

CABINET MEETING – 5th December 2012

EXECUTIVE SUMMARY SHEET – PART I

Title of Report:

Review of the Procurement Procedure Rules

Author(s):

Joint report of the Executive Director of Commercial and Corporate Services and Head of Law and Governance

Purpose of Report:

To recommend Council to make amendments to the Procurement Procedure Rules, which are part of the Constitution, as set out in the report.

Description of Decision:

To recommend Council make amendments to the Procurement Procedure Rules, which are part of the Constitution.

Is the decision consistent with the Budget/Policy Framework? **Yes**

If not, Council approval is required to change the Budget/Policy Framework

Suggested reason(s) for Decision:

The changes proposed are considered appropriate in order to provide more responsive procurements that maximise the local economic impact whilst securing the desired outcomes and value for money.

Alternative options to be considered and recommended to be rejected:

One alternative is to not to update the PPR's but this is not recommended as it will not achieve the objectives referred to in paragraph 5 of the report.

Another alternative is to implement some but not all of the changes proposed. Again, this is not recommended.

Impacts analysed;

Equality

None

Privacy

None

Sustainability

None

Crime and Disorder

None

Is this a “Key Decision” as defined in the Constitution? **No**

Is it included in the 28 day Notice of Decisions? **No**

Scrutiny Committee

REVIEW OF THE PROCUREMENT PROCEDURE RULES

**Joint Report of the Executive Director of Commercial and Corporate Services
and Head of Law and Governance**

1 Purpose of the Report

- 1.1 To seek agreement to recommend to Council changes to the Procurement Procedure Rules, to provide more responsive procurements that maximise the local economic impact whilst securing the desired outcomes and value for money.

2 Description of Decision

- 2.1 To recommend Council to make amendments to the Procurement Procedure Rules, which are part of the Constitution, as set out in the report.

3 Background

- 3.1 The Council spends significant amounts on the procurement of goods, services and works. Whilst the Council has a strong track record of successful procurement, delivering value for money and securing savings, the context within which this activity takes place is changing due to:
- the difficult economic position, and the impact that the Council's procurement activity can have in this regard
 - the increased consideration and use of Alternative Service Delivery Models and commercial models
 - increased regulation/complexity and higher levels of challenge
- 3.2 Given the future and changing procurement requirements, a Procurement Review was recently undertaken.
- 3.3 The overall conclusion of the review was that the arrangements in place are, in the main, good and there is a high degree of satisfaction from local suppliers. However, more can be done in relation to supporting local business win work, market development, improving awareness and knowledge of commissioners, and speeding up the process.

4. Proposals

- 4.1 A number of improvements were identified and in order to facilitate some of these it is proposed that the Procurement Procedure Rules be updated, as follows.
- a) At present the threshold for a formal tender exercise to be undertaken, as opposed to seeking quotes, is £75,000 or over regardless of the nature / complexity of the procurement or the ability of SME's / VCS organisations to bid. Directorates are not required to work with the Council's Corporate Procurement team for procurements under this £75,000 threshold. In order to ensure greater involvement of procurement professionals and provide flexibility as to the most appropriate procurement method to adopt it is proposed that all procurements over £5,000 be routed through Corporate Procurement who will determine the most appropriate procurement process up to the EU Threshold of £173,934. The use of Buy Sunderland First (the Council's e-quotation system) is also mandated for any quote processes.
 - b) A requirement for Chief Officers to ensure that the relevant Portfolio Holder(s) are consulted as appropriate prior to advertising and are provided with progress reports at appropriate intervals throughout the procurement process has been included.
 - c) Specifically in relation to procurement that relate to the Port, given its unique nature, the new Rules allow significant flexibility to allow the most appropriate procurement process to be adopted for those contracts under the EU Threshold.
- 4.2 A copy of the proposed PPRs, as amended in accordance with the proposals outlined in this report, is appended for members' consideration. The changes to Rules and any additions/clarifications are highlighted. The Rules have been also been re-drafted to make them easier to understand.
- 4.3 In order to address other findings from the review an updated Corporate Procurement Strategy shall be presented to Cabinet for consideration in due course.

