

Part 4H - Contract Rules

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1. INTRODUCTION

- 1.1 Contract Rules provide a framework for the procurement of goods, services and works. Following them will ensure value for money, propriety and the proper expenditure of public funds.
- 1.2 It is a disciplinary offence to fail to comply with the Contract Rules when letting contracts. Employees have a duty to report breaches of Contract Rules to their Line Manager.
- 1.3 These Contract Rules have been adopted in accordance with the requirements of Section 135(2) of the Local Government Act 1972.
- 1.4 For general advice on contracts or interpretation of these Contract Rules, please contact the Legal Team. For advice on general procurement matters you are advised to contact the Principal Procurement Officer.
- 1.5 The disposing of assets (other than land disposals) is also covered by rule 15 of the Financial Rules (section 4G of the Constitution).

2. SCOPE AND DEFINITIONS

2.1 SCOPE

These Contract Rules apply to all contracts for works and the supply of goods and services to Cheltenham Borough Council. They also apply to all contracts with third parties and to all sub-contracts where the Council nominates a sub-contractor or supplier, or by a consultant acting on behalf of the Council such as CBH. They also apply, in appropriate circumstances and in conjunction with Financial Rules (see Part 4G), to the sale of assets, goods or services by the Council. They do not apply to:

- contracts of employment
- contracts with agencies for the provision of temporary staff (except consultants)
- contracts relating to treasury management placed by the Council
- purchases made at public auction
- the acquisition or disposal of any interest in land, which are subject to special procedures ([see Appendix F](#))

2.2 DEFINITIONS

- | | |
|-----------------------------|--|
| “Authorised Officer” | Means an officer delegated in writing by the relevant Strategic Director in accordance with the Council's Financial Regulations. |
| “Cabinet ” | means the Cabinet or any member, committee, sub-committee or area committee |

to whom the exercise of executive functions has been delegated.

"The Council"

shall be deemed to include reference to, the Cabinet, a committee or sub-committee, approved working group, or person acting in accordance with delegated authority on behalf of the Council.

**"Contractor" or
"Sub-contractor"**

means any person, company or supplier who has:

- i) been approached to provide a quotation or tender;
- ii) provided a quotation or tender; or
- iii) been awarded a contract in accordance with these Contract Rules.

"Consultant"

means a Contractor who provides specialist professional advice or services for a fee, otherwise than as an employee of the Council.

"Strategic Director"

means the Strategic Director of the Group responsible for the contract in question or the Assistant Director of the department responsible for the contract in question or such senior officer of that division to whom the Strategic Director may have authorised in writing the exercise of the powers in question (except where any provision of these Contract Rules expressly prohibit such authorisation).

- 2.3 These rules are subject to EU and UK law and where there is any conflict the EU and UK law shall take precedence.
- 2.4 Contracts can be carried out electronically. (See Appendix B for further guidance)
- 2.5.1 These Rules will be reviewed annually. Responsibility for this lies with the Borough Solicitor and Monitoring Officer in consultation with the Chief Finance Officer.

3. CONTRACT VALUES

- 3.1 The estimated annual and total aggregate values of a contract should be established prior to any invitation to quote or tender and must be recorded in writing. It is this estimate that determines which of the contract letting requirements, (listed at para. 3.7), is applicable.
- 3.2 The aggregate value of any contract is to be calculated on the basis of the total value of the consideration estimated to be payable over the entire contract period.
- 3.3 If the value to be paid is a percentage of any saving or income generation, then this will be the estimated value of the contract, i.e. if a consultant is to be paid 15% of an estimated £100,000.00 cost saving, then the value of this contract is estimated to be £15,000.00.
- 3.4 Where the Council is to receive a percentage of the amount paid to the contractor under a contract the total value of the contract will be the amount paid to the contractor multiplied by the number of years. e.g. The contract is awarded for catering at a council venue for 3 years for which the council will receive a percentage. The value of the contract will be the estimated income to the contractor multiplied by 3.
- 3.5 Where a value or estimated value is given in these Contract Rules, it means the aggregate value payable in Pounds Sterling exclusive of Value Added Tax.
- 3.6 Contracts must not be artificially under or over estimated or divided into two or more separate contracts where the effect is to avoid the application of the Contract Rules.
- 3.7 After determining the proposed aggregate contract value, one of the following contract letting procedures shall be used, unless an approved waiver has been obtained as detailed in Rule 9. In all cases the relevant Strategic Director may follow a procedure applicable to a higher value contract, if it is considered to be in the Council's best interests.

<u>Estimated Aggregate Value of Procurement</u>	<u>Contract Letting Requirements</u>
Up to £10,000.00	Written Quotation/Offers At least one estimate or offer shall be obtained. (see 4.1)
£10,001.00 to £50,000.00	Minimum of Three Written Quotations A minimum of three competitive written quotations shall be invited, (See 5. Quotations)

£50,001.00 to EU Procurement Threshold	<p>Tender Procedure</p> <p>A minimum of three competitive tenders shall be invited using one of the tendering options in this Code (para. 6.1), and a formal written contract prepared by the Legal Team.</p>
At and Above the EU Threshold	<p>EU Specified</p> <p>The appropriate EU procurement directive shall be complied with.</p>

EU Procurement Thresholds

- 3.8 The current EU procurement thresholds are shown in [Appendix A](#). These values are adjusted from time to time and should be checked when commencing a procurement process.
- 3.9 Further guidance on which types of contracts are covered under the different categories and advice on the specific procedures to be followed may be obtained from the Legal Team or the Principal Procurement Officer.

4. ESTIMATES OR OFFERS – up to £10,000.00

- 4.1 For goods and services or works where the contract value is estimated to be below £10,000.00, Authorised Officers shall obtain at least one written quotation from any potential contractor prior to supply of the goods, services or works. Officers are expected to be able to demonstrate that Best Value has been obtained and should maintain records accordingly. It is the responsibility of each Strategic Director to ensure that appropriate mechanisms are in place within their Directorate. Such records should contain, as a minimum:
- i) The number of quotations or offers invited;
 - ii) The method of inviting quotations or offers;
 - iii) The basis of selecting suppliers/contractors; and
 - iv) The staff authorised to accept quotations or offers.
- 4.2 Written Purchase Orders for goods or services should be placed in accordance with Financial Rules. The Council's standard terms and conditions for contracts for goods and services are now incorporated into Purchase Orders.
- 4.3 Contracts for minor works should be in the appropriate form of standard contracts for minor works. e.g. JCT minor works

4.4 The requirement for written quotations shall not apply where the services comprise:-

advice of Counsel;
representation by Counsel;
services of an expert witness;
the engagement of temporary, locum or fixed term contract staff (contact HR for details of the Council current policy.)

