

TITLE OF REPORT: ITEM REFERRED FROM FINANCE, AUDIT AND RISK COMMITTEE: 15 JUNE 2015 – UPDATED CONTRACT PROCUREMENT RULES AND SOCIAL VALUES ACT RECOMMENDATIONS**17. UPDATED CONTRACT PROCUREMENT RULES AND SOCIAL VALUES ACT RECOMMENDATIONS**

The Interim Contracts Lawyer presented the report of the Head of Finance, Performance and Asset Management on the updated Contract Procurement Rules and Social Values Act recommendations.

The Interim Contracts Lawyer advised that the Contract Procurement Rules were reviewed on a periodic basis to ensure that they remained relevant and appropriate to the Council's needs. This review had been conducted by the Contracts and Procurement Group and led by the Procurement Officer and the Interim Contracts Lawyer. Responsibility for the rules rested with the Head of Finance, Performance and Asset Management and the Corporate Legal Manager. Both officers had reviewed and agreed the proposed changes.

The Committee was advised that the Rules were last reviewed by Cabinet at its meeting on 13 June 2013 and approved by Full Council on 30 July 2013. Legislative changes, such as the new Public Contract Regulations 2015, which came into force on the 26 February 2015, had necessitated changes to the current Procurement Rules.

The Interim Contracts Lawyer stated that the revised Contract Procurement Rules were provided at Appendix A to the report, with all proposed changes highlighted. In addition, a list of the main changes was provided at Appendix B to the report. She summarised the key changes:

- The addition of a requirement to post an official NHDC decision notice on the Council's website;
- Contract award notices must now be published within 30 days of award of contract (previously this was 48 days);
- The Rules had been updated to reflect the fact that PQQs were no longer to be used for below EU threshold procurements, in line with new legislation;
- References to the manual tender receipt and opening procedures had now been removed, as no longer required. All tenders now went through the e-tendering system;
- The new EU Regulations had introduced 2 new procedures, Innovation Partnerships and Competitive Procedure with negotiation - the Rules had been updated to reflect procedures around their use; and
- All new contracts over £5,000 must now be forwarded for inclusion on the Council's contract register in line with new Transparency requirements.

In response to questions on the Social Values Act policy note set out at Appendix C to the report, the Head of Performance, Finance and Asset Management confirmed that a report on the Social Values act, including procurement implications, would be submitted to a future meeting of Cabinet. In broad terms, the Act provided the opportunity to consider a wide variety of social benefit in awarding goods and service contracts.

RESOLVED: That the proposed changes to the Contract Procurement Rules, as described in Section 7 and Appendix B of the report, be supported.

RECOMMENDED TO CABINET: That the updated Contract Procurement Rules, as set out at Appendix A to the report, be supported and referred to Council for approval.

REASON FOR DECISION: To contribute towards effective organisational internal control and to comply with the requirements of the Council's Procurement Strategy.

The following is the report to be considered by the Finance, Audit & Risk Committee at its meeting to be held on 15 June 2015.

TITLE OF REPORT: UPDATED CONTRACT PROCUREMENT RULES AND SOCIAL VALUES ACT RECOMMENDATIONS

REPORT OF THE HEAD OF FINANCE, PERFORMANCE AND ASSET MANAGEMENT

PORTFOLIO HOLDER COUNCILLOR T. W. HONE

1. SUMMARY

- 1.1 This report provides an update to the Contract Procurement Rules that seek to revise the rules to incorporate the recent legislative changes both at EU and UK level.
- 1.2 To request that FAR Committee recommends the proposed changes to Cabinet, and onwards to Council, for adoption.

2. RECOMMENDATIONS

- 2.1 That FAR Committee agrees the proposed changes to Contract Procurement Rules, as described in Section 7 of this report.
- 2.2 That FAR Committee forwards these Rules (as included at Appendix A) to Cabinet for onward approval by Full Council.

3. REASON FOR RECOMMENDATIONS

- 3.1 That the Contract Procurement Rules are revised and updated periodically as part of the Council's Financial Management and Procurement review processes, contributing to effective organisational internal control. In addition, the review and adoption of the Council's Contract Procurement Rules is a key action in the Council's Procurement Strategy.

4. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 4.1 This report and appendices is being presented to FAR Committee for consideration prior to referral to Cabinet.

5. FORWARD PLAN

- 5.1 There are no recommendations relating to the Forward Plan in this report.

6. BACKGROUND

- 6.1 Contract Procurement Rules are reviewed on a periodic basis to ensure they remain relevant and appropriate to the Council's needs. This review has been conducted by the Contracts & Procurement Group and led by the Procurement Officer and the Contract Solicitor. Responsibility for the rules lies with the Head of Finance, Performance and Asset Management and the Corporate Legal Manager. Both officers have reviewed and agreed the proposed changes.
- 6.2 The Rules were last reviewed by Cabinet at its meeting on 13th June 2013 and recommended to Council for approval of the current version of the Contract Procurement Rules on 30th July 2013. Legislative changes mean

that the new Public Contract Regulations 2015 came into force on the 26th February 2015, necessitating changes to our current procurement rules.

7. ISSUES

- 7.1 The revised Contract Procurement Rules are provided at Appendix A, with all proposed changes highlighted. In addition, a list of the main changes is provided at Appendix B. A summary of key changes within this new version are outlined below.
- 7.2 Requirement to post an official NHDC decision notice on the Council's website added..
- 7.3 Contract award notices must now be published within 30 days of award of contract, previously this was 48 days.
- 7.4 Rules updated to reflect the fact that PQQs are no longer to be used for below EU threshold procurements, in line with new legislation.
- 7.5 References to the manual tender receipt and opening procedures have now been removed as no longer required. All tenders now go through the e-tendering system.
- 7.6 The new EU regulations have introduced 2 new procedures, Innovation Partnerships and Competitive Procedure with negotiation. Rules updated to reflect procedures around their use.
- 7.7 All new contracts over £5,000 must now be forwarded for inclusion on the Council's contract register in line with new Transparency requirements.

8. LEGAL IMPLICATIONS

- 8.1 The terms of reference of Finance Audit and Risk Committee include "to maintain an overview of the council's constitution in respect of Contract Procurement Rules...".
- 8.2 Full Council adopts and changes the Constitution and documents such as the Contract Procurement Rules that are appended to the Constitution. Under its terms of reference Cabinet may, by recommendation, advise the Council in the formulation of those policies within the Council's terms or reference.
- 8.3 The Council must comply with the Public Contracts Regulations 2015 for all procurements above the EU threshold. Below that threshold the procedures to adopt are for the authority to decide. The overriding principles of transparency, non-discrimination and equal treatment apply to all procurements irrespective of their value. Having a robust set of Contract Procurement Rules should ensure compliance with these obligations and reduce the risk of successful legal challenge to a procurement exercise.

9. FINANCIAL IMPLICATIONS

- 9.1 These are procedural matters that have no direct financial impact upon the Council's revenue or capital budgets. The changes seek to make the rules more straightforward to apply and allow officers to take a more proportionate approach.

10. RISK IMPLICATIONS

- 10.1 Adoption of the proposed amendments will contribute to the Council's internal control environment and the management of risk.

11. EQUALITIES IMPLICATIONS

- 11.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 11.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 11.3 The Contract Procurement Rules in themselves do not generate equalities implications, however their application when considering specific procurements of goods and services, or works, must take full account of this legislation.

12. SOCIAL VALUE IMPLICATIONS

- 12.1 As the recommendations made in this report do not, in themselves, constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied. However, the application of the Contract Procurement Rules must take full account of this requirement when procuring a public service contract within specified parameters as laid out in the Social Value Act. A recommendations report is annexed to this report as Appendix C. Its purpose is to provide advice on Social Value aspects for those undertaking a procurement exercise. Social Value is one of several factors to be considered when purchasing goods and services, or entering into a works contract.

13. HUMAN RESOURCE IMPLICATIONS

- 13.1 These are procedural matters that have no direct adverse impact upon either the Council's staff resources or equality issues.

14. APPENDICES

- 14.1 Appendix A – draft amended Contract Procurement Rules.
- 14.2 Appendix B - Summary of Changes.
- 14.3 Appendix C – Social Values Act recommendations report.

15. CONTACT OFFICERS

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16. BACKGROUND PAPERS

None.