5 Reasons for the Decision

- 5.1 The changes proposed are considered appropriate in order to provide more responsive procurements that maximise the local economic impact whilst securing the desired outcomes and value for money.

6. Alternative Options

- 6.1 One alternative is to not to update the PPR's but this is not recommended as it will not achieve the objectives referred to in paragraph 5 above.
- 6.2 Another alternative is to implement some but not all of the changes proposed. Again, this is not recommended.

7. Impact Analysis

- 7.1 The proposals do not have any direct impact on equalities, sustainability, privacy or reduction of crime and disorder – community cohesion / social inclusion issues. Members and Officers will still be required to have regard to these matters when undertaking any procurement activity.

8. Background Papers

- 8.1 No background papers were relied upon in the preparation of this report.

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Section 1 – Introduction and Scope

- 1.1 These Rules apply to all purchasing, licensing, contracting, commercial partnering and the establishment of frameworks in respect of the provision of works, goods or services from third parties by the City Council.
- 1.2 All procurement shall comply with:
 - a) all applicable statutory provisions;
 - b) the applicable European procurement rules (the EC Treaty (including the general Treaty principles of equal treatment, non-discrimination and transparency) and the Public Contract Regulations 2006 (as amended));
 - c) the Council's Constitution including the Codes of Conduct and Scheme of Delegation;
 - d) any Council Procurement Codes of Practice.
- 1.3 Where a new legal entity is to be created by the Council which meets any of the criteria set out below then the Constitution of that new entity must include a scheme of Procurement Procedure Rules as approved by the Executive Director of Commercial and Corporate Services.

Rule 1.3 shall apply to the following entities:

- (a) Where the new legal entity is financed wholly or mainly by the Council; or
 - (b) Where more than half of the Board of Directors or members of the new entity are appointed by the Council.
- 1.4 Chief Officers and managers are responsible for ensuring that employees comply with these rules and that appropriate contractual provisions are in place for compliance by agency workers, interims, consultants and agents.
- 1.5 The use of any exceptions to these Rules (see para 4.) must be agreed in writing with the Executive Director of Commercial and Corporate Services.
- 2. Interpretation and Definitions**
 - 2.1 "Third party" for the purposes of these Rules includes any economic operator, public sector body, a works contractor, a supplier, a services provider, a consultant, a firm, a company, a partnership or an individual.
 - 2.2 "OJEU" means the Official Journal of the European Union.
 - 2.3 "Port Contract" means a contract or framework agreement for the procurement of works, services or goods for the Port of Sunderland. In relation to a Port Contract, all references in these Rules to Cabinet shall be interpreted as meaning the Port Board.

3. Exemptions

- 3.1 The following are exempt from these Rules:
 - a) employment contracts (but not agency / interim / self employed workers);
 - b) contracts relating solely to disposal or acquisition of an interest in land or property;
 - c) contracts for specialist legal advice or representation or medical advice, or other expert advice in the context of actual or potential litigation or otherwise which the Head of Law and Governance considers it necessary to obtain.

