PART B

SECTION 20

CONTRACT PROCUREMENT RULES

NORTH HERTFORDSHIRE DISTRICT COUNCIL
CONTRACT PROCUREMENT RULES

SECTION 20

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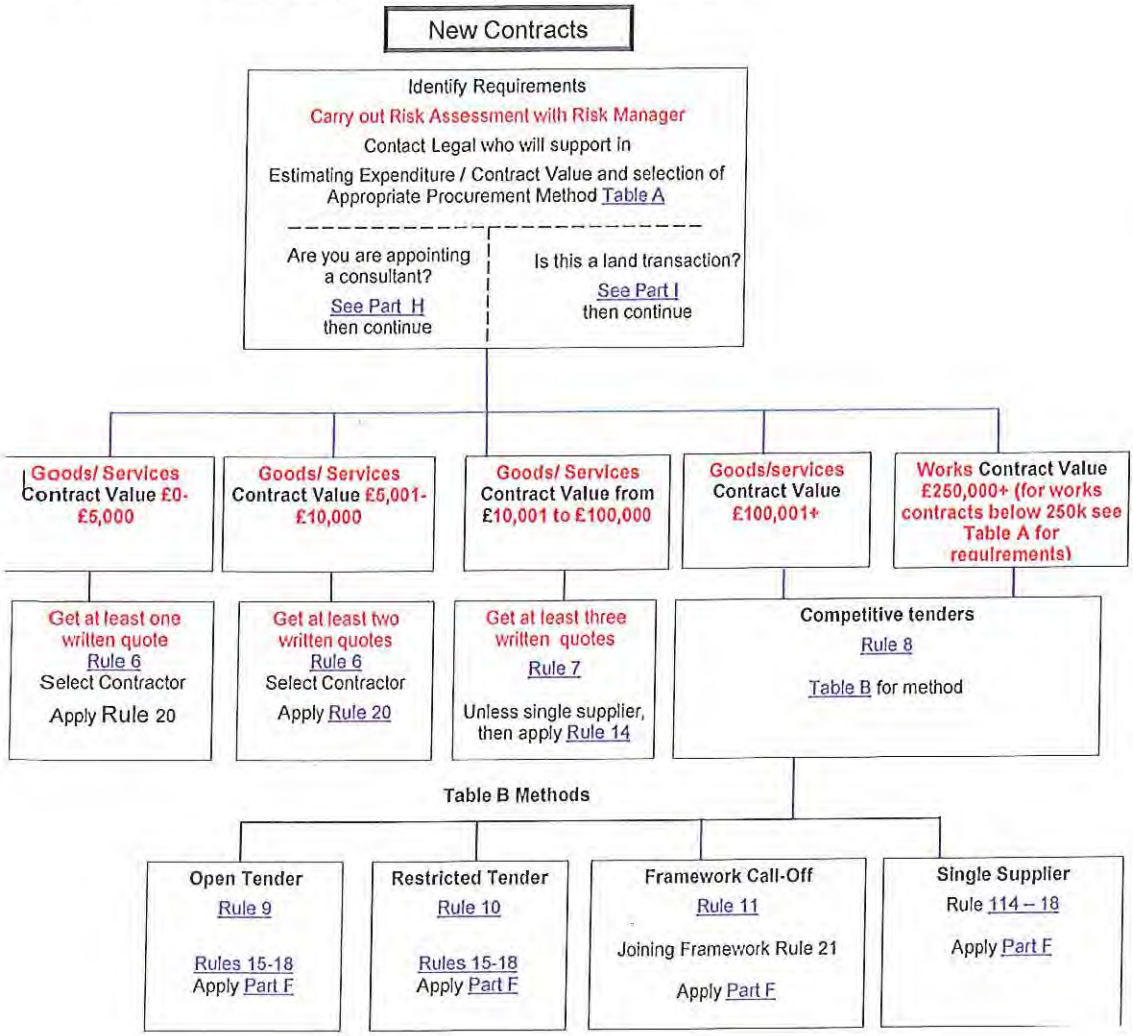
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1 Part A Flowchart to show tendering options





Part B Background

2 Introduction

2.1 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.

2.2 These Rules have been split into a number of Parts which you must comply with:

(a) Part C Procurement MethodsPart C Procurement Methods – relates to new procurements; and

(a) Part F Specific Rules of Contract

(b) Part F Specific Rules of Contract – which details the terms and conditions of contract that should apply; and

(c) Part G Ongoing RequirementsPart 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 ConsultantsPart H Appointment of Consultants – which details the special procedures that should be followed regarding the appointment of consultants; and

(e) Part I Land TransactionsPart I Land Transactions – which details the special procedures that should be followed regarding the acquisition or disposal of any interest in land.

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2.3 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.

2.4 Failure to comply with the Rules will result in Officers conduct being examined and may be a breach under the Council's Managing Misconduct Policy. It is a potential disciplinary offence to fail to comply with these Rules when letting contracts and employees have a duty to report breaches of these Rules to the Service Director: Legal and Community, who is also the Council's Monitoring Officer (monitoring.officer@north-herts.gov.uk). The Monitoring Officer will then report the matter to the relevant officer's line manager- and may consult with the Service Director: Resources, and the Senior Management Team.