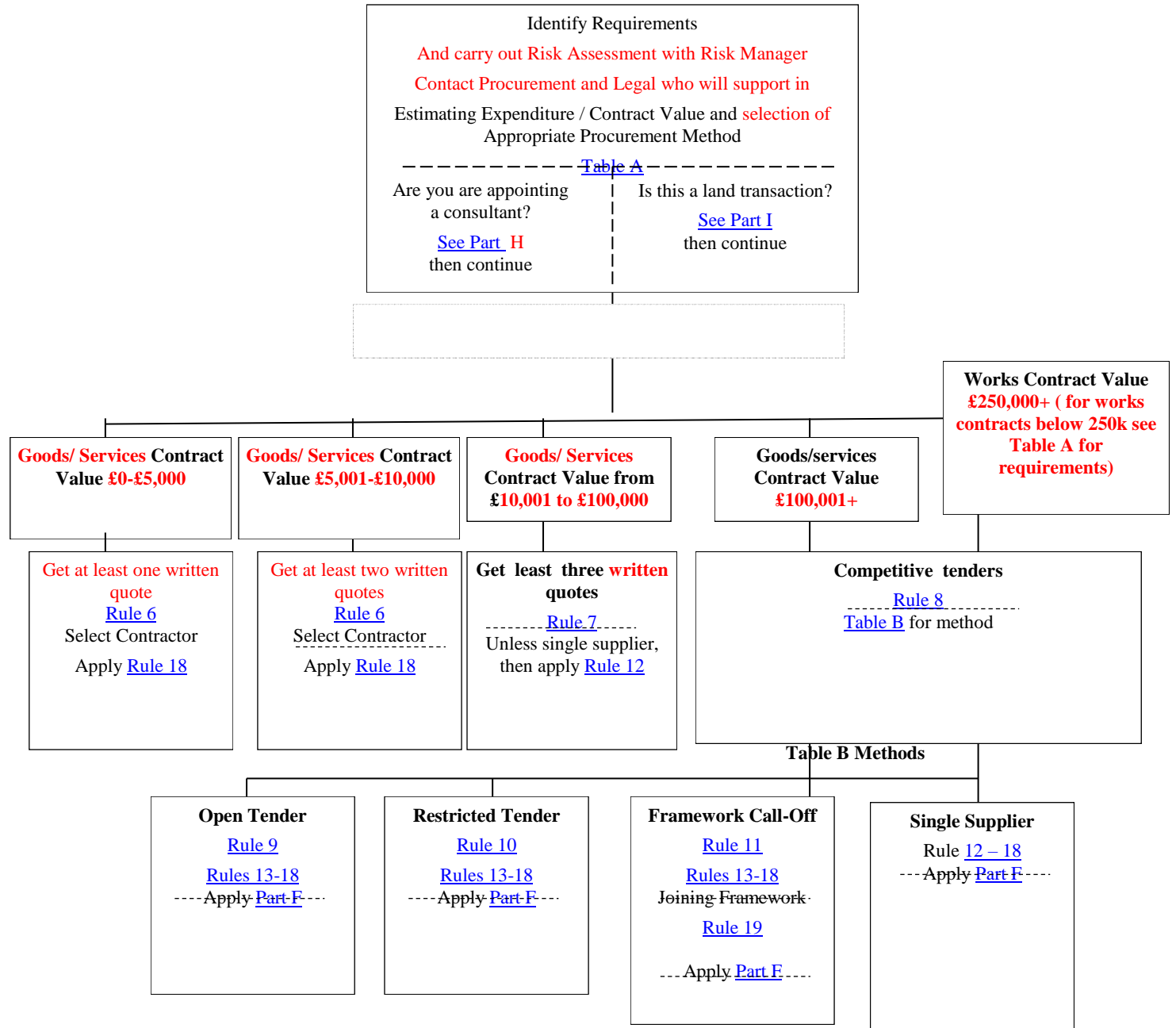
APPENDIX A

NORTH HERTFORDSHIRE DISTRICT COUNCIL CONTRACT PROCUREMENT RULES

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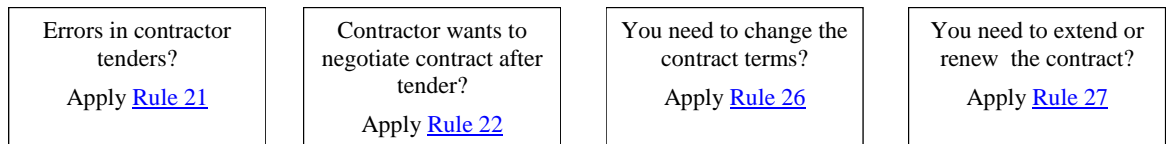
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New Contracts



Ongoing Contracts / Problems

Have you spoken to Legal Services or Procurement?



Part B Background

1 Introduction

- 1.1 These Contract Procurement Rules (the **Rules**) provide a structure for the procurement of works, goods and services. Following them will ensure value for money, propriety and the proper expenditure of public funds. Officers must remember that their budgets are made up of public money and must ensure that they are spent correctly, fairly and transparently.
- 1.2 These Rules have been split into a number of Parts which you must comply with:
- (a) Part C Procurement Methods – relates to new procurements; and
 - (b) Part F Specific Rules of Contract – which details the terms and conditions of contract that should apply; and
 - (c) Part G Ongoing Requirements – which details the procedures that must be followed if you need to vary, extend or terminate your contract; and
 - (d) Part H Appointment of Consultants – which details the special procedures that should be followed regarding the appointment of consultants; and
 - (e) Part I Land Transactions – which details the special procedures that should be followed regarding the acquisition or disposal of any interest in land.
- 1.3 Procurement decisions are amongst the most important decisions an Officer will make because the money involved is public money. Efficient use of scarce resources is therefore vital. Equally as important is the Council's reputation, which should be safeguarded from any suspicion of dishonesty or corruption. Officers must ensure that they are able to account for all the actions and decisions they take, and that all processes are transparent and can be audited. Following these Rules will ensure that Officers meet these requirements.
- 1.4 Failure to comply with the Rules may result in Officers conduct being examined under the [Council's Managing Misconduct Policy](#). It is a disciplinary offence to fail to comply with these Rules when letting contracts and employees have a duty to report breaches of these Rules following the procedures in the Confidential Reporting (Whistle blowing) Policy as described in section 3.13.
- 1.5 The Rules have been adopted in accordance with the requirements of Section 135(2) of the Local Government Act 1972.
- 1.6 The Council's Contracts and Procurement Group is responsible for reviewing and providing guidance on all procurement and contractual matters.
- 1.7 You should ask for advice from Procurement Services and Legal Services, as per the contacts list at the end of these Rules, if any aspect of these rules are unclear. You should also seek Procurement and Legal Services advice at the indicated stages of any procurement process, and at any other time should you wish to do so.
- 1.8 Officers have a responsibility to read and be familiar with these Rules.
- 1.9 Capitalised words usually have a particular defined meaning which is either explained elsewhere within these rules or else defined in another document. Common contract and procurement defined words are defined in the Contract Procurement Rules Jargon Busting Guide . Please contact Procurement or Legal services if the meaning of any of these Rules is unclear.

- 1.10 In these Rules, unless otherwise stated, references to a Strategic Director are to the Strategic Director of the department responsible for the contract in question or such senior officer of that department to whom the Strategic Director has delegated in writing the powers in question.

2 Scope

- 2.1 These Rules apply to all contracts for works or the supply of goods or services to North Hertfordshire District Council and any Trading Accounts.
- 2.2 You must not enter into any contract until all necessary approvals, sanctions and consents have been obtained and ensured these Rules have been followed.
- 2.3 No tender or quotation may be accepted unless the necessary approval, sanction and consent have been obtained.
- 2.4 These Rules apply to all contracts with third parties and all sub-contracts where the Council nominates a sub-contractor or supplier, or where we appoint a consultant (refer to Part G) to act on behalf of the Council. They also apply, in appropriate circumstances, to the sale of assets, goods or services by the Council. They do not apply to:
- contracts of employment
 - purchases made at public auction
 - contracts with other local authorities or Central Government (this can refer to collaborative working such as consortia arrangements, where the Procurement rules of the lead authority apply).
- 2.5 There are particular requirements in relation to the appointment of consultants, (Part H Appointment of Consultants) and transactions involving land, (Part I Land Transactions).
- 2.6 These Rules are made up of two intersecting sets of rules: EU and UK public procurement law; and competition law; and the Council Constitution. The Council Constitution applies to procurements of any value and has four levels depending on the Contract Value. EU and UK public procurement law applies in addition to the Council Constitution in relation to procurements above the EU Threshold.
- 2.7 These Rules will be reviewed regularly. Responsibility for this lies with the Contracts and Procurement Group in consultation with the Strategic Director of Finance, Policy & Governance and the Corporate Legal Manager.

Part C Procurement Methods

3 Introduction

- 3.1 The nature of the Council's activities often calls for a close working relationship with commercial organisations and without making any implication of improper conduct by either Officers or contractors, it is in your interests to ensure that there cannot even be a suspicion of a conflict of interest.
- 3.2 This Rule is of particular importance to staff who are in close contact with commercial firms seeking the opportunity to tender for the Council's services. It is important that the actions of such staff should be manifestly above

suspicion of bias in favour of a particular firm and every care must be taken not to disclose 'in confidence' information e.g. tender prices.

Private Interests

- 3.3 No contract may be awarded to an Officer of the Council, or to any partnership of which they, or any member of their family are a member (except for a corporation in which they are a shareholder) or to any company of which they or any member of their family are a director unless the Chief Executive has given permission for the award of the contract to proceed.
- 3.4 In such a case the officer must disclose the full measure of their interest in the contract to their Strategic Director who will notify the Chief Executive.
- 3.5 No Officer may accept a directorship in any company, without the express permission of the Chief Executive. Permission should be sought through their Strategic Director who will make a submission to the Chief Executive.
- 3.6 Any member of staff who comes into official contact with any matter concerning a business organisation in which they or a member of their family have an interest must disclose this interest to their Strategic Director and ask that some other Officer deals with the matter.
- 3.7 All Officers are expected to be aware of and comply with the requirements of the Council's policy on Conflicts of Interest.
- 3.8 The exception to this rule is if two Officers of the Council put in an expression of interest to supply a service through the Community Right of Challenge Act 2012. Information on this Community Right is available from the Corporate Legal Manager. Any Officers that have put in an expression of interest cannot take part in the tendering process from a Council perspective, e.g. they cannot participate in tender evaluation.

Prevention of Corruption

- 3.9 All contracts should ensure that suppliers are under a contractual obligation to adhere to the requirements of the Bribery Act 2010 and the Councils' requirements as set out in the Councils' Anti – Bribery Policy.
- 3.10 No Officer may purchase goods from or use the services of a contractor on preferential terms for private purposes if these terms are given either directly or indirectly because of the potential or actual contractual or other official business relationship between the contractor and the Council.

Hospitality

- 3.11 The utmost discretion must be exercised if offers of hospitality, gifts etc. are received from contractors with whom staff deal in the course of their official duties. Dealings must be kept strictly on a business footing and the highest standard of watchfulness and integrity must be maintained at all times. See also the Council Gift's and Hospitality Policy http://srvinternet01.north-herts.gov.uk/intracontent/index/human_resources/personnel/working_trust/gifts_hospitality.htm

Record of Interests

- 3.12 The Corporate Legal Manager shall record in a book to be kept for the purpose, particulars of any notice given by an officer of a pecuniary interest in a contract. During office hours any Member of the Council may inspect the book. See also the Council Conflicts of Interest Policy http://srvinternet01.north-herts.gov.uk/intracontent/index/human_resources/personnel/working_trust/conflicts_of_interest.htm

3.13 Whistle blowing

When a Member, employee or a contractor raises concerns about the activities of the Council which are ethically questionable, this is known as whistle blowing and is covered by the Councils' "Confidential Reporting Policy". The policy applies to all employees and those contractors working for the Council on Council premises, for example, agency staff. It also covers suppliers and those providing services under a contract with the Council on their own premises.

Further information is available at http://srvinternet01.north-herts.gov.uk/intracontent/index/human_resources/personnel/working_trust/confidential_reporting.htm

4 Contract values

- 4.1 The estimated annual and total aggregate values of any contract (whether for works, goods or services – see below and Table A) should be established prior to going to the market and should be recorded in writing.

The aggregate value of any contract is calculated on the basis of the total value of the consideration including any options for extensions or renewals (usually the cost payable but may include any benefit in kind or other benefit to the contractor) estimated to be payable over the entire contract period. Where the contract provides for an option to renew or extend, then the estimate should be based on the assumption that the option is exercised. Some contracts might be indefinite in length. In relation to services, the value shall be the total expenditure incurred over a four year period. In relation to supply of goods the value shall be the total expenditure incurred over a twelve month period. Note works contracts cannot be indefinite as they end when the works are complete.

- 4.1.1 The aggregate value of any works contract shall include not only the value of the works themselves over the entire estimated length but also all the related services, equipment and materials which the contractor will be expected to provide under the contract, so it is vital that the specification of the contract is comprehensive. If other contractors are providing separate services, i.e. Quantity Surveyors or Architecture Consultancy in relation to works contracts, these are not included and are treated as separate contracts to the main contract.
- 4.1.2 (a) "Works Contract" means a contractor carries out a significant amount of construction, demolition of buildings, earthworks and associated requirements such as re-roofing, re-surfacing etc.
- (b) "Services Contract" means a contractor provides a service of some sort, e.g. courier services, street cleansing, training etc. This may involve providing some goods, e.g. a report or refuse bins, but most of the work involves doing something for the Council other than "Works".
- (c) "Goods Contract" means a contractor provides some tangible items without significant services e.g. provision of photocopier paper.
- (d) "Consultancy Services" (see Part G) means a contractor who provides specialist advice to the Council. This does not cover training providers.