5. MINIMUM OF THREE WRITTEN QUOTATIONS - £10,000.00 to £50,000.00

5.1 This procedure requires that the Authorised Officer shall seek a minimum of three written quotations prior to award of contract. In selecting contractors who are to be requested to provide a quotation, Authorised Officers and Strategic Directors shall ensure that the selection process they are using is fair and equitable, and that no favouritism or prejudice is shown to any particular contractor. The Authorised Officer shall keep a record of the quotations obtained and the basis of the selection of those contractors invited to submit quotations including the following information:-

- i) all those contractors or suppliers who were requested to provide a quotation;
- ii) the reasons why those particular contractors or suppliers were selected to provide a quotation; and if applicable,
- iii) the reasons why fewer than three contractors or suppliers were selected to provide a quotation.

5.2 The requirement for written quotations shall not apply where the services comprise:-

advice of Counsel;
representation by Counsel;
services of an expert witness;
the engagement of temporary, locum or fixed term contract staff (contact HR for details of the Council current policy.)

6. TENDERING OPTIONS £50,001.00 and over (including E U requirements)

6.1 The following are the approved tendering options for use where formal tendering is required. In selecting contractors who are to be requested to provide a tender, Strategic Directors shall ensure that the selection process they are using is fair and equitable, and that no favouritism or prejudice is shown to any one contractor.

<u>Tender Option</u>		<u>Requirement</u>
A	Ad Hoc Tender	At least 14 days notice shall be given in at least one local/national newspapers and/or, where appropriate, in one or more relevant trade journals or approved Website inviting submission of tenders or expressions of interest.

		<p>(Where EU rules apply a minimum of 37 days notice is required, a public notice shall also be placed in the European Journal (see Appendix A)</p> <p>Authorised officers shall notify the Principal Procurement Officer to insert notice on CBC website or in the European Journal for all procurement activities</p> <p>The notice shall state the nature and purpose of the contract, where tender documentation can be obtained from, and the closing date for the receipt of tenders.</p>
B	Government Department framework arrangements e.g. CGAT	When purchasing from Government Department Framework Agreements ensure that you have read and amended (if necessary) the Terms and Conditions under which the goods or services are to be purchased.
C	Electronic Lists	Check with the Principal Procurement Officer whether a suitable electronic list of potential suppliers exists, and take advice on use of such lists.

- 6.2 All quotations or tenders that are being sought must include approved written contract terms, and be based on a definite written specification. In respect of works contracts there shall also be a requirement for a liquidated damages clause and for works contracts over £1,000,000.00 a requirement for a performance bond ([See Appendix D](#)).

7. EXCEPTIONS TO TENDERING PROCEDURES

- 7.1 The tendering procedures within the Contract Rules shall not apply to a contract for which the Strategic Director responsible agrees, in consultation with the Chief Finance Officer, that it is appropriate to invite tenders or quotations via Gloucestershire Purchasing Partnership, the Central Buying Consortium, the Office of Government Buying Solutions, or through any consortia of local authorities of which Cheltenham Borough Council is a member. This is always provided that the procedures applied are no less stringent than this Council's own Contract Rules. A written record of the consultation must be kept.
- 7.2 If a Strategic Director believes that by following one of the procurement options detailed in 3.7 above, the procurement process will not provide the most appropriate method of service delivery, the most competitive prices, allow for continuous improvements in service delivery, or stifle procurement innovation, then he/she may suggest alternative procurement strategies for approval by the Cabinet. Prior to proceeding with the procurement, the Strategic Director shall produce a written procurement strategy that shall be approved by the Chief Executive and the Cabinet.

- 7.3 The requirement for Tenders shall not apply where the services comprise:-
- advice of Counsel;
 - representation by Counsel;
 - services of an expert witness;
 - the engagement of temporary, locum or fixed term contract staff (contact HR for details of the Council current policy.)

8. NOMINATED SUB-CONTRACTORS AND SUPPLIERS

- 8.1 Tenders for sub-contracts to be performed or goods or materials to be supplied by nominated suppliers shall be dealt with in accordance with the provisions of these Contract Rules.

9 WAIVERS

- 9.1 Where the Contract Rules apply to a contract, any individual provision in them may be waived, subject to compliance with any relevant EU/UK legislation. Any such waiver must be agreed by:
- i) The Cabinet for contracts over £50,000.00; or 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
 - ii) A Strategic Director, in consultation with the Chief Finance Officer and the Borough Solicitor and Monitoring Officer, if the contract value is £50,000.00 or less.
 - iii) The Chief Executive activating the Council's 'Major Incident Plan' or a business recovery plan (as outlined in the business continuity management strategy).
- 9.2 Any waiver is subject in all cases, other than a major incident, to a written report being prepared by the Authorised Officer confirming which of the following reasons is applicable:
- (a) Prices are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available.
 - (b) Work to be executed or goods, services or materials to be supplied consist of repairs to or the supply of parts of existing proprietary machinery, equipment, hardware or plant, and the repairs or the supply of parts cannot be carried out practicably by alternative contractors.
 - (c) Specialist consultants, solicitor, barrister, agents, artist or professional advisors are required and
 - i) 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, solicitor, barrister, agent, artist or advisor.
4. Products are sold at a fixed price, and market conditions make genuine competition impossible.
- (d) No satisfactory alternative is available.
 - (e) The goods or services to be purchased or the works executed:
 - i) are required as a matter of urgency
 - ii) are required for a function covered by an agency agreement or a contract entered into by the Council and are to be sought in the manner provided by the principal body under such agency or contract
- 9.3 A record of the decision and the reasons for it must be kept by the relevant Strategic Director.

10. RECEIPT OF TENDERS AND QUOTATIONS

- 10.1 Contractors must be informed that their tenders or quotations will only be considered if they are sent in a plain envelope or package marked with the word 'tender' or 'quotation' followed by the subject of the contract. The envelope or package must be securely sealed and must not show the identity of the tenderer in any way.
- 10.2 Such envelopes shall be addressed impersonally to the Principal Procurement Officer
- 10.3 It must be delivered to the place and by the time stated in the tender/quotation invitation and must be endorsed on receipt with the date and time of receipt and numbered.
- 10.4 Tenders/quotations which do not meet the requirements of this Rule may only be considered if:
- i) failure to comply is the Council's fault; or
 - ii) a tender/quotation is late and it is clear after investigation by the Strategic Director responsible and the Audit Manager that it was sent in such a way that in the normal course of events it would have arrived on time. This is provided that the other tenders/quotations have not yet been opened.

- 10.5 In all other cases, late tenders shall not be considered, but shall be opened to ascertain the name of the sender and returned stating the reasons for rejection.
- 10.6 All envelopes received shall be kept securely and shall not be opened or accessed until the time appointed for their opening. Upon receipt each envelope must be date stamped and numbered consecutively.
- 10.7 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, at the same time, given the same information and that no tenders have been opened.

