

CONTRACT PROCEDURE RULES

1. INTRODUCTION

- 1.1 The primary objective of the Council's Contract Procedure Rules is to ensure that all contracts for works, goods and services are entered into in a manner that secures value for money and is demonstrably free from impropriety.
- 1.2 The Council's Contract Procedure Rules also ensure that:
- a) Contract selection and award procedures are conducted fairly, in a properly regularised manner and in accordance with relevant legal requirements.
 - b) Strategic service delivery and supply partners are used wherever possible to ensure value for money is obtained and the cost to procure is minimised.
 - c) Local firms are employed whenever they offer as good value for money as other firms and their selection is in accordance with the Council's legal obligations, for example in relation to European procurement rules.
 - d) The Council's strategic policies are taken into account, for example in promoting the economic development of Herefordshire and in relation to protecting the environment.
 - e) Alternative methods of procurement compatible with the objectives of the Contract Procedure Rules have been considered.
 - f) Procurement procedures are kept under review in order to ensure continuous improvements to services and provide Best Value to the community of Herefordshire.
 - g) Procurement of ICT equipment is achieved using the Council's on-line procurement system.
- 1.3 The Director of Resources has overall responsibility for the preparation of the Council's Contract Procedure Rules. Responsibility is delegated to the Head of Financial Services for all contracting and procurement issues relating to works, goods and services. The Strategic Procurement Manager assists the Head of Financial Services in this task.
- 1.4 The Head of Financial Services and Strategic Procurement Manager work very closely with the Head of Legal & Democratic Services due to the significant legal issues involved in contracting and procurement activity. This separation of duties within the Council's contracting and procurement function is an important internal control.
- 1.5 It should be noted that the Council's Contract Procedure Rules should be read in conjunction with the Council's Standing Orders, Scheme of Delegation, Budget & Policy Framework Rules and Financial Procedure Rules.
- 1.6 **It should also be noted that failure to observe the Council's Contract Procedure Rules could lead to disciplinary action.**
- 1.7 Please note that all financial limits outlined in this document exclude Value Added Tax (VAT).

2. STANDARDS OF CONDUCT

2.1 Declarations of Interest

2.1.1 Members and officers must ensure that they comply with the provisions of Standing Order 2.8 (Members) on the declaration of interests and Appendix 14 of the Constitution (officers) regarding the declaration of interests.

2.2 Gifts and Hospitality

2.2.1 Any offer of gift, favour or hospitality made by any person or firm doing or seeking to do business with the Council must be treated with extreme caution.

2.2.2 Any such offers must be noted on the appropriate form and reported to the Head of Legal and Democratic Services who shall maintain and make available to the Council's internal and external auditors a register of such matters.

2.2.3 Acceptance of gifts and hospitality must be in accordance with the Council's policies on such matters.

2.3 Honesty

2.3.1 All Members must follow the Members' Code of Conduct.

2.3.2 All employees must follow the Employee Code of Conduct (as set out in the Council's Employee Induction Handbook and available from Human Resources).

2.3.3 All officers must make sure that employees involved in an in-house tender for a contract do not take part in the decision on the award of such a contract.

3. OFFICER RESPONSIBILITIES

3.1 Chief Executive's Responsibilities

3.1.1 The Chief Executive is responsible for resolving issues concerning the operation of the Council's Contract Procedure Rules seeking advice as necessary from the Director of Resources **and** the Head of Legal & Democratic Services.

3.2 Directors' Responsibilities

3.2.1 All Directors are responsible for:

- a) Monitoring compliance with the Council's Contract Procedure Rules in relation to contracts funded by their Directorate budget.
- b) Appointing Contract Monitoring Officers (see 3.4 below) and ensuring they support them in their role and obtain regular briefings from them.
- c) Appointing a senior member of staff to the Corporate Procurement Group (see 3.5 below).
- d) Establishing, maintaining and utilising Approved Contractors Registers for their Directorate in accordance with section 4 of the Council's Contract Procedure Rules.

- e) Bringing the provisions of the Council's Contract Procedure Rules to the attention of their staff.
- f) Ensuring that the contracts within their Directorate are legal, comply with Contract Procedure Rules and Financial Procedure Rules and protect the Council's interests fully.
- g) Ensuring that the Council's Criminal Records Bureau policies and procedures are followed.

3.2.2 The Director of Resources has overall responsibility for the preparation and review of the Council's Contract Procedure Rules but must do so in agreement with the Head of Legal & Democratic Services.

3.3 Head of Service Responsibilities

3.3.1 The Head of Legal & Democratic Services is responsible for:

- a) Providing legal advice and guidance to Members and officers on the operation of the Council's Contract Procedure Rules and all contracting and procurement activity.
- b) Working with the Director of Resources on the preparation and review of the Contract Procedure Rules.
- c) Assisting the Chief Executive with the resolution of questions regarding the interpretation of the Council's Contract Procedure Rules.
- d) Advising on the preparation of contract documentation.
- e) Maintaining a central Procedures Exemption Register.
- f) Informing relevant officers of any information received that calls into question the suitability of a contractor, consultant, agency or any other person carrying out work for the Council.
- g) Maintaining a Contracts Register and keeping it up to date following notification of changes.

3.3.2 The Head of Financial Services is responsible for providing the professional lead on all the non-legal aspects of contracting and procurement relating to works, goods and services. They are also responsible for supervising the Corporate Procurement Group's activities (see 3.5 below).

3.4 Contract Monitoring Officers' Responsibilities

3.4.1 Directors shall appoint one or more Contract Monitoring Officer(s) to take responsibility for contracts with an estimated total value (excluding VAT) in excess of £50,000. Directors shall nominate a Contract Monitoring Officer for each contract and nominate one of their Contract Monitoring Officers to be responsible for the overall reporting and maintenance of contract records within the Directorate. A responsible officer shall be appointed for all contracts below £50,000.