- 4.2 The estimate is in Pounds Sterling exclusive of Value Added Tax. This value does not include any saving to the Council. This estimate is the **Contract Value**.
- 4.3 Contract Values must not be artificially under or over estimated or divided where the effect is to avoid the Rules.
- 4.4 The Contract Value determines which of the four levels of the Rules are applicable. However, if the preliminary estimate is within 10% of a higher category value, then the provisions for the higher level should be applied. This allows for any potential overspend on the Contract which would otherwise have meant that the final value of the contract was above the threshold for the type of procurement used.
- 4.5 In all cases a procedure applicable to a higher value contract may be used if it is considered to be in the Council's best interests or is considered to be best practice.
- 4.6 If there is any conflict or if it is unclear which procedure should apply, you should as a default method, apply the rules as if your procurement was a tender, i.e. Rule 8 (Tender). Please ask the Procurement Officer or Legal Services for advice.
- 4.7 If there is an intention to use indices for calculating any contract uplift, please ask Financial Services for advice.
- 5 **Summary of requirements for Contract Values**

Table A

In all instances, please contact the Procurement Officer for advice in order to ensure we meet requirements for transparency, openness and fairness in advertising opportunities.

Goods or Services

<u>Contract Value</u>	<u>Requirement</u>
Below £500	Purchase cards and Orders must be used unless there is a contract in place, e.g. – the stationery contract where all stationery must be purchased through the contracted supplier.
QUOTATION PROCESS	Quotation processes are defined in Section 6
£501 - £5,000	At least one estimate or offer shall be obtained. Alternatively, if more appropriate apply the Quotation or Tender rules
£5,001 - £10,000	A minimum of two written quotations will be required unless the relevant Head of Services agrees it is demonstrably clear that only one Supplier is available – seek Legal Services advice.
£10,001- £100,000	A minimum of three written quotations must be sought using a "Request for Quotation".
Advertising requirements within the above limits: £20,000 - £50,000	As a minimum, it is recommended that an advert be placed on the NHDC website.

<p>£50,001 - £100,000</p>	<p>An advert must be placed on the NHDC website and Contracts Finder through the Councils' e-tendering system.</p> <p>In all instances where an advert is published, then an Award Notice must also subsequently be published via the Councils' e-tendering system.</p>
<p>TENDER PROCESS</p>	<p>See Section 8</p>
<p>£100,001 to EU Threshold (for confirmation of EU Thresholds, please use the link in Glossary of Terms)</p>	<p>A Tender process must be completed using the Councils' Tender documentation.</p> <p>An advert must be posted on the NHDC website and Contract Finder through the Councils' E-Tendering system.</p> <p>In all instances where an advert is published, then an Award Notice must also subsequently be published, via the Councils' e-tendering system.</p>
<p>Above the EU Threshold</p>	<p>All Procurement above the EU Threshold must be carried out following an appropriate process, using the Councils' e-tendering system.</p> <p>As a minimum, an advert must be posted on the NHDC website, Contract Finder and OJEU through the Councils' e-tendering system.</p> <p>A Contract Award Notice must be published as soon as possible, after the end of the standstill period and, in any event, within 30 days of the award of the contract, via the Councils' e-tendering system.</p>
<p><u>Works</u></p> <p><u>Contract Values</u></p>	<p><u>Requirement</u></p>
<p>Under £10,000</p> <p>Within this category, an exception is made for emergency or reactive works up to a value of £2,500 in that one oral estimate is required.</p> <p>QUOTATION PROCESS</p>	<p>A Minimum of one written estimate shall be obtained. Standard terms and conditions are acceptable – seek Legal Services advice. A Purchase order is required.</p>
<p>£10,001 - £50,000</p>	<p>A minimum of three written quotations shall be invited for Works contracts. Standard terms and conditions may be acceptable – seek Legal Services advice with respect to the potential need for a contract.</p>

<p>£50,001- £250,000</p>	<p>A Minimum of three written quotations shall be invited for Works contracts. A formal written contract shall be entered into, either under hand or sealed as a deed (see section 18)</p> <p>Either – a pre qualification process is followed using Construction line or similar OR and advert must be placed on the NHDC website and Contract Finder through the Councils' e-tendering system to commence PQQ process.</p> <p>In all instances, where an advert is published, then and Award Notice must also subsequently be published through the Councils' e-tendering system.</p>
<p>TENDER PROCESS</p>	
<p>£250,001 to EU Threshold (for confirmation of EU thresholds, please use the link in Glossary of Terms)</p>	<p>A minimum of three competitive tenders shall be invited and a formal written contract prepared in advance.</p> <p>Either – a pre qualification process is followed using Construction line or similar OR anadvert must be placed on the NHDC website and Contract Finder through the Councils' e-tendering system to commence process.</p> <p>A Contract Award Notice must be published through the Councils' e-tendering system.</p>
<p>Above the EU Threshold</p>	<p>All Procurement above the EU Threshold must be carried out following an appropriate process, using the Councils' e-tendering system.</p> <p>An advert must be posted on the NHDC website, Contract Finder and OJEU as a minimum through the Councils' e-tendering system.</p> <p>A Contract Award notice must be published as soon as possible after the end of the standstill period and, in any event, within 30 days of the award of contract, via the e-tendering system.</p>

6 Estimates

- 6.1 Strategic Directors must ensure that appropriate mechanisms are in place within their Directorate to ensure value for money.
- 6.2 Officers should demonstrate that value for money has been obtained and should maintain records accordingly, in line with the Document Retention Schedule.
- 6.2.1 Such records should contain, as a minimum:
- (a) the number of estimates or offers invited; and
 - (b) the method of inviting estimates or offers; and
 - (c) the basis of selecting suppliers/contractors; and
 - (d) the staff authorised to accept estimates or offers.
- 6.3 Official Purchase Orders must be raised through the Council's electronic ordering system in accordance with Financial Regulations.
- 6.4 You must follow Rule 20 (Contracts).

7 Quotation

- 7.1 Once a quotation process has started, there must be no contact with any of the bidders unless it is through a clarification process. Clarification questions usually relate to the contract or the specification and responses are time sensitive. Clarification responses are the responsibility of the Project Manager and Legal Services, although please keep Procurement Services informed of progress.
- 7.2 Strategic Directors must ensure that appropriate mechanisms are in place within their Directorate to ensure value for money, that any selection process used is fair and equitable, and that no positive or negative favouritism is shown to any contractor.
- 7.3 Please see Table A for contract notice requirements. In addition, the project manager may also place an advert in a trade publication (please be aware that some publications charge for adverts)
- 7.4 You must have a specification of requirements. See Part F – Specific Rules of Contract, in particular Rule 26 (Specification).
- 7.4.1 For all procurements which require Portfolio Holder (e.g. Goods & Services procurements above £100,000 and Works procurements over £250k) input, you must agree the specification with the Portfolio Holder prior to going out to quotation or tender.
- 7.4.2 You must not change the specification after requesting quotations.
- 7.5 You must follow the procedures in Rule 17 (Evaluation Criteria for Quotations and Tenders).
- 7.5.1 For all procurements which require Member input, you must consult on the scoring method including environmental and economic factors prior to going out to quotation or tender.
- 7.5.2 You must not change the scoring method after requesting quotations or tenders.
- 7.6 You may approach only a single supplier if the conditions in Rule 14 (Single Tender) are met. This process may only be used where there are compelling reasons for it being required and must not be applied solely because it is convenient to do so. Otherwise you should invite a minimum of three formal quotations. (Please check with Procurement and Legal Services before proceeding)
- 7.6.1 Where you can demonstrate that there are insufficient suitably qualified contractors or suppliers to meet the requirements for a minimum of three quotations, both suitably qualified candidates must be invited and this approach agreed under Rule 20 (Waivers).
- 7.6.2 At least two satisfactory responses (i.e. responses which meet a minimum quality standard under which the Council could award the contract) must be received. If the Council receives only one satisfactory response, the Officer must obtain an additional quote or tender or obtain a waiver under Rule 22 (Waivers).
- 7.7 Goods & Services Contracts below £100,000 / Works Contracts below £250k
Strategic Directors may make such arrangements as they consider appropriate for the opening of quotations, provided that they are not opened until after the time appointed for the receipt of the quotations. Responses must be opened at

one time in the presence of the Procurement Officer (or their Line Manager) and the Project Manager (or nominated officer) with the results recorded on a quotation record sheet. Both officers are to sign and date the appropriate pages of the quotation document and the record sheet. A copy to be kept by Procurement Services and Legal Services.

- 7.8 The Strategic Director shall keep a record of:
- (a) all those contractors or suppliers who were interested in the advertisement; and
 - (b) all those contractors or suppliers who were invited to provide a quotation; and
 - (c) the reasons why those particular contractors or suppliers were selected to provide a quotation; and
 - (d) quotations opened; and
 - (e) evaluation record sheets.

7.9 You must follow Rule 20 (Contracts).

7.10 For contracts above £50k you must publish an official NHDC Decision Notice on the Councils website. Templates are available from procurement.

Goods & Services Contracts above £100k / Works Contracts above £250k

7.11 You must follow the procedures outlined in:

- (a) Rule 15 (Receipt of Tenders); and
- (b) Rule 16 (Opening Tenders); and
- (c) Rule 20 (Contracts).

8 Tenders

8.1 Strategic Directors must ensure that appropriate mechanisms are in place within their Directorate to ensure value for money, that any selection process used is fair and equitable, and that no positive or negative favouritism is shown to any contractor.

8.2 You must have a specification of requirements. See Part F – Specific Rules of Contract, in particular Rule 26 (Specification).

8.2.1 It is highly recommended that all documentation and specifications are completed before proceeding to advert. If this is not done in the initial stages, officers may find that they have placed themselves under unnecessary pressure to meet the timescales they have set. In addition, please ensure that all Project meetings (e.g. evaluation and moderation) are timetabled well in advance to ensure resource availability at key points, and no diary clashes)

8.2.2 For all procurements which require Member input, you must consult on the specification with the Portfolio Holder prior to going out to quotation or tender.

8.2.3 You must not change the specification once the Request for Quote (RFQ) and Invitation to Tender (ITT) has been sent to interested bidders.

8.3 You must follow the procedures in Rule 17 (Evaluation Criteria for Quotations and Tenders).

- 8.3.1 For all procurements which require Portfolio Holder input, you must consult on the scoring method with the Portfolio Holder prior to going out to quotation or tender.
- 8.3.2 You must not change the scoring method once RFQs, Pre Qualification Questionnaires (PQQ) or Invitations to Tender (ITT) have been sent to interested bidders.
- 8.4 You must have a contract prepared in advance in a form approved by the Corporate Legal Manager. See Part F – Specific Rules of Contract.
 - 8.4.1 Contact Legal Services for advice if you need to negotiate or amend the contract during the tender process.
- 8.5 If you are unable, or if your Strategic Director decides that it is not feasible to meet these requirements you must obtain a waiver under Rule 22 (Waivers).