2.5 The Rules have been adopted in accordance with the requirements of Section 135(2) of the Local Government Act 1972.

2.6 The Council's Contracts and Procurement Group is responsible for reviewing and providing guidance on all procurement and contractual matters.

2.7 You should ask for advice from Legal, as per the contacts list at the end of these Rules, if any aspect of these rules is unclear. You should also seek Legal advice at the indicated stages of any procurement process, and at any other time should you wish to do so.

2.8 Officers have a responsibility to read and be familiar with these Rules.

2.9 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 Legal if the meaning of any of these Rules is unclear.

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

3 Scope

3.1 These Rules apply to all contracts for works or the supply of goods or services to North Hertfordshire District Council save as set out in rule 3.4.

3.2 You must not enter into any contract until all necessary approvals, sanctions and consents have been obtained and ensured these Rules have been followed.

3.3 No tender or quotation may be accepted unless the necessary approval, sanction and consent have been obtained.

3.4 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 H) 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)
- contracts which are exempt under the Public Contracts Regulations 2015

3.5 There are particular requirements in relation to the appointment of consultants, (Part H Appointment of Consultants~~Part H Appointment of Consultants~~) and transactions involving land, (Part I Land Transactions~~Part I Land Transactions~~).

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3.6 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.

3.7 The principles of the Public Services (Social Value) Act 2012 will be applied to all relevant procurements and contract management required by the legislation and in any event will be applied to all procurement contracts above the EU threshold including capital works and goods supply. Additionally a "go local" policy applies to all contracts valued below £50,000, to first attempt to locate those goods, services or works from a supplier located within the North Herts District Council geographical area. Advice on these policies and the toolkits available to assist you should be sought from Legal.

3.8 These Rules will be reviewed regularly. Responsibility for this lies with the Service Director: Legal and Community (or relevant delegated officer) in consultation with the Contracts and Procurement Group. The Legal and Community Directorate includes both Legal and Procurement Officers.

3.9 These Rules do not apply to Concession Contracts (*see Glossary of Terms in section 34*). For Concession Contracts equal to or greater than the sum specified in Article 8(1) of the Concessions Directive, please follow the processes set out in the Concession Contracts Regulations 2016. Seek advice from Legal.

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3.10 For all relevant procurements (see Table A), you must consider the extent to which environmental protection and the following principles of locality could be incorporated and promoted in both the contract award criteria and performance of contract.

- Increase local spend to invest in the local economy
- Co-ordinate services at a neighbourhood level
- Think about the whole system not individual service silos
- Focus on early intervention now to save costs tomorrow
- Commit to your community and proactively support local organisations
- Commission services simply and collaboratively so they are "local by default"
- Physical environmental impacts

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Part C Procurement Methods

4 Introduction

4.1 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.

4.2 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.

Personal Interests

4.3 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 a relevant conflict of interest form has been completed and authorisation obtained from the officer's Appropriate Officer[1] for the award of the contract to proceed.

4.4 No Officer may accept a directorship in any company unless approved under the Employee Conflicts of Interest Policy. Permission should be sought from their Appropriate Officer, as detailed in the Employee Conflicts of Interest Policy[2]. All Officers are expected to be aware of and comply with the requirements of the Council's policy.

4.5 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 on the Council's website[3]. 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

[1] Officers to review Conflicts of Interest Policy and complete form 3 : http://intranet.north-herts.gov.uk/home/about-me/hr-policies/conflicts-interest
[2] *Ibid*
[3] https://www.north-herts.gov.uk/home/community/community-right-challenge

4.6 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.

4.7 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

4.8 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 Employee Gift's and Hospitality Policy:

http://intranet.north-herts.gov.uk/home/about-me/hr-policies/gifts-and-hospitality

Councillors who exercise their functions under these rules are also obliged to following their Code of Conduct, the NHDC Member Protocol for Gifts & Hospitality and declare any relevant interests[4].

Record of Interests

4.9 All interests in contracts must also be declared in writing in register (Interests in Contracts form 3) held by the Service Director: Legal and Community and all interests registered are open to inspection by members and the public:

http://intranet.north-herts.gov.uk/home/about-me/hr-policies/conflicts-interest

Whistleblowing

4.10 When a Member, employee or a contractor raises concerns about the activities of the Council which are ethically questionable, this is known as whistleblowing and is covered by the Councils' "Whistleblowing 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://intranet.north-herts.gov.uk/home/finance-and-procurement/corporate-governance/whistleblowing-policy

5 Contract values

5.1 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] https://www.north-herts.gov.uk/home/council-and-democracy/councillors/councillors-code-conduct-and-declaration-interests

5.1.1 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.

5.1.2 (a) "Works Contract" means a contract which has as its object construction, demolition of buildings, civil engineering, earthworks and associated requirements such as re-roofing, re-surfacing, design services etc.

(b) "Services Contract" means a contract which has as its object a service of some sort, e.g. courier services, street cleansing, training etc.

