

# STANDARDS COMMITTEE

**TUESDAY  
21<sup>ST</sup> JUNE 2011  
AT 1400 HOURS IN  
COMMITTEE ROOM 1**

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Sherwood Lodge  
Bolsover  
Derbyshire  
S44 6NF

Date: 13<sup>th</sup> June 2011

Dear Sir or Madam,

You are hereby summoned to attend a Standards Committee meeting of the Bolsover District Council to be held in Committee Room 1, Sherwood Lodge, Bolsover, on Tuesday 21<sup>st</sup> June 2011 at 1400 hours.

Members are reminded that under Section 51 of the Local Government Act 2000 the Bolsover Code of Conduct was adopted by the Council on 16<sup>th</sup> May 2007. It is a Councillor's duty to familiarise him or herself with the rules of personal conduct by which Councillors must conduct themselves in public life. In addition, Members should review their personal circumstances on a regular basis with these rules in mind and bearing in mind the matters listed on the Agenda for discussion at this meeting.

Copies of the Bolsover Code of Conduct for Members will be available for inspection by any Member at the meeting.

Register of Members' Interest - Members are reminded that a Member must within 28 days of becoming aware of any changes to their interests under paragraph 14 or 15 of the Code of Conduct provide written notification to the Authority's Monitoring Officer.

Members are reminded of the provisions of Section 106 of the Local Government Finance Act 1992 and the responsibility of Members to make a declaration at this meeting if affected by the Section and not to vote on any matter before this meeting which would have an affect on the Council's budget.

You will find the contents of the agenda itemised on page 9.

Yours faithfully,



Chief Executive Officer  
To: Members of the Standards Committee

## STANDARDS COMMITTEE

1. Promoting and maintaining high standards of conduct by Members and co-opted Members of the Council.
2. Assisting Members and co-opted Members of the Council to observe the Code of Conduct.
3. Advising the Council on the adoption or revision of a Code of Conduct.
4. Monitoring the operation of the Council's Code of Conduct.
5. Advising, giving training and arranging to train Members and co-opted Members of the Council on matters relating to the Council's Code of Conduct.
6. Member Training (including the attendance of Members at courses) in relation to matters affecting their conduct and probity.
7. All matters relating to dispensations for Members to speak and vote where the Members concerned have personal prejudicial interests.
8. To assess and review complaints against Members
9. To conduct determination hearings.
10. To promote and maintain high standards of conduct within Town/Parish Councils and to assist them in following the Code of Conduct.
11. To deal with complaints against Town and Parish Councillors in accordance with 8 and 9 above.
12. Applications for dispensations received from Town/Parish Councils.
13. To grant exemptions for politically restricted posts.
14. Responsibility for the Regulation of Investigatory Powers Act 2000 (RIPA) policy and procedures, to include monitoring, revisions and approval.

The political balance rules do not apply to this Committee, but this Committee prefers representatives from all political groups to serve on it.

**TO RECOMMEND TO COUNCIL WITH REGARD TO:-**

15. Overseeing the Council's "whistle blowing" policy and arrangements and to amend them as appropriate.

16. Changes required to the Constitution as a result of the monitoring and reviewing undertaken by the Committee.

**(i) Assessment Sub-Committee**

1. The receipt and assessment of complaints as to the conduct of Members in accordance with the Local Government and Public Involvement in Health Act 2007.

2. To consider investigation reports prepared on behalf of the monitoring officer following a referral by the Sub Committee on an initial assessment and to determine:

(a) That it accepts the monitoring officer's finding of no failure: or

(b) That the matter should be considered at a meeting of the Hearing Sub Committee: or

(c) That the matter should be referred to the Adjudication Panel for determination.

**(ii) Review Sub-Committee**

1. The review and assessment of complaints as to the Conduct of Members in accordance with the Local Government and Public Involvement in Health Act 2007.

## STANDARDS COMMITTEE

Minutes of a meeting of the Standards Committee of the Bolsover District Council held in Room F49, Sherwood Lodge, Bolsover, on Tuesday 19<sup>th</sup> April 2011 at 1400 hours.

### **PRESENT:-**

Independent Members: -

B. Betts, K. Belshaw, J.M. Hill (from minute number 1053), J.R. Jaffray, R. Lilley, D.J. Wright and J. Yates.

Parish Council Members:-

K. Reid

Members: -

Councillors M.J. Dooley, H. J. Gilmour, V.P. Mills and A.M. Syrett.

Officers:-

A. Turner (Deputy Monitoring Officer) and A. Bluff (Democratic Services Officer).

J. Yates – In the Chair

### **1047. APOLOGIES**

Apologies for absence were received from Councillor P.R. Hendry, A. Gascoyne (Independent Member), W. Lumley (Chief Executive Officer) and S. E. A. Sternberg (Solicitor to the Council & Monitoring Officer).

### **1048. URGENT ITEMS**

The Chair informed the meeting of an urgent item of business to be considered, being a recommended item from the Executive held on 4<sup>th</sup> April 2011, entitled 'Sheffield City Region Local Enterprise Partnership (LEP) Membership'. This item would be discussed as the last item on the agenda.

## STANDARDS COMMITTEE

### 1049. DECLARATIONS OF INTEREST

There were no declarations of interest made.

### 1050. MINUTES – 8<sup>th</sup> MARCH 2011

Moved by Councillor M. J. Dooley, seconded by Councillor H. J. Gilmour  
**RESOLVED** that the minutes of a meeting held on 8<sup>th</sup> March 2011 be approved as a correct record.

### 1051. COMPLAINTS TO THE STANDARDS BOARD

The Deputy Monitoring Officer presented information in relation to complaints made against Members. No complaints had been received for 2011.

Moved and seconded.

**RESOLVED** that the report be noted.

### 1052. STANDARDS COMMITTEE WORK PLAN 2010/11

The Deputy Monitoring Officer presented a report in relation to the Standards Committee Work Plan for 2010/11. Details regarding Member Induction training arranged for 16<sup>th</sup> May 2011 were also attached to the report.

Members asked questions.

Moved and seconded.

**RESOLVED** that the report be noted.

J. Hill entered the meeting at this point.

### 1053. STANDARDS COMMITTEE WORKPLAN 2011/12

The Deputy Monitoring Officer presented a report in relation to the Standards Committee Work Plan for 2011/12.

Moved and seconded

**RESOLVED** that the report be noted.

## STANDARDS COMMITTEE

### 1054. CONSTITUTION AMENDMENT REPORT

The Deputy Monitoring Officer presented a report which gave details of recommended changes to the Council's Constitution.

A short discussion took place.

Moved by Councillor K. Reid, seconded by Councillor A.M. Syrett  
**RESOLVED** that the report be noted.

(Head of Democratic Services- Constitution)

### 1055. ACS<sub>e</sub>S PAPER – MAINTAINING HIGH ETHICAL STANDARDS IN LOCAL GOVERNMENT

The Deputy Monitoring Officer presented information received from ACS<sub>e</sub>S (Association of Council Secretaries and Solicitors) with regard to the Localism Bill).

The paper summarised the proposals contained within the Localism Bill and outlined those provisions available to authorities to call upon.

A discussion took place regarding terms of 'bribery' and 'bias'.

Moved and seconded.  
**RESOLVED** that the report be noted.

### 1056. RECRUITMENT OF PARISH COUNCIL REPRESENTATIVES TO STANDARDS COMMITTEE

The Deputy Monitoring Officer gave a verbal update to the meeting on the recruitment of parish council representatives to Standards Committee.

Due to the number of LACs recently decreasing, it had been decided to put recruitment of parish councillors on hold to save on financial costs. The situation would be reviewed again after the District and Parish elections in May 2011.

The Chair suggested that this be put on the agenda for the June meeting.

Moved and seconded  
**RESOLVED** that the report be noted.

(The Deputy Monitoring Officer/Head of Democratic Services)

## STANDARDS COMMITTEE

### **1057. REPORT ON THE MEETING OF THE CHAIRMAN WITH THE CHIEF EXECUTIVE OFFICER**

The Chair gave a short verbal report to the meeting regarding his recent discussion with the Chief Executive Officer.

Moved and seconded

**RESOLVED** that the report be noted.

### **1058. URGENT ITEM OF BUSINESS RECOMMENDED ITEM FROM EXECUTIVE HELD ON 4<sup>TH</sup> APRIL 2011 - SHEFFIELD CITY REGION LOCAL ENTERPRISE PARTNERSHIP (LEP) MEMBERSHIP**

The Chair presented the report to seek Committee's approval for an amendment to the Leader's delegated authority, for inclusion in the Council's Constitution, in relation to the Sheffield City Region Housing and Regeneration Board.

The report had been presented to Executive on 4<sup>th</sup> April 2011, advising Members of governance arrangements for the Sheffield City Region Housing and Regeneration Board and had also sought Executive Members agreement for full membership of the Sheffield City Region LEP.

Moved by Councillor H Gilmour, seconded by Councillor K. Reid

**RECOMMENDED** that the Council be recommended to include in the Members' Delegation Scheme, in the Council's Constitution, that power be granted to the Leader, giving Bolsover District Council approval to the LEP Action Plans for the SCR period 2011-15, as appropriate.

(Head of Democratic Services (Constitution))

The meeting concluded at 1435 hours.



## STANDARDS COMMITTEE

### AGENDA

Tuesday 21<sup>st</sup> June 2011 at 1400 hours in Committee Room 1

Item No.		Page No.(s)
	<b>PART 1 – OPEN ITEMS</b>	
1.	To receive apologies for absence, if any.	
2.	To elect a Chair of the Standards Committee for the ensuing year.	
3.	To appoint a Vice Chair of the Standards Committee for the ensuing year.	
4.	To note any urgent items of business which the Chairman has consented to being considered under the provisions of Section 100(B) 4 (b) of the Local Government Act 1972.	
5.	Members should declare the existence and nature of any personal or prejudicial interests in respect of:-  a) any business on the agenda b) any urgent additional items to be considered c) any matters arising out of those items  and, if appropriate, withdraw from the meeting at the relevant time.	
6.	Terms of Reference.	3 to 4
7.	Minutes of a meeting held on 19 <sup>th</sup> April 2011.	5 to 8
8.	New Parish Council Representatives - Update	Verbal Update
9.	Revised Contracts Standing Orders.	To Follow
10.	Complaints to the Standards Board.	To Follow
11.	Annual Review of the Gifts and Hospitality Registers.	To Follow
12.	Standards Committee Work Plan.	To Follow

Sherwood Lodge  
Bolsover  
Derbyshire  
S44 6NF

Date: 13<sup>th</sup> June 2011

Dear Sir or Madam

STANDARDS COMMITTEE – TUESDAY 21<sup>st</sup> JUNE 2011

I refer to your recently circulated agenda for the above meeting and now enclose the following items;

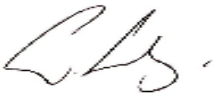
**Part One – Open Items**

Agenda Item 10 – Complaints to the Standards Board (page 10)

Agenda Item 11 – Annual Review of Gifts and Hospitality Registers (pages 11 to 15)  
**Recommendation on page 14.**

Agenda Item 12 – Standards Committee Work Plan (pages 16 to 18)

Yours faithfully



Chief Executive Officer

To: Chairman & Members of the Standards Committee



Complaints to the Standards Board

Year	Number	PC	DC	Review requested	ESO investigation	Monitoring Officer investigation	Hearing	Outstanding
2002	3	2	1		3		2	
2003	10	5	5		5		1	
2004	12	8	4		3	0	0	
2005	6	3*	3		2	0	0	
2006	10	9	1		3	1	0	
2007	3	2	1		0	0	0	
2008 to 8/5/08	2	1	1		0	0	0	
2008 from 8/5/08	9	6	4**	1	2	5	1	0
2009	17	13	4***	0	2	5	0	0
2010	6	6	0	0	0	0	0	0
2011	1	0		0				0

\* 1 complaint was made against an entire Parish Council but this has been shown as one complaint

\*\* 1 complaint was against a councillor as both a Parish and District Councillor.