Tendering Options

- 8.6 Strategic Directors should select one of the tendering methods described in Table B. Alternative methods of tendering may be used with approval of Cabinet in advance. Contact Procurement and Legal Services for advice.

Table B

<u>Tender Option</u>	<u>Description</u>
Open tender Rule 9	This process should be used when there are only a small number of suppliers competing for the business. There is no pre-qualification. Any interested supplier may tender.
Restricted tender Rule 10	This process should be used if there are a large number of suppliers competing for the business. It can only be used for above OJEU procurements. Suppliers are pre-qualified as to their suitability as contracting partners. They are assessed as to whether they have the capability to provide the works, goods or services. Qualified suppliers are invited to tender and are assessed as to how they will provide works, goods or services.
Framework Agreement Rule 11	This process may be used if we are named or named via a link (e.g. Supply Herts) as a member of an appropriate Framework Agreement, or if it is an Open Framework. The procedure is that defined by the Framework Agreement but generally invites supplier members to tender prices against a specification. There is not normally any negotiation on terms or conditions.
Competitive procedure with Negotiation and Competitive Dialogue Rule 12	These processes can be used when it is not possible to adapt readily available solutions or design / innovation may be required. Rules 29 and 30 of the Public Contract Regulations set out the requirements.
Innovation Partnership Rule 13	These processes can be used when it is not possible to adapt readily available solutions or design / innovation may be required. Rule 31 of the Public Contract Regulations sets out the requirements
Single tender Rule 14	You approach only a single supplier for their tender. This process may only be used where there are compelling reasons for it being required and must not be applied solely because it is convenient to do so. (Contact Procurement and Legal Services for advice)

Part D Tendering Methods

Once a tender process has started, there must be no contact with any of the bidders unless it is through a clarification process. Clarification questions usually relate to the contract or the specification and responses are time sensitive. Clarification responses are the responsibility of the Project Manager and Legal Services, although please keep Procurement Services informed of progress.

Rule 40 of The Public Contract Regulations 2015 expressly allows opportunities for Pre Tender market consultation. Please consult with Legal and Procurement on it's use as the rules must be carefully followed.

9 Open Tender

Once a tender process has started, there must be no contact with any of the bidders unless it is through a clarification process. Clarification questions usually relate to the contract or the specification and responses are time sensitive. Clarification responses are the responsibility of the Project Manager and Legal Services, although please keep Procurement Services informed of progress.

9.1 All adverts and contract award notices must be published as per Table A requirements.

9.1.1 See Rule 34 (Glossary of Terms) for the meaning of "EU Threshold" and "OJEU".

Invitation to Tender (ITT)

9.2 The Council has a standard ITT template which will be tailored to each procurement. Please contact Legal Services for the current version.

9.2.1 The ITT is a document that details the goods or services we require, in sufficient detail for the interested contractors to give us an accurate quotation of price and how they will meet our minimum expected service levels. The ITT incorporates the form of contract that we intend to contract under, as well as the detailed specification which is probably the most important element. The ITT for each specific procurement must be "owned" by the Project or Service Manager leading the procurement exercise. See also Rules 23 (contractual Terms) and 24 (Specification).

9.3 You must send all interested suppliers a copy of the ITT. You should seek advice from Legal Services in creating your ITT. Your ITT should contain questions that assess the suppliers ability to provide the services and their suitability to be contracting partners to the Council. This is done by assessing (where relevant):

- (a) the suppliers ability to perform their obligations against the specification; and
- (b) financial standing; and
- (c) technical standards; and
- (d) insurance; and
- (e) health and safety; and
- (f) environmental and economic (e.g. employment) factors; and
- (g) social value, and
- (h) compliance with any other relevant statutory obligation; (including equalities) and
- (i) references.

9.4 You must follow the procedures outlined in:

- (a) Rule 15 (Receipt of Tenders); and
- (b) Rule 16 (Opening Tenders); and
- (c) Rule 17 (Evaluation Criteria for Quotations and Tenders); and

- (d) Rule 18 (Contract Award); and
- (e) for procurements over the EU Threshold, Rule 19 (Standstill Period).

10 Restricted Tender

Once a tender process has started, there must be no contact with any of the bidders unless it is through a clarification process. Clarification questions usually relate to the contract or the specification and responses are time sensitive. Clarification responses are the responsibility of the Project Manager and Legal Services, although please keep Procurement Services informed of progress.

- 10.1.1 All adverts and contract award notices must be published as per the requirements in Table A.
 - 10.2 The restricted tender procedure splits the procurement process into two stages: the PQQ and then the ITT. This process can only be used for above OJEU procurements.
 - 10.2.1 See Rule 34 (Glossary of Terms) for the meaning of “PQQ” and “ITT”.
- Pre-Qualification Questionnaire (PQQ)
- 10.3 You should use the approved starting point PQQ. Contact Legal Services for the current version.
 - 10.4 You must send all interested suppliers a copy of the PQQ. You should seek advice from Legal Services in creating your PQQ.
 - 10.5 The PQQ stage involves assessing the general capability of a company as a contracting party to provide the services. This is done by assessing:
 - (a) financial standing; and
 - (b) technical standards; and
 - (c) environmental and economic (e.g. employment) factors and
 - (d) compliance with any other relevant statutory obligation; and
 - (e) references; and
 - (f) and other matters that do not relate to the quality of their services, just their ability to provide the service.
 - (g) The following may be assessed at PQQ or ITT stage – Social Value and Equalities impacts.
 - 10.6 This assessment is designed to fail those companies that we could not contract with and allow to ITT all companies we could contract with.
 - 10.7 It is important not to assess aspects of quality at PQQ otherwise you cannot ask the same question at ITT. A suppliers quality of service should only be assessed by their tender (following ITT).
 - 10.8 The process for selecting and short listing contractors must be transparent, fair and auditable.

Invitation to Tender (ITT)

- 10.9 You should use the approved starting point ITT. Contact Legal Services for the current version.

- 10.9.1 The ITT is a document that details the goods or services we require in sufficient detail for the interested contractors to give us an accurate quotation of price and how they will meet our minimum expected service levels. The ITT incorporates the form of contract that we intend to contract under as well as the detailed specification which is probably the most important element. The Evaluation Criteria must also be included in this document. See also Rules 25 (Contractual Terms) and 26 (Specification).
- 10.10 You must send all short listed suppliers a copy of the ITT. You should seek advice from Legal Services in creating your ITT.
- 10.11 Your ITT should contain questions that assess the suppliers ability to provide the services and their suitability to be contracting partners to the Council. This is done by assessing the suppliers ability to perform their obligations against the specification. You should not include any question you have assessed in your PQQ.
- 10.12 You must follow the procedures outlined in:
- (a) Rule 15 (Receipt of Tenders); and
 - (b) Rule 16 (Opening Tenders); and
 - (c) Rule 17 (Acceptance of Tenders); and
 - (d) Rule 18 (Contract Award); and
 - (e) for procurements over the EU Threshold, Rule 19 (Standstill Period).

11 Call-Off Further Competition under a Framework Agreement

- 11.1 The tendering procedures within the Rules will not apply to a contract for which the Strategic Director responsible, in consultation with the Strategic Director of Finance, Policy & Governance, agrees it is appropriate to purchase from suppliers through an approved external Framework Agreement.
- 11.2 See Rule 34 (Glossary of Terms) for the meaning of "Framework Agreement".
- 11.3 This Rule only applies if the Council is already named or named via a link (e.g. Supply Herts) unless using a consortium framework. i.e. ESPO (Eastern Shires Purchasing Organisation) or it is an Open Framework. If there is no appropriate Framework Agreement in place see Rule 21 (Joining a Framework Agreement).
- 11.4 Each Framework Agreement has its own procedures in relation to purchasing from a Supplier under the agreement. These must be followed exactly. See Procurement and Legal Services for advice. These procedures may be quicker and more straightforward than full procurements. As with all Frameworks, it is important to consider whether it provides the best Value for Money outcome.

12 Competitive Procedure with Negotiation

- 12.1 All adverts and contract award notices must be published as per the requirements in Table A
- 12.2 The Competitive Procedure with Negotiation splits the procurement process into initial receipt of ITTs, a negotiation stage and final submission of bids from Suppliers.

- 12.3 Competitive Procedure with Negotiation is subject to detailed rules and Legal must be consulted if this option is selected.
- 12.4 As in 8.6 the approval of Cabinet must be obtained in advance if this method is selected.

13 Innovative Partnership procedure.

- 13.1 All adverts and contract award notices must be published as per the requirements in Table A
- 13.2 This procedure may only be used where it has been identified that there is a need for innovative goods, services or works which cannot be met by the existing market.
- 13.3 The Innovative Partnership procedure is subject to detailed rules, and Legal must be consulted if this option is selected.
- 13.4 As in 8.6 the approval of Cabinet must be obtained in advance if this method is selected.

14 Single Tender

Please liaise with Procurement and Legal Services in the first instance.

Below EU Threshold

- 14.1 A single tender may be obtained when:
- (a) Prices are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available; or
 - (b) The works, goods, or services to be supplied consist of repairs to or the supply of parts or upgrading of existing proprietary machinery, equipment, software, hardware or plant and the repairs or the supply cannot be carried out practicably by alternative contractors; or
 - (c) Specialist consultants, suppliers, agents or professional advisors are required and:
 - (i) Evidence that there is no satisfactory alternative; or
 - (ii) evidence indicates that there is likely to be no genuine competition; or
 - (iii) it is in the Council's best interest to engage a particular consultant, supplier, agent or advisor; (Contact Procurement and Legal Services for advice) or
 - (d) Products are sold at a fixed price and market conditions make genuine competition impossible.
- 14.2 You must have prior written approval of the Strategic Director responsible, the Corporate Legal Manager and the Strategic Director of Finance, Policy & Governance. Contact Procurement or Legal Services for advice on preparing your Single Tender Option report.

Above EU Threshold

Please liaise with Legal Services and Procurement in the first instance.