4 Exceptions

- 4.1 Where a Chief Officer considers an exception to the requirements of paragraphs 11-19 should apply he must first discuss this with Corporate Procurement prior to seeking advance written approval of the Executive Director of Commercial and Corporate Services, and, as appropriate, authorisation from Cabinet.
- 4.2 Subject to paragraph 4.1 above, a Delegated Decision Form is to be completed by the relevant Chief Officer including the rationale for the application of the exception and a copy provided to Corporate Procurement where a central record will be maintained.
- 4.3 Subject to Paragraphs 4.1 and 4.2, paragraphs 11 to 19 of these Rules do not need to be applied to the following categories of procurement, provided that where the procurement is equal to or exceeds £250,000, the prior approval of Cabinet is obtained.
- a) Where the goods / asset are being sold through an auction.
 - b) Procurement when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can only be awarded to a particular third party.
 - c) Execution of mandatory works by statutory undertakers.
 - d) Execution of works or services in which the personal skill or knowledge of the person(s) carrying out the works or services is of primary importance.
 - e) Personal social services contracts for the provision of residential and / or nursing care and packages which form an alternative to residential care.
 - f) Call-offs via a framework agreement previously awarded by the Council or under which the Council has a right to participate which offers value for money and provided the Council follows the framework's call-off procedures.
 - g) Contracting via a contract awarded by a third party under which the Council has a right to participate and offers value for money, and provided the Council follows the terms and conditions of the contract.
 - h) Urgency, when (but only if it is strictly necessary) the time required to fully comply with these Rules would be prejudicial to the Council's interests or its ability to discharge its statutory duties. In these cases, consideration should still be given to those parts of the Rules that could still be followed particularly the need for competition. Where the value of the procurement is equal to or over £250,000 a report shall be submitted to the next Cabinet with an explanation of the circumstances giving rise to the need for the exception and detailing the procurement process actually followed. The requirements of the Public Contracts Regulations 2006 must still be followed.
 - i) The award of any Port Contract which is below the relevant EU Threshold as contained in the Utilities Contracts Regulations 2006 and provided that consideration is given to those parts of these Rules that can be reasonably followed for the particular procurement.

- j) Procurement of works, goods or services below the applicable EU threshold to meet the requirements of principal contracts that have been awarded in-house as a result of a competitive tendering process. Where the principal contract has not been awarded via competition then this exception shall not apply. Further, this exception is restricted to those elements of these Rules that cannot reasonably be followed.

5. Responsibilities

5.1 Executive Director of Commercial and Corporate Services

5.1.1 Corporate Procurement, on behalf of the Executive Director of Commercial and Corporate Services, will:

- a) agree the procurement process for all procurements valued £5,000 and over;
- b) Chair procurement evaluation panels;
- c) organise and manage corporate contracts (including framework agreements and standing lists for supplies or services);
- d) keep complete records for procurements of £5,000 or over, where such procurements are led by Corporate Procurement;
- e) maintain a corporate contract management framework;
- f) support procurements led by directorates, where appropriate.

5.2 Chief Officers

5.2.1 Chief Officers are responsible for:

- a) ensuring that the relevant Portfolio Holder(s) are consulted as appropriate prior to advertising and are provided with progress reports at appropriate intervals;
- b) ensuring that an appropriate level of engagement with Members and service users is undertaken relating to procurements within their areas of responsibility;
- c) engaging with Corporate Procurement at the earliest opportunity, including the options appraisal stage of any proposals that may lead to a procurement £5,000 and over. This does not include call-offs from existing contracts;
- d) ensuring, where Council contracts exist (including framework agreements and standing lists), or a commitment has been given for the Council to participate in a consortium contract, those arrangements are adhered to, except in exceptional circumstances, which shall be documented and approved in advance by the Executive Director of Commercial and Corporate Services;
- e) complying with the corporate contract management framework;
- f) prior to advertising or awarding (as appropriate) any contract:
 - (i) producing a clear written specification of the Council's requirement (outcome based where appropriate) and evaluation criteria; and
 - (ii) ensuring sufficient budget provision is available.
- g) procuring goods, works and services under £5,000, where not covered by an existing Council contract, in accordance with these Rules;
- h) ordering goods and calling-off services in accordance with the conditions of existing contracts;
- i) keeping complete records for procurements where they are the lead.

6. Collaborative or joint procurement arrangements

- 6.1 Where the Council acts as the lead or host authority in any collaborative or joint procurement arrangement these Rules will apply, unless otherwise agreed by the Executive Director of Commercial and Corporate Services.

- 6.2 Subject to Paragraphs 9 and 10, where a Chief Officer wishes to participate in a proposed collaborative or joint procurement arrangement to be undertaken by a third party, the prior written agreement of the Executive Director of Commercial and Corporate Services shall be obtained. The procurement process followed should be broadly comparable to that set out in these Rules.