3.4.2 Contract Monitoring Officers are responsible for liaising fully with Financial Services and Legal Services on all matters relating to contracting and procurement.

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- 3.4.3 Contract Monitoring Officers are responsible for agreeing exemptions from the formal tendering procedures with the Head of Financial Services/Strategic Procurement Manager **and** the Head of Legal and Democratic Services. All exemptions are to be approved in writing and reported in line with the requirements of Section 10 of the Council's Contract Procedure Rules.
- 3.4.4 Contract Monitoring Officers are responsible for liaising with officers administering contracts regarding any reports concerning failures by contractors to comply with contractual obligations or otherwise satisfactorily complete work.
- 3.4.5 Contract Monitoring Officers are responsible for posting any information they receive concerning the suitability of a contractor to carry out work for the Council on the Contracts Watch sub-folder of the Procurement/Contract Management public folder on the Council's Intranet. The message should advise any officer who has employed or is considering employing the contractor to contact the Head of Legal & Democratic Services for further information as the message should not state the reason for concern. The Contract Monitoring Officer should inform the Head of Legal & Democratic Services in writing of the reasons for the alert.
- 3.4.6 Contract Monitoring Officers are responsible for emailing copies of their Approved Contractor Registers to the central Approved Contractor Register sub-folder of the Procurement / Contract Management public folder on the Council's Intranet. They are responsible for keeping their Approved Contractor Registers updated with any additions, suspensions or removals (section 4 of the Council's Contract Procedure Rules refers). A hard copy shall be provided to the Strategic Procurement Manager.
- 3.4.7 Contract Monitoring Officers are responsible for emailing copies of their Suspended and Removed Contractors Lists to the central Suspended and Removed Contractors List sub-folder of the Procurement / Contract Management public folder on the Council's Intranet. A hard copy shall be provided to the Strategic Procurement Manager.
- 3.4.8 Contract Monitoring Officers are responsible for maintaining records of the:
- a) Contractors included in their Approved Contractor Registers.
 - b) Contracts awarded including the nature and value of contracts and the names of successful tenderers.
 - c) Total value of contracts awarded to each successful tenderer during each financial year.
 - d) Names of unsuccessful tenderers and reasons why their tenders were not accepted if the reason is other than price.
 - e) Details of any failure by a tenderer to comply with instructions to tenderers.
 - f) Details of the reasons for any tenders being withdrawn.
 - g) Details of failures by contractors to submit tenders after having requested and been invited to do so.
 - h) Contractors' performance.
 - i) Reasons for opening late tenders (see section 5 of the Council's Contract Procedure Rules).

- j) Reasons for exceptions to tendering procedures (see section 10 of the Council's Contract Procedure Rules).

3.4.9 The lead Contract Monitoring Officer appointed by the Director is responsible for keeping their Director briefed on contract and procurement issues within the Directorate.

3.5 Strategic Procurement Manager's Responsibilities

3.5.1 Working to the Head of Financial Services, the Strategic Procurement Manager is responsible for providing advice on all aspects of the Council's Contract Procedure Rules save for the legal issues. The responsibility for the legal aspects of the Council's Contract Procedure Rules rests with the Head of Legal & Democratic Services.

3.5.2 The Strategic Procurement Manager is responsible for chairing the Council's Corporate Procurement Group. Each Director shall appoint a senior officer to be a member of the Corporate Procurement Group and the membership shall include the Head of Legal & Democratic Services or their nominated representative.

3.5.3 The Council's Corporate Procurement Group will meet at least quarterly in order to fulfil the following responsibilities:

- a) Continually reviewing the Council's Procurement Strategy and making recommendations on appropriate enhancements to the relevant Head of Financial Services to take forward in consultation with the Head of Legal & Democratic Services.
- b) Maintaining a register of current contracts.
- c) Monitoring compliance with the Council's Contract Procedure Rules and reporting exceptions to the Head of Financial Services and Head of Legal & Democratic Services for action.
- d) Preparing an annual report on the operation of and compliance with the Council's Contract Procedure Rules for the Head of Financial Services to take forward in consultation with the Head of Legal & Democratic Services.
- e) Continually reviewing the Council's Contract Procedure Rules to ensure they keep pace with developing best practice and advising amendments as necessary.
- f) Prescribing the information needed from Contract Monitoring Officers and maintaining a central record of the information notified by Contract Monitoring Officers.
- g) Reviewing the Contract Procedure Rules Exemption Register and preparing an annual report on the exemptions recorded for the Head of Legal & Democratic Services.
- h) Providing training and support for employees involved in procurement activities.

3.6 Responsibilities of all Officers

3.6.1 All officers are responsible for:

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- a) Following the Council's Contract Procedure Rules and any codes of practice, guidance or instructions provided by the Head of Financial Services/Strategic Procurement Manager and the Head of Legal & Democratic Services.
- b) Following all relevant English and European procurement laws.
- c) Seeking advice from the Head of Financial Services/Strategic Procurement Manager and the Head of Legal & Democratic Services in the case of any uncertainty.
- d) Ensuring that any departure from these Contract Procedure Rules is agreed with the Head of Financial Services/Strategic Procurement Manager **and** the Head of Legal & Democratic Services.
- e) Following the Council's Employee Code of Conduct (a copy is included in the Employee Induction Handbook and can be obtained from Human Resources).
- f) Following the Council's Financial Procedure Rules and the systems and procedures that are in place to control budgets properly.
- g) Declaring any interest that could influence their judgement in contracting matters to their Director and the Head of Legal & Democratic Services.
- h) Not taking part in **any** decisions relating to the procurement of work, goods or services if they are part of a formal in-house bid for that work.
- i) Reporting any suspected fraudulent, corrupt or other irregularity to the Chief Internal Auditor.
- j) Ensuring that approved contracts are value for money.