(c) "Goods Contract" means a contract which has as its object the supply of some tangible items e.g. photocopiers, refuse bins, consumables etc.

(d) "Consultancy Services" (see Part H) means a contract to provide specialist advice or support to the Council. This does not cover training providers.

5.2 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**.

5.3 Contract Values must not be artificially under or over estimated or divided where the effect is to avoid the Rules.

5.4 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.

5.5 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.

5.6 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 Legal for advice.

5.7 If there is an intention to use indices for calculating any contract uplift, please ask Finance (Resources Directorate) for advice.

5 Summary of requirements for Contract Values – Table A

PROCUREMENT – TABLE OF REQUIREMENTS – GOODS AND SERVICES					
UNDER 5K	**£5K-£10K**	**£10K - £50K**	**£50K - £100K**	**£100K - EU**	**EU PROCUREMENTS**
1 Quote	2 Quotes	3 Quotes	Open Advert	Open Advert	Restricted, Open or Negotiated Process
Apply Go Local Policy	Apply Go Local Policy	Apply Go Local Policy			
-	Keep records of offers invited, method of inviting offers, basis of selecting contractors, staff authorised to accept offers, correspondence with suppliers.	- Discussion with Legal before starting procurement including discussion on incorporating environmental protection and locality	Discussion with Legal before starting procurement including discussion on incorporating environmental protection and locality	- Initial procurement meeting held with Legal before starting the procurement including discussion on incorporating environmental protection and locality.	Initial procurement meeting held with Legal before starting the procurement including discussion on incorporating environmental protection and locality.
-	-	Standard Quotation Documents	Standard Quotation Documents	Standard Tender Documents	Standard Tender Documents
-	-	Must use e - Tendering	Must use e- Tendering	Must use e- Tendering	Must use e - Tendering
-	-	-	Carry out Risk Assessment	Carry out Risk Assessment	Carry out Risk Assessment
-	-	-	Consider Social Value	-Consider Social Value	Must consider Social Value
-	-		Standard decision letter templates	Standard decision letter templates.	Standard decision letter templates
-	-	-	-	Detailed Feedback	Detailed Feedback
-	-	-	-	Observe 10 day Standstill	Observe 10 day Standstill.
			Standard Award letters.	Standard Award letters.	Standard Award letters.
-	-	-	Contracts must be completed and signed by both parties prior to commencement where practical. Where this is unlikely to take place, notification should be provided to the Service Director: Legal and Community prior to the start date with a plan to achieve contract signing.	Contracts must be completed and signed by both parties prior to contract commencement where practical. Where this is unlikely to take place, notification should be provided to the Service Director: Legal and Community prior to the start date with a plan to achieve contract signing.. Consider if contract should be sealed as a deed.	Contracts must be completed and signed by both parties prior to contract commencement where practical. Where this is unlikely to take place, notification should be provided to the Service Director: Legal and Community prior to the start date with a plan to achieve contract signing. Consider if contract should be sealed as a deed.
-	-	-	Must complete Decision Notice	Must complete Decision notice	Must complete Decision Notice
-	Must provide details for	Must provide details for	Must provide details for	Must provide details for Contract	Must provide details for Contract Register.

-	Contract Register.	Contract Register	Contract Register.	Register.	
-	-	-	Must post award notice within 30 days of Contract Award.	Must post award notice within 30 days of Contract Award.	Must post award notice within 30 days of Contract Award.
-	-	Must consider setting up Google alerts/ Creditsafe alerts.	Must consider setting up Google alerts/ Creditsafe alerts.	Must consider setting up Google alerts/ Creditsafe alerts.	Must consider setting up Google Alerts. Mandatory /Creditsafe alerts.

PROCUREMENT – TABLE OF REQUIREMENTS – WORKS					
EMERGENCY UP TO £2.5K	**UNDER £10k**	**£10K - £50K**	**£50K - £250K**	**£250K - EU**	**EU PROCUREMENTS**
1 Verbal Quote	1 Written Quote	3 Quotes	3 Quotes	Restricted Process or Open Advert	Restricted, Open or Negotiated Process
Apply Go Local Policy	Apply Go Local Policy	Apply Go Local Policy	-	-	-
-	Must keep records of offers invited, method of inviting offers, basis of selecting contractors, staff authorised to accept offers, correspondence with suppliers.	Must keep records of suppliers invited, method of inviting offers, basis of selecting contractors, staff authorised to accept offers, correspondence with suppliers, evaluation record sheets.	- Discussion with Legal before starting procurement including discussion on incorporating environmental protection and locality.	Initial procurement meeting held with Legal before starting the procurement. including discussion on incorporating environmental protection and locality.	Initial procurement meeting held with Legal before starting the procurement. including discussion on incorporating environmental protection and locality.
-	-	Standard Quotation Documents	Standard Quotation Documents	Standard Tender Documents	Standard Tender Documents
-	-	Consider e - Tendering	Must use e- Tendering	Must use e- Tendering	Must use e - Tendering
-	-	-	Carry out Risk Assessment	Carry out Risk Assessment	Carry out Risk Assessment
-	-	-	Consider Social Value	Consider Social Value	Must consider Social Value
-	-		Standard decision letter templates	Standard decision letter templates.	Standard decision letter templates
-	-	-	-	Detailed Feedback	Detailed Feedback
-	-	-	-	Observe 10 day Standstill	Observe 10 day Standstill.
			Standard Award letters.	Standard Award letters.	Standard Award letters.
-	-	-	Contracts must be completed and signed by both parties prior to any works commencing. Where this is unlikely to take place, notification and a	Contracts must be completed and signed by both parties prior to any works commencing. Where this is unlikely to take place, notification and a waiver should be provided to the	Contracts must be completed and signed by both parties prior to any works commencing. Where this is unlikely to take place, notification and a waiver should be provided to the Service Director: Legal and