Section 2 - Thresholds

7.1 Procurements below £5,000

- 7.1.1 A Chief Officer may procure works, supplies or services (that are not already covered by an existing Council contract or a contract in which the Council has committed to participate) up to a value of less than £5,000 provided that he can objectively demonstrate value for money, **has considered obtaining quotes and the use of local suppliers.**

7.2 Procurements between £5,000 and such level as equates to the applicable EU Threshold for goods and services (which is currently £173,934).

(For the avoidance of doubt, Rule 7.2 applies to all contracts for goods, services and works)

- 7.2.1 All proposals for a procurement at or above £5,000 (excluding routine call-offs from existing frameworks) must be notified to Corporate Procurement at the earliest opportunity. Corporate Procurement shall then determine, in consultation with the Chief Officer, the most appropriate procurement strategy.

7.2.2 Quotes

Where a quotation process is deemed by Corporate Procurement to be appropriate, at least three written relevant quotations shall be obtained and considered from suitable third parties. In addition, where available, any in-house provider must also be asked to provide a quotation. **Where a corporate electronic quotation system is provided this is to be used.**

Where it is not reasonably practicable to obtain three quotations the Executive Director of Commercial and Corporate Services and the relevant Chief Officer may agree to reduce the number of quotations required to be obtained provided the reasons for this are documented before the purchase is made or the contract is let.

7.2.3 Tenders

Where a tender process is deemed by Corporate Procurement to be appropriate, the contract shall be awarded after following one of the procurement procedures below:

- a) the Open Procedure
- b) the Restricted Procedure
- c) a Call-Off pursuant to an existing Framework Agreement let by the Council or other Third party (where the Council has the right to participate)
- d) the Competitive Dialogue Procedure
- e) the Negotiated Procedure

A tender process must be followed for works contracts over the EU Threshold for goods and services.

7.3 Contracts with a value equivalent or exceeding the relevant EU Thresholds

- 7.3.1 These procurements must be undertaken in accordance with one of the procedures set out in the Public Contracts Regulations 2006 (as amended). These thresholds are subject to variation by legislation from time to time. The current thresholds are:

Works:	£4,348,350
Supplies:	£173,934
Services:	£173,934

- 7.3.2 In the case of Port Contracts, the relevant EU Thresholds are contained in the Utilities Contracts Regulations 2006 (as amended) and the current thresholds are:

Works:	£4,348,350
Supplies	£347,868
Services	£347,868

Port Contracts above these EU thresholds shall be awarded in accordance with one of the procedures set out in the Utilities Contracts Regulations 2006 (as amended).

8. **Estimating Contract Values/Aggregation**

- 8.1 Where there is a reference to the value of any contract, framework agreement or transaction, it shall mean its total estimated value net of VAT over the entire term of the contract or framework (as the case may be), including all options, permitted extensions and variations. Where a contract does not include a total price the estimated value will be the amount of the consideration payable each month multiplied by 48 (i.e. 4 years).
- 8.2 Corporate Procurement and Chief Officers shall have regard to the optimum packaging of works, supplies or services, particularly works, supplies or services of a similar nature, which are likely to be carried out in connection with a particular project in order to achieve the best value for money, **including social value**. A proposed contract must not be divided into separate lower value contracts simply to avoid the full application of these Rules. This does not affect the determination of the number and size of lots within a Framework Agreement.

Section 3 – Approvals

9. **General Procurements**

- 9.1 **The Executive Director of Commercial and Corporate Services (through Corporate Procurement) must agree the procurement process for all procurements with a value equal to or over £5,000.**
- 9.2 **In all cases the relevant Chief Officer must consider the level of engagement needed with Members, and service users.** Where the aggregate value of the intended procurement (other than consultancy services) is estimated to be equal to or over £250,000 Cabinet approval is required prior to advertising, except in urgent cases where approval is required before award.

The above requirements do not apply to those corporate contracts that are in place to underpin the day to day workings of the Council (e.g. utility supplies, stationery supply) provided that the prior agreement of the Executive Director of Commercial and Corporate Services has been obtained before relying on this provision.