- 14.3 A single tender may only be obtained if:
- (a) No tenders or no appropriate tenders were received in response to a previous tender; or
 - (b) The contract involved is purely for the purpose of research, experiment, study or development under specific conditions; or

- (c) The works/goods/services can be provided only by a particular tenderer for reasons that are:
 - (i) Technical; or
 - (ii) Artistic; or
 - (iii) Connected with the protection of exclusive rights; or
 - (d) Because of extreme urgency brought about by events unforeseeable by the contracting authority and in accordance with strict conditions; or
 - (e) Additional works/deliveries/services are ordered under strict conditions; or
 - (f) New works/services, constituting a repetition of existing works/services are ordered in accordance with strict conditions; or
 - (g) Service contract awarded to the successful candidate or one of them after a design contest; or
 - (h) For supplies quoted and purchased on a commodity market; or
 - (i) For the purchase of supplies on particularly advantageous terms:
 - (i) From a supplier which is definitely winding up its business activities; or
 - (ii) From the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure; or
 - (j) All tenders submitted in reply to an open procedure, or a restricted procedure were irregular or unacceptable. Only those tenderers who satisfied the qualitative selection criteria (i.e. PQQ) may be included in the negotiations.
- 14.4 You must have prior written approval of the Strategic Director responsible, the Corporate Legal Manager and the Strategic Director of Finance, Policy & Governance. Contact Procurement or Legal Services for advice on preparing your Single Tender Option report.
- 14.5 A “voluntary transparency notice” must be published in the OJEU giving reasons for negotiating with a single supplier. This takes the place of the “contract award notice” described by Rule 16 (Contract Award).
- 14.6 You must follow Rule 19 (Standstill Period).

15 Receipt of Tenders

- 15.1 All tenders should be received electronically via the Councils E-tendering system. The documents cannot be accessed until the closing date and time has passed..
- 15.2 Where the circumstances so warrant, a Strategic Director may postpone for a reasonable period the closing time and date for the receipt of tenders, provided that all persons from whom tenders have been invited are notified by the same method, given the same information and that no tenders have been opened. Bidders must be notified in reasonable time.
- 15.3 Contact Procurement and Legal Services for advice if there are any problems with receiving tenders.

16 Opening Tenders

- (a) Tenders must be submitted through the Councils' e-tendering system. It will automatically record the receipt of the tender for audit purposes. Each tender submitted will be deposited securely in the system to which only the project team, Procurement and Legal Services will have access. Once the tender has been awarded, the tender will be kept securely until the expiry of the retention period.

17 Evaluation Criteria for Quotations and Tenders

17.1 The appropriate Strategic Director shall evaluate all the tenders or quotations received in accordance with the evaluation criteria set out in the bid documentation (either the invitation to quote or ITT). The Project/ Service manager leading the procurement is responsible for organising all the project meetings necessary to complete the procurement process.

17.2 You must clearly explain your evaluation scheme to suppliers in your bid documentation.

17.3 You should contact Legal Services who will advise on the appropriate criteria for your procurement.

Price alone

17.4 This assesses the price and not the quality (subject only to minimum levels of quality as defined in your specification) of quotations or tenders. This method is appropriate for supply of goods or simple services and is not normally appropriate for complex services or works. A Price only evaluation must not be used for above OJEU tenders.

17.5 The Council will accept that quotation or tender that offers the best price (either the cheapest where the Council pays money or the highest when the Council receives money).

17.6 Tenders or quotations exceeding the approved budget may only be accepted once the budget holder has liaised with the Accountancy Manager to determine whether, and how, the budget can be increased.

17.7 The acceptance of a tender or quotation that is not the lowest priced tender or quotation shall only be accepted if:

- (a) the Cabinet has considered a written report from the appropriate Strategic Director; or
- (b) in cases of urgency, the Chief Executive may use Urgency powers as set out in the Constitution. The appropriate Strategic Director shall report tenders or quotations accepted in this way to the next meeting of the Cabinet.

17.8 Where post tender negotiations have been undertaken in accordance with Rule 24 (Post Tender Negotiation), the appropriate Strategic Director shall only accept the lowest priced tender received. A tender other than the lowest must not be accepted until the Cabinet has considered a written report from the appropriate Strategic Director and recommended acceptance of a tender other than the lowest.

Most economically advantageous tender

17.9 This Rule does not provide comprehensive or exhaustive procedures for the application and evaluation of tenders using most economically advantageous tender criteria. It aims to provide officers with practical advice on suggested

evaluation methods to ensure that the aims of NHDC can be achieved and demonstrated taking into account value for money.

- 17.10 The approved starting point ITT includes most economically advantageous tender criteria. Contact Legal Services for advice on using most economically advantageous tender criteria.
- 17.11 In its simplest form, the most economically advantageous tender criteria includes a balance between the price and quality aspects of your procurement so that the Council achieves the best product for the best price. Common balances are between 70–30 to 60-40 with the weighting towards either price or quality depending on whether price or quality is more important. The weighting decision is made by the Project/ Service Manager leading the procurement.
- 17.12 Most economically advantageous tender criteria must be set before the tender process commences and should include the following elements:
- (a) a point scoring system for individual quality / best value considerations set at the commencement of the procurement process with weightings applied to quality / best value issues in accordance with their importance to the contract; and
 - (b) a 'quality threshold' which sets the minimum standards expected. Tenders which fall below this will be excluded from consideration; and
 - (c) an assessment of the price using either of the Council's "standard" price assessment methods.

18 Contract Award

- 18.1 Following assessment and the selection of the winning tender each of the losing tenderers must be:
- (a) informed of the identity of the successful tenderer; and
 - (b) informed of the reasons why the Council selected that winning tender; and
 - (c) provided with a brief summary of the relative advantages of that tender compared with their own.
- 18.2 You should contact Legal Services for assistance in preparing these letters to failed tenderers.
- 18.3 All letters and documents must be uploaded through the Councils' e-tendering system and advice is available from Procurement.
- 18.4 A "contract award notice" must be published in the OJEU , Contract Finder (and on the NHDC website) following procurements where the Contract Value is over the EU Threshold,. All contract award notices should be published via the Councils' e-tendering system within 30 days of contract award.. Again, Procurement can assist with this. .
- 18.5 An official NHDC Decision notice must be prepared by the Project Manager and published on the Councils website. Templates are available from Procurement.
- 18.6 The Strategic Director of Finance, Policy & Governance maintains a Contract Register showing all contracts entered into by the Council. Once awarded, all new contracts over £5,000 must be confirmed to Procurement Services so they can be recorded on the Contracts Register.

19 Standstill Period (for EU Threshold only)

- 19.1 Before a contract for value above the EU threshold can be signed, the Council must wait a minimum of 10 calendar days. This “standstill period” allows a losing supplier to challenge the award decision.
- 19.2 The standstill period must be built into the procurement timetable and immediately follows notification to all tenderers regarding the proposed Contract Award.
- 19.3 You must inform Procurement and Legal Services if any failed potential contractor challenges a contract award as soon as possible.
- 19.4 You must not sign a contract during the standstill period or after any challenge without specific advice in writing from the Corporate Legal Manager.

20 Contracts

- 20.1 All contracts must be in writing and follow the requirements of Part F Specific Rules of Contract.
 - 20.1.1 Contracts under £10,000 must, as a minimum, be in the form of an official order, issued and signed by an authorised officer in accordance with the Council’s Financial Regulations.
 - 20.1.2 Contracts in excess of £10,000, or in any other case where the responsible Strategic Director decides it is necessary or desirable, must be drawn up in a form approved by the Corporate Legal Manager.
- 20.2 For all contracts over £50,000, documents must be completed and signed by both parties prior to any works commencing.
- 20.3 Where the contract value exceeds £100,000 you should consider whether the contract should be sealed as a deed. Sealing as a deed offers a number of technical advantages over contracts under hand (i.e. just signed by an appropriate person). The main relevant advantage for the Council is that we can sue under the contract for 12 years (against the normal 6 years). This is most relevant for works or significant services contracts where latent defects or incorrect advice may only cause problems years later. Please contact Legal Services for advice if you are unsure.
- 20.4 A contract of any value may be sealed if requested by the responsible Strategic Director or the Corporate Legal Manager. Please contact Legal Services for advice .

21 Joining a Framework Agreement

In some instances, a Framework Agreement can offer the most cost effective and appropriate means by which to procure. However, this may not necessarily be the case and so should be regarded as one potential means by which to proceed and should be compared to the alternatives.

Procurement will research framework agreements to ensure that they are available for use by NHDC and Legal Services will check the terms and conditions of the call off agreement, if one exists. The Project manager should ensure that it is fit for purpose for their needs.

- 21.1 A Framework Agreement is “an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to

establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged”.

- 21.2 This means that the Framework Agreement is a pre-agreed set of terms and conditions that establishes the terms and conditions that will apply to subsequent contracts (a **Call-Off** contract) created under the Framework Agreement but it does not itself do anything except explain how Call-Off contracts are made.
- 21.3 Frameworks can cover supply of works, goods or services. They are useful because once a Framework Agreement has been set up to cover a particular type of works, goods or service you do not need to carry out a full procurement exercise each time you need that supply. Dependant on how the framework has been set up, you can either purchase directly from a supplier, or carry out a mini competition amongst the suppliers. Some consortia require an access agreement to be completed. If there is no appropriate Framework Agreement in place, you can consider whether your procurement is suitable to be a Framework Agreement with other authorities. Procuring supply through a Framework Agreement may lead to price efficiencies due to increased purchasing power.
- 21.4 The maximum duration of a Framework Agreement is four years . The term of a framework agreement may not exceed four years, save in exceptional cases, duly justified. Contact Procurement who will provide advice and guidance..
- 21.5 Call-Off contracts may extend beyond the life of the Framework Agreement. The terms of the Framework and the maximum length of call off will need to be considered on a case by case basis.
- 21.6 Useful Framework Agreements include Eastern Shires Purchasing Organisation (ESPO), the Government Procurement Service (GPS) Hertfordshire Business Services, Supply Hertfordshire, Yorkshire Purchasing Organisation (YPO) North East Purchasing Organisation (NEPO Pro 5 or through any consortia of Local Authorities.

Part E Procurement Issues

22 Waivers

In certain circumstances, it may be necessary to request a variation to these Procurement Rules. Such a request is referred to as a waiver. You must seek advice from Procurement and Legal Services in the first instance.

- 22.1 Waivers are not to be used as an alternative to a lack of forward planning. Where a waiver is needed due to unforeseen circumstances, it will be expected that the waiver will be for a short period of time to allow for a tender/quotation process to be carried out. Waivers which have been submitted to extend contracts or for reasons of extreme urgency must have a timetable attached to highlight when the procurement process is going to be undertaken within the framework of the Contract Procurement Rules.
- 22.2 In relation to procurements above the EU Threshold, few elements of these Rules may be waived. Please contact Procurement and Legal Services for advice as the general law of public procurement is more complicated than can be summarised in these Rules.
- 22.3 In relation to procurements below the EU Threshold only, any individual provision in these Rules may be waived. The waiver has to be agreed by:

- (a) a Strategic Director, in consultation with the Strategic Director of Finance, Policy & Governance and the Corporate Legal Manager, if the Contract Value is £100,000 or less (whether for goods, services or works); or
 - (b) the Cabinet for contracts over £100,000; or
 - (c) the Chief Executive in consultation with the Leader of the Council if the matter is urgent and a meeting of the Cabinet cannot be called; or
 - (d) the Chief Executive activating the Council's 'Major Incident Plan' or a business recovery plan (as outlined in the business continuity management strategy).
- 22.4 All waivers other than a major incident, require a written report being submitted in advance by the authorised officer explaining that the waiver is justified because either:
- (a) the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procurement Rules is justifiable; or
 - (b) the contract is for supplies, works or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
 - (c) the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or UK law); or
 - (d) where it is in the Council's overall interest; or
 - (e) there are other circumstances which are genuinely exceptional.
- 22.5 A record of the decision and the reasons for it must be kept by the Corporate Legal Manager.