11. OPENING OF TENDERS AND QUOTATIONS

Tenders and Quotations

- 11.1 Tenders/Quotations shall all be opened at one time in the presence of not less than two officers of the Council, one being the Principal Procurement Officer and one designated by the Strategic Director responsible for the contract to which the tenders relate. Members may attend the opening of Tenders/Quotations as observers but they are requested to give prior notification to the Principal Procurement Officer of their intention to attend. A Member who has an interest of a type described in paragraph 2 of Appendix E shall not be allowed to attend the opening of any Tender/Quotation relating to a contract in respect of which such interest applies.

Recording of Tenders and Quotations

- 11.2 On opening, the results of all tenders or quotations received must be recorded in writing on a tender or quotation opening record as appropriate. This record must contain the name of the proposed contract, the estimated cost (where available), and the names of all those invited to tender. The form of tender or quotation and any accompanying documentation shall be marked with the date of opening and signed by the officers present. The tender or quotation opening record including details of any Members present shall be signed by all officers present at the opening and retained in the custody of the Chief Finance Officer.

12. ACCEPTANCE OF TENDERS AND QUOTATIONS

- 12.1 The appropriate Strategic Director shall evaluate all the tenders or quotations received in accordance with the acceptance criteria set out in the bid documentation and shall accept either:
- i) The LOWEST where payment is made by the Council; or
 - ii) The HIGHEST where payment is received by the Council; or

- iii) The most economically advantageous tender (MEAT) in accordance with the guidance in [Appendix C](#).
- 12.2 Strategic Directors shall be responsible for ensuring adequate financial checks are carried out on contractors prior to acceptance of Tenders or Quotations. Any concerns regarding the financial status of the contractor shall be referred to the Chief Finance Officer **BEFORE** the Tender or Quotation is accepted. See Appendix D in respect of Performance Bonds. Further advice should be sought from the Principal Procurement Officer.
- 12.3 Tenders or Quotations shall only be accepted by Strategic Directors or Assistant Directors and acceptance cannot be delegated to other officers.
- 12.4 Tenders or Quotations exceeding the approved budget may only be accepted once the budget holder is satisfied that they can increase the budget.
- 12.5 The acceptance of a Tender or Quotation that does not comply with the above requirements shall only be permitted if:
- i) The Cabinet has considered a written report setting out the reasons for non compliance with the Contract Rules from the appropriate Strategic Director and authorised acceptance; or
 - ii) In cases of urgency, the Chief Executive has authorised acceptance in writing, following consultation with, and having obtained the approval of, the Leader of the Council. The appropriate Strategic Director shall report Tenders or Quotations accepted in this way to the next meeting of the Cabinet.

13. ARITHMETICAL ERRORS AND POST TENDER NEGOTIATION

Arithmetical Errors

- 13.1 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 arithmetical errors or discrepancies which affect the Tender or Quotation figure. The contractor shall be given details in writing of all such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing their offer in writing.

Post Tender Negotiation

- 13.2 In evaluating tenders, the appropriate Strategic Director may, where not in contravention of any legal prohibition, invite one or more contractors who have submitted a tender to submit a revised offer, (Best and Final Offer BAFO), following post-tender negotiations or clarification.

All post-tender negotiations/clarification shall:

- i) Only be undertaken in consultation with the Council's Principal Procurement Officer
- ii) Only be undertaken where permitted by law, and
- iii) Not disclose commercially sensitive information supplied by other bidders for the contract.

13.3 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 adversely affect trust in the competitive tendering process.

13.4 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.

14 ENGAGEMENT OF CONSULTANTS – (See Appendix G)

14.1 Contract Rules apply to the engagement of consultants. All consultants must provide evidence of adequate professional indemnity insurance as determined by the Chief Finance Officer prior to their appointment. The requirement for insurance and the levels required should be obtained from the Chief Finance Officer.

14.2 It shall be a condition of the engagement of 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:

- i) Comply with these Contract Rules as though they were an employee of the Council;
- ii) At any time during the carrying out of the contract produce to the appropriate Strategic Director on request, all the records maintained by them in relation to the contract; and
- iii) On completion of the contract transmit all records that they have produced or received that relate to the contract to the appropriate Strategic Director.
- iv) Declare any interest in or personal links to any company partnership or service provider that the Consultant recommends the Council use as sub-contractors or specialist advisors on the contract for which they are tendering or quoting

- 14.3 Appendix [G](#) provides further guidance on the engagement of consultants.
- 14.4 Strategic Directors shall ensure that consultants used to write specifications or let tenders for contracts comply with the Council's Contract Rules and any requirements of the Borough Solicitor and Monitoring Officer.

15. PAYMENT PROCEDURES AND FINANCIAL CHECKS

- 15.1 No tender or quotation shall be accepted nor contract shall be entered into until all necessary approvals, sanctions and consents have been obtained and all documentation completed.
- 15.2 The Chief Finance Officer and Principal Procurement Officer shall be informed of all contracts and contract extensions by relevant departments. The Principal Procurement Officer shall maintain a Contract Register showing all contracts entered into by the Council and any extensions to contracts.

16. EXTENSIONS AND VARIATIONS TO CONTRACT

- 16.1 If a contract is in place and the terms of the contract allow for an extension then the contract may be extended, prior to the expiry of the original contract, in accordance with the terms of the extension clause, provided that the Contractor has performed all the requirements of the contract at that time. This should be done in conjunction with Legal Services. In all other cases the Cabinet may vary or extend a contract for a period of not more than 4 months, provided that to do so is consistent with the provisions of Financial Rules and Contract Rules. 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.
- 16.2 In addition, a Strategic Director may authorise variations to a contract (other than an extension) where either delay would incur substantial cost penalties to the Council, or the proposed variations are unavoidable and/or essential for the project to proceed or continue. Officers must demonstrate in writing that a detailed and robust cost/benefit analysis has been undertaken and that sufficient budget is available. The Chief Finance Officer must be informed in writing.
- 16.3 Subject to any statutory restrictions and compliance with Financial Rules and Contract Rules, a Strategic Director may authorise the following changes to an existing contract:
- i) A change in price determined within the terms of the contract or arising from the application of a price formula in the contract;
 - ii) Issue a variation and a resulting change in price determined in accordance with the contract terms.

- 16.4 A Strategic Director or Assistant Director only may authorise in writing (giving reasons) the making of variations to a contract where circumstances arise during the performance of the contract which make it necessary to amend the specification or method of carrying out the works, provided that any such variations do not vary the original contract price by +/- 10% and that the amended contract price does not exceed the budget allocation. The advice and assistance of Legal Services should be sought in cases where a variation is proposed.