4. APPROVED CONTRACTOR REGISTERS

4.1 Introduction

- 4.1.1 Approved Contractor Registers are very useful for some types of works, goods or services contracts and can be an efficient way of identifying suppliers.
- 4.1.2 **Approved Contractor Registers cannot be used for contracts governed by the European procurement rules as such contracts must be advertised unless the Approved Contractor Register has been drawn up in compliance with European procurement rules.**
- 4.1.3 If an Approved Contractor Register exists and it is appropriate to use it then the register should be used.
- 4.1.4 If an Approved Contractor Register is to be used, a method for selecting the suppliers on it that will be invited to tender must be determined. The method chosen must ensure that all the suppliers on the relevant Approved Contractor Register have the same opportunity over time to tender for work.
- 4.1.5 Officers may use Government-backed Approved Contractor Registers or other registers approved by the Corporate Procurement Group to select those to be invited to bid for a

contract or to buy one-off items. The process and criteria used for choosing prospective suppliers from a Government-backed or other registers must be agreed with the Head of Financial Services/Strategic Procurement Manager **and** the Head of Legal & Democratic Services.

4.2 Managing an Approved Contractor Register

- 4.2.1 Officers must advertise and invite applications from potential suppliers to be added to an Approved Contractor Register for any given type of contract for works, goods or services.
- 4.2.2 Advertisements inviting applications from potential suppliers to be included in an Approved Contract Register should be placed in the relevant local and trade press and, if necessary, the EC Journal.
- 4.2.3 The information needed from potential suppliers in order to assess whether they are suitable for inclusion on an Approved Contract Register should be gathered using the same method for all suppliers seeking inclusion on the Register. Further advice on the methods that can be used to gather information from potential suppliers is given in section 5 of the Council's Contract Procedure Rules.
- 4.2.4 When considering whether to include a contractor on an Approved Contractor Register, officers must look at each contractor's:
- a) Past performance on similar contracts (quality and costs).
 - b) Technical capacity.
 - c) Other existing contractual commitments.
 - d) Specialist experience in the type of products and services being procured.
 - e) Financial situation.
 - f) Public and employer's liability insurance arrangements.
 - g) Health & safety arrangements.
 - h) Equalities policy.
 - i) Contractors' reputation.
- 4.2.5 Officers may add other criteria to help them select suppliers for inclusion on an Approved Contractor Register providing the additional criteria are relevant, do not prevent fair competition and do not illegally discriminate between suppliers.
- 4.2.6 An Approved Contract Register must state the value of work that can be placed with each supplier at any one time.
- 4.2.7 An Approved Contractor Register should normally contain at least five suppliers. Advice and guidance must be sought from the Head of Financial Services/Strategic Procurement Manager where fewer than five suppliers qualify for inclusion as this might indicate that an Approved Contractor Register is not the most suitable route for the works, goods or services in question.

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- 4.2.8 Officers must review their Approved Contractor Registers at least every two years using the criteria set out in 4.2.4 and 4.2.5 to assess whether a supplier should remain on the Register. The review should also consider whether the value of work that can be placed with each supplier at any one time should be revised.
- 4.2.9 Officers should consider suspending or removing suppliers from an Approved Contractor Register as a result of such a review or at other times if there are grounds to do so such as poor performance, disputes or poor financial standing. See 4.3 below for guidance on how to suspend or remove a supplier from an Approved Contractor Register.
- 4.2.10 Officers must advertise to compile subsequent Approved Contractor Registers at least every five years or earlier if less than five suppliers remain on the Register.
- 4.2.11 All contracts let using an Approved Contractor Register must comply with the Council's Contract Procedure Rules in every respect.

4.3 Suspending or Removing a Supplier from an Approved Contractor Register

- 4.3.1 If an officer receives a materially adverse report concerning a contractor's performance that suggests they should no longer be on an Approved Contractor Register, the officer must seek advice from the Head of Financial Services/Strategic Procurement Manager who will, in consultation with the Head of Legal & Democratic Services, advise whether suspension or removal is appropriate.
- 4.3.2 If the Head of Financial Services/Strategic Procurement Manager determines after consultation with the Head of Legal & Democratic Services that the supplier should be suspended or removed from an Approved Contractor Register, the officer shall follow this advice and amend the Register accordingly. The officer shall also include the contractor in a List of Suspended and Removed Contractors and notify the contractor accordingly.
- 4.3.3 An officer must seek approval as outlined in 4.3.1 and 4.3.2 to lift a suspension on a supplier or re-admit a supplier to an Approved Contractor Register.
- 4.3.4 If an officer concludes as a result of a routine review of an Approved Contractor Register that a supplier should be removed from that Register, then they must seek advice as outlined in 4.3.1 and 4.3.2.

5. FORMAL QUOTATION AND TENDERING PROCEDURES

5.1 Introduction

- 5.1.1 West Mercia Supplies (WMS) or their supply partners must be used for all purchases of office supplies and consumables, furniture, photocopiers, janitorial supplies and personal protective equipment.
- 5.1.2 Proposals to use an alternative supplier for such goods must be approved prior to an order being placed using a form prepared by the Strategic Procurement and Efficiency Review Manager.
- 5.1.3 Requests to use an alternative supplier to WMS will be approved or otherwise by the Head of Financial Services.