10 Consultancy Services

- 10.1 Where the aggregated value of the intended procurement is estimated to be under £100,000 the prior written approval of the Chief Executive or Deputy Chief Executive is required before advertising. Where the cost is estimated to be equal to or exceed £100,000 the prior approval of Cabinet is required before advertising, except in urgent cases where approval is required before award. In the case of external consultants Corporate Procurement and the Chief Officers must also comply with the additional requirements set out in the Appendix to these Rules.

Section 4 – Procurement Process

11. Advertising Contracting Opportunities

- 11.1 Where the value of the proposed contract is on or above the applicable EU threshold a Contract Notice must first be published in the OJEU in the form prescribed.
- 11.2 For tender opportunities Corporate Procurement, in consultation with the relevant Chief Officer, shall consider the most appropriate and cost effective form of publicity for the particular opportunity including considering the use of local media / newspapers / trade journals / online channels.
- 11.3 All procurement opportunities (regardless of value) should be considered as to whether their advertising would be beneficial in order to encourage competition.

12. Tender Procedures

12.1 Open Procedure

- 12.1.1 The Open Procedure means a tender procedure leading to the award of a contract / framework agreement whereby all interested parties may tender.
- 12.1.2 Tender documentation shall be sent to all who apply prior to the tender closing date.

12.2 Restricted Procedure

- 12.2.1 The Restricted Procedure means a tender procedure leading to the award of a contract whereby only parties pre-selected by the Council may submit tenders for the contract.
- 12.2.2 A Pre-qualification Questionnaire (“PQQ”) must be provided to all third parties requesting to participate, which shall be used to determine the third party’s eligibility, financial standing and technical capacity.

12.2.3 For tenders over the EU threshold, Officers should select not less than five companies or individuals to be invited to tender. If fewer than five companies or individuals return questionnaires or are not eligible to be invited to tender, the procurement may only proceed with the prior written agreement of the Executive Director of Commercial and Corporate Services.

12.2.4 For tenders under the EU threshold that relate to Design and Build works contracts, only three companies or individuals need to be invited to tender.

12.3 Standing Lists

12.3.1 Any Standing Lists will be maintained by the Executive Director of Commercial and Corporate Services.

12.4 Framework Agreements let by the Council

12.4.1 Where required, the Executive Director of Commercial and Corporate Services will maintain Framework Agreements with a range of third parties for works, goods or services.

12.4.2 Any Framework Agreement shall be awarded in accordance with these Rules. For the avoidance of doubt, the procurement of a Framework Agreement for consultancy services shall also comply with the requirements set out in Section 5 of these Rules (Additional Requirements on the Use of Consultants).

12.4.3 Any call-off contract awarded pursuant to a Framework Agreement shall be undertaken in accordance with the procedures set out in the relevant Framework Agreement.

12.5 Competitive Dialogue Procedure

12.5.1 Competitive Dialogue Procedure means a procedure in which any third party may make a request to participate, and whereby the Council conducts a dialogue with the third party admitted to that procedure with the aim of developing one or more suitable alternative solutions capable of meeting its requirements and on the basis of which the third parties chosen by the Council are invited to tender.

12.5.2 The Competitive Dialogue Procedure may only be used in the award of contracts which are, in the opinion of the Executive Director of Commercial and Corporate Services, complex contracts and where there is a need for the Council to discuss all aspects of the proposed contract with candidates. Such dialogue is not permitted under open and restricted procedures.

12.6 Negotiated Procedure

12.6.1 Negotiated Procedure means a procedure leading to the award of a contract whereby the contracting authority negotiates the terms of the contract with one or more third parties selected by it.

12.6.2 This procedure may only be used in very exceptional circumstances and with the prior agreement of the Executive Director of Commercial and Corporate Services.