17 CONTRACT DOCUMENTS

- 17.1 All contracts must be in writing.
- 17.2 Contracts under £10,000.00 must, as a minimum, be in the form of an official order, issued and signed by an officer authorised in accordance with the Council's Financial Rules. The Council's standard terms and conditions for contracts for goods or services should be used, and these are now incorporated into the Council's Purchase Orders. Contracts for minor works will be on a standard contract for minor works suitable for the type of works being carried out.
- 17.3 For contracts with a value of between £10,000.00 - £50,000.00 it is recommended that a contract drawn up in a form approved by the Borough Solicitor and Monitoring Officer is utilised. However, where this is not feasible the contract used must be in writing and approved by the Borough Solicitor and Monitoring Officer before completion/signature.
- 17.4 Contracts for the supply of goods or services, or the execution of works in excess of £50,000.00 in amount or value or in any other case **must** be drawn up in a form approved by the Borough Solicitor and Monitoring Officer.
- 17.5 All contracts under £10,000.00 shall either be signed by an Authorised Officer as defined in Appendix H or may be signed by the Borough Solicitor and Monitoring Officer or the Head of Legal Services. Alternatively, they may be sealed if required by the Borough Solicitor and Monitoring Officer or by the responsible Strategic Director.
- 17.6 All written contracts over the value of £10,000.00 shall be signed by the Borough Solicitor and Monitoring Officer or the Head of Legal Services or may be sealed if required by the Borough Solicitor and Monitoring Officer or by the responsible Strategic Director.

APPENDIX A - EU DIRECTIVES AND REGULATIONS

1) INTRODUCTION

As part of the drive to remove barriers to cross border public procurement, the European Union introduced laws which seek to enhance free trade by ensuring that all EU members are able to tender for contracts anywhere within the EU. In addition, EU member states sought to ensure that public sector organisations achieve best value by ensuring that the procurement methods they use increase competition and make purchasing decisions more rational and justifiable. The effect of these rules is to require transparency and fairness in the procurement process.

Although the EU Directives are directly enforceable in the UK, the UK government has introduced Statutory Regulations, which transpose the requirements of the Directives into a UK legal format.

Whether the regulations apply depends upon the value of the proposed contract. The current threshold levels for contract value above which you are legally required to follow the regulations are as follows: -

Contracts for Works -	£3,497,313.00
Contracts for Services -	£ 139,893.00
Contracts for Supplies -	£ 139,893.00

(Correct at 1/01/2008 and subject to biennial review)

2) ASSESSING THE CONTRACT VALUE

The valuation rules for contracts can be somewhat complex. In cases of uncertainty advice should be sought from the Principal Procurement Officer and/or Legal Services. The general test for calculating the value of the contract is to estimate the total value of the consideration of the contract net of VAT at the time the contract goes out to tender. This value should include all aspects of consideration, whether it takes a monetary form or the contribution by the authority of other types of consideration such as goods or equipment.

There is a general rule, which prohibits the division or splitting of contracts with the intention of evading the application of the procurement rules. In addition, there are specific aggregation rules, which apply where the contract is for an indefinite period or is a repetitive or regular contract.

Services Contracts

In the case of services contracts which do not specify a total price, the basis of calculating the estimated contract value shall be:

- i) in the case of fixed term contracts with a term of 48 months or less, the total contract value; or
- ii) in the case of contracts of indefinite duration, or with a term of more than 48 months, the monthly instalment multiplied by 48.

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.

Not all services are covered by the full application of the EU Procurement rules. There is a list in Schedule 1 of the Services Regulations. Services are split into two parts:

PART A SERVICES

- are subject to the full EU regime

"PART A" SERVICES

CPC Category	Services
1	Maintenance and repair of vehicles and equipment
2	Transport by land, including armoured car services and courier services, but not including transport of mail and transport by rail
3	Transport by air, but not transport of mail
4	Transport of mail by land, other than by rail, and by air
5	Telecommunications services other than voice telephony, telex, radiotelephony, paging and satellite services
6	Financial services: (a) Insurance services (b) Banking & investment services other than financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments and central bank services
7	Computer and related services
8	R&D services where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs and the services are wholly paid for by the contracting authority
9	Accounting, auditing and book-keeping services

- 10 Market research and public opinion polling services
- 11 Management consultancy services and related services, but not arbitration or conciliation services
- 12 Architectural services; engineering services and integrated engineering services; urban planning and landscape architectural services: related scientific and technical consulting services; technical testing and analysis services
- 13 Advertising services
- 14 Building-cleaning services and property management services
- 15 Publishing and printing services on a fee or contract basis
- 16 Sewerage and refuse disposal service; sanitation and similar services

PART B SERVICES

- are **not** subject to the full EU regime
- so there is no requirement to advertise in OJEU or follow detailed procedural rules, but there
- **is** a requirement to use European standards in specifications
- **is** a requirement to file a contract aware notice with the OJEU

"PART B" SERVICES

CPC Category	Services
17	Hotel and restaurant services
18	Transport by rail
19	Transport by water
20	Supporting and auxiliary transport services
21	Legal services
22	Personnel placement and supply services
23	Investigation and security services, other than armoured car services

- 24 Education and vocational education services
- 25 Health and social services
- 26 Recreational, cultural and sporting services
- 27 Other services

Supplies Contracts

In the case of supply contracts, the contract value for regular or renewable contracts is:

- i) the aggregate consideration to be paid during the anticipated duration of the contract; or
- ii) over the first 12 months of the contract if the duration is indefinite; or
- iii) the consideration paid by the contracting authority under similar contracts for the provision of goods of the same type during the preceding 12 months

whichever is the most appropriate.

In the case of contracts for lease, rental, or hire purchase, the relevant figure is the aggregate of the consideration, which will be paid throughout the duration of the contract. Where the term exceeds 12 months, the estimate of residual value must also be included, where the duration is indefinite or uncertain, the relevant figure is the monthly contract value multiplied by 48.

Works Contracts

When assessing the value of a works contract it is necessary to include not only the value of the works themselves but also all the related service, equipment and materials which the contractor will be expected to provide under the contract.

3) THE REQUIREMENTS OF THE REGULATIONS

Where the regulations apply, they lay down strict guidelines on:

- i) the advertising of contracts and the disclosure of certain information relating to the procurement process;
- ii) the manner in which tenderers are selected and invited to tender;

- iii) the specification of requirements utilising the appropriate EU references and avoiding criteria which would have the effect of favouring or eliminating particular tenderers without good reason;
- iv) the evaluation of bids received from tenderers and the award of contract; and
- v) the timescales between the various stages of the procurement process

The Advertising/Notification Requirements

The regulations recommend that authorities, at the beginning of every financial year, publish **Prior Information Notices**, (PIN), setting out their procurement plans for the coming year the value of which will exceed the relevant threshold.

(N.B **All** notices and adverts must be published in the Official Journal of the European Union. Publication is free. Please contact Principal Procurement Officer to facilitate this.)

In most cases it is a requirement that the authority publishes a **Contract Notice**, (OJ Notice), inviting expressions of interest in the forthcoming procurement project. There is a special coding system to describe the nature of the requirement services/supplies etc. which is intended to ensure that people from all EU countries will recognise the type of procurement whatever their native tongue.

After the award of a contract the authority is required, within two months, to publish a **Contract Award Notice** confirming details of the award.