			waiver should be provided to the Service Director: Legal and Community prior to the start date with a plan to achieve contract signing.	Service Director: Legal and Community prior to the start date with a plan to achieve contract signing Consider if contract should be sealed as a deed.	Community prior to the start date with a plan to achieve contract signing. Consider if contract should be sealed as a deed.
-	-	-	Must complete Decision Notice	Must complete Decision notice	Must complete Decision Notice
-	Must provide details for Contract Register.	Must provide details for Contract Register	Must provide details for Contract Register	Must provide details for Contract Register	Must provide details for Contract Register
-	-	-	Must post award notice within 30 days of Contract Award.	Must post award notice within 30 days of Contract Award.	Must post award notice within 30 days of Contract Award.
-	-	Must consider setting up Google alerts/ Creditsafe alerts.	Must consider setting up Google alerts/ Creditsafe alerts.	Must consider setting up Google alerts/ Creditsafe alerts.	Must consider setting up Google Alerts. Mandatory /Creditsafe alerts.

6 Estimates – (Below £10,000)

6.1 Service Directors must ensure that appropriate mechanisms are in place within their Directorate to ensure value for money.

6.2 The Council has adopted a Go Local Policy for all procurements below £50,000. Officers should always seek to obtain local quotes where available. A record should be kept of the decision making process, as this may be required for audit purposes.. (See Glossary of Terms for description of Go Local and link to Cabinet report)

6.3 Officers should demonstrate that value for money has been obtained and should maintain records accordingly, in line with the Document Retention Schedule.

6.3.1 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.

6.4 Official Purchase Orders must be raised through the Council's electronic ordering system in accordance with Financial Regulations.

6.5 You must follow Rule 20 (Contracts).

7 Quotation (Goods and Services £10,000 to £100,000 / Works £50,000 to £250,000)

7.1 All Quotations should take place using the Council's E – Tendering system. Contact Procurement for assistance.

7.2 Prior to starting your quotation you should contact Legal to discuss you planned procurement.

7.3 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.

7.4 Service 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.

7.5 Please see Table A under Rule 5 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).

7.6 You must have a specification of requirements. See

~~7.6~~ Part F Specific Rules of Contract

7.7 ~~Part F Specific Rules of Contract~~, in particular Rule 26 (Specification).

7.7.1 You must not change the specification after requesting quotations.

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

7.8.1 You must not change the scoring method after requesting quotations.

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7.9 You may approach only a single supplier if the conditions in Rule 14 (Single TenderSingle 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 Legal before proceeding).

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7.9.1 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 22 (Waivers).

7.9.2 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).

7.10 You must follow the procedures outlined in:

(a) Rule 15 (Receipt of Quotations / TendersReceipt of Quotations / Tenders); and

(b) Rule 16 (Opening Quotations and TendersOpening Quotations and Tenders); and

(c) Rule 20 (Contracts).

7.11 The Council has adopted a Go Local Policy for all procurements below £50,000. Officers should always seek to obtain local quotes where available. A record should be kept of the decision making process, as this may be required for audit purposes. (See the Glossary of Terms for a description of Go Local and link to Cabinet Report).

7.12 For Contracts over £25,000 you must post an award notice to Contract Finder using the Councils E-Tendering system, even if the procurement was not advertised. This is a Government requirement for Transparency purposes.

7.13 For contracts above £50,000 you must publish an official NHDC Decision Notice on the Councils' website. The Decision Notice template is available on the following page on the Intranet. http://intranet.north-herts.gov.uk/home/doing-business/procurement/standard-procurement-templates

8 Tenders (Goods and Services above £100,000 and Works above £250,000)

8.1 Service 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 Prior to starting your quotation you should contact Legal to discuss you planned procurement.

8.3 You must have a specification of requirements. See

8.3 Part F Specific Rules of Contract

8.4 Part F Specific Rules of Contract, in particular Rule 26 (Specification).

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8.4.1 It is important 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).

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

8.4.3 You must not change the specification once the Invitation to Tender (ITT) has been sent to interested bidders.

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

8.5.1 For all procurements which require Executive Member input, you must consult on the scoring method with the Executive Member prior to going out to quotation or tender.

8.5.2 You must not change the scoring method once Selection Questionnaire or Invitations to Tender (ITT) have been sent to interested bidders.