13. Invitation to Tender

- 13.1 The Invitation to Tender (or Participate in Dialogue or Negotiate) shall include details of the Council's requirements for the particular contract including but not limited to:
- a) a description of the works, supplies or services (this should be outcome bases where appropriate);
 - b) the rules and instructions for submitting of tenders including the tender return date and time;
 - c) a specification containing the Council's requirements;
 - d) a statement as to whether any variants to the specification are permissible;
 - e) the Council's terms and conditions applicable to the contract;
 - f) the tender evaluation criteria including applicable weightings;
 - g) pricing schedule and instructions for completion;
 - h) a statement as to whether in the Council's view TUPE may apply;
 - i) instructions for the completion and content of any method statement;
 - j) the period which the Council requires that the tender offer shall remain open;
 - k) a statement that the Council does not bind itself to accept the lowest or any tender;
 - l) the Council's requirements in respect of any bond, parent company guarantee or liquidated damages;
 - m) the Council's requirements in respect of insurance and indemnity.

14. Submission of Tenders

- 14.1 Tenders shall comply with and be submitted in accordance with the rules and instructions set out in the invitation to tender.
- 14.2 Tenders will normally be submitted through a secure electronic system whereby they are not 'opened' until the deadline has passed for receipt of tenders.
- 14.3 Where tenders are not submitted electronically, tender documents must be submitted in a plain sealed envelope which shall bear the word "tender" followed by the subject to which it relates and addressed to the 'Civic Centre Main Reception', but shall not bear any name or mark indicating the sender. Such envelopes shall be held securely until the appointed time for their opening.

15. Opening of Tenders

- 15.1 Tenders for a particular contract shall be opened at one time and only in the presence of a Member of the Council and an officer not party to the procurement and designated by the Executive Director of Commercial and Corporate Services. The Executive Director of Commercial and Corporate Services shall keep a Register of Tenders opened. The Register of Tenders shall include the names, addresses, value and the date and time of opening.
- 15.2 The Member and officer in whose presence tenders are opened shall initial the Register, and where the tender is a hard copy, any summary page of the tender.
- 15.3 Unless submitted electronically, controlled copies shall be taken of every priced page of the tender and securely held by the Executive Director of Commercial and Corporate Services.

16. Amending Tenders, Bids or Quotations and Tender Errors

- 16.1 Where a tenderer identifies an error in their tender after submission but before the closing date for receipt of tenders, they may submit a correction in accordance with the rules applicable to the submission of tenders generally.
- 16.2 Genuine arithmetical error(s) may be amended with the consent of the tenderer.
- 16.3 Correction of any other tender error(s) shall be made at the discretion of the Executive Director of Commercial and Corporate Services.

17. Evaluation of Pre-Qualification Questionnaires, Tenders or Quotations

- 17.1 Evaluation criteria (including any and all sub-criteria) shall be determined in advance of the procurement and set out in descending order of importance in the Invitation to Tender documentation.
- 17.2 The evaluation criteria, including the weighting between quality and cost, for all procurements where the tender process applies shall be agreed with the Executive Director of Commercial and Corporate Services (through Corporate Procurement).

18. Negotiations

- 18.1 In open and restricted procedures, all negotiations with candidates or bidders on fundamental aspects of contracts or variations, which are likely to distort competition (in particular on prices), are not permitted.
- 18.2 Negotiations following receipt of tenders or quotations may only take place with the approval of the Head of Law and Governance.

19. Acceptance of Quotations and Tenders

- 19.1 A Chief Officer may accept a tender or quotation on the basis of the offer, which he considers, is the most economically advantageous to the Council or offers the lowest price, as determined in accordance with the evaluation criteria as set out in the invitation to tender or quote.
- 19.2 Where a Chief Officer wishes to accept a tender on the basis of the most economically advantageous offer where the tender is not also the lowest price, he shall do so only after obtaining the written agreement of the Executive Director of Commercial and Corporate Services and the reasons shall be documented. For clarity, this provision does not apply to the acceptance of quotations.

20. Standstill Period

- 20.1 In respect of a contract which exceeds the EU threshold, as soon as possible after the decision has been made to award a contract, Corporate Procurement shall give notice to any third party which submitted an offer or applied to tender, of the decision to award, in line with the Public Contracts Regulations.
- 20.2 A period of at least 10 days should elapse between the date of despatch of the notice referred to in rule 20.1 and the date on which the Council proposes to enter into the contract during which time an unsuccessful third party may raise challenges to the intended award.