\*\*\* Each of the 4 complaints was against 4 councillors

Average time taken to reach a decision by the LAC

Year	Number of Complaints	average time to LAC decision
2010	6	20
2011	1	47

10<sup>th</sup> June 2011.

Committee:	Standards Committee	Agenda Item No.:	11
Date:	21 <sup>st</sup> June 2011	Category	
Subject:	Annual Review of gifts and hospitality registers	Status	Open
Report by:	Solicitor to the Council and Monitoring Officer.		
Other Officers involved:	<b>None</b>		
Director	*		
Relevant Portfolio Holder	<b>Not applicable</b>		

### **RELEVANT CORPORATE AIMS**

STRATEGIC ORGANISATIONAL DEVELOPMENT – Continually improving our organisation.

This review is carried out annually to check on the keeping of the registers and so that the results can be used to help enable Standards Committee to evaluate what changes/improvements need to be made to the ethical framework

### **TARGETS**

This report relates to the ethical framework and how the Council carries out its business. It does not relate to a particular target

### **VALUE FOR MONEY**

There are no financial consequences from this report.

### **THE REPORT**

In accordance with the Standards Committee Work Plan, I reviewed all the departments' Gifts and Hospitality Registers. I was checking for the following:-

1. That a Register could be provided for checking.
2. That the Register contained the up to date guidance and correct forms.
3. That where entries had been made, such entries complied with the requirements.

This inspection was carried out in June 2011 for the previous 12 months. There are 20 registers in all, including IT which is being reviewed for the last time. All but 2 complied with the above 3 requirements.

The 2 departments had not complied in minor ways. One had not got the relevant guidance on the file. This has now been put on the file. The other department had not made clear who the recipient was in 1 case. They have now been asked to make this clear in future. A number of gifts and hospitality offered had been rejected. The latter included some Marks and Spencers vouchers to the value of £40 which had been returned. In addition 2 of the entries related to the donation of prizes for a Council raffle for a community safety event. These should not have been recorded as gifts.

More extensive guidance is available on ERIC. This is sometimes reproduced on the registers which is good practice. In addition, following the session on gifts and hospitality that I did at the depot, the presentation forms an extra piece of guidance on one of the depot registers.

A further check was carried out in relation to the number of entries made per department and the results are as follows:-

Type of entry and number of entries:-

Flowers 2 (2) (2)	Overnight stay 0 (0) (2)
Diaries/Calendars etc 15 (48) (13)	Box of chocolates 6 (15) (5)
Meals 1* (8) (5)	Other 26 (42) (8)
Total 50 (115) (35)	

\*this was for 9 employees and the total was £130

The figures for the previous 2 years are in brackets.

As can be seen above the nature of the gifts and hospitality is relatively modest. The number of gifts and hospitality being received and recorded has decreased.

For members' information, the "other" category includes small items such as a £5 gift voucher, an invitation to a graduation, pens, bottles of wine, brochures, biscuits.

In relation to the numbers per department:-

	2010/11	2009/10
CSPD	0	0
Finance (excluding Revenues)	0	0
Procurement	0	0
Clowne Contact Centre	0	0
Shirebrook Contact Centre	0	2

South Normanton Contact Centre	0	0
Planning	0	1
Legal	1	3
Street services	1	30
Bolsover Contact Centre	1	0
Community Services	2	1
IT	2	8
Leisure	2	4
CEO & CEPT	2	1
Revenues	2	2
Democratic Services,	4	3
Housing	4	9
Human Resources and Payroll	5	1
Environmental Health	8	10
Regeneration	20	16

In 2008/9 the spread was 0 to 12 entries. In 2009/10 the spread was 0 to 30. In the current year the spread is 0 to 20.

It is not proposed to do anything further in relation to the departmental registers.

### **Members**

Members no longer have a Register of Gifts and Hospitality. Their Register of Interests form includes provision for members to make a declaration of receipt.

All forms submitted by members since May 2010 for members who were re-elected and from May 2011 for those members newly elected, have been checked and show that no member has declared the receipt of gifts or hospitality in that period.

### **ISSUES FOR CONSIDERATION**

It is for members to consider the outcome of the review of the Gifts and Hospitality Registers.

## **IMPLICATIONS**

Financial: None.

Legal: It is good practice to review the Registers annually and to send appropriate reminders on a regular basis. In Bolsover's case a reminder is sent to members annually to coincide with any changes made at the Annual Meeting.

Human Resources: None.

## **RECOMMENDATION(S) that;**

- 1 the outcome of the review be noted,**
- 2 an item is put on the weekly bulletin confirming completion of the review.**

ATTACHMENT: Y

FILE REFERENCE: **None**

SOURCE DOCUMENT: **Departments' Registers of Gifts and Hospitality and Members' Register of Interests forms.**

GIFTS AND HOSPITALITY REGISTER					
DEPARTMENT	NAME OF OFFICER	COMMENT	Action to be taken	Amount of Gifts Declared	Type of Gifts.
COMMUNITY SERVICES	Admin Assistant 2348 - Christine	File contains current Guidance and Forms.	Return with no further action.	2	MP3 Player and book of 12 1st class stamps, both to be used in a free raffle for Crime Cracking event.
CSPD	Ann Bedford	File contains current Guidance and Forms.	Return with no further action.	0	
DEMOCRATIC	Kath Whittingham	File contains current Guidance and Forms.	Return with no further action.	4	3 boxes chocolates and Various diaries.
ENVIRONMENTAL HEALTH	Sue Simmons	File contains current Guidance and Forms.	Return with no further action.	8	A Biro, 2 Planners, 4 Calendars, a pen and a box of Roses Chocolates.
FINANCIAL	David Hill	File contains current Guidance and Forms.	Return with no further action.	0	
HOUSING	Peter Campbell	File contains current Guidance and Forms.	Return with no further action.	7	2 Bottles of wine, Hat and Scarf, 1 Calendar, 2 Tape Measures and 1 box of chocolates.
HUMAN RESOURCES	Linda Charity	File contains current Guidance and Forms.	Return with no further action.	5	A book, 2x £5 Gift Vouchers, Invitation to Apprentice Graduation. Invitation to Meadows School Prom Night and Flowers and bottle of wine.
I.T.	Martin Noble	File contains current Guidance and Forms.	<b>Return and remove from next years inspection list as this is now under NEDDC.</b>	2	A Satchel type bag with 'comino' logo and a box of Heroes chocolates.
LEGAL	Sarah Sternberg	File contains current Guidance and Forms.	Return with no further action.	1	Invitation to Browne Jacobson's Christmas Party - refused.
LEISURE	Pam Burrows	File contains current Guidance and Forms.	Return with no further action.	2	Diary and a pen
CEO & CEPT	Jo Green	File contains current Guidance and Forms.	Return with no further action.	2	A Pen, Flowers and a bottle of wine
PLANNING	James Arnold	File contains current Guidance and Forms.	Return with no further action.	0	
Street Services at the Depot	Christine Baggaley	File contains current Forms but no Guidance.	Add the Guidance into the file and return.	1	Bundle of pens, bags, mousemats and brochures. Less than £5 value in total.
REGEN (CONSULTANCY, HSG STRA, ECO DEV)	Sue Simmons	File contains current Guidance and Forms.	Return with no further action.	20	1 Car Airfreshner, 7 Mouse Mats, 3 packets of biscuits, 1 box of chocolates, 6 Calendar/diaries and 2 bottles of wine. <b>£40 of M&amp;S gift vouchers - Not accepted and returned to donor.</b>
REVENUES	David Hill	File contains current Guidance and Forms.	Need to have a word about the entries. Only stating in recipient section that it is ' Billing & Recovery Officers' Sarah needs me to advise that the individual accepting the gift needs to state their name.	2	Christmas Box containing chocolates and wine. Christmas Dinner Evening - worth approx £130.00
Procurement	Bob Truswell	File contains current Guidance and Forms.	Return with no further action.	0	
Bolsover Contact Centre	Sally Asher	File contains current Guidance and Forms.	Return with no further action.	1	1 Calendar and Diary.
Clowne Contact Centre	Sarah Smith	File contains current Guidance and Forms.	Return with no further action.	0	
Shirebrook Contact Centre	Sally Asher	File contains current Guidance and Forms.	Return with no further action.	0	
S Normanton Contact Centre	Maxine Marriott	File contains current Guidance and Forms.	Return with no further action.	0	



## STANDARDS COMMITTEE WORK PLAN 2011/12

ITEM	MILESTONES	DATES OF MEETINGS	COMMENTS	STATUS
1. Annual report to Council by Chairman of Standards Committee		<ul style="list-style-type: none"> <li>24<sup>th</sup> April 2012</li> </ul>	<ul style="list-style-type: none"> <li>Suggested date</li> </ul>	Not yet Started
2. Review of training needs – District and Parish Councillors	<ul style="list-style-type: none"> <li>District Councillors</li> <li>Parish Councillors</li> <li>Monitoring of attendance</li> </ul>	<ul style="list-style-type: none"> <li>progress reports at each meeting</li> </ul>	<ul style="list-style-type: none"> <li>District Cllrs – the induction has taken place.</li> <li>Parish Cllrs – needs reviewing at 21<sup>st</sup> February 2012 meeting when Localism Bill has been enacted.</li> </ul>	Ongoing
3. Annual Reports -	<ul style="list-style-type: none"> <li>Year end number of complaints against District and Parish Councillors received by the Standards Board</li> <li>Gifts and hospitality Registers</li> <li>RIPA</li> </ul>	<ul style="list-style-type: none"> <li>20/6/2011</li> <li>20/6/2011</li> <li>20/6/2011.</li> </ul>	<ul style="list-style-type: none"> <li>On this agenda</li> <li>On this agenda</li> <li>Request deferral until next meeting</li> </ul>	<ul style="list-style-type: none"> <li>Done</li> <li>Done</li> <li>Ongoing</li> </ul>

ITEM	MILESTONES	DATES OF MEETINGS	COMMENTS	STATUS
4. Liaison meetings	<ul style="list-style-type: none"> <li>• Meeting of Chairman with District Council's CEO</li> <li>• Meeting of Chairman with each of the 3 political parties' Leaders</li> </ul>	<ul style="list-style-type: none"> <li>• 24<sup>th</sup> April 2012</li> <li>• 4<sup>th</sup> December 2012</li> </ul>	<ul style="list-style-type: none"> <li>•</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Not yet started</li> <li>• Not yet started</li> </ul>
5. Review of guidance to members involved with the Planning process	<ul style="list-style-type: none"> <li>• To be determined in 2011/12 depending on the progress of the Localism Bill.</li> </ul>	<ul style="list-style-type: none"> <li>• 21<sup>st</sup> December 2012</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Not yet started</li> </ul>
6. Review of Constitution			<ul style="list-style-type: none"> <li>• This is dependent on the progress of the Localism Bill. Changes will be required to the Constitution at that point.</li> </ul>	
	Contracts Standing orders	<ul style="list-style-type: none"> <li>• 20/6/2011.</li> </ul>	<ul style="list-style-type: none"> <li>• On this agenda</li> </ul>	Done
	Financial Regulations review	<ul style="list-style-type: none"> <li>• 20/6/2011</li> </ul>	<ul style="list-style-type: none"> <li>• I've asked the Director of Resources to update me on when this will be available.</li> </ul>	Ongoing

ITEM	MILESTONES	DATES OF MEETINGS	COMMENTS	STATUS
	Delegation Scheme	•	• This is dependent upon the Strategic Alliance and progress with arrangements.	Suspended
7. Development of the Annual Standards Committee work plan for 2012 to 2013	•	• 27/4/11.	• This is dependent on the Council's decision following the enactment of the Localism Bill.	Not yet started
8. Partnership Governance arrangements and the ethical framework?	• Scoping report	•	• Request this is suspended until the requirements of the Localism Bill are known.	Suspended
9. Review of Constitution User Guide	•	•	• This is dependent on the changes to be made by the Localism Bill.	Suspended

**June 2011**

Sherwood Lodge  
Bolsover  
Derbyshire  
S44 6NF

Date: 16<sup>th</sup> June 2011

Dear Sir or Madam

## **STANDARDS COMMITTEE – TUESDAY 21<sup>st</sup> JUNE 2011**

I refer to your recently circulated agenda for the above meeting and now enclose the following items;

### **Part One – Open Items**

Agenda Item 9 – Revised Contracts Standing Orders (page 19 to 32)

- Appendix 1 – BDC Financial Thresholds (page 33)
- Appendix 2 – Glossary of Definitions (page 34)
- Appendix 3 - Procurement Toolkit (Pages 35 to 43)

Please note that Appendix 4 – EU Procurement Rules Toolkit (32 pages) is a guidance document and is not for approval by Standards Committee. This document will be available for Members to view at the Standards Committee meeting.