8.6 You must have a contract prepared in advance in a form approved by the Service Director: Legal and Community. See

~~8.6~~8.7 Part F Specific Rules of Contract~~Part F Specific Rules of Contract~~.

~~8.6.1~~8.7.1 Contact Legal for advice if you need to negotiate or amend the contract during the tender process.

~~8.7~~8.8 If you are unable, or if your Service Director decides that it is not feasible to meet these requirements you must obtain a waiver under Rule 22 (WaiversWaivers).

Tendering Options

~~8.8~~8.9 Service 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 Legal for advice.

Table B

Tender Option	Description
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 processed 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

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	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 Legal for advice)

Part D Tendering Methods

Rule 40 of The Public Contract Regulations 2015 expressly allows opportunities for Pre Tender market consultation. Please consult with Legal ~~and Community~~ and Procurement on its 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 ~~and Community~~, 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 for each procurement. Please contact Legal ~~and Community~~ 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 every 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 in creating your ITT. Your ITT should contain questions that assess the supplier's 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 Quotations / ~~Receipt of Quotations / Tenders~~); and

b) Rule 16 (Opening Quotations and ~~Opening Quotations and Tenders~~); and

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c) Rule 17 (Evaluation Criteria for Quotations and Tenders); and

d) Rule 18 (Contract Award~~Contract Award~~); and

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e) Rule 19 (Standstill Period) it is highly recommended that this is observed for all tenders unless timescales are prohibitive.

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.

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 SSQ and then the ITT. **This process can only be used for procurements above the OJEU threshold for services.**

10.2.1 See Rule 34 (Glossary of Terms) for the meaning of "SSQ" and "ITT".

Standard Selection Questionnaire (**SSQ**)

10.3 You should use the approved starting point SSQ. Contact Legal ~~and Community~~ for the current version.

10.4 You must send all interested suppliers a copy of the SSQ. You should seek advice from Legal ~~and Community~~ when creating your SSQ.

10.5 The SSQ 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 SSQ 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 SSQ otherwise you cannot ask the same question at ITT. A supplier's 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 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 when creating your ITT.

10.11 Your ITT should contain questions that assess the supplier's ability to provide the services and their suitability to be contracting partners to the Council. This is done by assessing the supplier's ability to perform their obligations against the specification. You should not include any question you have assessed in your SSQ.

10.12 You must follow the procedures outlined in:

a) Rule 15 (Receipt of Quotations / Tenders); and

b) Rule 16 (Opening Quotations and Tenders~~Opening Quotations and Tenders~~); and

c) Rule 17 (Evaluation of Quotations / Tenders); and

d) Rule 18 (Contract Award); and

e) Rule 19 (Standstill Period) - it is highly recommended that this is observed for all tenders unless timescales are prohibitive.

11. Call-Off Further Competition under a Framework Agreement

11.1 The full tendering procedures within the Rules will not apply to a contract where Legal, advises it is appropriate to purchase from suppliers through an approved external Framework Agreement.

11.2 See Rule 34 (Glossary of Terms~~Glossary of Terms~~) for the meaning of "Framework Agreement". Formatted: Font color: Black

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~~Joining a Framework Agreement~~). Formatted: Font color: Black

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 Legal 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.

11A Dynamic Purchasing System

11A.1 The tendering procedures in these Rules will not apply to a contract if Legal advises it is appropriate to purchase from suppliers through a Dynamic Purchasing System.

11A.2 See Rule 34 (Glossary of Terms) for the meaning of "Dynamic Purchasing System"

11A.3 Dynamic Purchasing Systems ("DPS") can provide all the benefits of a Framework Agreement but are more flexible. The key benefits compared to a Framework Agreement are no limits on duration and suppliers can join and leave at any time.

11A.4 A DPS is generally appropriate for purchasing simple and commoditised goods. Please seek advice from Legal.

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 ~~and Community~~ 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 ~~and Community~~ 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 Legal in the first instance, as pre-authorisation for this approach is required as per Rule 14.2.

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 Legal 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 Service Director responsible, the Service Director: Legal and Community and the Service Director: Resources. Contact Legal for advice on preparing your Single Tender Option report.

14.3 In the event that approval has not been obtained for a single tender in accordance with section 14.2, and a contract has been awarded, the Service Director: Resources and the Service Director: Legal and Community may grant retrospective approval provided the following conditions are met:

(i) Expenditure is within approved budgets or overspend has been reported

(ii) Contract award was approved under Section 14 of the Council's Constitution (Responsibility for Functions)

(iii) The Service Director: Resources and the Service Director: Legal and Community are satisfied that an application for a single tender would have been approved under section 14.2.

(iv) The commissioning officer completes an application for retrospective approval to the Service Director: Resources and the Service Director: Legal and Community.

Above EU Threshold

Please liaise with Legal ~~and Community~~ and Procurement in the first instance.

14.4 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.

14.5 You must have prior written approval of the Service Director responsible, the Service Director: Legal and Community and the Service Director: Resources. Contact Legal for advice on preparing your Single Tender Option report.