21. Award Notice

- 21.1 In respect of a contract which exceeds the relevant EU threshold an Award Notice shall be published by Corporate Procurement no later than 48 days after the date of award of the contract.

22. Contract Terms and Conditions

- 22.1 All contracts and orders shall be in writing or in an approved electronic format, and every contract, which equals or exceeds £75,000 in value or amount, shall be in writing in a form to be approved by the Head of Law and Governance and executed in accordance with Article 14 of the Council's Constitution. The following areas must be adequately covered within the terms and conditions:

- The Contract Period (including any extensions)
- The Contract Price
- The Council's requirements (i.e. specification and performance requirements)
- Termination

Express provision dealing with the following areas must also be included in the terms and conditions, where appropriate:

- Insurance and Liability
- Bribery and Corruption
- Prohibition against Assignment / Novation (without agreement of the Council)
- Liquidated Damages and Guarantees
- Safeguarding Authority Registration
- Dispute Resolution
- TUPE
- Contract Variations
- Data Protection
- Freedom of Information
- Law and jurisdiction
- Audit access rights

23. Nominated Contractors and Sub-Contractors

- 23.1 In exceptional circumstances where there is a case for nominating sub-contractors to main contractors the provisions of these Rules shall apply in relation to the selection of the nominated sub-contractor.

24. Authorised Payments and certificates for variations incurring extras

- 24.1 All contract variations shall be consistent with the scope and terms of the existing contract and proportionate in value to the total value of the contract when originally awarded.

- 24.2 Any variation or series of variations incurring extras shall be authorised prior to the work being undertaken, as follows:
- a) where the net cumulative value of variations does not exceed £50,000 or 20% of the value of the contract, whichever is the lower, by the Chief Officer provided payment can be contained within the relevant budget provision, if not, written authorisation must be provided by the Executive Director of Commercial and Corporate Services;
 - b) where the net cumulative value of variations is between £50,000 and does not equal or exceed £250,000 or at least 20% of the value of the contract, whichever is the lower, by the Chief Officer having obtained prior written agreement of the Executive Director of Commercial and Corporate Services, provided payment can be contained within the relevant budget provision. If not, prior authorisation must be obtained from Cabinet.
 - c) where the net cumulative value of variations is equal to or exceeds £250,000 Cabinet approval must be sought regardless of whether this can be contained within the budget for the contract.
 - d) where the net cumulative value of variations in respect of a contract is estimated to equal or exceed 50% of the original contract value the Chief Officer may only authorise the variation or series of variations after consultation with the Head of Law and Governance as to application of the Public Contract Regulations.
- 24.3 Once duly authorised, approved variations must be ordered in writing and payments made in accordance with the terms of the contract.
- 24.4 The Chief Officer shall issue separate certificates, showing all extras less deductions presented to the Council for payment, stating the amounts of extras ordered to date and the amount certified for payment.
- 24.5 Where the Council has entered into a standard form contract in a form prepared on behalf of a professional organisation, which has been approved by the Head of Law and Governance, this Rule shall not prevent the discharge of the Council's obligations in connection with the granting of variations incurring extras or compensation events which arise or become due under the terms of the contract provided that records are kept in a form acceptable to the Executive Director of Commercial and Corporate Services.

25. Contract Extensions

- 25.1 A contract may be extended before the expiry date where the extension is in accordance with its original terms, can be shown to offer value for money and with the approval of the applicable Chief Officer and the Executive Director of Commercial and Corporate Services.
- 25.2 Where the contract terms do not provide expressly for an extension:
- a) contracts subject to the EU Regulations may be extended only in limited circumstances and on the written approval of the applicable Chief Officer and the Head of Law and Governance.

- b) contracts not subject to the EU Regulations may only be extended by formal written variation where the extension to a contract can be shown to offer value for money and is reasonable in all the relevant circumstances on the written approval of the applicable Chief Officer and Executive Director of Commercial and Corporate Services.

In addition, where the contract does not include an express right of extension, any proposed extension will also constitute a contract variation for the purpose of Paragraph 24 above and therefore the provisions of that Paragraph will also need to be followed.