The revised Contracts Standing Orders are before you for you to consider recommending them to Council for inclusion in the Constitution. The recommendation is therefore:-

### **RECOMMENDATION**

**That Members recommend the revised Contracts Standing Orders to Council for inclusion in the Constitution.**

Yours faithfully



Chief Executive Officer

To: Members of the Standards Committee



## REVISED CONTRACTS STANDING ORDERS

### 1. INTRODUCTION

1.1 These Contract Procedure Rules (the Rules) provide a corporate framework for the procurement of all goods, services and works for the Council. The Rules are designed to ensure that all procurement activity is conducted with openness, probity and accountability. Above all, the Rules are designed to ensure that the Council obtains value for money and the required level of quality and performance in all contracts that are let. Every contract for the supply of goods and services and for the execution of works made by or on behalf of the Council shall comply with these Rules.

1.2 E-procurement procedures shall be used wherever possible. These include e-tendering, purchase cards and others. Where appropriate e-auctions may be used, so long as provision is made for this in the advert. Requests for quotations, Pre-qualification questionnaires and Invitations to tender should wherever practical be issued to tenderers by electronic means. Where e-tendering is being considered, the e-tendering software that is to be used must be the corporate e-tendering system. The Head of Shared Procurement Unit will provide User Names and Passwords for the corporate e-tendering system.

1.3 Before any tendering exercise is considered, reference must be made to the Council's procurement and equalities guidelines. The Council is committed to dealing fairly with all relevant discrimination group as defined in the Equalities Act 2010. A failure to take into account special requirements for these groups in a tender would be a significant corporate failure, affecting the reputation and standing of the Council.

1.4 Any employee who fails to comply with Contract Procedure Rules may be subject to disciplinary action.

1.5 The Council has produced a Procurement Toolkit which is available on the intranet. This should be adhered to by all officers engaged in procurement activity.

1.6 A Glossary of Terms is contained at Appendix 2.

### 2. COMPLIANCE WITH CONTRACT PROCEDURE RULES

2.1 The provisions contained in these Rules are subject to the statutory requirements of both the European Union and the United Kingdom. The letting and content of Contracts shall conform to all statutory requirements and be subject to any over-riding directives of the European Union relating to contracts and procurement. This Rule cannot be waived, since a failure to comply with European legislation may result in a legal challenge with consequent reputational

and financial risk. If you are uncertain, advice can be sought from the Head of Shared Procurement Unit or the Solicitor to the Council.

2.2 In estimating relevant contract values, officers shall have regard to the rules regarding aggregation. See Appendix A.

### **2.3 Partnerships**

2.4 These Rules apply, in addition to other procurements, to any proposal for the Council to become involved in a joint venture or partnership, including the monitoring of any such arrangement. All procurements must also comply with Freedom of Information and Data Protection requirements.

In relation to the Rules, a joint venture or partnership includes any arrangement involving one or more organisations in addition to the Council through which either a specific project or services within any of the functions of the Council are to be provided. It will also provide a role for the Council or any of its members or officers in whatever structure is used to deliver the project or services involved (such structures may include, but are not limited to, companies, trusts and management committees).

2.5 Before any consideration is given to the Council entering into a joint venture with the private sector or a strategic service delivery partnership with any external organisation and in particular before any detailed negotiations are entered into or before any contract is made or undertaking given by or on behalf of the Council in relation to a joint venture or partnership, the Authorised Officer concerned must submit detailed information concerning the proposed joint venture or partnership to the Senior Officer. The Senior Officer will give consideration to the proposed joint venture in accordance with these Rules. On receipt of the detailed information above, the Senior Officer will ensure that an appropriate project board is convened. The Senior Officer will also ensure that appropriate consultation is made with the Senior Management Team and Cabinet.

2.6 Procurement processes for strategic partnerships and privately funded construction (PFI) projects must include:

- The issue of an information memorandum to prospective bidders setting out the background to the project, the Council's objectives and an outline of the procurement process and timetable, with roles and responsibilities made clear.

- An invitation to bidders to demonstrate their track record in achieving value for money through effective use of their supply chain, including the use of small firms; this should continue to be examined as part of contract management.
- The inclusion in invitations to tender (or take part in competitive dialogue) a requirement on bidders to submit optional, priced proposals for the delivery of specified social benefits which are relevant to the contract and add value to the community strategy.

### **3. NORMAL PROCEDURE**

#### **3.1 These Rules relate to five categories of procurement based on the estimated value of the contract:**

- a. £1 to £1,000
- b. £1,001 to £5,000
- c. £5,001 to £50,000
- d. £50,001 to £EU Threshold
- e. Over the EU Threshold

#### **3.2 In all instances, goods, services or works should be obtained via the methods outlined below :**

- a. in-house services (for example, printing and design etc.)
- b. established corporate contracts or framework agreements
- c. request for quotation
- d. tender
- e. in the case of Constructionline, by running a mini-competition.
- f. framework contracts established by Purchasing Consortia or other Local Authorities (to be agreed by the Head of Shared Procurement Unit)
- g. for low-value purchases, Purchasing Cards can be used provided they are not used with the intention of undermining the use of approved or corporate contracts

All of the above options are subject to EU and/or UK Statutory requirements which must be complied with.

#### **3.3 Orders and payments for goods, services and works shall be undertaken in accordance with the Financial Procedure Rules. In all cases,**

**the following wording must be included in tender and request for quotation documents:**

“Information in relation to this tender may be made available on demand in accordance with the requirements of the Freedom of Information Act 2000. Tenderers should state if any of the information supplied by them is confidential or commercially sensitive or should not be disclosed in response to a request for information under the Act. Tenderers should state why they consider the information to be confidential or commercially sensitive. This will not guarantee that the information will not be disclosed but will be examined in the light of the exemptions provided in the Act.”

**3.4 Before entering into a contract, the authorised officer must:**

- a. Be satisfied that a specification (where appropriate) that will form the basis of the contract has been prepared (the specification should be retained on the appropriate contract file held within the service), and
- b. Have prepared and documented an estimate of the cost of the contract including, where appropriate, any maintenance and on-going costs (the estimate should be retained on the appropriate contract file held within the service), and
- c. For contracts where there is evident risk, and for all contracts over £50,000, produce and maintain a documented risk register for the procurement process and for the eventual contractual relationship. A risk register entry should be made and entered on the appropriate risk register. As a minimum this should analyse all risks, identify how the risks will be managed, and the responsible officer(s).
- d. For all contracts greater than £50,000 a draft contract should be produced to accompany the tender documents or contract terms and conditions.

**3.5 Before entering into a contract the authorised officer must:**

- a. Be satisfied about the technical capability of such proposed contractor and be satisfied that s/he has the power and authority to enter into the contract; and
- b. Ensure that all evaluation criteria have been determined in advance, put into order of relative importance with weightings for each element and published in the tender pack; and
- c. Ensure that these Rules have been complied with, and that the proposed contract represents value for money; and
- d. For all contracts that exceed £50,000, the authorised officer shall undertake appropriate checks to ensure that the proposed contractor has the financial and



resource capacity (taking account of contract value and risk) to perform the contract (unless the contractor has already been subjected to a recent satisfactory financial check). Financial vetting shall be undertaken by an officer designated by the Head of Finance and Revenues, who shall advise on what, if any, security should be provided by the contractor.

### **3.6. Advertising**

All tenders shall be advertised and, where appropriate, be available for download on the website <http://www.sourcederbyshire.co.uk/>. Contract award notices shall also be published on the website.

3.7 Officers should consider whether the contract will be of benefit to other public sector bodies. If so they should include the following text in the advert ;

**"Tenderers should be aware that although the contracting authority for the purposes of this procurement is Bolsover District Council, one or more other local authorities and/or public bodies from the Counties of Derbyshire and Nottinghamshire may choose to access the concluded contract, without creating any obligation on behalf of any of them to do so."**

3.8 All EU notices shall be referred, in advance of sending to the OJEU, to the Head of Shared Procurement Unit to advise on wording.

## **4.0 EXEMPTIONS**

4.1 Subject to statutory requirements tenders need not be invited in accordance with these Rules in the following cases:

(a) In the case of the supply of goods:

(i) the goods or materials are proprietary articles and, in the opinion of the appropriate Senior Officer (which should be put in writing and retained on the project file), no reasonably satisfactory alternative is available, and

(ii) Exemptions under this rule shall be notified to the Head of Shared Procurement Unit.

(b) The work to be executed or the goods or services to be supplied are controlled by a statutory body.

(c) The work to be executed or the goods or services to be supplied constitute an extension to an existing contract and subject to the Senior Officer deciding

that it would not be in the interests of the service or the Council to tender the contract. The Senior Officer or his or her nominee should consult with the Head of Shared Procurement Unit who will ensure that a record of the decision is made on the project file.

(d) The contract is for the execution of work or the supply of goods or services certified by the appropriate Senior Officer to be required so urgently as to preclude the invitation of tenders. The appropriate Portfolio Holder shall be kept informed of such decisions and a record of the decision shall be retained by the service and a copy sent to the Head of Shared Procurement Unit.

(e) Or Commissioning, such as for the Working Neighbourhoods Funded projects where, for example, there is no (or insufficient) marketplace to tender for the supply of goods, services or works required.

4.2 Officers should consider using the Council's internal services where appropriate, or using established arrangements in Rule 3.2. Officers should ensure that the best possible balance of value for money and quality is obtained for the Council.

4.3 Tenders need not be invited where they have been undertaken by any consortium, collaboration or similar body, where the Council is able to access contracts. Officers should contact the Shared Procurement Unit to ensure that any contracts let by such a consortium, collaboration or similar body are in accordance with UK and EU procurement directives and regulations.

4.4 Where the Council acts as lead body on a consortium or collaborative arrangement, the procedures for tendering contained within these Rules shall be followed (including the delivery, opening and acceptance of tenders).

## **5. CONTRACTING & FINANCIAL GUIDELINES**

5.1 Officers should order goods and services that are required through an arrangement illustrated in Rule 3.2. If however the Council or the consortium providing them do not have the goods or services or resources available to meet the reasonable needs of the service then an alternative supply may be sourced. In these circumstances the authorised officer must record why the goods or services have been procured through other means, and send a copy of the record to the Head of Shared Procurement Unit. In all circumstances a written purchase order is required.

5.2 It is good practice (for all but small value and routine purchases) to obtain a written quotation. The Procurement Toolkit at Appendix C shows the procurement route for the examples described below.

### **5.3 Contracts £1 to £1,000**

Procurement of goods and services estimated to be for amounts up to £1000 shall be by oral or written quotation, unless an arrangement under 3.2 has already been established for the goods, services or works required. There is no mandatory procurement involvement.

### **5.4 Contracts £1,001 to £5,000**

Procurement of goods and services estimated to be for amounts in the range £1,001 to £5,000 shall be by written quotation from at least three suppliers, unless an arrangement under 3.2 has already been established for the goods, services or works required. There is no mandatory procurement involvement.

### **5.5 Contracts £5,001 to £50,000**

Procurement of goods and services estimated to be for amounts in the range £5,001 to £50,000 shall be by formal written request for quotation (RFQ) from at least three suppliers, unless an arrangement under 3.2 has already been established for the goods, services or works required.