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- 5.1.4 Failure to comply with the Council's policy on the use of WMS will lead to a corresponding budget reduction.
- 5.1.5 Officers must also use Council approved strategic service delivery partners (such as Amey Wye Valley Limited and Owen Williams) where appropriate to do so.
- 5.1.6 Procurement of ICT equipment must be achieved using the Council's online procurement system.
- 5.1.7 The following procedures must be followed for all other types of procurement:
- a) **Purchases in total valued less than £1,000** – no requirement for formal quotations or tenders but officers must be able to demonstrate value for money has been obtained and that all other relevant aspects of the Council's Contract Procedure Rules have been followed.
 - b) **Purchases in total valued between £1,001 and £10,000** – two formal quotations must be obtained (see 5.2 below).
 - c) **Purchases in total valued between £10,001 and £50,000** – three formal quotations must be obtained (see 5.2 below).
 - d) **Purchases in total valued between £50,001 and up to relevant EU limit** – formal tendering arrangements must be followed (see 5.3 below).
 - e) **Purchases in total valued in excess of relevant EU limit** – European procurement rules must be followed (see section 6 of the Council's Contract Procedure Rules).
- 5.1.8 Officers must consider all aspects of the contract that will eventually be entered into with a supplier (for example equipment acquisition costs **and** associated maintenance costs) over the entire life of the contract (often in excess of one year) in estimating the total value of a purchase and hence determining which of the procurement routes identified in 5.1.7 applies. Officers are strictly prohibited from circumventing the Council's Contract Procedure Rules by letting short term contracts and / or separating related items in order to avoid using the correct procurement route.
- 5.1.9 It is important to respect confidentiality in formal quotation and tendering processes. Officers must not therefore disclose any information they have about potential suppliers to others persons / suppliers potentially competing for the same contract.
- 5.1.10 Official orders should be raised for works, goods and services in line with the Council's Financial Procedure Rules.

5.2 Formal Quotation Procedure

- 5.2.1 The requisite number of formal quotations must be obtained for all purchases (other than those with WMS or a Council approved strategic service delivery partner) between £1,001 and £10,000 in total (see 5.1.7).
- 5.2.2 A quotation is a written estimate of the cost to execute works or supply goods, materials or services.

- 5.2.3 Officers must produce a description of the goods or specification of the services required before seeking tenders. This will enable a fair comparison of prices. The level of detail in the description or specification will depend on the value and type of goods or services being purchased. Advice can be obtained from the Strategic Procurement Manager
- 5.2.4 Formal quotations should contain as a minimum the following information:
- a) Date and reference number.
 - b) Supplier company details.
 - c) Council officer / department name.
 - d) Item/part number.
 - e) Description specification.
 - f) Quantity required.
 - g) Unit/service cost.
 - h) Total cost.
 - i) Delivery information.
 - j) Payment details.
 - k) Any special requirements.
 - l) Details of any discounts/rebates.
- 5.2.5 An appropriate Approved Contractor Register should be used if available to select the suppliers that will be asked to provide a quotation.
- 5.2.6 Every person or firm who makes a quotation must be treated fairly. Selection of the preferred supplier from the quotations received must be done in accordance with the principles set out in the formal tendering procedures (5.3 refers).
- 5.2.7 Any departures from the formal quotation procedures must be discussed with the Head of Financial Services / Strategic Procurement Manager who will agree or otherwise any exception in consultation with the Head of Legal & Democratic Services. A record must be kept of the reasons for and approval given for departing from the formal quotation procedure.
- 5.2.8 Formal quotations for contracts below £50,000 (excluding VAT) should be kept for a minimum of two years after the contract has been awarded.

5.3 Formal Tendering Procedure

Introduction

- 5.3.1 Formal tendering procedures apply to all contracts with a total value between £50,001 and the prevailing European procurement limit for supplies and services (currently £144,00) except for those with WMS or a Council approved strategic service delivery partner. To ensure that European procurement rules are properly applied, Contract Monitoring Officers should liaise

with the Strategic Procurement Manager for all contracts with an estimated value in excess of £50,000.

5.3.2 It is important to respect confidentiality during all stages of the formal tendering process. Officers must not therefore disclose any information they have about potential suppliers to other persons / suppliers potentially competing for the same contract.

5.3.3 Advice and guidance on how to describe the works, goods or services required for formal tendering purposes can be obtained from the Strategic Procurement Manager.

Selecting Potential Tenderers

5.3.4 An Approved Contractor Register should be used wherever possible for selecting potential tenderers for an ordinary contract. Officers must record the names of the persons / suppliers invited to tender from an Approved Contractor Register.

5.3.5 If an Approved Contractor Register does not exist or is unsuitable for selecting potential tenderers, officers will either need to advertise for potential tenderers or approach selected ones in cases where specialist works, goods or services are required.

5.3.6 If an Approved Contract Register is available but considered unsuitable for a specific contract, the Contract Monitoring Officer should discuss the reason with the Head of Financial Services/Strategic Procurement Manager. The Head of Financial Services/Strategic Procurement Manager should then consult with the Head of Legal & Democratic Services. If agreement is reached, the Director shall give approval in writing.

5.3.7 Officers must also seek guidance as outlined in 5.3.6 above if they propose to approach selected persons or firms as potential tenderers.

5.3.8 Officers must keep a written record of the reasons for departing from the usual practice of selecting potential tenderers from an existing Approved Contractor Register and the approval given. They must also record the reasons for approaching selected tenderers and the approval given.

5.3.9 Advertisements for potential tenderers may be placed in relevant trade or professional journals, local and national newspapers and the Council's website.

5.3.10 The method for collecting the information needed from potential suppliers to assess whether to invite them to submit a formal tender and the method of assessment must be agreed before the selection process begins.

5.3.11 A standard business questionnaire may be used to collect information from the potential suppliers but the same questionnaire must be used for all potential suppliers. Alternatively, information may be gathered by inviting potential suppliers to express an interest in writing covering the specifics identified by the officer in the advertisement or letter of invitation. Further advice can be obtained from the Strategic Procurement Manager.

5.3.12 The method for selecting tenderers must:

- a) Treat all tenderers in the same way.
- b) Keep the process clear and simple.
- c) Record all the selection decisions.

5.3.13 Officers must consider the following when selecting suppliers to be invited to tender for a particular contract:

- a) Past performance on similar contracts (quality and costs).
- b) Technical capacity.
- c) Other existing contractual commitments.
- d) Specialist experience in the type of products and services you are looking for.
- e) Financial situation.
- f) Public and employer's liability insurance arrangements.
- g) Health & safety arrangements.
- h) Equalities policy.
- i) Contractors' reputation.