The Options for Procurement Procedures

The regulations currently only provide for three distinct procedures for conducting the procurement process, these are;

The Restricted Procedure

... under which only selected persons are invited to tender for a contract.

The Negotiated Procedure

... under which a purchaser may negotiate the terms of the contract with one or more persons selected by it.

The Competitive Dialogue

... under which an alternative to the negotiated procedure in large complex projects a purchaser may be aware of the needs of the contract but does not know in advance what is the best technical, legal or financial solution for satisfying those needs. The Open or Restricted procedure must be considered first.

The Restricted Procedure may be used in any situation but the Negotiated Procedure and Competitive Dialogue can only be utilised in certain circumstances.

Timetables

Each of the procedures lays down minimum timescales between certain stages of the procedure. These periods are designed to ensure that all potential tenderers have a reasonable opportunity to formulate and submit a tender should they wish to. The timescales vary and will be shorter if a PIN had been published. Shorter timescales are also applicable where the process is conducted electronically. Advice should be sought as to the appropriate timescales in each case from the Principal Procurement Officer.

Selection Criteria

The Regulations stipulate which factors may justify excluding potential tenderers from those invited to tender. In addition the regulations provide for only two bases for the ultimate selection of the successful bidder, those of Lowest Price or Most Economically Advantageous Tender, (MEAT). Careful thought should be given to which selection criteria should be used and what, if any, system of weighting should be used. Selection matrices can often be used and these have the advantage of providing a clear record of the selection decision. Advice should be sought from the Principal Procurement Officer as to how to choose appropriate selection criteria and methodology.

Records

Due to the reporting requirements contained in the regulations and the possibility of legal challenge for non compliance, it is essential that comprehensive records are kept documenting the key stages of the process and recording the reasons for any key decisions such as award.

4) SOURCES OF FURTHER GUIDANCE

Office of Government Commerce
(Click on procurement policy and EC rules)

www.ogc.gov.uk

The European Commission Procurement Website

www.simap.eu.int

APPENDIX B – ELECTRONIC PROCUREMENT

- 1) eProcurement is the term used to describe the use of electronic methods in every stage of the purchasing process from identification of requirement through to payment, and potentially to contract management. Electronic enablement of the purchasing process can be more specifically identified as:
 - eSourcing** - for contractual processes. Tools include eTendering, eRFQs (Request for Quotations/evaluations) and eAuctions.
 - eProcurement** - for transactional processes. Tools include marketplaces using techniques such as eCatalogues and punch-out.
 - ePayment** - Tools include virtual or embedded GPC (Government Procurement Card), eInvoicing and self-billing.

- 2) The benefits of eProcurement include:
 - i) Efficiency improvements (the way people work)
 - ii) Improved commercial relationships with suppliers
 - iii) Reduce costs for suppliers dealing with government
 - iv) Opens up the government marketplace
 - v) Improve departments' ability to manage their supply chain more efficiently

- 3.1 Subject to obtaining the approval of the relevant Strategic Director the Authorised Officer may decide to conduct any tendering exercise or a negotiated procedure or enter into any contract using electronic means.

- 3.2 The Principal Procurement Officer shall, establish and maintain a register of all contracts held by the Council, highlighting all of the contracts which have been entered into using electronic means and the name of the successful contractor in each case.

- 3.3 The Authorised Officer may carry out an electronic auction where they are satisfied that it is in the interests of the Council to do so, see OGC 'Decision Tool' <http://www.ogc.gov.uk/index.asp?docid=1001034&syncNav=1#7> and where they are satisfied that the electronic auction is in accordance with the EU Procurement Rules. (See http://europa.eu.int/comm/internal_market/publicprocurement/legislation_en.htm)

Schedule 4

E-Procurement

1. Introduction

- 1.1 This Schedule shall apply to any tendering procedure or contract entered into using electronic means.
- 1.2 All provisions of the Contract Rules shall apply to contracts and tendering procedures covered by this Schedule except to the extent that they are inconsistent with the following provisions.

2. Use of e-procurement

- 2.1 Subject to para. 2.2 and approval by the relevant Strategic Director, an Authorised Officer may conduct any tendering exercise or a negotiated procedure or enter into any contract using electronic means (“e-procurement”).
- 2.2 An Authorised Officer may only use e-procurement where:
 - i) the e-procurement is to take place using a system approved by the Council; and
 - ii) to do so would not significantly restrict or distort competition.

3. Verification and Authentication

- 3.1 Where an Authorised Officer decides to use e-procurement, he must consider whether it is appropriate to impose any specific requirements regarding verification and authentication of the tender submission and the signature of the person making that submission.
- 3.2 Any tender document issued using electronic means must state whether the Council has any specific requirements relating to authentication or verification of the tender submission or of the signature of the person making the submission.

4. Receipt and Custody

- 4.1 No tender submitted using electronic means will be considered unless it is received in the format requested by the Council in the tender documents and at the electronic address specified by the Council and unless it is received prior to the deadline for the receipt of tenders, as stated in the tender documents.
- 4.2 The Principal Procurement Officer shall ensure that each tender is kept unopened in a single secure electronic mailbox that cannot be opened before the deadline for the receipt of tenders unless the Request For Quote facility is being used for tender values below the existing Contract Rules thresholds.

- 4.3 The system used must not allow the identity of the contractor submitting the tender to be revealed prior to the tender being opened after the deadline for the receipt of tenders unless the Request For Quote facility is being used for tender below the existing Contract Rule thresholds.
- 4.4 The Authorised Officer shall ensure that for each procurement project the system used shall keep and, if required, produce a record showing the time and date of receipt of all tenders received in respect of each e-procurement exercise.
- 4.5 These Contract Rules shall also apply to the receipt and custody of tenders for sub-contracts let using electronic means to be performed by nominated sub-contractors.
- 4.6 Late tenders or tenders received in the wrong format or not at the notified address will not be considered and they shall be returned to the tenderer with an explanation as to why that tender has not been considered.

5. **Opening of Tenders**

- 5.1 All tenders for an e-procurement project shall be opened in accordance with the Contract Rules tender thresholds.
- 5.2 The Authorised Officer shall ensure that for each e-procurement project he shall keep and, if required, produce a record showing the particulars of each tender received and the date and time when those tenders were opened.
- 5.3 The Contract Rules relating to the opening and recording of tenders will also apply to electronic tenders.

6. **Register of e-tenders**

- 6.1 The Principal Procurement Officer shall establish and maintain a register in electronic form listing all of the contracts which have been entered into using electronic means and the name of the successful contractor in each case.

7. **Electronic Auctions & Reverse Auctions**

- 7.1 For the purpose of these Contract Rules, the expression 'electronic auctions' means:- A repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic and Buyer-specified evaluation methods.
- 7.2 The Authorised Officer may authorise the carrying out of an electronic auction where satisfied that it is in the interests of the Council to do so and where he

is satisfied that the electronic auction is in accordance with the EU Procurement Rules.