### **5.6 Contracts £50,001 to EU Threshold**

5.6.1 Procurement of goods and services estimated to be for amounts in the range £50,001 to EU THRESHOLD shall be by formal open Invitation to Tender (ITT), unless an arrangement under 3.2 has already been established for the goods, services or works required, whereupon mini competition will be encouraged with all capable suppliers. For evaluation purposes, a standing invitation to the evaluation meeting shall be made to officers from Finance, Legal and Audit along with the relevant Portfolio Holder or substitute and the appropriate commissioning officer.

5.6.2 In cases where the goods, services or works are covered by Constructionline, this list may be used provided that at least three written quotations are obtained (and more where, in the opinion of the Authorised Officer, there is a reasonable level of competition or variety of solutions). The use of Constructionline must be structured in order to ensure open and fair competition with an appropriate rotation of suppliers from the list.

### **5.7 Contracts EU Threshold and above**

Procurement of goods and services estimated to be for amounts in the range EU THRESHOLD AND ABOVE shall be by formal open Invitation to Tender (ITT). Full procedural details are contained in Appendix D.

## **6. PROBITY**

**6.1 In every instance there shall be a record of the process. This shall be in accordance with the Procurement Toolkit and shall include the following, plus any information that may be required for submitting annual reports to the Government or other agencies:**

- a. the officer(s) undertaking the procurement process and taking the decisions
- b. the rationale for the procurement route taken (including open or restricted procedure if above EU thresholds)
- c. a copy of the specification, risk register and anything required by Financial Regulations
- d. copies of all tenders & completed supplier questionnaire
- e. copy of the evaluation process and reasons for the decisions as to acceptance or rejection for every tender
- f. copy of the award letter and a copy of the relevant Executive Report and Minute
- g. copy of the final contract
- h. copy of the contract review and management process including the officer responsible for on-going contract management.

**6.2 All contracts for goods, services and works must be registered on the Shared Procurement Unit Contracts Register and the original contract documents held centrally and securely in Legal Services.**

**6.3 Tenderers, whether successful or not, should be offered a debrief, to assist them in preparing future bids. The relevant officer should also keep a record of all debrief requests and responses.**

**6.4 In accordance with EC Procurement Directive 2004/18/EC, any company responding to an EU tender shall be excluded from the tender process if it, or its directors have been convicted of; conspiracy, corruption, bribery, fraud or money laundering. Where a service has information relating to the above, contact the Head of Shared Procurement Unit for advice.**

## **6.5 BRIBERY ACT.**

The Act makes it an offence to pay or receive a bribe, either directly or indirectly. The Act provides for transactions that take place both in the public and private sectors. Where a commercial organisation is convicted of such an offence there is provision within the Regulations for the commercial organisation to be barred from participating in tenders for public contracts. The Government intends to change this in amended Regulations to give a discretion to the public body seeking the tender as to whether such a commercial organisation should be so barred. Where there is evidence to suggest a breach of the Act or a conviction under the Act, officers should inform the Head of Shared Procurement Unit, Director of Resources and the Solicitor to the Council who will advise on a course of action.

## **7. RECEIPT AND CUSTODY**

7.1 No tender will be considered unless it is either:

(a) Contained in a plain envelope which shall be securely sealed and shall bear the word 'TENDER' followed by the subject to which the tender relates or the number of the tender concerned, but shall not bear any distinguishing matter or mark to indicate the identity of the sender. Prospective tenderers shall be notified accordingly.

OR

(b) Received via the corporate e-tendering system.

7.2 Subject to 7.1,(a) tenders where the estimated value exceeds £50,000 shall immediately on receipt be consecutively numbered and remain in the custody of Democratic Services until the time appointed for opening. Any officer receiving tenders shall indicate on the envelope the date and time of its receipt by him or her.

7.3 Requests for quotation(RFQ) where the estimated cost does not exceed £50,000 may be addressed impersonally to the appropriate Senior Officer.

7.4 Responses to pre-qualification questionnaires (PQQs) and quotations(RFQ's) are not deemed to be tenders and should be returned to the originating officer, either via hard copy or electronically via email or e-tendering system.

## **8. OPENING AND EVALUATION OF TENDERS**

8.1 Tenders shall be opened and recorded at one time and by not less than two officers designated for that purpose, as well as the designated Executive member and a Democratic Services officer.

8.2 Tenders submitted in hard copy must be opened by the same officers and Member and at the same time as documents received via any e – tendering system.

8.3 In respect of tenders with a value in excess of £50,000, any officer from the Finance, Legal or Internal Audit sections has the right to attend any tender opening.

8.4 Once opened, tenders shall be passed to the evaluation team which will include the relevant Portfolio Holder or substitute. A report outlining the results of the evaluation process will then be presented to Executive to decide on the award of the contract.

## **9. LATE TENDERS**

9.1 Where a tender is submitted in competition and is received after the specified time then it shall be disqualified. This shall be subject to a test of reasonableness on the part of the Head of the Shared Procurement Unit and the Solicitor to the Council. Any such tender should be returned promptly to the tenderer who should be notified accordingly. The tender envelope may be opened to ascertain the name and address of the tenderer concerned.

## **10. ACCEPTANCE**

10.1 Contracts shall be evaluated and awarded in accordance with the evaluation criteria issued with the tender documentation. Only those tenders that comply with the evaluation criteria shall be considered for acceptance. Tenders must be accepted on the basis of “most economically advantageous” tender.

10.2 A tenderer who submits a qualified or conditional tender shall be given the opportunity to withdraw the qualification or condition without amendment to the tender. If the tenderer fails to do so the tender must be rejected.

10.3 Prior to final contract award, the contractor must provide evidence of adequate insurance to cover both public and employers’ liability, and produce such evidence during the life of the contract at the reasonable request of the authorised officer.

10.4 For all procurements covered by the EU Directives, a statutory minimum period of 10 calendar days standstill time after the award decision is issued is required to allow companies an opportunity to challenge the decision.

**The notification of the award decision to unsuccessful bidders, based on the most economically advantageous tender, should contain;**

- the award criteria;
- the score the tenderer obtained against those award criteria;
- the score the winning tenderer obtained;
- the name of the winning tenderer.

10.5 All contracts must be notified to the Head of Shared Procurement Unit, including performance monitoring information.

## **11. NOMINATED/NAMED SUB-CONTRACTORS AND SUPPLIERS**

11.1 It is recommended that contracts are awarded to a single entity or lead contractor, who in turn will take contractual responsibility for the performance (and risks) for all sub-contractors and supply-chains. This reduces the risk of the Council becoming party to disputes between contractors.

## **12. ENGAGEMENT OF CONSULTANTS**

12.1 An authorised officer may only appoint external consultants or advisors providing professional or consulting services if such services are not available within the Council or if Council officers providing them do not have the resources to meet the needs of the service. Where such services are available in-house, the authorised officer must consult with a Senior Officer before taking any decision to make an external appointment.

12.2 Consideration should be given to using appropriate framework agreements for business, professional, and ICT consultancy services.

12.3 External consultants and technical officers engaged to supervise contracts must follow these Rules as applicable and their contracts for services must state this requirement.

12.4 Procurement plans and / or tenders prepared by external consultants on behalf of the Council **must** be referred to Head of Shared Procurement Unit for approval and advice.

12.5 The relevant officer is required to submit a Request for Service form (found on the intranet) to the Head of Shared Procurement Unit in respect of all consultancy and advisor contracts where the value of the contract is above £5,000.

12.6 All contracts for external consultants and advisors shall explicitly require that the consultants or advisors provide without delay any or all documents and records maintained by them relating to the services provided on request of the authorised officer, and lodge all such documents and records with the Authorised Officer at the end of the contract.

12.7 The authorised officer shall ensure that any consultant working for the Council has appropriate indemnity insurance.

### **13. CONTRACT CONDITIONS**

13.1 Every contract for goods or services regardless of value shall be in writing and shall be based on the standard terms and conditions held by the shared Procurement Unit.

**Every contract over £50,000 shall be in a form approved by the Senior Principal Solicitor or his nominee.**

### **14. EXTENDING EXISTING CONTRACTS**

14.1 The Authorised Officer, subject to the budget being available, and after consultation with the appropriate Senior Officer, may extend a contract subject to the extension being within the scope of the original scheme (subject to Rule 4.1.c).

14.2 If the original contract was subject to the EU procurement regulations, the contract can only be extended within the parameters identified in the original EU contract notice, or if the notice explicitly contained provision for extension.

### **15. PERFORMANCE BONDS AND GUARANTEES**

15.1 In the case of all contracts valued above £50,000 the authorised officer shall determine, based on advice from the Director of Resources, the degree of



security (if any) required to protect the Council from a contractor default. This may be a performance bond or some other form of financial or performance guarantee.

15.2 Where an order is placed with a Council in-house service and work forming part of that order is sub-contracted to an external company, then the provisions of Rule 15.1 will apply.

15.3 Where a performance bond and/or parent company guarantee is required, then the tender documents must provide for this.

## **16. LIQUIDATED DAMAGES**

16.1 Any contract which is estimated to exceed £100,000 in value or amount, and is for the execution of works, or for the supply of goods or materials by a particular date or series of dates, shall provide for liquidated damages. The amount to be specified in each such contract shall be determined by a Senior Officer in consultation with Legal Services and appropriate stakeholders.

### **17.1 Agreements shall be completed as follows:**

<b>Total Value</b>	<b>Method of Completion</b>	<b>By</b>
Up to £50,000	signature	Solicitor to the Council
£50,001 and above	sealed	see 17.3

### **17.2 Signature**

The Authorised Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

### **17.3 Sealing**

Where contracts are completed by each side adding their formal seal, the affixing of the Council's seal will be attested by the Solicitor to the Council and Monitoring Officer together with the Chairman or in their absence, the Vice-Chairman of the Council, or in their absence, another Councillor. An entry of every sealing shall be made and consecutively numbered in a book kept for the purpose. The seal

must not be affixed without the authority of the Council, Executive, a Committee or under delegated powers. A contract must be sealed where:

- the Council may wish to enforce the contract more than six years after its end; or
- the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; or
- where there is any doubt about the authority of the person signing for the other contracting party; or
- the Total Value exceeds £50,000.

#### **17.4 Archiving & lodgement of records**

The original sealed contract must be deposited with the Council's Legal Services and recorded on the Contracts Register.

## BDC Financial Thresholds

Contract Value		Process	Award Procedure based on	Contract Opportunity Publication Route	Documentation
From	To				
£0	£1,000	Oral quotation	At least three oral quotations	No mandatory procurement involvement	Employee identifying need to record details on project file
£1,001	£5,000	Written Quotation	Minimum of three written quotations	No mandatory procurement involvement	Employee identifying need to record details on project file
£5,001	£50,000	RFQ (Request for Quotation)	Three written quotations based on a RFQ document with simplified Ts & Cs	Inform SPU via "Request for Service" form on intranet. Option for advert on Source Derbyshire. Option for electronic RFQ system	Must be based on a written specification provided to the supplier by the Council. Quotation may be delivered by e-mail or provided through an electronic RFQ system.
£50,001	Up to EU Threshold	Formal Tender	Full tender process	Inform SPU via "Request for Service" form on intranet. Advert on Source Derbyshire. Option for electronic RFQ system	PQQ and ITT documentation as relevant with sealed bids which may be submitted via the e-tendering system. Must be based on a written specification and the Council must supply evaluation criteria to the suppliers.
EU Threshold	Above	Formal Tender	Full tender process	Inform SPU via "Request for Service" form on intranet. Advert on Source Derbyshire and OJEU. Option for electronic RFQ system	PQQ and ITT documentation as relevant with sealed bids which may be submitted via the e-tendering system. Must be based on a written specification and the Council must supply evaluation criteria to the suppliers.