5.3.14 Officers may also use information from referees and from company searches to assess which persons or firms to invite to submit a tender.

5.3.15 At least three potential suppliers should be invited to tender. If there are only three potential suppliers (e.g. due to the number of suppliers responding to an advertisement) they must all be invited to tender.

5.3.16 If there are only one or two suppliers indicating they wish to be considered then an exemption from the Contract Procedure Rules **must** be sought from the Head of Legal & Democratic Services and his approval given before proceeding. The names or details of suppliers must not be passed on to anyone at any time during the tendering process.

Inviting Tenders

5.3.17 Having arrived at a preferred tenderer list using the process described in the preceding paragraphs of 5.3, the officer needs to decide and record how the tenders will be assessed before inviting potential suppliers to tender.

5.3.18 Each potential supplier should be sent an invitation to tender, the contract documents, a tender form and a return label bearing the name of the contract and the word 'Tender' together with instructions on when and how the tenders should be returned. They must be instructed to return their tender in a plain envelope addressed to the Head of Legal & Democratic Services. There should be no marks or writing on the envelope, other than the address and the return label. Tenderers must be advised not to use a franking machine if they propose posting their tender.

5.3.19 A copy the Council's standard contract terms should also be included so that the tenderer is aware of the terms and conditions that will form part of the final contract. When an industry standard contract is used advice should be sought from the Head of Legal & Democratic Services on which of the standard clauses to incorporate.

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- 5.3.20 Tenderers must be told that tenders sent by fax or e-mail will not be accepted because the information cannot be kept confidential.
- 5.3.21 Tenders can be returned by hand or by post to the Head of Legal & Democratic Services, Brockington, 35 Hafod Road, Hereford, HR1 1SH. Tenderers should be advised to use postal services that provide them with proof of postage and the time of sending.
- 5.3.22 Tenderers should be advised that tenders will be opened at the same time and no advantage is secured by seeking to delay submission until the last moment.
- 5.3.23 The invitation to tender **must** state that the Council does not bind itself to accepting the lowest or any tender.
- 5.3.24 The invitation to tender needs to explain how the Council will deal with any mistakes it identifies in the tender documentation submitted (see Assessing Tenders below).
- 5.3.25 The invitation to tender **must** set out the criteria that will be used to select the preferred supplier. The assessment criteria must not prevent fair competition or discriminate between tenderers in any way. They must also comply with relevant legislation.
- 5.3.26 The responsible officer must discuss and agree the tender assessment process with the Head of Financial Services/Strategic Procurement Manager who will consult the Head of Legal & Democratic Services as appropriate. This will include a decision on who is involved in the tender assessment process. It is expected that at least two officers are involved, one of whom may be the Strategic Procurement Manager of their nominated representative if the contract is high value or non-standard.
- 5.3.27 The tender assessment criteria might include:
- a) Price.
 - b) Technical standard.
 - c) Experience and skills.
 - d) Practical considerations.
 - e) Financial proposals.
 - f) Financial standing.
 - g) Contract management arrangements.
 - h) Quality management proposals.
 - i) Delivery proposals.
 - j) Employment practices.
 - k) Environmental considerations.
 - l) Diversity issues.

- 5.3.28 If an officer wants to know whether the supplier has received an invitation to tender, they must enclose a 'Tender Received Confirmation Form' with the invitation to tender documentation. They must not contact the potential supplier to check they have received the documentation.
- 5.3.29 During the period allowed for preparing tenders, all communications with tenderers must be recorded. If a tenderer raises a query during this period, it must be passed on to all other tenderers, together with the reply. The identity of the tenderer who has raised the query **must not** be revealed.

Receiving Tenders

- 5.3.30 The original tender return date should be fixed and unchanged except in appropriate and necessary circumstances. The date cannot be extended to allow only some suppliers extra time or to allow for late tenders. The extension must apply to all. Any proposal to extend the closing date must be agreed by the Head of Legal & Democratic Services.
- 5.3.31 Should it be necessary to extend the time limit for the submission of tenders all potential tenderers should be informed of the new date in good time before the original submission date.
- 5.3.32 Tenders should be recorded in a register that shows the time, date and name of the contract as they are received. Tenders delivered by hand should be acknowledged with a written receipt and the time, date and name of the contract similarly recorded in the register. All tender envelopes must be date stamped on receipt with the time of receipt written on the envelope and countersigned by the receiving officer.
- 5.3.33 Tenders must not be opened until the final deadline for receiving them. Tenders must be stored securely until it is time for them to be opened. The storage used should be locked and access to it available only to those officers in Legal & Democratic Services responsible for handling tenders and they must ensure that keys are secure at all times.
- 5.3.34 A Legal & Democratic Services officer shall be responsible for opening the tenders for a contract in the company of at least one other officer, one of whom must be the responsible officer or Contract Monitoring Officer for the contract. The Legal & Democratic Services officer must ensure the number of tender envelopes to be opened tallies with the number recorded in the tender register and shall sign the register to indicate that this is the case.
- 5.3.35 If a tender is opened by mistake before the deadline, a record of how this has happened should be attached to the packaging. The tender should be re-sealed immediately and its contents kept confidential.
- 5.3.36 If fewer tenders are received than expected, do not contact tenderers to ask whether they have sent one in.
- 5.3.37 In exceptional circumstances, Legal & Democratic Services, in consultation with the Head of Legal & Democratic Services, can accept a late tender (see below).

Opening & Recording Tenders

- 5.3.38 The Head of Legal & Democratic Services must make sure that the procedures for opening tenders are followed and that the correct records and documents are completed.
- 5.3.39 It is important that at least three officers are present throughout the tender opening and recording process. One must be a Legal & Democratic Services officer who will assume responsibility for the tender opening process. One of the others must be the responsible

officer or Contract Monitoring Officer. The third officer must be from Financial Services or Audit Services.