14.6 A "voluntary ex transparency notice" (VEAT) 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 18 (Contract AwardContract Award).

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14.7 You must follow Rule 19 (Standstill Period).

14.8 In the event that approval has not been obtained for a single tender, in accordance with section 14.5, and a contract has been awarded, the Service Director: Resources and the Service Director: Legal and Community may grant retrospective approval provided the following conditions are met:

(i) Contract award was compliant with EU procurement law

(ii) Expenditure is within approved budgets or overspend has been reported

(iii) Contract award was approved under Section 14 of the Council's Constitution (Responsibility for Functions)

(iv) The Service Director: Resources and the Service Director: Legal and Community are satisfied that an application for a single tender would have been approved under section 14.5

(v) The commissioning officer completes an application for retrospective approval to the Service Director: Resources and the Service Director: Legal and Community.

14.9 In respect of both retrospective approvals detailed under 14.3 and 14.8, you must also remember to publish a delegated decision for any contract award with an totalaggregate value of £50,000 and above exclusive of options to extend.

15. Receipt of Quotations / Tenders

15.1 All quotations and 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 Service Director may postpone for a reasonable period the closing time and date for the receipt of quotations and tenders, provided that all persons from whom tenders have been invited are notified by the same method, and given the same information and that no quotations or tenders have been opened. Bidders must be notified in reasonable time through the E-Tendering System.

15.3 Contact Legal for advice if there are any problems with receiving quotations or tenders.

16. Opening Quotations and Tenders

16.1 Quotations and Tenders must be submitted through the Councils' e-tendering system. It will automatically record the receipt of the quotation or tender for audit purposes. Each document submitted will be deposited securely in the system to which only the project team and Legal will have

access. Once the quotation or tender has been awarded, the documents will be kept securely until the expiry of the retention period.

17. Evaluation Criteria for Quotations and Tenders

17.1 The appropriate Service Director, or delegated officer, 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.

~~17.1~~17.2 The risk of the contract (e.g. in terms of value, length of contract and the impact of the service being provided) will determine the level of financial and viability checks undertaken on the tenderers (as distinct from the financial evaluation of the tender). Where these findings raise significant concerns then they will be discussed by the Contract Manager, Procurement and Finance, who will jointly determine the course of action to take. This decision will consider procurement legislation and the balance of risk. The decision can still be made that the risk will be tolerated

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~~17.2~~17.3 You must clearly explain your evaluation scheme to suppliers in your bid documentation.

~~17.3~~17.4 You should contact Legal who will advise on the appropriate criteria for your procurement.

Price alone

~~17.4~~17.5 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~~17.6 The Council will accept the 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~~17.7 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~~17.8 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 Service Director; or

b) in cases of urgency, the Chief Executive may use Urgency powers as set out in the Constitution. The appropriate Service Director shall report tenders or quotations accepted in this way to the next meeting of the Cabinet.

~~17.8~~17.9 Where post tender negotiations have been undertaken in accordance with Rule 24 (Post Tender Negotiation), the appropriate Service 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 Service Director and recommended acceptance of a tender other than the lowest.

Most economically advantageous tender

~~17.9~~17.10 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.

17.1017.11 The approved starting point ITT includes most economically advantageous tender criteria. Contact Legal for advice on using most economically advantageous tender criteria.

17.1117.12 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.

17.1217.13 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 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 Legal.

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, Legal can assist with this.

18.5 An official NHDC Decision notice must be prepared by the Project Manager and sent to Member Services to be published on the Councils website. Templates are available on the Legal procurement resource pages of the Intranet at the following link.

18.6 http://intranet.north-herts.gov.uk/home/doing-business/procurement/standard-procurement-templatesThe Service Director: Legal and Community maintains a Contract Register showing all contracts entered into by the Council. Once awarded, all new contracts over £5,000 must be confirmed to Legal so they can be recorded on the Contracts Register. A standard template which captures contract details can be found on the Legal procurement resource pages of the intranet at the link below.

http://intranet.north-herts.gov.uk/home/doing-business/procurement/standard-procurement-templates

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 Legal 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 Service Director: Legal and Community.

20. Contracts

20.1 All contracts must be in writing and follow the requirements of

~~20.1~~ Part F Specific Rules of Contract

20.2 ~~Part F Specific Rules of Contract~~.

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20.2.1 Contracts under £10,000 must, as a minimum, be in the form of an official order, issued and approved by an authorised officer in accordance with the Council's Financial Regulations.

20.2.2 Contracts in excess of £10,000, or in any other case where the responsible Service Director decides it is necessary or desirable, must be drawn up in a form approved by the Service Director: Legal and Community.

20.3 For all works contracts over £50,000, documents must be completed and signed by both parties prior to any works commencing.

20.4 For goods and services contracts over £50,000, contracts should be executed before commencement where practical. As soon as you become aware that this is not feasible, notification should be provided to the Service Director: Legal and Community with the reasons why this shall not take place and likely timescale and plan for any delays in execution.

20.5 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 it 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 for advice if you are unsure.