- 7.3 An electronic auction may only be carried out where the possibility of the use of an electronic auction has been stated in the tender documents issued to contractors.
- 7.4 For the avoidance of doubt, an electronic auction may also be used where previous stages of a tendering procedure have not been undertaken using electronic means.
- 7.5 Before proceeding with an electronic auction, the Authorised Officer shall make a full initial evaluation of the tenders in accordance with the award criteria set and with the weighting fixed for them. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values.
- 7.6 Throughout each phase of an electronic auction the Authorised Officer shall instantaneously communicate to all tenderers involved at least sufficient information to enable them to ascertain their relative rankings at any moment. The Council may also, at any time, announce the number of participants in that electronic auction. In no case, however, may the Council disclose the identities of the tenderers during any phase of an electronic auction.
- 7.7 Prior to the commencement of any electronic auction, the Council shall inform all tenderers involved of the date and time fixed for the carrying out of the electronic auction and the proposed duration of the electronic auction together with any proposals for the extension of the duration of the electronic auction.
- 7.8 Any electronic auction will be subject to such additional procedural requirements as the Principal Procurement Officer considers necessary.

APPENDIX C - MOST ECONOMICALLY ADVANTAGEOUS TENDER

- 1) As stated in Rule 12.1 tenders can be accepted on the following basis, either:
 - a) The LOWEST where payment is made by the Council, or
 - b) The HIGHEST where payment is received by the Council, or
 - c) The most economically advantageous tender (MEAT) in accordance with the guidance in this Appendix
- 2) This Appendix does not provide comprehensive or exhaustive procedures for the application and evaluation of tenders using the above criteria. It aims to provide officers with practical advice on suggested evaluation methods.
- 3) It is vital to ensure that assessment criteria are agreed and documented prior to tenders being invited and an evaluation structure defined so that an objective evaluation can take place whatever procurement method is applied. The Principal Procurement Officer should be consulted when considering the assessment criteria and weighting to be used.
- 4) In its simplest form, the Most Economically Advantageous Tender (MEAT) will be items (a) and (b) above, where tenders are being evaluated both on financial issues and quality/best value. However, this is not the only definition of the MEAT term, criteria for evaluating tenders can include quality and best value issues in addition to purely financial ones. It is possible that the lowest priced tender may not satisfy the MEAT criteria.
- 5) Such criteria should usually include the following three elements:
 - i) A point scoring system for individual quality/ best value considerations.
 - ii) Weightings applied to quality/best value issues in accordance with their importance to the completion of the contract.
 - iii) A 'quality threshold' which sets the minimum standards expected. Tenders which fall below this shall be excluded from consideration. Tenders which exceed the quality threshold can then be assessed on the tender price and:
 - any additional quality features included within the bid
 - the additional cost of these features compared to the lowest bid.
- 6) A schedule of tenders can therefore be produced which ranks in order of price and in order of quality. Tenders can be eliminated where they do not satisfy the specified quality threshold even when they are the lowest based solely on price.

APPENDIX D - LEGAL PROVISIONS

1) This Appendix is designed to provide guidance for staff to highlight those areas, which should normally be addressed by the terms of all contracts let by the Council. Where issues are not covered advice should be sought from Legal Services.

2) Content of Contracts

Every contract shall contain, so far as is appropriate:

- (i) a description of the goods, materials, services or the work to be supplied provided or executed (including as appendices any necessary technical specifications, plans or drawings), including compliance with any British or European Standard current at the date of the tender;
- (ii) a schedule of the payments to be made under the contract with a statement of any discounts or other deductions;
- (iii) the dates within which the contract is to be performed;
- (iv) the names and addresses of the parties to the contract, including the Registered Office and company registration number of any company
- (v) a clause empowering the Council to cancel the contract in circumstances of corruption and to recover any loss resulting from the cancellation;
- (vi) a requirement for the contractor and any sub-contractors to comply with current legislation relating to Health & Safety at work, Sex, Race, Age, and Disability Discrimination;
- (vii) a clause requiring appropriate insurance cover, including Professional Indemnity in the case of consultants, to be held by the contractor and a right, for the council, to inspect the relevant insurance policy;
- (viii) a clause requiring the contractor to supply sufficient information in a timely manner to enable the council to fully and properly comply with requests for information under the Data Protection Act 1998 and the Freedom of Information Act 2000;
- (v) that the Council's Internal Auditors shall have access to records in the possession of the contractor which are, or have been used in the performance of the contract.

3) Liquidated Damages for works contracts

All works contracts should, where appropriate, provide for liquidated and ascertained damages to be obtained from the contractor where the terms of the contract are not

duly performed. Liquidated and ascertained damages should equate to a genuine pre-estimate of the losses that the Council would incur as a consequence of the delay or other non-compliance with contract conditions.

4) Performance Bonds for works contracts

Performance bonds will be required on all works contracts over £1,000,000.00 or for all other contracts at the discretion of the relevant Strategic Director in consultation with the Chief Finance Officer and the Borough Solicitor and Monitoring Officer where the financial checks are unsatisfactory. Where contract payment is in arrears and a reasonable retention is applied, performance bonds will not usually be required. Strategic Directors or Assistant Directors may authorise in writing the waiver of the Bonding Requirements. This cannot be delegated to other officers.

5) Guarantees

Strategic Directors in consultation with Chief Finance Officer must consider if a guarantee is necessary, if so, the form of guarantee and the proportion to the contract sum.

6) Cancellation

The contract shall contain a clause which entitles the Council to terminate the contract and to recover from the contractor the amount of any loss to the Council resulting from such termination, if the contractor shall have acted to induce any individual in relation to obtaining or executing a Council contract.

This applies equally to the Contractor and any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor) under the Prevention of Corruption Acts, 1889 to 1916, and subsection (2) of section 117 of the Local Government Act 1972 and any other relevant legislation.

APPENDIX E – OFFICERS/MEMBERS INTERESTS IN CONTRACTS

1) Relations with Contractors

The nature of the Council's activities often calls for a close working relationship with commercial organisations and whilst it is in no way implied that those contractors with whom the Council has dealings are likely to act improperly in such circumstances, it must be recognised that by virtue of their position, officers involved in the authorising, placing, supervision or overall control of contracts could be particularly vulnerable to criticism.