- 5.3.40 A time for opening the tenders must be agreed before the tenderers return them. The tenders should be opened as soon as possible after the deadline for returning them. If a delay becomes necessary, the responsible officer must agree to this and the reason must be recorded. **Never delay the time for opening tenders to allow for late tenders.**
- 5.3.41 All tenders relating to a contract must be opened at the same session and opened one at a time. Each officer present must sign, date and write on the tender form the time that the tender was opened.
- 5.3.42 The details of each tender must be recorded on a tender return form. Each officer must check, sign and date the form.
- 5.3.43 The officers must sign each page of the tender document unless it is very long. In this case, they may only sign the pricing pages.
- 5.3.44 Once the tenders have been opened, they should be held in a secure place by the responsible officer or Contract Monitoring Officer.

Late Tenders

- 5.3.45 The Head of Legal & Democratic Services must reject tenders that are received after the deadline unless none of the tenders submitted on time have been opened or there is proof that the tender was posted in enough time to meet the deadline (for example, the postmark date is the day before the deadline for a first class delivery or is three days before the deadline for a second class delivery).
- 5.3.46 If the Head of Legal & Democratic Services decides to accept a late tender, they must treat that tender in the same way as all other tenders. The full details of the decision to accept the late tender must be recorded on file.
- 5.3.47 If the late tender is rejected, it should be returned unopened to the tenderer and a record of posting kept on file for two years. The tenderer should be informed in writing of the date and time the tender was received.

Assessing Tenders

- 5.3.48 The responsible officer or Contract Monitoring Officer will ensure the tenders are assessed in accordance with the advice provided by the Head of Financial Services/Strategic Procurement Manager (5.3.26 refers).
- 5.3.49 Before assessing the tenders, the responsible officer needs to check that each part of them meets the requirements of the specification. The responsible officer also needs to make sure that there are no mistakes and that nothing is missing
- 5.3.50 If there are substantial omissions of data or documentation that make it impossible to assess the tender, or if there is a fundamental mistake, this should be fully recorded and the tender rejected.
- 5.3.51 The accuracy of the figures in each tender must be checked. If mistakes are found that do not affect the overall price of the goods or services, the tenderer must be contacted and asked to confirm the correct figures in writing. If there appears to be any other mistake then the tender should be rejected.

- 5.3.52 A record of all mistakes must be kept and attached to the tender documents together with any corrections agreed with the tenderer.
- 5.3.53 The correct tenders can then be assessed in accordance with the assessment criteria that have previously been agreed in accordance with these formal tendering procedures.
- 5.3.54 The assessment criteria used for the tender evaluation must be the same in all respects as the criteria advised to prospective suppliers at the beginning of the process.
- 5.3.55 Assessment details are strictly confidential and must not be passed on to anyone else. During the course of the assessment, tender documentation must be kept secure and confidentiality preserved. If, in a major tendering exercise, the documentation is going to be copied or divided to aid the assessment process, a record should be maintained to identify to whom such documents have been issued and the date returned.
- 5.3.56 The responsible officer shall retain a complete set of documents in a secure place in case any parts of the documentation go missing.
- 5.3.57 Once the assessment has been completed the responsible officer should produce a report showing:
- a) The result of the assessment of each tender.
 - b) A comparison of assessment results.
 - c) The recommendation on which tenderer should be offered the contract.

Accepting and Rejecting Tenders

- 5.3.58 The officer should accept the tender that is in the Council's best interests. This will usually be:
- a) The lowest tender where the Council is the purchaser or the highest tender where the Council is the supplier.
- Or
- b) The tender that will be of most economic benefit to the Council. Where this is not the lowest tender, the officer should explain in writing giving objective reasons why that tender is preferred and seek approval from the Head of Legal & Democratic Services to proceed to appoint. A note should be placed on file.
- 5.3.59 The responsible officer should always consider whether their recommendation for awarding the contract should be put before a Cabinet Member, the Cabinet or Council for formal approval **before** contacting the successful tenderer. Sections 12.4 and 12.5 of the Scheme of Delegation (Part 12 of the Constitution) that set out the Council's procedures for making Executive Decisions and Administrative Decisions respectively refer. If in doubt, seek advice and approval from the Head of Financial Services/Strategic Procurement Manager and the Head of Legal & Democratic Services.
- 5.3.60 The officer should write to inform the successful tenderers of the decision as soon as possible **after all necessary approvals have been received.**

- 5.3.61 Care should be taken when issuing letters informing the tenderer that they have been successful as an unqualified acceptance of the tender may create a binding contract before the formal documentation has been completed and signed by the appropriate number of authorised signatories.
- 5.3.62 Acceptance letters, in response to a formal tender, can be used to enter into certain contracts without the need for any additional contract documentation, provided that the letter is signed by the required number of authorised persons appropriate to the value of the contract.
- 5.3.63 Where the tender and acceptance letter are not to form the formal contract documentation (e.g. when an industry standard contract is used or where the formal written contract is to follow), the acceptance letter must be headed "SUBJECT TO CONTRACT". This is to avoid the Council inadvertently entering into a contract before all terms and conditions have been agreed and incorporated and before both parties agree to be formally bound by the contract.
- 5.3.64 Unsuccessful tenderers should be informed after the successful tenderer has been told. If unsuccessful tenderers ask why their tender was not successful then general feedback should be given on the areas of their tender that scored poorly. Officers should not become involved in detailed arguments or discussions in order to justify their decision. If the tenderer requires more detailed information the officer should advise them to put their request in writing and seek appropriate advice before responding in writing.