- 25.3 After the expiry of the term of a contract it may not be extended or varied.

26 Assignment and Novation

- 26.1 The relevant Chief Officer, in consultation with the Executive Director of Commercial and Corporate Services, shall have authority to determine whether permission to assign or novate a contract is given on behalf of the Council.

27. Termination

- 27.1 Where a Chief Officer wishes to terminate a contract early he may do so only after consulting with the Executive Director of Commercial and Corporate Services as to the financial and legal impact of the termination.

Section 5 – Additional Requirements on the use of Consultants

Where consultancy services can be provided in-house their use should be considered first, and discussed with the relevant service area, before seeking external consultants.

28 Application

- 28.1 These additional requirements govern the selection, appointment and use of consultants in all Directorates of the Council.
- 28.2 The term “consultants” is intended to extend to all persons, firms or organisations who market their services as a consultancy service for whatever purpose, whether management, technical (including engineering, surveying and architectural services), financial, I.T., marketing, personnel etc., and are generally understood to come within the term “consultants”. This does not include staff employed via job agencies or other organisations that carry out day-to-day work on the Council’s behalf.
- 28.3 For the avoidance of doubt these guidelines will not apply to the engagement of individual professional witnesses or representatives.
- 28.4 These Rules are intended to supplement the main requirements of the Procurement Procedure Rules, not replace them.

Identification of Need

- 29.1 The objectives of the work and what the recommendations arising from the work are to achieve or change need to be clearly identified in a Project Brief.
- 29.2 Any proposals to use external consultants shall be approved, in writing, in advance by the Chief Executive or Deputy Chief Executive.
- 29.3 A budget for the exercise must be identified.
- 29.4 Where the cost of the procurement is estimated to exceed £100,000, Cabinet approval to the use of external consultants must be sought prior to advertising.
- 29.5 Any report to Cabinet must include the justification for using consultants and shall assess and document the benefits of employing consultants in the light of probable costs.

Preparation

- 30.1 A project brief shall be prepared by the Chief Officer in all cases.
- 30.2 Standard terms should be used to ensure comparability of consultants’ submissions.
- 30.3 Terms of reference should include a number of standard features to ensure that the consultants have sufficient information to make informed and feasible proposals.

These should include:

- a) the objectives of the project;
- b) what resources the Council will provide, e.g. staff, data;
- c) how the results are to be reported and presented;

- d) the time scale;
- e) how the project is to be monitored;
- f) an outline of the suggested approach;
- g) the basis upon which tenders are sought (fixed fee inclusive of expenses is to be preferred over daily rate);
- h) a requirement for consultants to outline relevant experience and personnel to be used;
- i) provision for any bonuses or deductions.

Invitation to Tender

- 31.1 External consultants should normally be selected on the basis of competitive tender unless satisfactory reasons to the contrary exist – refer to the exceptions set out in Section 1 of these Rules.
- 31.2 Chief Officers shall have regard to the likelihood of multistage consultancy and shall, wherever possible, consider all stages of work when assessing the overall value of the consultancy exercise, and for obtaining quotes or tenders. Tenders/quotations should identify all potential stages of the work.
- 31.3 In selecting suitable consultants from whom to invite quotations regard shall be had to firms who have worked for the Council previously and to any assessment of their past performance.
- 31.4 All tenderers and those submitting quotations shall be asked to provide the names of at least two customers for reference purposes, at least one of whom shall be a recent customer.
- 31.5 In the following circumstances, the requirement to seek written quotations or tenders may be dispensed with:
 - a) the value of the project is less than £5,000 (although regard must still be had to achieving value for money).
 - b) the firm it is proposed to use has developed a detailed knowledge of the particular project through past work with the Council.
 - c) the skills of a particular individual are demonstrably required.

The above exemptions are in addition to those set out in Section 1 of these Rules.

- 31.6 The reasons for not seeking written quotations or tenders shall be documented.

Monitoring Progress

- 32.1 The relevant Chief Officer is to nominate a named officer to be responsible for monitoring progress of the consultant.