23 Arithmetic Errors

- 23.1 Contractors can alter their tenders or quotations after the date specified for their receipt, but before the acceptance of the tender or quotation, where examination by officers of the tender or quotation reveals arithmetic errors or discrepancies which effect the tender or quotation figure.
- 23.2 The contractor should be given details in writing of all such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing their offer in writing.

24 Post Tender Negotiation

- 24.1 In evaluating tenders, the appropriate Strategic Director may invite one or more contractors who have submitted a tender to submit a revised offer following post-tender negotiations.
- 24.2 All post-tender negotiations shall:
- (a) only be undertaken where permitted by law and where the appropriate Strategic Director, together with the Corporate Legal Services Manager and the Strategic Director of Finance, Policy & Governance consider additional financial or other benefits may be obtained which over the period of the contract shall exceed the cost of the post-tender negotiation process; and
 - (b) be conducted by a team of officers approved in writing by the appropriate Strategic Director, Corporate Legal Manager and Strategic Director of Finance, Policy & Governance; and

- (c) be conducted in accordance with guidance issued by the Corporate Legal Manager and in compliance with current EU legislation; and
 - (d) not disclose commercially sensitive information supplied by other bidders for the contract.
- 24.3 Post tender negotiations shall not be used to degrade the original specification unless the capital or revenue budget is exceeded, or the appropriate Strategic Director considers other special circumstances exist. This process must not put other tenderers at a disadvantage, distort competition or affect adversely trust in the competitive tendering process.
- 24.4 The appropriate Strategic Director shall ensure that all post-tender negotiation meetings are properly minuted with all savings and benefits offered clearly costed. Following negotiations, but before the letting of the contract, amendments to the original tender submitted shall be put in writing by the contractor and shall be signed by him.
- 24.5 There are restrictions on the use of post tender negotiations on Procurements over the EU Threshold, which follow the open or restricted procedures. The European Commission specifically rules out any negotiation on price.

“In open and restricted procedures, all negotiations with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, shall be ruled out. However, discussions with candidates or tenderers may be held only for the purpose of clarifying, or supplementing the content of their tenders or the requirements of the contracting authorities, and provided this does not involve discrimination.”

Part F Specific Rules of Contract

25 Contractual Terms

- 25.1 The Council has a number of different standard contractual terms and conditions depending on the nature of the goods, services or type of works you require. These may require additional elements depending on the complexity, risk and importance of the contract. You should ask Legal Services for advice on the appropriate terms and conditions as early as possible.
- 25.2 If your contractor requests or demands that the Council contracts on their standard terms and conditions, you should contact Legal Services who will advise you in relation to these terms. In many cases a Suppliers' terms can be acceptable but sometimes negotiation is required.
- 25.3 If your procurement is a Call-Off under a framework agreement there is usually no scope for negotiation on the terms and conditions of that contract. The terms were pre-agreed when the framework agreement was signed. Under a Call-Off contract the only terms that are negotiated are: when and where the work will start; how much will be paid; and when the work will be completed.

26 Specification

- 26.1 A specification is a description of what the Council requires in as much detail as possible. This description should include all the supply that the contractor will provide and it should list all our requirements so that any quotation / tender prices reflect as fully as possible what the Council requires. Contact Legal Services for assistance with preparing your specification.

- 26.2 Contracts must be consistent with the delivery of the Council's approved policies, service plans and budgets. If for any reason a proposed contract appears likely to require a change to any policy, service plan and/or budget approval of those changes must be obtained in accordance with the Constitution prior to procurement being initiated.
- 26.3 Specifications should have regard to all of the Council's priorities and policies, as well as any legislative requirements. In the specification (and/or award criteria) consideration should be given to factors such as the method of working or production, sourcing of materials, packaging, or type of fuel employed, whole life costing including disposal and environmental issues, which may impact on those wider policies and priorities. These factors should not be applied as a means to stifle competition and be commensurate with potential costs.
- 26.4 Whenever a contract is relet, the opportunity should be taken to revise the specification to achieve better value, where necessary, seeking approvals as above.

27 Payment

- 27.1 Payment to contractors on account of works contracts should only be made on receipt of a payment certificate, or equivalent under the JCT, NEC, ICE or other industry standard form contract (whether of staged or complete works).
- 27.2 Payment terms applied to all contracts will be within 30 days of receipt of goods or satisfactory completion of services and will be made by BACS, unless there are exceptional circumstances such as stage payments, or there is a benefit to the council to reduce the payment terms.
- 27.3 Strategic Directors shall be responsible for ensuring appropriate systems are in place for carrying out checks on contractors' final accounts. These checks should include a suitably qualified officer who has had no previous involvement in the contract.

Part G Ongoing Requirements

28 Variations

You should seek advice from Legal Services and Procurement before negotiating / agreeing any variation.

This Rule 26 may apply in addition to the Rule 14 Single Tender Option.

- 28.1 There are two variation procedures: where the contract has provision and procedures relating to variations; and where the contract has no provision for variation.
- 28.2 Any contract may be varied through the use of a deed of variation. You should seek advice from Legal Services before agreeing any variation.
- 28.3 All variations must be in writing and conform to the appropriate Financial Regulations.
- 28.4 The Strategic Director of Finance, Policy & Governance must be informed in writing of any variation.

Contractual variation

- 28.5 A Strategic Director may authorise variations to a contract where the variation procedure and the resulting change in price is determined in accordance with the contract terms – this may be through the use of agreed formula or through serving and agreeing change notices.

Non-contractual variation

- 28.6 A Strategic Director may authorise variations to a contract where:

- (a) delay would incur substantial cost penalties to the Council; or
- (b) the proposed variations are unavoidable and/or essential for the project to proceed or continue; or
- (c) circumstances arise during the performance of the contract which make it necessary to amend the specification or method of carrying out the works;
in each case provided that:
 - (i) the cost to the Council of the variation is less than or equal to 20% of the value of the contract, for contracts up to £250,000; or
 - (ii) the cost to the Council of the variation is less than or equal to 10% of the value of the contract, for contracts above £250,000 subject to a de-minimis of £50k; or
 - (iii) that any additional cost is less than the EU Threshold; or
- (d) in the case of urgency or unforeseen circumstances where works, services or goods are to be added to or deleted from the contract which are substantially different in scope. In this instance the Strategic Director must report this action to the Portfolio Holder as soon as possible;

and, if relevant, that the variation is within the scope of the OJEU notice.

- 28.7 Subject to the availability of budget funding, a Portfolio Holder may authorise variations to a contract which:

- (a) adds more than 20% to the value of the contract for contracts up to £250,000; or
- (b) adds more than 10% to the estimated value of the contract for contracts above £250,000;(noting de- minimis in 26.6c(ii) or
- (c) increases the estimated value of the contract from below £60,000 to £72,000 or more; or
- (d) in the case of urgency or unforeseen circumstances where works, services or goods are to be added to or deleted from the contract which are substantially different in scope;

in each case provided that any that any additional cost does not take the total costs of the project over the EU Threshold or within 10% and, if relevant, that the variation is within the scope of the OJEU notice.

- 28.8 Any other variation must be agreed by Cabinet or be formally authorised under another delegated authority.

29 Extensions

You should seek advice from both Procurement and Legal Services before negotiating / agreeing any extension, including Framework Agreements.

- 29.1 All extensions must be in writing in a form approved by the Corporate Legal Manager and conform to the appropriate Financial Regulations.

- 29.2 If the terms of a contract allow for an extension, then a Strategic Director may following agreement of the Strategic Director of Finance, Policy & Governance and the relevant Portfolio Holder may authorise a single extension of a contract by up to three months.
- 29.3 If the extension is for more than three months a single extension only may be approved by the appropriate Portfolio Holder, following consultation with the Finance & IT Portfolio Holder and the Strategic Director of Finance, Policy & Governance, subject to compliance with rule 26.
- 29.4 In all cases, officers must demonstrate that a detailed and robust cost/benefit analysis has been undertaken and that sufficient budget is available. Evidence of the decision making process must be formally recorded in a delegated decision sheet which is filed on the relevant contract file and a copy sent to the Corporate Legal Manager.

30 Contract Management

- 30.1 Once a contract has been awarded it must be monitored with regular review meetings to raise concerns and issues from both parties.
- 30.2 You should take minutes of any review meeting for the benefit of the Council and the contractor.

Part H Appointment of Consultants

31 Consultants

Before the appointment of any Consultants, Officers must contact Procurement and Legal Services in the first instance who will provide advice and guidance on the process.

- 31.1 It is important that best value is obtained when employing consultants. Therefore, for all instances where the Contract Value of a consultancy appointment (see 29.2) is over £10,000, the commissioning officer must provide a report to the Head of Service responsible containing as a minimum the details listed in Rule 30 (Project Details).
- 31.2 This requirement at 29.1 applies to the appointment of management or other advisory consultancy work (to replace, advise or bolster in-house staff resources in "business as usual" activities) The process outlined in 29.1 does not apply to technical or specialist contracts for services (employed for specific projects and included in approved overall project budget) e.g. specialist engineers, architects, surveyors, barristers etc. However, proper procurement procedures must be followed when appointing in all circumstances.
- 31.3 All consultants (of any type) must provide evidence of adequate professional indemnity insurance as determined by the Risk Manager prior to their appointment. The requirement for insurance and the levels required should be advised in the specification of works. This insurance must be maintained for a minimum of 6 years after the contract ends.
- 31.4 It should be a condition of contract with any consultant, agent or professional advisor who is to be responsible to the Council for the award or supervision of a contract on its behalf, that in relation to that contract they shall:
- (a) comply with these Procurement Rules as though they were an employee of the Council; and confirm their acknowledgement of this requirement, (this

will be particularly relevant if a consultant sub-contracts on behalf of the Council)

- (b) engage in skills transfer activities where required and appropriate.
 - (c) produce on request all the records maintained by them in relation to the contract and award of contract; and
 - (d) on completion of the contract, transmit all records that they have produced or received that relate to the contract to the appropriate Strategic Director.
- 31.5 Any contract must set out the consultants legal obligations to the Council.
- 31.6 The Strategic Director shall be responsible for ensuring that the consultant's work is properly monitored on an ongoing basis. This includes:
- (a) appointing a named project officer or group; and
 - (b) specifying key tasks and dates for consultants; and
 - (c) monitoring costs against budgets; and
 - (d) arranging regular progress meetings with consultants.
- 31.7 The project officer shall maintain the following documentation:
- (a) project brief/objectives; and
 - (b) minuted authority, where required; and
 - (c) the agreement with the consultant and any subsequent variations; and
 - (d) records that can demonstrate contractors compliance with contract standards prior to payments being made; and
 - (e) record of payments made to the consultant and for the project; and
 - (f) a project evaluation form.
- 31.8 The project officer shall report immediately to the Strategic Director any material technical or financial deviation by the consultant from the specified agreement.
- 31.9 At the end of a project a post-project appraisal exercise should be carried out by the Project Manager (and including Legal, Procurement and other relevant officers) that includes an assessment of the consultant's performance. When a project is complete, the Project Manager shall also forward a copy of the completed Lessons Log to the Performance and Risk Management Team. The team will review the content of the projects Lessons Log and enter the details of the relevant lessons in the Corporate Lessons Learnt Log.