Negotiating

- 5.3.65 If it is in the Council's best interests, the officer may negotiate with tenderers for more favourable prices or terms. The following conditions apply to negotiating:
- a) Guidance must be sought from the Head of Financial Services / Strategic Procurement Manager who will consult with the Head of Legal & Democratic Services as appropriate before advising on the appropriate course of action.
 - b) Two officers must always be present at negotiations and a full written record of all discussions should be made and signed by both officers. The results of the negotiation process must be shared with the Head of Financial Services / Strategic Procurement Manager.
 - c) All negotiations must be carried out at the Council's offices.
 - d) Officers must not discuss one tenderer's detailed prices, conditions or terms with another tenderer.
 - e) Officers must not give anyone information about the criteria used for assessing the tenders or any other matter connected with the contract or tenders.
 - f) If negotiations lead to a material change in the description of the work, goods or services or other terms, the officer must invite everyone who has provided a tender to re-tender on the basis of the revised contract. If this is the case, the whole process of assessment should start again.
- 5.3.66 If there is an in-house tender for a contract, negotiations must not take place without permission from the Head of Financial Services / Strategic Procurement Manager as outlined in 5.3.65 a) above.

5.3.67 Where the Council is the supplier, the officer, subject to 5.3.65 a) above, may negotiate with the highest tenderer with a view to increasing any consideration payable to the Council.

Awarding a Contract

5.3.68 Before awarding any contract, the officer concerned must first obtain the approval of their Director or their authorised representative, providing the authorising officer with confirmation of:

- a) The competency of the proposed contractor and the adequacy of any necessary insurance.
- b) The prices quoted by the proposed contractor.
- c) The consistency of the proposed action with the objectives and requirements of the Council's Contract Procedure Rules.
- d) The financial stability of the proposed contractor.
- e) A satisfactory credit check if the Council has not dealt with that contractor for more than two years for contracts in excess of £50,000. A credit check should be carried out on all short listed tenderers for contracts in excess of the European procurement limit for supplies and services (currently £144,000). Advice on credit checks should be sought from Audit Services.

5.3.69 Once this approval has been granted, the officer needs to complete the contractual arrangements. The documents should clearly set out the name of the supplier, what the contract is for, and the terms and conditions of the contract. They should also show that there is suitable insurance to protect the Council's interests. Advice on insurance matters is available from the Council's Insurance and Risk Manager. Where an official order is used and where it makes reference to the Council's General Terms and Conditions for Services, Supplies and Works those terms will apply to the contract. If in any doubt with the contract documentation, advice should be sought from the Head of Legal & Democratic Services.

5.3.70 All contracts must be signed by the Head of Legal & Democratic Services. The Head of Legal & Democratic Services will only sign contracts if the Director has given written authority for him to do so. A Director must also sign all contracts where European procurement rules apply.

5.3.71 Officers are responsible for seeking advice from Legal & Democratic Services if they are not clear about the form of contract to be used or changes are needed to the standard form of contract used by the Council.

5.3.72 The relevant Contract Monitoring Officer must be informed of the contract and must record the details of all contracts in the Directorate contract register. Where the value of such contracts exceeds £50,000 they shall be notified to the Head of Legal & Democratic Services.

5.3.73 Officers must keep written records of each contract, including all the quotes and letters they have received and notes of telephone calls and meetings about selecting suppliers. These records must be made available to internal or external audit as required by them.

Publication of Contract Details

5.3.74 Officers must not give tenderers or suppliers any information about the bids or affairs of any other tenderer or contractor unless the law requires it. All information relating to tendering and contracting procedures is confidential.

5.3.75 The only information officers should make public is the name of the successful tenderer and the value of their bid. However, this information must not be released until the contract has been awarded and signed.

5.3.76 If information is published on the amounts of the other bids received, the names of the unsuccessful tenderers must not be disclosed. Officers should ensure that all tenderers are aware that this information will or may be published when they are invited to tender and that the Council will need to meet its obligations under the Freedom of Information Act.

6. EUROPEAN PROCUREMENT RULES

6.1 Introduction

6.1.1 Officers are expected to follow the principles set out in the Council’s Contract Procedure Rules even in if the procurement process comes under the European procurement rules.

6.1.2 The European procurement rules are complex with significant penalties if the legislative requirements are not strictly adhered to. All officers are therefore responsible for seeking advice and guidance at all stages of the process from the Head of Financial Services / Strategic Procurement Manager and the Head of Legal & Democratic Services.

6.2 European Limits

6.2.1 The following table sets out the public sector thresholds for 1st January, 2006 to 31st December, 2007:

	Supplies	Services	Works
Other public sector contracting authorities	£144,371	£144,371	£3,611,319
Indicative Notices	£513,166	£513,166	£3,611,319

6.2.2 The figures are revised every two years on 1st January and officers should check with the Head of Legal & Democratic Services for the latest values.

6.2.3 If a contract for supplying goods or services will be worth more than the limits set out in the table above, the contract may be governed by EC Directives and English Regulations.

6.2.4 The value limits apply to individual contracts and groups of contracts with similar characteristics that are to be agreed in the same year. Contracts with similar characteristics have to be added together to see whether they have reached the value limits. This is to prevent organisations packaging similar contracts into small units to avoid the rules.

6.2.5 Individual contract values are calculated as follows:

- a) If the contract is part of a series or is renewable, its value will be:
 - The value given in the previous financial year (over a 12-month period).

Or

 - The estimated value over the next 12 months from the date the goods, work or service is first provided.

- b) If the contract is for a fixed term of less than four years, the value will be the total value of the contract.
- c) If the contract has no end date or is for a fixed term of more than four years, the value will be the monthly value of the contract multiplied by 48.

6.2.6 If more than one of the above applies, the method that gives the highest value must be used. Again this is to prevent organisations by-passing the rules by choosing a calculation that puts a contract or group of contracts below the value limit.