20.6 A contract of any value may be sealed if requested by the responsible Service Director or the Service Director: Legal and Community. Please contact Legal 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 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 Legal 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 Crown Commercial Service (CCS), 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 Contract Procurement Rules. Such a request is referred to as a waiver. You must seek advice from Legal 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 Legal for advice as the general law of public procurement is more complicated than can be summarised in these Rules. Approval must be obtained from the Service Director: Legal and Community and the Service Director: Resources but they may refer the matter to Cabinet for approval.

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 Service Director, in consultation with the Service Director: Resources and the Service Director: Legal and Community, if the Contract Value is £100,000 or less (whether for goods, services or works); or

b) the Service Director: Legal and Community and the Service Director: Resources in consultation with the appropriate Executive Member for contracts over £100,000 however they may refer the matter to Cabinet for approval; or

c) 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 Service Director: Legal and Community.

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 affect 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 Service Director, or delegated officer, 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 Service Director, together with the Service Director: Legal and Community and the Service Director: Resources 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 Service Director, Service Director: Legal and Community and Service Director: Resources; and

c) be conducted in accordance with guidance issued by Legal 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 Service 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 Service Director or delegated officer shall ensure that minutes of all post-tender negotiation meetings are properly taken 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 them.

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 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 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 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 re-let, 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 Contracts which involve the use of subcontractors shall contain a contract clause ensuring payment throughout the supply chain of 30 days payment terms.

27.4 Service 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 before negotiating / agreeing any variation.

This Rule 30 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 before agreeing any variation.

28.3 All variations must be in writing and conform to the appropriate Financial Regulations.

28.4 The Service Director: Resources and Service Director: Legal and Community must be informed in writing of any variation.

28.5 Any variation under this section does not require reassessment of the original procurement process as a result of a change in the overall value of the contract.

Contractual variation

28.6 A Service 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

28.7 A Service 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 or services or purchase of goods;

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 for works and £100,000 for services or goods; 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 maximum value of £50,000k in respect of the variation; 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 Service Director must report this action to the Executive Member as soon as possible;

and, if relevant, that the variation is within the scope of the original contract notice or any applicable limits as set out in the Public Contracts Regulations 2015 or the overall value of the contract remains below the applicable OJEU threshold.

28.8 Subject to the availability of budget funding, a Executive Member 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 subject to a maximum value of £50,000 in respect of the variation; or

c) 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;

d) results in minor changes to the contract terms or specification;

in each case provided that any additional cost does not take the total costs of the contract over the limits permissible by the Public Contracts Regulations 2015 or, if relevant, that the variation is within the scope of the original contract notice.

28.9 Any other variation must be agreed by Cabinet or under delegated authority from Cabinet.

29. Extensions

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

29.1 All extensions must be in writing in a form approved by the Service Director: Legal and Community and conform to the appropriate Financial Regulations.

29.2 If the terms of a contract allow for an extension (or the law otherwise permits), then a Service Director may, following consultation with the Service Director: Resources and the relevant Executive Member authorise an extension of a contract by up to twenty fourtwelve months, up to a value of £2400,000.

29.3 The appropriate Executive Member may authorise an extension of more than twenty fourlve months OR in excess of £2400,000 with the approval of the Service Director: Resources following consultation with the Finance & IT Executive Member.

29.4 In all cases, officers must demonstrate that any extension complies with all applicable laws and statutory guidance; that a detailed and robust cost/benefit analysis has been undertaken and that sufficient budget is available. The relevant Service Director must also consider whether any extension would have a detrimental impact on the Council's strategies and plans. Where applicable, evidence of the decision making process must be formally recorded in a delegated decision which (in addition to the normal process) is filed on the relevant contract file and a copy sent to the Service Director: Legal and Community.

29.5 Any extension under this section does not require reassessment of the original procurement process so long as the value of the extended contract:

(i) does not exceed any applicable limits as set out in the Public Contracts Regulations 2015; or

(ii) is within the limits as set out in the original contract notice; or

(iii) is below the applicable OJEU threshold

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.

30.3 Contracts identified as Core contracts should be set up with Creditsafe and /or Google Alerts in order to monitor the financial status of the Company. Please contact Accountancy to set up Creditsafe alerts once the contract has been awarded.

30.4 A Contract & Relationship Management guide is available on the Procurement Resource pages of the intranet under the following link:

http://intranet.north-herts.gov.uk/home/finance-and-procurement/procurement/contract-management

Part H Appointment of Consultants

31. Consultants

Before the appointment of any Consultants, Officers must contact Legal in the first instance, which 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 is over £10,000, the commissioning officer must provide a report to the Service Director responsible containing as a minimum the details listed in Rule 32 (Project DetailsProject Details).

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31.2 This requirement at 33.1 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 33.1 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 and parties must enter into a written contract in the form approved by Legal.

31.3 All consultants (of any type) must provide evidence of adequate professional indemnity insurance as determined by the HCC Insurance 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 Service Director.