Further information is available at

http://srvinternet01.north-herts.gov.uk/intracontent/index/finance_and_procurement/corporate_governance/project_management-2/lessons_learned.htm

32 Project Details

- 32.1 Before consultants are invited to bid/tender, the Strategic Director shall:
- (a) identify the project objectives; and
 - (b) document the reasons for the employment of consultants including the benefits of employing consultants against in-house staff or agency staff; and

- (c) document the residual in-house costs to support the consultant and ensure that sufficient budget is available to meet all identified costs; and
- (d) prepare a project brief, including:
 - (i) background; and
 - (ii) objectives; and
 - (iii) timetable; and
 - (iv) costs; and
 - (v) monitoring arrangements; and
 - (vi) documentation standards; and
 - (vii) contact names and numbers for enquiries.

Part I Land Transactions

33 Land Transactions

- 33.1 These Rules shall apply to purchases and sales of property and land and to leases for a fixed term of more than twenty years.
- 33.2 All valuations and negotiations in respect of transactions shall be carried out by or under the supervision of a properly qualified Member of the Royal Institution of Chartered Surveyors or equivalent. **In no circumstances shall Members of the Council conduct them.**
- 33.3 These Rules apply to all valuations of land carried out by a qualified and independent Chartered Surveyor appointed to act on behalf of, or to advise, the Council.
- 33.4 At least two officers of the Council or an officer of the Council and a duly appointed Chartered Surveyor or other agent shall be involved in all negotiations relating to land transactions which engage Part 3 of the Council Constitution (Responsibility for functions: Terms of Reference and the Scheme of Delegation).
- 33.5 It shall be the duty of the Council's Chartered Surveyor whether employed or appointed to report on any transaction authorised by the Council to the relevant Committee or Group at appropriate times. Which Committee or Group depends on the particular transaction and the authorisation for that transaction. Please contact Legal Services for advice.
- 33.6 All valuations prepared for the purpose of a transaction or balance sheet estimate shall be supported by evidence of the values of comparable properties in the locality where information and relevant comparators are available.
- 33.7 No property or land owned or leased by the Council shall be disposed of to a third party until it has been established that no other directorates of the Council have a need for the property or land, and that the current service area confirms no other requirement for the site. .
- 33.8 No property or land owned or leased by the Council, other than land held for investment purposes or previously declared surplus to requirements shall be disposed of until a report has been prepared by the Strategic Director of Finance, Policy and Governance and presented to Cabinet containing:
 - (a) a description of the property or land, its title, physical characteristics and development constraints; and

- (b) any information from the Council's records or those of statutory undertakers which would affect the property or land's value or development potential; and
- (c) an assessment of the development potential of the property or land; and
- (d) evidence that the property or land has been offered to all directorates and that the Council has no operational use for the property or land; and
- (e) recommendations on the following:
 - (i) the title to be transferred; and
 - (ii) the method of disposal; and
 - (iii) whether negotiations must proceed with a special purchaser; and
 - (iv) the estimated price the Council may receive (in a Part 2 report)
- (f) In arriving at the recommendation, other factors that officers need to take into consideration are:
 - (i) issues that need to be resolved before marketing of the property or land can proceed; and
 - (ii) whether legal and other costs must be recovered from the prospective purchaser and if so an estimate of their amount; and
 - (iii) whether the appointment of external advisors or agents is required

33.9 All disposals of property or land owned or leased by the Council shall be by one of the following methods: Private Treaty, Public Auction, Formal Tender, Informal Tender, statutory offer back to the former owner, or long lease. Costs of marketing and disposal will be charged to the receipt.

33.10 In the event that it is decided to dispose of property or land by way of a tender then so far as it is practicable the procedures laid down in the Rules shall apply, subject to a waiver under Rule 22 (Waivers) where it is not practicable to follow the procedures laid down in the Procurement Rules.

31.11 The authorisation required for a land transaction depends on its value and is set out within the Constitution. The following are able to authorise transactions, subject to the value set out in their terms of reference:-

- Strategic Director of Finance Policy and Governance
- Cabinet
- Full Council.
-

Part J Other Information

34 Glossary of Terms

Framework Agreements

This is an agreement where the Procurement has been done in such a way as to allow other local authorities to join the contract for particular goods or services. Usually there is some form of “further competition” where we simply say what work or goods we want and the Framework Agreement contractors give us a quotation price for that work, but it might be that prices are fixed.

There are many different sorts of these Framework Agreements and it is worth asking whether there is a Framework Agreement that might suit your requirements. Ask Procurement and Legal Services for advice.

EU Threshold

These are updated bi-annually and the current figures can be found at

<http://procurement.cabinetoffice.gov.uk/policy-capability/latest-policy-and-regulations/public-procurement-policy>

Invitation to Tender (ITT)

The ITT is a document that details the goods or services we require in sufficient detail for the interested contractors to give us an accurate quotation of price and how they will meet our minimum expected service levels.

The ITT will also contain a Form of Contract that we will require the winning bidder to use. There are also a number of certificates that we require tenderers to return.

There is a standard ITT starting point which contains all of the legal requirements that you will need to complete with help from Legal Services. This will be tailored to suit your requirements.

OJEU

This stands for Official Journal of the European Union. It used to be a print journal but is now a website where local authorities throughout the EU publish details of their procurements to the public. Interested contractors can search the website and find details of contracts that they may want to tender for. If a procurement is over the EU Threshold it must be published on OJEU. Procurement will do this for you.

Prior Information Notice (PIN)

A published notice which advertises the procurement in advance. Use of a PIN allows timescales to be shortened. In some circumstances it can be used instead of a Contract Notice.

Pre-Qualification Questionnaires (PQQ)

Used to shortlist bidders when there are likely to be large number of suppliers expressing an interest in the contract.

It works by splitting the procurement process into two stages. The first, the PQQ stage involves assessing the companies general competence as a contracting party to provide the services – but not the way that they would actually provide the services. This is done by assessing their financial standing, and other matters that do not relate to the quality of their services, just their ability to provide the service over the contract lifetime which is assessed by the second stage, the ITT.

The PQQ assessment is normally quicker and easier than the full assessment that would be carried out in the ITT and for this reason is useful. Where there is no PQQ, the ITT itself would ask these questions.

There is a standard PQQ starting point which contains all of the legal requirements that you will need to complete with help from Legal Services. This will be tailored to suit your requirements.

35 Key Contacts

Procurement	Procurement Officer Ext. 4284 Payments & Reconciliation Manager Ext 4606
Legal	Corporate Legal Manager Ext. 4315/ 4588 Contracts Solicitor Ext. 4578
Internal Audit	Audit Manager 01438 845508
Committee Services	Committee & Member Services mgr Ext. 4403 Committee Secretary Ext. 4590
Finance/Financial Appraisals	Head of Finance Ext. 4243 Accountancy Manager Ext. 4470
Risk & Insurance	Performance & Risk Manager Ext. 4251
Health & Safety	Health & Safety Officer Ext. 4600
Equalities/Environmental	Policy Manager Ext. 4835
Freedom of Information / Data Protection	Information & Records Mgr Ext. 4563

APPENDIX B

CONTRACT PROCUREMENT RULES UPDATE

Summary of Main Changes:

Page number and reference	New entry	Previous entry or clarification of amendment
9	An official NHDC Decision Notice must be posted on the Councils website	Quotations over £50k
10	A Contract Award Notice must be published as soon as possible, after the end of the standstill period and, in any event, within 30 days of the award of the contract, via the Councils' e-tendering system.	Previously 48 days. Changed in line with new eu regs.
11	Either – a pre qualification process is followed using Construction line or similar OR an advert must be placed on the NHDC website and Contract Finder through the Councils' e-tendering system to commence process.	Removed reference to PQQ for below OJEU procurements as no longer permitted by new regs.
11	A Contract Award notice must be published as soon as possible after the end of the standstill period and, in any event, within 30 days of the award of contract, via the e-tendering system.	Previously 48 days. Changed in line with new eu regs
13 7.10	For contracts above £50k you must publish an official NHDC Decision Notice on the Councils website. Templates are available from procurement.	Wording added
13 7.11	(a) Rule 15 (Receipt of Tenders); and	Removed reference to hard copy tenders. As all tenders now received via e tendering system.
15 Table B	This process should be used if there are a large number of suppliers competing for the business. It can only be used for above OJEU procurements.	Added clarification to use of PQQ in line with new regs
15 Table B	These processes can be used when it is not possible to adapt readily available solutions or design / innovation may be required. Rules 29 and 30 of the Public Contract Regulations set out the requirements.	New wording added for Competitive Procedure with Negotiation and Competitive Dialogue
15 Table B	These processes can be used when it is not possible to adapt readily available solutions or design / innovation may be required. Rule 31 of the Public Contract Regulations sets out the requirements	New wording added for Innovation Partnerships
16 Part D	Rule 40 of The Public Contract Regulations 2015 expressly allows opportunities for Pre Tender market consultation. Please consult with Legal and Procurement on it's use as the rules must be carefully followed.	Added clarification

17 9.4(a)	(a) Rule 15 (Receipt of Tenders); and	Removed reference to hard copy tenders as all tenders now go through e tendering
17 10.2	The restricted tender procedure splits the procurement process into two stages: the PQQ and then the ITT. This process can only be used for above OJEU procurements.	Clarified that PQQs can no longer be used for below OJEU procurements
18 10.9	Wording for PQQs below OJEU deleted – no longer relevant	No longer use PQQs for below OJEU
19 12	<p>36 Competitive Procedure with Negotiation</p> <p>36.1 All adverts and contract award notices must be published as per the requirements in Table A</p> <p>36.2 The Competitive Procedure with Negotiation splits the procurement process into initial receipt of ITTs, a negotiation stage and final submission of bids from Suppliers.</p> <p>36.3 Competitive Procedure with Negotiation is subject to detailed rules and Legal must be consulted if this option is selected.</p> <p>36.4 As in 8.6 the approval of Cabinet must be obtained in advance if this method is selected.</p>	Wording added re new procedure
19 13	<p>37 Innovative Partnership procedure.</p> <p>37.1 All adverts and contract award notices must be published as per the requirements in Table A</p> <p>37.2 This procedure may only be used where it has been identified that there is a need for innovative goods, services or works which cannot be met by the existing market.</p> <p>37.3 The Innovative Partnership procedure is subject to detailed rules, and Legal must be consulted if this option is selected.</p> <p>37.4 As in 8.6 the approval of Cabinet must be obtained in advance if this method is selected.</p>	Wording added re new procedure
21 15	All tenders should be received electronically via the Councils E-tendering system. The documents cannot be accessed until the closing date and time has passed.	Deleted all wording relating to hard copy tenders as all tenders are received via e tendering.
22 16	(a) Tenders must be submitted through the Councils' e-tendering system. It will automatically record the receipt of the tender for audit purposes. Each tender submitted will be deposited securely in the system to which only the project team, Procurement and Legal Services will have access. Once the tender has been awarded, the tender will be kept securely until the expiry of the retention period.	Deleted all wording relating to hard copy tenders as all tenders received via e tendering.