**NB The Contract Value shall be calculated as follows:** The estimated or proposed contract value is the value or consideration for the contract as a whole (not an annual value) and any contract with an option to extend the contract period will be valued to include also any provision for such extended period (eg a three year contract with an option to extend for a further two years will be valued as the consideration for a five year contract.

**Glossary of definitions;**

**Authorised Officer** Means any officer who by the nature of his or her job, or as directed by a manager, is authorised to place orders.

**Code of Practice** Means the Council’s Code of Practice for Procurement including accompanying guidance.

**Contract** Means any form of contract, agreement or other arrangement for the supply of goods, services or works.

**Executive Member** Means a member of the Cabinet

**Goods** Covers all supplies and materials that the Council purchases or obtains.

**Senior Officer** Means one of the officers outlined in the table below “Senior Officer Equivalents”

**Services** Includes all services which the Council purchases or obtains including advice, specialist consultancy work, agency staff, etc.

**Works** Includes all construction and repairs in respect of physical assets (buildings, roads, etc.).

**Table- Senior Officer Equivalents**

<b>Ashfield District Council</b>	<b>Bolsover District Council</b>	<b>Chesterfield Borough Council</b>	<b>Mansfield District Council</b>	<b>North East Derbyshire District Council</b>
Chief Executive	Chief Executive	Chief Executive	Chief Executive	Chief Executive
	Director of Resources	Deputy Chief Executive		Director of Customers and Communities
	Director of Neighbourhoods			Director of Finance and Assets
	Director of Development			Director of Sustainable Development
	Solicitor to the Council			

**PLACE THE APPROPRIATE WORKSHEET(S) ON THE PROJECT FILE**

*nb this toolkit should be read in conjunction with the suite of Standard Documents*

		Notes
Receive Instructions from Stakeholders via Intranet		
Q.has authority been given to procure?	Y / N	
Q. has funding been approved?	Y / N	
Set up kick off meeting with Stakeholder	Date:	
Agree project title	Title:	
Agree project reference	Reference:	
One off purchase or ongoing?	One off?	
	Ongoing?	
If ongoing, agree contract length	Contract Length	
Agree appropriate Procurement Route, based on the market:	Open?	
	Restricted?	
	Framework?	
What is the value of the whole contract?	£5K - £50K	
	£50K - £156K	
	Over £156K	
Follow the appropriate worksheet for the procurement		
<i>nb per Standing Orders, SPU should be informed of all procurements over £5000</i>		
<i>Please use the Request for Service form on the Intranet to advise SPU.</i>		

<b>REQUEST FOR QUOTATION WORKSHEET</b>		Notes
<p><b>Only use the yellow PQQ section if following the Restricted Procedure</b>            Use PQQ Template and Evaluation Sheet            Agree Section 10 "Requirement Specific" Questions with Stakeholder            Produce final PQQ Evaluation Sheet in conjunction with Stakeholder            Agree timescale for PQQ period with Stakeholder            Agree PQQ Evaluation Meeting</p> <p>Send agreed PQQ and Evaluation sheet to Procurement Assistant for issue            Agree Advert Wording            Place Advert on Source Derbyshire</p>	<p>Agreed Date:            Agreed Date:            PQQ Return Date:            Meeting Date:            Venue:</p> <p>Agreed Date:            User Name:            Password:</p>	<p><a href="mailto:bob.truswell@bolsover.gov.uk">bob.truswell@bolsover.gov.uk</a>            xxxxxxx</p>
<p><b>Only use the yellow PQQ section if following the Restricted Procedure</b>            PQQs issued by Procurement Assistant responding to Expressions of Interest            PQQs returned to Procurement Assistant either electronically or hard copy            Chair PQQ Evaluation Meeting            Produce Evaluation Scoresheet            Rank Bidders in order and agree those going through to tender            Produce PQQ Unsuccessful Letters- pass to Procurement Assistant for issue            Requests for debrief to come via email to Procurement Assistant            Produce PQQ Debrief Letters- pass to Procurement Assistant for issue            If a contract is required, send Heads Up template to Legal Department            Use RFQ Template and appropriate Goods/Service/Works Terms &amp; Conditions            Ask Stakeholder to prepare appropriate Specification            Agree appropriate Pricing Mechanism</p>	<p>Date issued:            Date issued:            Date sent:            Received Date:            Agreed Date:</p>	

Request for Quotation Worksheet Continued

<p>Agree Requirement Specific questions                  Produce final RFQ Cost/Quality Evaluation Sheet in conjunction with Stakeholder                  Produce model answer in conjunction with Stakeholder                  Agree timescale to quotation period with Stakeholder                  Agree RFQ Evaluation Meeting</p>	<p>Agreed Date:                  Cost/Quality Split                  Agreed Date:                  RFQ Return Date:                  Meeting Date:                  Venue:                  RFQ Issue Date:</p>	
<p>Send agreed RFQ and Evaluation Sheet to Procurement Assistant for issue                  Questions sent in to Procurement Assistant- responses circulated to all bidders                  RFQs returned to Procurement Assistant either electronically or hard copy                  Chair RFQ Evaluation Meeting                  Produce Evaluation Scoresheet                  Rank Bidders in order and agree the winner based on Cost/Quality Mix                  Post Tender Negotiations (by SPU staff only)  <i>nb this should only include clarifications and not anything that materially alters the nature of the contract</i>                  Invite Bidders to Interview if required                  Take up References if required                  Produce RFQ Successful Letter- pass to Procurement Assistant for issue                  Produce RFQ Unsuccessful Letters- pass to Procurement Assistant for issue                  Requests for debrief to come via email to Procurement Assistant                  Produce RFQ Debrief Letters- pass to Procurement Assistant for issue                  If contract required, pass documents through to Legal</p>	<p>Interview Date                  Date Request Sent                  Date issued:                  Date issued:                    Date issued:                  Instructions Template                  Tender (x2 copies)                  Delegated Decision                  Date Completed:                  Date Entered:</p>	
<p>Complete Contract Award Notice on Source Derbyshire                  Enter Contract Details on Contract Register</p>		

FRAMEWORK WORKSHEET		Notes
<p>Conduct due diligence to ensure framework available for use            Make file note showing justification for using a framework            Type of Framework</p> <p><b>If, single supplier:</b>            Request Quote for supplies or service required. <b>Go to Line 30.</b></p> <p><b>If, multi-supplier:</b>            If a contract is required, send Heads Up template to Legal Department            If contract valued over £50,000, place on Forward Plan            Use Mini-Competition Template and appropriate framework Terms &amp; Conditions            Ask Stakeholder to prepare appropriate Specification            Agree appropriate Pricing Mechanism            Agree Requirement Specific questions            Produce final Mini-Competition Cost/Quality Evaluation Sheet in conjunction with Stakeholder            Produce model answer in conjunction with Stakeholder            Agree timescale to Mini-Competition period with Stakeholder            If contract valued over £50,000, inform Democratic Services of tender return date            Agree Mini-Competition Evaluation Meeting</p> <p>Invite Legal, Finance, Audit, Members, Stakeholders to Evaluation Meeting            Send agreed Mini-Competition and Evaluation Sheet to Procurement Assistant for issue</p>	<p>Original Advert Details:            Note Dated:            Single Supplier?            Multi-Supplier?</p> <p>Date Requested:</p> <p>Date sent:            Date sent:</p> <p>Received Date:            Agreed Date:            Agreed Date:            Cost/Quality Split            Agreed Date:</p> <p>Mini-Competition Return Date:            Date informed:            Meeting Date:            Venue:            Invites sent:</p> <p>Mini-Competition Issue Date:</p>	



Framework Worksheet Continued

Questions sent in to Procurement Assistant- responses circulated to all bidders  
 Mini-Competitions returned in hard copy to Democratic Services  
 Tender opening  
 Chair Mini-Competition Evaluation Meeting  
 Produce Evaluation Scoresheet  
 Rank Bidders in order and agree the winner based on Cost/Quality Mix  
 Post Tender Negotiations (by SPU staff only)  
*nb this should only include clarifications and not anything that materially alters the nature of the contract*  
 Invite Bidders to Interview if required  
 Take up References if required  
 Take award recommendation to Cabinet for Approval  
 Wait for five days for Scrutiny Call-in to pass  
 Produce Mini-Competition Successful Letter- pass to Procurement Assistant for issue  
 Produce Mini-Competition Unsuccessful Letters- pass to Procurement Assistant for issue  
 Requests for debrief to come via email to Procurement Assistant  
 Produce Mini-Competition Debrief Letters- pass to Procurement Assistant for issue  
 If contract required, pass documents through to Legal  
  
 Inform Framework Owner of results of Mini-Competiton (winning bidder, value of call off, date)  
 Enter Contract Details on Contract Register

Interview Date  
 Date Request Sent  
 Cabinet Minute Number:  
  
 Date issued:  
 Date issued:  
  
 Date issued:  
 Instructions Template  
 Tender (x2 copies)  
 Delegated Decision  
 Cabinet Minute  
  
 Date Entered:



Tender Worksheet Continued

<p>Send agreed Tender and Evaluation Sheet to Procurement Assistant for issue                  Questions sent in to Procurement Assistant- responses circulated to all bidders                  Tenders returned in hard copy to Democratic Services                  Tender opening                  Chair Tender Evaluation Meeting                  Produce Evaluation Scoresheet                  Rank Bidders in order and agree the winner based on Cost/Quality Mix                  Post Tender Negotiations (by SPU staff only)  <i>nb this should only include clarifications and not anything that materially alters the nature of the contract</i>                  Invite Bidders to Interview if required                  Take up References if required                  Take award recommendation to Cabinet for Approval                  Wait for five days for Scrutiny Call-in to pass                  Produce Tender Successful Letter- pass to Procurement Assistant for issue                  Produce Tender Unsuccessful Letters- pass to Procurement Assistant for issue                  Requests for debrief to come via email to Procurement Assistant                  Produce Tender Debrief Letters- pass to Procurement Assistant for issue                  If contract required, pass documents through to Legal</p> <p>Complete Contract Award Notice on Source Derbyshire                  Enter Contract Details on Contract Register</p>	<p>Tender Issue Date:</p> <p>Interview Date                  Date Request Sent                  Cabinet Minute Number:</p> <p>Date issued:                  Date issued:</p> <p>Date issued:                  Instructions Template                  Tender (x2 copies)                  Delegated Decision                  Cabinet Minute                  Date Completed:                  Date Entered:</p>	
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TENDER WORKSHEET		Notes
<p>Place contract on Forward Plan</p> <p><b>Only use the yellow PQQ section if following the Restricted Procedure</b></p> <p>Use PQQ Template and Evaluation Sheet</p> <p>Agree Section 10 "Requirement Specific" Questions with Stakeholder</p> <p>Produce final PQQ Evaluation Sheet in conjunction with Stakeholder</p> <p>Agree timescale for PQQ period with Stakeholder</p> <p>Agree PQQ Evaluation Meeting</p> <p>Send agreed PQQ and Evaluation sheet to Procurement Assistant for issue</p> <p>Agree OJEU Advert Wording</p> <p>Place Advert on SIMAP</p> <p>Place Advert on Source Derbyshire</p> <p><b>Only use the yellow PQQ section if following the Restricted Procedure</b></p> <p>PQQs issued by Procurement Assistant responding to Expressions of Interest</p> <p>PQQs returned to Procurement Assistant either electronically or hard copy</p> <p>Chair PQQ Evaluation Meeting</p> <p>Produce Evaluation Scoresheet</p> <p>Rank Bidders in order and agree those going through to tender</p> <p>Produce PQQ Unsuccessful Letters- pass to Procurement Assistant for issue</p> <p>Requests for debrief to come via email to Procurement Assistant</p> <p>Produce PQQ Debrief Letters- pass to Procurement Assistant for issue</p> <p>Use Tender Template and appropriate Goods/Services/Works Terms &amp; Conditions</p> <p>Ask Stakeholder to prepare appropriate Specification</p> <p>Agree appropriate Pricing Mechanism</p> <p>Agree Requirement Specific questions</p> <p>Produce final Tender Cost/Quality Evaluation Sheet in conjunction with Stakeholder</p> <p>Produce model answer in conjunction with Stakeholder</p>	<p>Date sent:</p> <p>Agreed Date:</p> <p>Agreed Date:</p> <p>PQQ Return Date:</p> <p>Meeting Date:</p> <p>Venue:</p> <p>Agreed Date:</p> <p>User Name:</p> <p>Password:</p> <p>User Name:</p> <p>Password:</p> <p>Date issued:</p> <p>Date issued:</p> <p>Received Date:</p> <p>Agreed Date:</p> <p>Agreed Date:</p> <p>Cost/Quality Split</p> <p>Agreed Date:</p>	<p>BolsoverSPU</p> <p>xxxxxxx</p> <p><a href="mailto:bob.truswell@bolsover.gov.uk">bob.truswell@bolsover.gov.uk</a></p> <p>xxxxxxx</p>