31.5 Any contract must set out the consultants legal obligations to the Council. Further guidance on the use of consultants can be found on the Legal procurement pages of the Intranet at:

http://intranet.north-herts.gov.uk/home/doing-business/procurement/procurement-guides

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32. Project Details

32.1 For consultant appointments £10,000, the Service 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.

32.2 The project officer shall report immediately to the Service Director any material technical or financial deviation by the consultant from the specified agreement.

32.3 The project officer shall provide a Projects Details report to the appropriate Service Director which:

a) identifies the project objectives; and

b) documents the reasons for the employment of consultants including the benefits of employing consultants against in-house staff or agency staff; and

c) documents the residual in-house costs to support the consultant and ensure that sufficient budget is available to meet all identified costs; and

d) includes a project brief, detailing:

(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.

32.4 For consultancy appointments over £10,000, at the end of the appointment, an assessment of the consultant's performance should be carried out. This assessment should be documented in the Consultant's Performance Appraisal form and Lessons Learnt Log. Copies of these completed forms should be sent to the relevant stakeholders, with copies to the Procurement Officer.

32.5 The Procurement Officer in conjunction with the Contract Procurement Group (CPG) will review the lessons learned and recommend if any should be entered into the Corporate Lessons Leant Log

Further information can be found:

http://intranet.north-herts.gov.uk/home/finance-and-procurement/corporate-governance/project-management/project-management-overview

Templates for the Performance Appraisal form and Lessons Learnt Log can be found here:

http://intranet.north-herts.gov.uk/home/doing-business/procurement/procurement-guides

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 Section 14 of the Council Constitution (Scheme of Delegation) and any other applicable Section with Terms of Reference for a relevant Committee. .

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 ~~and Community~~ 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 Service Director: Resources 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.

33.11 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:-

- Service Director: Resources
- Cabinet
- Full Council.

Part J Other Information

34. Glossary of Terms

Concession Contract	A contract which allows a Contractor to exploit the works or services for financial gain whilst assuming the usual market risks.
Concessions Directive	Means Directive 2014/23/EU of the European Parliament and of the Council
Dynamic Purchasing System	Is a procedure available for contracts for works, services and goods commonly available on the market. It operates in a similar way to framework agreements but is processed and managed electronically.
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 Legal for advice.
EU Threshold	These are updated bi-annually and the current figures can be found at http://www.ojeu.eu/usefullinks.aspx
Go Local Policy	The "go local" policy requires any officer seeking to acquire goods or services, for council use, with an aggregate contract value below £50,000, to first attempt to locate those goods, services or works from a supplier located within the North Herts District Council geographical area. The method of acquisition would be in accordance with the current NHDC Contracts and Procurement Rules. If the "go local" policy cannot be applied, because, for instance, there is no suitable supplier (for example, the procuring officer identifies that prices are too high) within the area, then policy would have been exhausted and considered not to be appropriate, and explained as such within the usual procurement process. The overarching principle of this policy would be that, for appropriate procurement, NHDC **will aim to use** local suppliers for the provision of goods, services and works, having full regard for the principles of "best consideration". The Cabinet report detailing the Go Local policy can be found at the link below. http://intranet.north-herts.gov.uk/home/doing-business/procurement/procurement-guides
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 ~~and Community~~. 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.
Price or Value	Price or value is the total cost or value of a contract, or transaction **net of any tax or incidental fees**. Note: a decision can be made up to the price or value as set out in these Rules or otherwise as set out in the Council Constitution, notwithstanding that additional tax (for example VAT/ SDLT)/ or fees (for example land registration) may then apply.
Social Value	The Public Services (Social Values) Act 2012 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 – How to improve through procurement, the social, economic and environmental well being of the area served by the Contracting Authority and How to undertake a procurement process with a view to securing that improvement. You will need to consider Social Value for all procurements above the EU threshold for goods and Services. Guidance on The Social Value Act and it's application and the Cabinet report can be found at the following location. http://intranet.north-herts.gov.uk/home/finance-and-procurement/procurement/general-procurement-guides
Standard Selection Questionnaire (**SSQ**)	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 SSQ stage involves assessing the company's 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 SSQ 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 SSQ, the ITT itself would ask these questions. There is a standard SSQ starting point which contains all of the legal requirements that you will need to complete with help from Legal ~~and Community~~. This will be tailored to suit your requirements.

35. Key Contacts

Legal	Service Director: Legal and Community	Ext. 4370
	Legal Commercial Team Manager	Ext. 4578
	Procurement Officer	Ext. 4284
Shared Internal Audit Services	Audit Manager	01438 845508
Committee Services	Democratic Services Manager Ext TBC	
	Committee, Member and Scrutiny Services Mgr Ext. TBC	
	Committee, Member and Scrutiny Officers [x 2 tbc]	
Finance/Financial Appraisals	Service Director: Resources	Ext. 4243
	Accountancy Manager	Ext. 4470
Insurance	HCC Insurance Manager	01438 843565
Risk	Controls, Risk & Performance Manager	Ext 4606
Health & Safety	Health & Safety Officer	Ext. 4600
Equalities/Environmental	Senior Policy Manager	Ext. 4835
Freedom of Information / Data Protection	Information & Records Mgr	Ext. 4563

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