2) Personal Interests

Officers and Members who are involved on behalf of the Council in a procurement process should comply with the Members Code of Conduct or Employees Code of Conduct as the case may be. In particular:

- 2.1 No contract may be let to an officer or Member of the Council or to any member of their family.
- 2.2 No contract may be let to any partnership of which an officer or Member or any member of their family is a partner.
- 2.3 No contract may be let to any company of which an officer or Member or any member of their family is a Director or in which such officer, Member or any member of their family holds a beneficial interest in a class of securities that exceeds a nominal value of £25,000.00 or one hundredth of the total issued share capital (whichever is the lower).
- 2.4 However, the Chief Executive in consultation with the Borough Solicitor and Monitoring Officer may in exceptional circumstances give written permission (explaining the reasons for such decision) for the letting of the contract to proceed contrary to the restrictions above where it is in the interests of the Council to do so. In such a case the officer or Member must disclose the full measure of their interest (or the interest of a member of their family) in the contract to the Chief Executive.
- 2.5 Any officer who comes into official contact with any matter concerning a contract in which they or a member of their family have a personal or financial interest must disclose this interest to their Strategic Director and ask that some other officer deals with the matter.

3) Prevention of Corruption

The Standard Conditions of Contracts prohibit a contractor from offering or making a gift or other consideration of any kind as an inducement to some action pertaining to a contract and refer to the Prevention of Corruption Acts 1889 to 1916. Under these Acts it is an offence for an officer corruptly to solicit or accept any gift or consideration as an inducement or reward for:

- (i) doing or refraining from doing anything in his official capacity, or
- (ii) showing favour or disfavour to any person in his official capacity.

4) Private benefit through preferential terms

No officer may without the consent of the Council 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.

5) Officers dealing with Contracts

5.1 Whilst the above rules apply to all officers whose duties bring them into contact with contractors, they are of particular importance to officers in contracts and purchasing sections 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 officers should be manifestly above suspicion of bias in favour of or against a particular firm and every care must be taken not to disclose 'in confidence' information e.g. tender prices.

5.2 The utmost discretion must therefore be exercised if offers of hospitality, gifts etc. are received from contractors with whom officers 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.

6) Record of Interests

6.1 The Council shall record in a register to be kept for the purpose, particulars of any notice given by an officer of the Council under Section 117 of the Local Government Act 1972, of a pecuniary interest in a contract.

6.2 The Borough Solicitor and Monitoring Officer shall keep a record of members' interests under Section 81(1) of the Local Government Act 2000.

APPENDIX F - LAND TRANSACTIONS

- 1) This Appendix shall apply to the purchase and disposal of any interest in property or land (except for Council dwellings let under a secure tenancy managed by Cheltenham Borough Homes)
- 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.
- 3) All transactions to which these Contract Rules apply must be referred to the Head of Property and Asset Management prior to any negotiations or agreements taking place.
- 4) Disposals (except Right to Buy applications) must be in line with the Council's current Disposal Strategy, (attached).
- 5) This Appendix shall apply to agents and officers of the Council.
- 6) Officers shall not give access to or hand out keys to any premises without the prior written consent of the Head of Property and Asset Management, unless the appropriate written documentation has been completed
- 7) For further advice and guidance on land transactions contact Head of Property and Asset Management.

Cheltenham BC Disposal Strategy

Introduction

This strategy applies to the disposal of any interest in property by the Council.

The Council has to occupy property in order to be able to provide the majority of its services.

The purpose of asset management planning is to match the property the Council occupies to service needs.

Over time, property may be altered, acquired or disposed of in order to achieve a better fit with existing services and match changing services.

This strategy sets out how the Council will identify property for and the issues which need to be taken into account in achieving these aims.

Identification of Property for Disposal

The Council uses a number of methods to review its property requirements and identify opportunities for development or disposal, including:

- best value service reviews which seek to identify whether the property meets the needs of the service and the most appropriate way of providing the property.
- other review processes (E.g. local plan, review of investment properties by asset management working party, housing business plan)
- the public (E.g. requests to purchase or be granted rights to Council property are a fairly regular occurrence)
- an incentive scheme to encourage officers to identify surplus property
- review of property by the asset management working party

Before property is declared surplus its suitability for other Council purposes must be considered.

Framework for the Disposal of Property

When the Council disposes of property it needs to comply with the appropriate legal framework (statute and case law), take into account appropriate guidance and the relevant policy framework including:

S123 of the Local Government Act 1972

disposals at less than best consideration and disposals of public open space

- Other statutory provisions which may apply (E.g. the consent of the Secretary of State is required to the disposal of statutory allotment land)
- ODPM Circular 06/2003 – ‘Local Government Act 1972:General Disposal Consent’ which replaces DOE circular 6/93 - ‘disposal of land for less than best consideration that can reasonably be obtained - guidance for authorities’
- Local Government Ombudsman - ‘disposal of land - guidance on good practice (1995)’
- recommendations from the annual report of the Chief Inspector of Audit 1980



- The Valuation Liaison Group - professional guidance note 2 - disposals of landed interests by local authorities - August 1982
- 'Crichel Down' rules (ODPM Circular 2004 – Compulsory Purchase and the Crichel Down Rules)
Disposal of land which was acquired by, or under threat of compulsion
- Community Plan and strategy documents (economic development, planning etc.)
- Draft property protocol agreed with the county Council
- Standing Orders

Shared Use of Property

In 2002 the Royal Institution of Chartered Surveyors published a research report 'Whose property is it anyway?' which examined issues around the occupation of Council property by third party organisations which have a relationship with the Council. (E.g. Cheltenham Borough Homes, Everyman Theatre, Cheltenham Centre for Change etc.)

The report formulated nine 'good practice statements' which could form the core elements for a code of practice.

Consideration

S123(2) of the Local Government Act 1972 provides that consideration should not (except with the consent of the Secretary of State) be less than the best that can be reasonably obtained.

DOE circular 6/93 defines consideration as something of monetary value to the Council

In deciding whether a particular price is 'best consideration' any restrictions which the Council has voluntarily placed on the property must be disregarded.

Where the Council may be considering disposing of property for less than best consideration it needs to have regard to a number of issues:

- what is the overriding policy or strategic objective that will be met if the property is disposed of for less than best consideration?
The Council should have clear policy reasons for accepting a price which is less than best consideration
- will the disposal give the purchaser an unfair commercial advantage (E.g. disposal for a particular use at a price below that which might be expected for that use)?
The Council should not give a particular purchaser an unfair commercial advantage.
- the incorporation of terms which protect the Council in the event of a subsequent disposal by the purchaser (E.g. a covenant restricting use to that for which the Council disposed of the property).

From time to time the Secretary of State issues general consents for the disposal of property at less than best consideration (E.g. provision of recreational facilities).

Where a disposal falls within the ambit of a general consent and is at less than best consideration the Council need not refer it to the Secretary of State.

Methods of Disposal

Possible methods for disposal of property include:

- private treaty
- sealed bids

- auction
- formal tender

Private treaty is not the best way of dealing with a competitive situation as it can be difficult to demonstrate all prospective purchasers have been fairly dealt with. It has its place in a 'special purchaser' situation or where the Council has decided to deal with a particular purchaser for policy reasons

A special purchaser is someone who has a particular need for a property which is demonstrably greater than that of any other purchaser and is likely to be willing to pay more for that property than any other purchaser. In these circumstances the Council may well be justified in only dealing with the special purchaser for commercial reasons.