Tender Worksheet Continued

<p>Agree timescale to Tender period with Stakeholder                  If contract valued over £50,000, inform Democratic Services of tender return date                  Agree Tender Evaluation Meeting</p> <p>Invite Legal, Finance, Audit, Members, Stakeholders to Evaluation Meeting                  Send agreed Tender and Evaluation Sheet to Procurement Assistant for issue                  Questions sent in to Procurement Assistant- responses circulated to all bidders                  Tenders returned in hard copy to Democratic Services                  Tender opening                  Chair Tender Evaluation Meeting                  Produce Evaluation Scoresheet                  Rank Bidders in order and agree the winner based on Cost/Quality Mix                  Post Tender Negotiations (by SPU staff only)  <i>nb this should only include clarifications and not anything that materially alters the nature of the contract</i>                  Invite Bidders to Interview if required                  Take up References if required                  Take award recommendation to Cabinet for Approval                  Wait for five days for Scrutiny Call-in to pass                  Produce Notification of Intention to Award Letter- pass to Procurement Assistant for issue                  Produce Tender Unsuccessful Letters- pass to Procurement Assistant for issue                  Ten day standstill period commences                  Requests for debrief to come via email to Procurement Assistant (by Day 3 of Standstill)                  Produce Tender Debrief Letters- pass to Procurement Assistant for issue (by Day 7 of Standstill)                  Check that all debriefs issued and no challenges received by Day 10 of Standstill.                  If contract required, pass documents through to Legal</p> <p>Complete Contract Award Notice on SIMAP                  Complete Contract Award Notice on Source Derbyshire                  Enter Contract Details on Contract Register</p>	<p>Tender Return Date:                  Date informed:                  Meeting Date:                  Venue:                  Invites sent:                  Tender Issue Date:</p> <p>Interview Date                  Date Request Sent                  Cabinet Minute Number:</p> <p>Date issued:                  Date issued:                  End of standstill:</p> <p>Date issued:</p> <p>Instructions Template                  Tender (x2 copies)                  Delegated Decision                  Cabinet Minute</p> <p>Date Completed:                  Date Entered:</p>	
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# Introduction

This booklet has been developed to provide clarity and support to Cyril Sweett staff and our clients on procurement in the public sector. In particular, it focuses on the use of procedures set out in the Public Contracts Regulations, (Statutory Instrument 2006 No 5) hereafter referred to as the Regulations.

The Regulations were developed in response to Procurement Directives issued by the European Union and they set out how the UK has transposed the EU Directive into national law. EU Procurement Directives apply when contracting authorities (public sector authorities or utility providers) seek to acquire goods, services, engineering or building works that exceed a specified threshold.

## **The directives exist to:**

- open up the public procurement market
- ensure there is free movement of goods and services within the EU
- guarantee that public procurement is based on “Value for Money” which should be achieved through competition.

Failure to follow the procurement procedures set out in the Regulations may result in penalties for non-compliance. There are three routes under which remedies may be sought: Judicial review, Article 226 proceedings and remedies under the Regulations. In any case if a challenge is made, the procurement process can be suspended or even cancelled and damages can be awarded. When Cyril Sweett acts as an advisor, we have a duty of care to our clients to ensure they are conducting procurement in accordance with these Regulations.

## **This guide provides:**

- guidance on the steps and considerations that need to be taken to establish whether an advert in the Official Journal of European Union (OJEU) is required
- guidance on determining the appropriate procedure
- detailed guidance on the restricted procedure and competitive dialogue as these are the two routes most relevant to the construction industry
- flowcharts and keynotes for the procedures
- sources of further information such as directives, guidance documents, template examples and individuals who can be contacted for further advice

## Cyril Sweett contacts

Cyril Sweett is able to provide a range of expert consulting services that relate to public sector procurement. The table below outlines who you can contact for expert procurement advice.

Name	Team	Expertise	Contact Details
<b>Charles McSweeney</b>	Procurement and Supply Chain Management (PSCM)	Public procurement	t: 020 7061 9121 charles.mcsweeney@cyrilssweett.com
<b>Keith Keown</b>	Legal Support	Drafting contracts	t: 020 7061 9332 keith.keown@cyrilssweett.com
<b>Andrew Wildgust</b>	PFI/PPP	Health PFI	t: 020 7061 9213 andrew.wildgust@cyrilssweett.com
<b>Alan Saunders</b>	Procurement and Supply Chain Management (PSCM)	Social housing	t: 020 7061 9172 alan.saunders@cyrilssweett.com
<b>Tony Newberry</b>	Procurement and Supply Chain Management (PSCM)	Frameworks	t: 0117 926 0785 tony.newberry@cyrilssweett.com

## OGC Buying Solutions Technical Assurance Services framework

Public and third sector clients can appoint Cyril Sweett directly through the OGC Buying Solutions Technical Assurance Services framework agreement.

For more information about the type of services offered under the framework, please visit [www.ogcbuyingsolutions.gov.uk](http://www.ogcbuyingsolutions.gov.uk) or [www.cyrilssweett.com](http://www.cyrilssweett.com) or contact **Charles McSweeney** on t: +44 20 7061 9000 e: [charles.mcsweeney@cyrilssweett.com](mailto:charles.mcsweeney@cyrilssweett.com).



# Establishing the contracting authority's needs

In order to determine if the Regulations apply and to select the most appropriate procurement strategy, detailed discussions with the client, referred to here as the contracting authority, need to take place. This is to establish the scope of the proposed contract including:

- the nature of the works and/or services to be procured. Is the contracting authority able to pre-define their needs/requirements or are they so technically and financially complex that they will need input from bidders?
- the quantity of work to be undertaken, the anticipated duration and anticipated total value of any proposed work, purchase or service
- whether the setting up of a framework agreement would be appropriate (see Appendix A for more information).

It is advisable to formally document the needs identified above, detailing the appropriate procurement strategy, which the contracting authority will then sign off.

Be aware that some contracting authorities have produced their own guidance (see page 20). Always check to see whether your contracting authority has any such guidance so you can use this as the basis for your advice or alternatively point out where such guidance is inapplicable. If the contracting authority is a utility provider, a different directive governs this procedure (see Appendix B for more information).

It is not always clear whether the Regulations apply as the contracting authority can sometimes include a mix of public and private sector stakeholders. If this is the case, seek advice from the individuals listed in the introduction to this guide.

## **“T.E” – Teckal Exemption**

Clients may want to consider where the Teckal Exemption applies. Teckal Exemption in essence allows one or more local authorities to place work with an external entity without complying with the public procurement directive or regulations if their relationship is equivalent to that between the authorities and their internal departments, in the sense that the authority exercises control over the entity without private sector involvement and the essential part of the entity's activities are with the authorities (please seek specialist procurement advice before determining this route).

# The EU procurement procedures

## **Open procedure**

This allows an unlimited number of interested parties to tender against defined parameters. This procedure is straightforward and transparent but can attract an unwieldy number of potential bidders. It may be used for commodity procurement, (e.g. stationery, furniture supply), but is not usually recommended for construction projects due to the high number of tenders that could be expected. It is not appropriate for PFI/PPP due to their complex technical, legal and financial requirements. If you think this procedure is suitable, seek advice first (contacts noted on page 2).

## **Restricted procedure**

This is a two-stage procedure. The first stage allows the contracting authority to set the minimum criteria relating to technical, economic and financial capabilities that the suppliers have to satisfy. Following evaluation and short-listing, a minimum of five suppliers (unless fewer qualify) are invited to tender in the second stage. This process is typically used to appoint consultants or contractors on traditionally procured projects or frameworks. If this option is appropriate, see page 8.

## **Accelerated restricted procedure**

This procedure is exactly the same as the restricted procedure but allows for a quicker process. It can only be used in situations where external factors have created a state of urgency. "Urgency" is narrowly defined so it is worth seeking advice if you suspect this route can be justified (contacts noted on page 2).

## **Negotiated procedure**

The procedure involves the contracting authority selecting one or more persons with whom to negotiate the terms of the contract. If used, a full audit trail should be maintained and appropriate legal advice sought. This procedure has previously been popular and was used for all PFI/PPP procurement but has been superseded by the competitive dialogue procedure as a result of the revised Regulations that came into force on 31 January 2006. It is now only to be used in very exceptional circumstances. Undertaking a complex procurement for the first time would not usually justify a contracting authority using the negotiated procedure.

## **Competitive dialogue**

This procedure is appropriate for complex contracts where contracting authorities:

- are not objectively able to define the technical means capable of satisfying their needs or objectives, and/or
- are not objectively able to specify the legal and/or financial make-up of a project

A pre-qualification questionnaire should be completed to select the candidates to participate in the dialogue. The contracting authority enters into a dialogue with bidders to identify and define the means best suited to satisfying their needs. The dialogue may be conducted in successive stages with the remaining bidders being invited to tender. Some public sector authorities have developed guidance on conducting this procedure so it is vital that specific departmental guidance is adhered to where applicable. This process is now used for the procurement of private sector partners on PFI/PPP projects. If this procedure is relevant, see page 14.

# Determining the right procedure

The purpose of this section is to define the procurement route for a given contract, in compliance with the Regulations. Answer the questions in this section once you have established the contracting authority's needs and are clear about the scope of the contract. By answering these questions you should arrive at the most suitable procurement route for your contract.

1. Is the public sector contract a:
  - **Supplies contract** (procurement of pre-manufactured goods including stationery, equipment and fixed assets)? If yes, go to question 2
  - **Services contract** (the engagement of a person or a company to provide services such as maintenance, consultants etc.)? If yes, go to question 3
  - **Works contract** (traditional construction work)? If yes, go to question 4
  - if you are not sure, see Appendix C of this guide
  - if it is a mixture of the different contract types, see Appendix D

2. Are the supply costs (net of value added tax) payable to an individual supplier expected to exceed the values listed below?

<b>Entities listed in Appendix E</b>	£ 90,319	€133,000
<b>Other public sector contracting authorities</b>	£139,893	€206,000

If no go to question 5, if yes go to question 6

3. Are the services fees (net of value added tax) payable to an individual supplier expected to exceed the following values?

<b>Entities listed in Appendix E</b>	£ 90,319	€133,000
<b>Other public sector contracting authorities</b>	£139,893	€206,000

If no go to question 5, if yes go to question 6

N.B. These values are as of January 2008 and are updated every two years.

4. Is the tender price of the works contract expected to exceed £3,497,313 (net of value added tax)?

If no go to question 5, if yes go to question 6

5. Does the aggregate fee of a single requirement for services of the same type (e.g. architectural services) exceed the relevant thresholds below, over a 12 month period?

