: (please keep quote/tenders with this form)			
<u>Supplier Name</u>		<u>Quote/Tender Value (£)</u>	
<u>Please document rationale for selecting these suppliers</u>			
<u>Successful Supplier:</u>			
<u>Please state your reasons for selecting this supplier.</u> <u>If the most financially favourable tender or quote or the most economically advantageous tender or quote has not been selected, please explain why. What costs savings, if any, have been made?</u>			
<u>Procuring Officer (please print name)</u>		<u>Job Title</u>	
<u>Signature</u>		<u>Date:</u>	

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5. **The Director of Business and Monitoring Officer**

- 5.1 The Director of Business and Monitoring Officer is responsible for the control of Legal, Planning, Building Control, Licensing, Environmental Health, Land Charges, Democratic Services, Economic Regeneration & Strategic Housing,
- 5.2 The Director of Business and Monitoring Officer shall be authorised to act as Solicitor to the Council and to take any action intended to give effect to a decision of the Full Council, Committees, Sub-Committees or an Officer.
- 5.3 The Director of Business and Monitoring Officer is also authorised to discharge the functions of the Monitoring Officer; (the Assistant Head of Legal shall act as Deputy Monitoring Officer in the absence of the Monitoring Officer) and authority is given by Full Council on 24th September 2008 to provide that the Monitoring Officer may update the list of Legislation at Appendix 1 as required.
- 5.4 The Director of Business and Monitoring Officer is responsible for the day to day management of the Council's functions in relation to:
- a) the commencement, defence, withdrawal or settlement of legal or other proceedings
 - b) the authorisation of Council employees to conduct legal matters in court
 - c) contracts
 - d) the requirements of the Data Protection Act 1998, Freedom of Information Act 2000 and the Regulation of Investigatory Powers Act 2000 and the Environmental Information Regulations 2004. [The Director of Business is the Senior Responsible Officer for the purposes of the Regulation of Investigatory Powers Act 2000.](#)
 - e) environmental health, environmental protection, public health and land drainage
 - f) Regulatory licensing matters.
 - House to House and Street Collections
 - Licensing of Hackney Carriage Vehicles and Drivers
 - Licensing of Private Hire Operators, Vehicles and Drivers
 - Second Hand Goods Dealers
 - Hypnotism
 - Sex Establishments
 - Street Trading
 - Licensing Matters (Licensing Act 2003)
 - Licensing Matters (Gambling Act 2005)
 - g) Building Control
 - h) Development Control

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recommended by Officers for refusal.

those matters not listed for decision by the Development Control Committee .

To make applications to the Home Secretary for consent to make Orders under the Public Order Act 1986 upon such terms as the Director of Business considers appropriate having regard to any application of the Chief Constable and in consultation with the Leader or his Deputy if unavailable and consideration of any provision of the Human Rights Act 1998 and any other legislative or legal provision the Director of Business deems appropriate. The authorisation includes the making of any appropriate Orders following the receipt of any consent of the Home Secretary.

MATTERS TO BE SUBJECT TO CONSULTATION WITH THE PORTFOLIO HOLDER

Amendments to minutes in cases of error

Consultations on Strategic planning applications in cases in which the time limit for response expires before the next Committee

Consultation responses to Government papers

EXERCISE OF DELEGATED POWERS

The Director of Business may authorise the Planning Manager/Building Control Manager and other officers to determine these matters on their behalf.

(The Head of Finance is responsible for submitting all planning applications on behalf of the Council (See Terms of Reference of the Development Control Committee)).

- 5.6 All functions/consultations relating to footpaths/bridleways, byways and rights of way.
- 5.7 The Director of Business shall be identified as the "Appropriate Officer" under Section 243 of the Housing Act 2004.

6. The Director of Business

- 6.1 The Director of Business shall be authorised to exercise strategic control of Financial Services, Policy and Performance, Elections, Civic and Ceremonial, Committee Management, Committee and Member Services, and Town Twinning.

7. Head of Finance

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ARTICLE 3 - CITIZENS AND THE COUNCIL

3.01 Citizens' Rights and Responsibilities

Citizens have the following rights:-

- a) **Voting and Petitions.** Citizens on the electoral roll for the Borough have the right to vote and sign a petition to request a referendum for an elected mayor.
- b) **Information.** Citizens have the right to:
 - i) attend meetings of the Council its Cabinet and its Committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
 - ii) see reports and background papers (excluding confidential or exempt information) and any records of decisions made by the Council, its Cabinet and Committees;
 - iii) inspect the Council's accounts and make their views known to the external auditor;
 - iv) inspect any document as set out in the Councils Publication Scheme;
 - v) contact Councillors about all matters of concern to them;
 - vi) obtain a copy of the Council's Constitution;
 - vii) find out from the Forward Plan what Key Decisions are to be discussed by the Council, its Cabinet and Committees.
- c) **Participation.**

The Council welcomes participation by its citizens in its work. For further information on your rights as a Citizen please contact the Committee and Member Services Manager – on 01706 252423 or democracy@rossendalebc.gov.uk

Citizens have the right to:-

- i) submit written questions to Council meetings (they must provide their name, postal address details, and any group/organisation they are representing). Written questions will only be read out at the meeting if the questioner (or his/her representative) is in attendance.
- ii) to ask questions at its Cabinet and Committee meetings,
- iii) to be consulted on the level and quality of local services in accordance with the Council's Consultation Strategy.
- iv) contribute to investigations by the Overview and Scrutiny Committees.

- ii) requires the disclosure of exempt or confidential information
- iii) is defamatory, frivolous or offensive
- iv) is substantially the same as a question which has been asked at a meeting of the Council in the past six months.

9.6 **Record of Questions**

The Head of Paid Service will immediately send a copy of written questions to the Leader and/or the appropriate Committee Chair. Rejected questions will include reasons for rejection.

9.7 **Asking the Question at the Meeting**

The Mayor will invite the questioner to read the written question. If a questioner who has submitted a written question is unable to be present a written reply will be given [\(see section on Citizens' Rights and Responsibilities Part 2\)](#).

9.8 **Answers to Questions**

The Leader of the Council will determine which Cabinet Member will answer a particular question.

9.9 **Written Answers**

Any question which cannot be dealt with during Public Question Time will be dealt with by a written answer.

10 **QUESTIONS BY MEMBERS**

10.1 Subject to Council Procedure Rule 10.2, a Member of the Council may put a written question to:

The Leader

A Member of the Cabinet

The Chairman of any Committee or Sub-Committee

The Member of the Council appointed to a Joint Authority and nominated as Spokesperson for the Joint Authority.

The Member of the Council appointed as the Council's representative on an Outside Body.

The Question must be on any matter for which the Council has a responsibility or which affects the Borough.