Auction and formal tender may be appropriate in some circumstances but can discourage prospective purchasers as both lead to immediate contracts (the auction at 'knock down' the tender on acceptance by the Council).

Sealed offers have benefits which include:

- all bids are opened at the same time which helps to avoid accusations of unfair practice.
- bids can be made conditional which means that prospective purchasers do not have to commit to substantial expenditure prior to knowing that they have been selected.
- the Council can seek clarification on bids before acceptance

Process for Disposal of Property

Excluding disposals of Council dwellings under 'right-to-buy'

General

- ward members to be consulted on all disposals prior to a decision being taken
- all proposed disposals to be referred to the asset management working party for consideration prior to any commitment by the Council to the transaction.
- consent to a disposal will be a matter for the cabinet or in accordance with a scheme of delegation approved by the cabinet.
- The Head of Property and Asset Management to advise the asset management working party on the potential effect on consideration where it is proposed to set criteria for the acceptance of an offer which do not have a monetary value to the Council.
- subject to any policy decision by the cabinet, all proposed disposals at less than best consideration will be referred to cabinet for approval prior to any commitment by the Council to the transaction.
- except in the case of a special purchaser, any proposal to negotiate with a particular purchaser or purchasers to the exclusion of other potential purchasers shall to be referred to cabinet for approval
- the Head of Property and Asset Management to advise the asset management working party, prior to any commitment by the Council to a transaction, where he believes that a proposed disposal is to a special purchaser
- all disposals will comply with standing orders or variations to standing orders which have been approved by cabinet
- the Council will seek to comply with the draft property protocol agreed with the county Council

- in complex or high value transactions the District Auditor will be consulted on the proposals including the method of disposal and issues around best consideration.

Disposals at less than best consideration

In considering any proposal to dispose of property for less than best consideration the cabinet shall be informed of:

- the policy background which supports the proposal
- the potential consequences if the proposal is not approved
- whether the proposal will need specific consent of the Secretary of State or if it is the subject of a general consent
- an assessment as to whether the proposal is likely to confer a commercial advantage on the prospective purchaser
- the proposed sale price
- an assessment of best consideration prepared by the Head of Property and Asset Management

Private treaty

- marketing by private treaty will not normally be used except in the case of a disposal to a special purchaser or where the cabinet has approved a disposal to a particular purchaser.
- where private treaty negotiations are taking place with a single purchaser:
 - if the purchaser is connected with the Council (member of staff, Councillor etc) the Head or Property and Asset Management will normally appoint an agent to act for the Council in the negotiations and advise on best consideration
 - if the consideration is likely to exceed £100,000 the Head or Property and Asset Management will normally appoint an agent to act for the Council in the negotiations and advise on best consideration
 - if the consideration is likely to exceed £1,000,000 the Head or Property and Asset Management will normally appoint a second agent to report on best consideration

Auction and formal tender

- the Head of Property and Asset Management will advise the asset management working party if there are reasons for proceeding by way of auction or formal tender but in most cases the preferred method of marketing will be by sealed offer

Sealed offers

- invitations to offer for a property must state the criteria which the Council will use when considering offers and the procedure to be used when making offers.
- if the Council varies the criteria for considering offers then all prospective purchasers should be informed of the new criteria. If bids have been received then the people making the bid must be informed of the new criteria and invited to confirm their bid or re-submit by way of a sealed offer
- the amount of any offers must be kept confidential prior to exchange of contracts
- prior to acceptance of an offer, assessment to be made of any offers received against the criteria set for the disposal and for achievability including:
 - discussions with bidders to clarify any areas of uncertainty in the bid



- requesting bidders to amend proposals to comply with criteria or improve achievability. If the opportunity to revisit proposals is given to one bidder it must also be given to all of the other bidders using the same process as for a change in the criteria
- the cabinet, or a person acting under delegated authority must consider offers which do not comply with the process for submission against the relevant legal and policy framework.
- a purchaser should be informed when his offer is accepted that 'in the event of a higher offer being received before a contract is exchanged, the Council will be obliged to consider it'.
- The relevant officers including the Head of Property and Asset Management and the Borough Solicitor and Monitoring Officer to consider whether covenants should be included in a disposal to:
 - restrict the use of the property being disposed of
 - for the Council to share in future increases of value on a subsequent disposal or development of the property



APPENDIX G - GUIDANCE FOR THE ENGAGEMENT OF CONSULTANTS

Contract Rules relating to contracts should be followed in the engagement of consultants. This guidance is designed to give managers an indication of good practice in the processes of engaging and managing consultants.

1. IDENTIFICATION OF NEED

Before consultants are invited to bid/tender, the Strategic Director shall record in writing:

- i) the project objectives;
- ii) the reasons for the employment of consultants including the benefits of employing consultants against in-house staff or agency staff;
- iii) the residual in-house costs to support the consultant
- iv) the calculations made to ensure that sufficient budget is available to meet all identified costs.

2. PROJECT BRIEF

The Strategic Director is responsible for ensuring that a project brief is prepared including background, objectives, timetable, costs, monitoring arrangements, documentation standards, contact names and numbers for enquiries.

3. CONTRACT MONITORING

Any appointment shall be on the Council's standard form of consultancy agreement to be prepared by the Borough Solicitor and Monitoring Officer unless otherwise agreed with the Borough Solicitor and Monitoring Officer.

The Strategic Director shall be responsible for ensuring that the consultant's work is properly monitored on an ongoing basis. This includes:

- i) appointing a named project officer or group;
- ii) specifying key tasks and dates for consultants;
- iii) monitoring costs against budgets;
- iv) arranging regular progress meetings with consultants.

The project officer shall maintain the following documentation:

- i) project brief/objectives;
- ii) minute authority, were required;
- iii) contractual documentation
- iv) any written variations (made subject to Rule 16) to the contractual documentation (any verbal variations shall be confirmed in writing);
- v) records to provide evidence of contractor compliance with the contract standard prior to payment being made;
- vi) a record of payments made to the consultant and for the project;



vii) a project evaluation form.

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

At the end of a project it is expected that a post-project appraisal exercise be carried out, to include an assessment of the consultant's performance.

APPENDIX H - CONTACT OFFICERS

Legal

Peter Lewis	Borough Solicitor and Monitoring Officer	Ext. 4216
Nicolas Wheatley	Solicitor	Ext. 5207
Sarah Halliwell	Legal Assistant	Ext. 4927

Procurement

Angela Cox	Principal Procurement Officer	Ext. 5223
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Committee Services

Rosalind Reeves	Democratic Services and Communications Manager	Ext. 4937
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Finance

Mark Sheldon	Chief Finance Officer	Ext. 4123
Paul Jones	Head of Financial Services	Ext. 5154
Andy Smith	Accounts Payable Manager	Ext. 5032

Internal Audit

Duncan Edwards	Audit and Assurance Services Manager	Ext. 5174
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