	<b>Supplies</b>	<b>Services</b>	<b>Works</b>
<b>Entities listed in Appendix E</b>	£90,319	£90,319	£3,497,313
	€133,000	€133,000	€5,150,000
<b>Other public sector</b>	£139,893	£139,893	£3,497,313
<b>Contracting authorities</b>	€206,000	€206,000	€5,150,000

Note that the thresholds are as it stands from 31 January 2008 and are updated biannually. The thresholds are fixed so do not always reflect the current exchange rates between pound sterling and euro. For current thresholds check:  
[www.ogc.gov.uk/procurement\\_policy\\_and\\_application\\_of\\_eu\\_rules\\_eu\\_procurement\\_thresholds.asp](http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_eu_procurement_thresholds.asp)

If no, follow the client's internal tendering procedures. The contract is not subject to the Regulations although the principles still apply. For information on this process see Appendix F. If yes go to question 6.

N.B. In valuing a contract or transaction it is necessary to consider whether the 'aggregation' rules apply. In principle the relevant value for threshold purposes is the value of each individual contract, however, in certain circumstances it is necessary to add together the value of purchases made under a number of similar contracts.

6. Is the contract straightforward, i.e. can specifications and terms of engagement be stated in advance of going to the market?

If no go to question 8, if yes go to question 7

7. Is the contract considered to be "urgent"? This is narrowly defined by the Public Contracts Regulations 2006, so administrative inefficiency does not count!

If no, use open or restricted procedure, if yes, use accelerated restricted procedure.

8. Is there any reason (artistic or technical expertise or the need to protect exclusive rights) that warrants the contract being carried out by a particular person or authority?

If no: competitive dialogue, if yes: negotiated procedure

N.B. Accelerated or negotiated procedures should only be used in specific circumstances. Seek advice first (contracts noted on page 2).

# Restricted procedure guidance

This section describes what each stage of the procedure involves as shown in the flowchart on page 13. An indicative programme of works for this procedure is included in Appendix H.

## Procurement strategy

As part of agreeing a procurement strategy:

- **consider holding an objectives workshop with the contracting authority and/or conduct a contracting authority briefing** – this ensure that the contracting authority's needs are understood and can be communicated to potential suppliers
- **consider drafting a procurement strategy document** – this acts as an audit trail of decisions made for the tendering process
- **consider using electronic communication** – this allows reduced timescales to be used

To comply with the Regulations, the equipment to be used for communication by electronic means must be:

- non-discriminatory
- generally available
- compatible with information and communication technology products in general use

The Regulations do not state which documents need to be communicated electronically in order for the reduced timescales to apply. Therefore the reduction of timescales by the use of electronic communication is open to interpretation. Reduced timescales are not always beneficial as the quality of the tenders may be compromised.

## Prior information notice (PIN)

- ▶ **Consider issuing a PIN** – the purpose of this is to inform the market of impending work and it allows the use of reduced timescales
  - it is mandatory, but there are no specific sanctions for failure to publish a PIN
  - can give advance warning of impending contracts which is useful to warm up the market
  - allows reduced timescales if published at least 52 days (and within 12 months) prior to OJEU notice but this is not always advantageous as the quality of tenders is frequently compromised when timescales are reduced

- for services or supplies, publish the PIN at the start of the financial year when the aggregate value is expected to exceed €750,000 (approx £500,000)
- for works, publish the PIN once a decision has been made to proceed with a works contract

## **Advertising**

- no transaction subject to the directives is to be advertised elsewhere before despatching the OJEU notice
- once it is published in the OJEU the requirement may then be advertised elsewhere, provided that no more information than that given in the OJEU is supplied
- additional advertising is optional (it can sometimes be beneficial to advertise the notice in a trade journal)

## **Contract notice**

### **Draft OJEU contract notice using contracting authority development information**

- go to Simap website: <http://www.simap.eu.int> and follow links to “Buyers Corner” then “New Forms”. The PSCM team has registered Simap users and are able to access and publish contract notices.

N.B. If the conclusion of the procurement process is to set up a framework agreement, potential candidates must be made aware of this when the contract notice is submitted and in any subsequent advertisements.

### **Submit contract notice**

## **Pre qualification questionnaire (PQQ)**

### **Develop information pack and PQQ**

- consider using a website as a vehicle for publishing all documents to reduce time and cost
- consider holding an open day for prospective tenderers. This allows tenderers to clarify queries and indicates the level of market interest
- applications can only be short-listed on the following criteria:
  - technical or professional ability (e.g. experience and resources)
  - economic and financial standing
- assessment criteria and relative weightings need to be agreed. Examples of criteria are shown in Appendix G
- tenderers must remain unaware of each others’ identities to ensure fair competition

#### **► Issue PQQ and information pack to tenderers**

- **Respond to all requests for information** – ensure that responses to all applicant queries are recorded and made available to all other applicants

- ▶ **Administration and clarification of the PQQ process with prospective tenderers**

## **Pre qualification assessment**

- ▶ **Assist contracting authority with the evaluation of returned PQQs to develop a shortlist with a minimum of five tenderers** (unless fewer than five compliant PQQs are received or fails to satisfy minimum standards)
  - it is recommended that a core group of stakeholders mark the submissions and collate and weight the scores (to pre-agreed criteria and weightings) to ensure that a collective and objective view is obtained
- ▶ **Issue all applicants with a written notification of success/failure**
- ▶ **Debriefing for unsuccessful applicants**

In accordance with the Regulations the unsuccessful applicant must be informed of the:

- reasons why it was unsuccessful
- characteristics and advantages offered by the successful applicant(s)
- name of the applicant to be awarded the contract, or the names of the parties to the framework agreement

## **Invitation to tender (ITT)**

- ▶ **Prepare tender document:**
  - confirm/agree tender submission opening procedures
  - prepare invitation to tender (ITT)
  - include payment terms
  - include evaluation criteria
  - the tender documents should be marked on quality/added value issues as well as financial issues
  - the relative assessment ratings for quality and price should be decided at early briefing meetings, and in any case no later than the issue of the ITT

N.B. Under the Freedom of Information Act, public sector contracting authorities may be requested to release details of tenders received. Tender documentation should ask bidders to identify commercially sensitive aspects of their bid which they do not wish to be released into the public domain. Ultimately the public sector contracting authorities will make the decision on what is to be discussed.



▶ **Issue tender documents**

**Tender evaluation**

▶ **Administration and clarification of the ITT process with tenderers**

- ensure that responses to all tender queries are made available to all other tenderers, apart from those commercially sensitive to the bid

▶ **Conduct tender evaluation process as agreed with client on receipt of tenders**

- it is recommended that a core group of stakeholders mark the submissions and collate and weight the scores (to pre-agreed criteria and weightings) to ensure that a collective and objective view is obtained and recorded for audit purposes

▶ **Organise and facilitate interview evaluation (if required)** – this provides the opportunity for the contracting authority to clarify information included within submissions

▶ **Post tender clarification with client:**

- hold meeting to finalise details
- should not include negotiation on submitted tenders
- compile a recommendations report

▶ **Issue all applicants with a written notification of success/failure**

▶ **Debriefing for unsuccessful applicants**

In accordance with the Regulations, and in line with the timescales noted below for the standstill period, the unsuccessful applicant must be informed of:

- the reasons why it was unsuccessful
- the characteristics and advantages offered by the successful applicant(s)
- the name of the applicant to be awarded the contract or the names of the parties to the framework agreement

## Ten day standstill period

- ▶ **Ten day standstill period** (also often referred to as the “Alcatel” period due to the legal decision from which this point arose)
  - contracting authorities must notify all tenderers of their decision on the contract award in writing, allowing a standstill period of at least 10 calendar days between the date the notification is sent to tenderers and the date when the preferred bidder is awarded the contract
  - if a tenderer makes a request for a debriefing by the end of the second working day of the 10 day period, contracting authorities must debrief that tenderer during the stand-still period
  - contracting authorities must allow three working days between providing the debriefing and the end of the standstill period

## Contract award notice

- ▶ **Publish contract award notice** – a notice of the contract award must be placed in the OJEU, no later than 48 days after the award or conclusion.
- ▶ **Conclusion of the procurement process** – the contracting authority should be presented with an evaluation report of recommendations. This document will form part of the project audit trail. It is advisable to include the following in this document:
  - background information including an overview of the:
    - contract
    - procurement strategy
    - the process and stakeholders involved
    - details of the number of bidders that applied, withdrew, were disqualified, unsuccessful at PQQ, interviewed, invited to tender etc.
    - description of the evaluation criteria used to shortlist bidders
  - combined final score sheet
  - recommendations
  - appendices that include summary evaluation data

If the conclusion of the procurement process is a framework agreement, consider holding a framework launch event and schedule regular framework review meetings in order to maintain communication channels between framework partners. For specialist supply chain management advice, contact Tony Newberry (contacts noted on page 2)

- ▶ **Get contract signed**

# Competitive dialogue procedure guidance

This section describes the process for each stage of the flowchart on page 19. An indicative programme of works for this procedure is included in Appendix I.

## Procurement strategy

As part of agreeing a procurement strategy:

- **consider holding an objectives workshop with the contracting authority and/or conduct a client briefing** – this ensures that the contracting authority's needs are understood and can be communicated to potential suppliers
- **consider drafting a procurement strategy document** – this acts as audit trail documentation for the tendering process
- **consider using electronic communication** – this allows reduced timescales to be used

To comply with the Regulations, the equipment to be used for communication by electronic means must be:

- non-discriminatory
- generally available
- compatible with information and communication technology products in general use

The Regulations do not state which documents need to be communicated electronically in order for the reduced timescales to apply. Therefore the reduction of timescales by the use of electronic communication is open to interpretation. Reduced timescales are not always beneficial as the quality of the tenders may be compromised.

## Advertising

- no transaction subject to the directives is to be advertised elsewhere before despatching the OJEU notice.
- once published in the OJEU, the requirement may be advertised elsewhere provided that no more information than that given in the OJEU is supplied
- additional advertising is optional (it can sometimes be beneficial to advertise the notice in a trade journal)

## **Contract notice**

### **▶ Draft OJEU contract notice using contracting authority development information**

- go to Simap website: [www.simap.eu.int](http://www.simap.eu.int) and follow links to “Buyers Corner” then “New Forms”. The PSCM team has registered Simap users and are able to access and publish contract notices.
- the OJEU notice must state that the competitive dialogue procedure will be used
- where the contracting authority wishes to reduce the numbers of tenderers during the dialogue phase, it should state its intention to do so

N.B. If the outcome of the procurement process is to set up a framework agreement, potential candidates must be made aware when the contract notice is submitted and in any subsequent advertisements. It is unlikely that this procedure would be suitable for setting up frameworks.

### **▶ Submit contract notice**

## **Pre qualification questionnaire (PQQ)**

### **▶ Develop information pack and PQQ**

- consider using a website as a vehicle for publishing all documents to reduce time and cost
- consider holding an open day for prospective tenderers. This allows tenderers to clarify queries and indicates the level of market interest
- applications can only be short-listed on the following criteria:
  - technical or professional ability (e.g. experience and resources)
  - economic and financial standing
- assessment criteria and relative weightings to be agreed, examples of criteria are shown in Appendix G
- candidates to remain unaware of each others' identities to ensure fair competition

### **▶ Issue PQQ and information pack to tenderers**

### **▶ Respond to all requests for information – ensure that responses to all queries that are addressed are recorded and made available to all other applicants**

### **▶ Administration and clarification of the PQQ process with prospective tenderers**

## **Pre qualification assessment**

- ▶ **Assist contracting authority with the evaluation of returned PQQs to develop a shortlist with a minimum of three bidders** – (provided they satisfy the minimum standards set)
- ▶ **Issue all applicants with a written notification of success/failure**
- ▶ **Debriefing for unsuccessful applicants**

In accordance with the Regulations the unsuccessful applicant must be informed of:

- the reasons why it was unsuccessful
- the characteristics and advantages offered by the successful tenderer(s)
- the name of the economic operators to be awarded the contract, or the names of the parties to the framework agreement

## **Invitation to participate in dialogue**

- ▶ **Prepare Invitation to Participate in Dialogue (ITPD)**

ITPD should include:

- memorandum of information and any other supporting documentation
- date for the start of the dialogue period
- information to show at what stage the number of bidders will be reduced
- criteria for the award of contract
- information on the weighting of the award criteria
- reference to any additional documents required from bidders

N.B. Under the Freedom of Information Act, public sector contracting authorities may be requested to release details of tenders received. Tender documentation should ask bidders to identify commercially sensitive aspects of their bid which they do not wish to be released into the public domain. Ultimately the public sector client will make the decision on what is to be discussed.