22 17.4	. A Price only evaluation must not be used for above OJEU tenders.	Wording added as per new regs.
24 18.4	A "contract award notice" must be published in the OJEU , Contract Finder (and on the NHDC website) following procurements where the Contract Value is over the EU Threshold,. All contract award notices should be published via the Councils' e-tendering system within 30 days of contract award.. Again, Procurement can assist with this. .	Previously 48 days, as per new eu regs.
24 18.5	37.5 An official NHDC Decision notice must be prepared by the Project Manager and published on the Councils website. Templates are available from Procurement.	Wording added.
24 18.6	The Strategic Director of Finance, Policy & Governance maintains a Contract Register showing all contracts entered into by the Council. Once awarded, all new contracts over £5,000 must be confirmed to Procurement Services so they can be recorded on the Contracts Register.	Previously £10k. changed in line with new transparency requirements.
36 Glossary	PRIOR INFORMATION NOTICE (PIN) A published notice which advertises the procurement in advance. Use of a PIN allows timescales to be shortened. In some circumstances it can be used instead of a Contract Notice	Added

APPENDIX C

SENIOR MANAGEMENT TEAM Date 12th May 2015

POLICY PAPER on The Public Services (Social Value) Act 2012 and the application of Social Value to procurement outside the confines of the Act

Report of the; Head of Policy and Community Services

1. SUMMARY

- 1.1 To provide recommendations for policy on the implementation of the Public Services (Social Value) Act 2012 and ancillary considerations

2. BACKGROUND

- 2.1 The Public Services (Social Value) Act 2012 became law in January 2013. All authorities were required to comply with its provisions at that time. NHDC does not yet fully apply The Act.

Whilst social value within procurement is a concept that significantly pre-dates the Social Value Act, The Act does provide a useful statutory understanding of what the phrase means, that being an improvement to “economic, social and environmental well-being of the relevant area”

Austere times should not be a reason to shy away from ensuring social value is obtained. In fact, referring to this issue directly in its guidance on the Social Value Act, the Cabinet Office stated its understanding as follows:

“In these tight economic times it is particularly important that maximum value in public spending is achieved, however some commissioners miss opportunities to secure both the best price and meet the wider social, economic and environmental needs of the community. Commissioners and procurers should be taking a value for money approach – not lowest cost – to assessing contracts and the Act complements that approach.” This concept is also described in a number of NHDCs other plans, including the Procurement Strategy, the Community Asset Transfer Policy etc. as the authority being required to seek “best consideration”.

The EU legislative framework leaves no doubt that there are instances in which it is valid for a contracting authority to consider social and environmental characteristics when deciding whether to award a contract.

- 2.2 Following all relevant legislation, award criteria relating to social value may only be used if they:
- a) are being used to assess MEAT (Most Economically Advantageous Tender) in achieving value for money,
 - b) are linked to the subject matter of the contract,
 - c) do not confer an unrestricted freedom of choice on a contracting authority,
 - d) comply with EU Treaty obligations, and specifically are not directly or indirectly discriminatory,
 - e) are compatible, generally, with EU law;
 - f) can be compared and / or assessed objectively; and
 - g) are properly advertised in the contract notice and/or contract documents.

- 2.3 The Social Value Act imposes an active duty on relevant contracting authorities to consider the economic, environmental and social benefits that

can be achieved through commissioning. It does so by requiring consideration of the following:

- a) how to improve through procurement the social, economic and environmental well-being of the area served by that contracting authority; and
- b) how to undertake a procurement process with a view to securing that improvement.

2.4 This duty relates to *service* contracts above the relevant monetary thresholds in the Regulations, whether they fall under Part A or B of those regulations. It also applies to contracts with a *works/supplies* element that is so incidental that the contract would ordinarily be considered a services contract under the Regulations (as well as to frameworks for such contracts).

The Social Value Act also applies to the pre-procurement stage and authorities are required to consider whether consultation on social value matters is required.

2.5 The Act provides the opportunity to consider a wide variety of social benefit in awarding service contracts, these could include, for example,

- Achievement of jobs for the long-term unemployed
- Career advice and work placements for school children
- Apprentice opportunities and graduate placements
- Skills and training opportunities for staff and local businesses
- Supply chain and sub-contracting opportunities for SME's and Social Enterprises
- Development of Third Sector organisations and stimulating socially conscious markets
- Local investment from contractors
- Environmental benefits through sustainable purchasing
- Achievement of "living wage" levels of remuneration
- Increased community engagement through consultation
- Increased market diversity
- Encouragement of ethical purchasing
- Stimulating social integration
- Application of the living wage as opposed to minimum wage legislation
- Contributing to wider public sector priorities (e.g. health improvement, crime and anti-social behaviour)

This list is not exhaustive; the opportunities for imaginative consideration of what constitutes social value are extensive and the opportunities for direct impact on the NHDC district could be substantial.

2.6 The value of contracts (total value of the duration of the contract, not defined as annual cost), where NHDC is required to consider the Social Value Act, are those whose value exceeds the EU regulations concerning inclusion in the European Journal (OJEC), currently EURO 207,000 (£172,514).

2.7 There is an opportunity, in implementing policy to comply with this act, to expand NHDC application of Social Value considerations throughout the procurement process.

Following discussions with relevant stakeholders it is suggested that the application of the Social Value Act in North Herts should be considered in relation to **all** contracts procured over the lower European threshold (£172,514), including capital works and goods supply. Whilst this is not a requirement of the Act, implementation would be no more onerous than a

strict observation of the legislation and would further contribute to NHDC implementation of our Localism agenda.

- 2.8 It is further suggested that NHDC implement a “go local” policy on procurement below £50,000. This would require the officer procuring to consider sourcing supply within the NHDC area as a first resort, if no suitable supplier is available locally then to look more broadly for a supplier for the service, subject to the normal rules of procurement
- 2.9 Central government recently enquired whether authorities were in the process of either considering or developing a specific policy in regard to Social Value, that enquiry itself prompted by the Lord Young review (see paragraph 3.1 below). It is not intended that this authority develop a stand-alone document entitled ‘Social Value Policy’ but that it forms part of the overall procurement process as it should, and thus be updated and reviewed as required within that documentation.

3. ISSUES

- 3.1 The values imposed by the act are linked to the thresholds set by EU directives (most recently Directive 2014/24/EU). It has already been suggested, most noticeably by Lord Young in his review of the Act 02/15 (published 13 February 2015), that these thresholds in relation to the application of the Social Value Act should be lowered, potentially considerably. It has also been mooted that the application of the Act should be extended beyond service contracts. Whilst this policy goes a long way to anticipating those changes there can be no certainty of where they will, ultimately, be set, particularly given present additional uncertainty arising from the general election and Government policy thereafter
- 3.2 Whilst the “go local” principle on lower value procurement may be achieved by policy implementation, a totally locality based approach to Social Value in contracts would be neither appropriate nor legally enforceable, considering the wider implications of general procurement legislation.
- 3.3 Contract monitoring and management will require active consideration of the adequate implementation of any social value elements included together with consideration of the SVA elements, and either the decision by the contract manager to incorporate social value (as being available and appropriate) or not to incorporate social value (together with the reasons why this is not suitable). They must then formally record such decision in the Decision Notice which must be completed by all contract managers for ANY contract with an **aggregated value** of over £50,000.00.
- 3.4 The proposals outlined in this paper are yet to be discussed with the relevant portfolio holder for Finance and IT, once the views of SMT have been captured and any subsequent amendment made.

4. LEGAL IMPLICATIONS

- 4.1 The Social Value Act 2012 was introduced to require public authorities, not only local authorities, to have regard to economic, social and environmental wellbeing in connection with public services contracts, and for connected purposes.
- 4.2 The legislation therefore changes the Councils' responsibilities in the procurement of services and, if this policy is approved, will change the Councils' approach to the procurement of goods and works.

5. FINANCIAL AND RISK IMPLICATIONS

- 5.1 There is a risk that application of “best value” as a result of consideration of social value *may* incur elevated costs to contracts procured. It is expected that officers procuring or managing contracts would challenge increased cost demands on a case-by-case basis under the current system of oversight.
- 5.2 There is a risk of increased challenge by unsuccessful service providers/contractors on the procurement process if Social Value application were the only differentiation in awarding a contract particularly if unsuccessful bidders/service providers may have provided better value for money on a purely costs perspective. Implementation of statutory responsibility may be sufficient to avoid liability where appropriate. Clear direction in invitations to tender to incorporate social value should satisfy liability otherwise.
- 5.3 Active consideration of the social impact of applying this act should not be overtaken by a simple “tick box” exercise. Whilst the act only requires *consideration of social value* in the procurement exercise, the potential benefits to the district require reasonable consideration of social value inclusion where practicable to do so.
- 5.4 It is anticipated that changes/additions to Invitations to Tender will accommodate the responsibilities of the Act and policy changes as approved
- 5.5 Care should be taken in applying certain elements of social value inclusion. For example insisting on the payment of a living wage for those assigned to a contractor’s workforce when working on our contract may not be possible due to the employment situation across the remainder of that workforce, however contracting where the payment of a living wage is already established would not pose the same concerns.

6. HUMAN RESOURCE IMPLICATIONS

- 6.1 Currently the implementation of this policy would fall to officers procuring services under the purview of The Act and, if approved, all contracts effected.
- 6.2 Ongoing contract management will require consideration of social value elements included

7. EQUALITIES IMPLICATIONS

- 7.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 6.5, that public bodies must meet, underpinned by more specific duties, which are, designed to help meet them.
- 7.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 7.3 This paper identifies at 3.2 above that there are risks of challenge which may arise from a ‘go local’ approach to procurement of goods under £50k. However we also need to ensure that our approach in the implementation of Social Value requirements does not unduly or adversely impact any potential supplier (save for any impact arising as a result of the fact that a ‘go local’ policy inevitably precludes applying best price as a primary consideration).

8. RECOMMENDATIONS

- 8.1 That SMT consider endorsing this policy for submission to cabinet.

Contributing officers:

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