6.2.7 Once the value of each contract has been calculated, it must be added to the value of other contracts with similar characteristics. If the value of a contract or group of contracts with similar characteristics is greater than the value limit, European procurement rules must be followed. To ensure that the aggregation rules are properly applied, Contract Monitoring Officers should liaise with the Strategic Procurement Manager for all contracts in excess of £50,000.

6.2.8 **Before going any further with a European procurement process, officers must discuss the next steps with the Head of Financial Services / Strategic Procurement Manager and the Head of Legal & Democratic Services.**

6.3 Awarding Contracts Subject to European Procurement Rules

6.3.1 Before issuing an award notification, or if contact is made by an unsuccessful tenderer at any time during the standstill period, contact the Head of Financial Services / Strategic Procurement Manager or your external procurement consultants for advice.

6.3.2 To ensure compliance with the European Court of Justice judgement in the Alcatel case, there must be a **minimum** standstill period of 10 calendar days between advising all tenderers of the award decision and the actual award of the contract. This 10-day standstill period incorporates other specific deadlines that can result in the standstill period being extended.

6.3.3 The standstill period is to allow unsuccessful tenderers an opportunity to challenge any award decision. Where a legal challenge is made within the 10-day standstill period, the contract cannot be awarded until the outcome of the application to court is known. **It is imperative that any correspondence amounting to an acceptance letter is not issued during this period.**

6.3.4 The written notification to the unsuccessful tenderers which triggers the standstill period **must** contain:

- a) The award criteria.
- b) The tenderer's score (where appropriate).
- c) The winning tenderer's score (where appropriate).
- d) The name of the winning tenderer.

6.3.5 The European procurement rules require tender results to be published in the Official Journal within 48 days of the date a contract is awarded. This must be done in consultation with the Head of Legal & Democratic Services.

- 6.3.6 The Head of Financial Services/Strategic Procurement Manager and the Head of Legal & Democratic Services must be consulted on all EU procurements.

7. FRAMEWORK CONTRACTING

- 7.1.1 Framework contracting involves selecting a contractor from a list of contractors on an approved "Framework" for given works, goods or services. The contractors are included on the Framework following a tendering exercise to establish capability, quality and value. The tendering procedures will have had to comply with any relevant English or European law.
- 7.1.2 Purchasers can enter into subsequent 'call-off' contracts from a Framework. Framework contracting is becoming increasingly prevalent in an attempt to avoid bureaucracy and achieve best values via economies of scale.
- 7.1.3 Frameworks can be externally formed (e.g. by Government) or internally formed (e.g. by the Council). The number of approved contractors on a Framework can vary but the minimum number should be three. Frameworks should not be confused with internal Approved Contractor Registers.
- 7.1.4 When an external Framework is formed general terms and conditions are agreed between the Framework contractors and the Framework organiser. These pre-agreed terms and conditions will form a major part of any purchasers' 'call-off' contract and contractors are not obliged to agree to any amendments to them.
- 7.1.5 From the 1st January 2006, **EU Procurement Directive 2004/18/EC** has governed the process under which contracts under Frameworks are to be awarded and in the interests of competition has placed a maximum duration of 4 years on any Framework (unless special justification can be made for a longer period).
- 7.1.6 Officers must take the following steps to ensure compliance with EU Procurement Directive 2004/18/EC when using a Framework contract created since the 1st January 2006:
- a) All the contractors on a Framework that are capable of meeting the purchaser's specification must be allowed to submit a bid against that specification.
 - b) The reasons for selecting a smaller number of contractors on a Framework must be clearly evidenced.
 - c) Award of contract must be on the basis of the criteria for the Framework as set out in the Framework agreement itself, that is, within the original tender documentation setting up the Framework.
- 7.1.7 The Head of Financial Services/Strategic Procurement Manager and the Head of Legal & Democratic Services must be consulted on all Framework contract procurements.

8. OTHER PROCUREMENT PROCEDURES

APPENDIX 5

- 8.1 There are a number of other procurement procedures that may be available in particular circumstances:
- a) Design contests, particularly in the fields of planning, architecture, civil engineering and information technology.
 - b) Public housing schemes where the size and complexity of schemes necessitate the close collaboration between the Council and Contractors.
 - c) Concession contracts where contractors derive income from the completed work, for example a toll bridge.
- 8.2 The Head of Financial Services / Strategic Procurement Manager and Head of Legal & Democratic Services must be consulted regarding any proposals to follow any such procedures.

9. CONTRACTS UNDER SEAL

- 9.1 All contracts for building, engineering (excluding highway maintenance), property repairs and property maintenance works with an estimated value in excess of the European procurement limit for supplies and services (currently £144,000) shall be sent to the Head of Legal & Democratic Services for execution under the Council's seal.

10. EXEMPTIONS FROM THE COUNCIL'S CONTRACT PROCEDURE RULES

- 10.1 Exemptions from the Council's Contract Procedure Rules are only allowed in exceptional circumstances. Permission must be obtained for any exemption from the Head of Legal & Democratic Services. Major contracts may be subject to the European procurement rules and the Head of Legal & Democratic Services cannot provide an exemption from those requirements.
- 10.2 A written application for an exemption from the Council's Contract Procedure Rules must be made to the Head of Legal & Democratic Services setting out the reasons for the application. The Head of Legal & Democratic Services must respond within 21 days. If agreed by the Head of Legal & Democratic Services, the exemption must be approved as an Executive Decision as such decisions are not defined as an Administrative Decision (Sections 12.4 and 12.5 of Part 12 of the Council's Constitution – the Scheme of Delegation – refer).
- 10.3 Tenders need not be invited in accordance with the provisions of section 5 of the Council's Contract Procedure Rules if an urgent decision is required, for example for the protection of life or property or to maintain the functioning of a public service. Wherever possible though, at least two quotations must be obtained and the provisions within the Council's Financial Procedure Rules for making urgent decisions must be followed.