- ▶ **Issue ITPD**

### **Dialogue phase**

- ▶ **Carry out the dialogue phase**

The aim is to identify and define the means best suited to satisfy the contracting authority's needs:

- discuss solutions, develop ideas and explore options
- consider presentations, round table meetings etc
- issue clarifications as the solution develops
- ensure all discussions are documented

- ▶ **Conclude dialogue** – this occurs once the contracting authority has identified the solution(s) capable of meeting its needs
- ▶ **Notify all bidders that the dialogue has concluded**
- ▶ **Invite bidders to submit final tenders**

## **Tender evaluation**

- ▶ **Conduct tender evaluation process as agreed with the client on receipt of tenders**
  - ensure that final tenders contain all the elements required
  - if necessary contact bidders to obtain any clarification, specification or fine tuning
  - ensure that after clarification, specification and fine tuning there is no change to the basic features of the final tender
- ▶ **Post-tender clarification with contracting authority**
  - hold meeting to finalise details
  - should not include negotiation on submitted tenders
  - compile a recommendations report
- ▶ **Select preferred bidder**
- ▶ **Issue all applicants with a written notification of success/failure**
- ▶ **Debriefing for unsuccessful applicants**

In accordance with the Regulations and in line with the timescales noted below for the standstill period, the unsuccessful applicant must be informed of the:

- reasons why they were unsuccessful
- characteristics and advantages offered by the successful applicant(s)
- name of the applicant to be awarded the contract, or the names of the parties to the framework agreement

## Ten day standstill period

- ▶ **Ten day standstill period** (also often referred to as the “Alcatel” period due to the legal decision from which this point arose)
  - contracting authorities must notify all tenderers of their decision on the contract award in writing, allowing a standstill period of at least 10 calendar days between the date the notification is sent to tenderers and the date when the preferred bidder is awarded the contract
  - if a tenderer makes a request for a debriefing by the end of the second working day of the 10 day period, contracting authorities must debrief that tenderer during the stand-still period
  - contracting authorities must allow three working days between providing the debriefing and the end of the standstill period

## Contract award notice

- ▶ **Publish contract award notice** – a notice of the contract award must be placed in the OJEU, no later than 48 days after the contract award or conclusion of the procurement process
- ▶ **Conclusion of the procurement process** – the contracting authority should be presented with an evaluation report of recommendations. This document will form part of the project audit trail. It is advisable to include the following in this document:
  - background information including an overview of the:
    - contract
    - procurement strategy
    - the process and stakeholders involved
    - details of the number of bidders that applied, withdrew, were disqualified, unsuccessful at PQQ, interviewed, invited to tender etc
    - description of the evaluation criteria used to shortlist bidders
  - combined final score sheet
  - recommendations
  - appendices that include summary evaluation data
- ▶ **Get contract signed**

# Further Information

On some occasions you may need to refer back to the full Public Contract Regulations 2006 which can be found:

- [www.opsi.gov.uk/si/si2006/20060005.htm](http://www.opsi.gov.uk/si/si2006/20060005.htm) (Statutory Instrument 2006 No 5)

The following guidance documents are clear and succinct and are a useful starting point for learning about OJEU procurement. Please note that these guides do not contain details of practical implementation:

- OGC Introduction to Public Sector Procurement
- OGC Guidance on Competitive Dialogue
- OGC Guidance to Framework Agreements
- OGC Guidance on the 10 day standstill period
- EU Explanatory Note on Competitive Dialogue

The OGC has issued the following information note, which was a response to uncertainty over implementing competitive dialogue into practice. The note is useful for best practice guidance.

- OGC Information Note on Competitive Dialogue

All OGC documents can be found at [www.ogc.gov.uk](http://www.ogc.gov.uk)

The following guidance is essential if you are involved with Competitive Dialogue Procurement for hospitals or schools.

- Department of Health: The Private Finance Initiative. How to conduct a Competitive Dialogue – [www.dh.gov.uk](http://www.dh.gov.uk)
- Building Schools for the Future Guidance Note. How to Conduct a Competitive Dialogue Procedure – [www.p4s.org.uk](http://www.p4s.org.uk)

Other sample documentation and advice can be obtained from the PSCM and legal support team (contacts noted on page 2).



# Glossary of terms

**Central Product Classification (CPC)** – codes assigned by the United Nations to categorise products, works and services.

**Common Procurement Vocabulary (CPV)** – codes assigned to the different categories of works, services and supplies to enable standardised European categorisation.

**Contracting Authority** – a body governed by public law which is predominantly financed by the state, or regional or local authorities.

**Contract Notice** – form to be completed for all public sector contracts valued above a certain threshold when submitting them to the OJEU. It is a standard form that contains all the information that prospective tenderers will view.

**European Union (EU) Procurement Directive** – sets out the procedures to be followed by purchasers in the public and utilities sectors. Under these rules, public sector procurement must follow transparent open procedures to ensure fair conditions of competition for suppliers. The Directives aim to open up public procurement, improve the functioning of the Internal Market and enable the EU to reap the full benefits from an enlarged Internal Market. The European Commission's consolidated Directive was adopted in March 2004.

**Invitation to Tender (ITT)** – a document in which the contracting authority invites interested companies or organisations to submit a tender for a public sector contract. It outlines the conditions for the submission of a tender and gives the terms of reference or the technical qualifications required.

**Invitation to Participate in Dialogue (ITPD)** – a document in which the contracting authority invites participants who have pre-qualified for a public sector contract, to participate in the competitive dialogue phase.

**Office of the Government Commerce (OGC)** – independent office of the Treasury that work with public sector organisations to gain the best possible value for money from procurement. They represent the UK at the European Union (EU), and are responsible for transposing the EU Procurement Directives into UK law.

**Office Journal of European Union (OJEU)** – publication (formerly known as OJEU) in which all contracts from the public sector (which are valued above a certain threshold) must be published. The term 'Journal' can be misleading, as production of the hard copy version ceased in 1997 and is now only accessible online.

**Pre Qualification Questionnaire (PQQ)** – this enables public sector purchasers to identify the most suitable suppliers to invite to tender for contracts. It is a formal mechanisms for assessing whether potential suppliers are suitable to tender for contract opportunities in terms of their legal, financial and technical capacity.

**Prior Information Notice (PIN)** – the annual or occasional advertisement in the Official Journal of the European Union, advising the contracting community of a contracting authority's future procurement plans. PINs are intended to ensure that interested parties have as much time as possible to prepare to participate.

**Public Contract Regulations 2006** – came into force on 31<sup>st</sup> January 2006 and transposes the European Commission's Procurement Directive into UK law. The Directive consolidates all the rules affecting procurement of contracts for works, services and utilities into one piece of legislation for England, Wales and Northern Ireland. Scotland has a separate Public Contracts Regulation 2006 which similarly came into force on 31<sup>st</sup> January 2006.

# Appendix A

## Framework guidance

A framework agreement sets out the terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. The EU rules apply to framework agreements which are treated in the same way as any other contract. Figure 1 provides clarification on the processes to be undertaken when considering a framework. Figure 2 shows the decision process that should be followed when deciding how best to call off suppliers once the framework has been established.

As with all qualifying public contracts, the framework is advertised in the OJEU. When procuring a framework the contracting authority must make clear that it intends to conclude the procurement process with a framework agreement. This must be highlighted in the contract notice.

Where the contracting authority concludes a framework agreement, the minimum number of suppliers must be three; providing that there were enough suppliers to satisfy the selection criteria and there was a minimum of three admissible tenders which met the award criteria.

The main benefits of setting up a framework are as follows:

- it is only necessary to go through the OJEU procedure once; those in the framework are then “called off” under the agreement when goods, services and works are required
- the framework establishes the fundamental terms on which subsequent contracts will be awarded
- authorities are not tied to the agreement so can use it when it provides value for money, but go elsewhere when it does not
- the treaty-based principles still apply at the call-off stage to ensure nothing is done that is discriminatory, improper or which distorts competition

The drawbacks are:

- the purchases that are intended to be made through the framework need to be specified with sufficient precision (i.e. scope, types of goods/services) in the OJEU notice
- changes to the terms established by the framework agreement are forbidden (i.e. no negotiation). Times can only be refined or supplemented
- hourly rates means pricing mechanisms are fixed

The OJEU notice must:

- make it clear that a framework is being awarded
- include the contracting authorities entitled to call off under the framework
- specify the length of the framework agreement (generally up to a maximum of four years under the new directive)
- include an estimate of the total value of goods, works or services for which call-offs are to be placed
- include an estimate of the value and frequency of the call-offs to be awarded

For more information about frameworks refer to:

OGC guidance to Framework Agreements or speak to a member of the PSCM team.

# Appendix B

## Utilities contracts

24. The rules apply to
- i. public authorities
  - ii. public undertakings (undertakings over which public authorities may exercise directly or indirectly a dominant influence) and
  - iii. private sector bodies which operate on the basis of special or exclusive rights or which are deemed to do so if they undertake relevant authorities.

The activities are:

- the provision or operation of fixed networks for the provision of services in the public in connection with the production, transport or distribution of drinking water, electricity, gas or heat
- the supply of drinking water, electricity, gas or heat to such networks
- sewerage and hydraulic engineering activities by water network operators
- the exploitation of a geographical area for the purpose of exploring for, or extracting, oil, gas, coal or other solid fuels
- the exploitation of a geographical area for the provision of airport, maritime or inland port facilities
- the operation of networks providing transport services to the public, by rail, tramway, trolley-bus, bus, cable or automated systems

25. The utilities rules are similar to those for the public sector, but there are some differences, for instance:

- utilities can call for competition either by advertising in the OJEU, publishing sufficiently detailed PINs or by publishing a notice of a qualification system. Where a qualification system is used, those invited to tender or negotiate for a particular contract have to be selected from those who have qualified in accordance with the system.
- utilities have a free choice between the open, restricted and competitive negotiated procedures.
- utilities have voluntary access to a system for the external audit (attestation) of their, procurement systems and practice; and they and their supplies or contractors may resolve disputes about the application of the EU rules through a Community-level system for conciliation.

26. The revised Utilities Regulations incorporate some of the changes introduced into the Public Sector Regulations, in particular, Dynamic Purchasing Systems, Electronic Auctions, Central Purchasing Bodies and the Standstill period. They also allow for utilities to apply for an exemption from the rules altogether where it can be shown that the activity they undertake is directly exposed to competition.

# Appendix D

## **Mixed contracts** (e.g. supplies and services)

In most cases it should be clear from the nature of the work, whether a contract is supplies, services or works but when contracts contain a mixture of these elements the Regulations state:

- where contracts cover both services and supplies it should be determined by whichever element is greater in value
- where a contract covers works/services or works/supplies the classification is based on the predominant purpose, e.g. a Design and Build procurement would be classified as a works contract as the build element is always going to exceed the design component
- a contract that provides for the supply of equipment and an operator should be regarded as a services contract
- software contracts are considered as supplies unless it is tailored to the purchaser's needs whereby it becomes services

# Appendix E

## Schedule 1 of the Public Contracts Regulation 2006

Cabinet Office	Office of the Parliamentary Counsel National School of Government
Central Office of Information	
Charity Commission	
Department for Constitutional Affairs	Boundary Commission for England Circuit Offices and Crown, County and Combined Courts (England and Wales) Combined Tax Tribunal Council on Tribunals Court of Appeal Criminal Immigration Appellate Authorities Immigration Adjudicators Immigration Appeals Tribunal Lands Tribunal Law Commission Legal Aid Fund (England and Wales) Office of the Social Security Commissioners Pensions Appeal Tribunals Public Trust Office Supreme Court Group (England and Wales) Transport Tribunal
Department for Culture, Media and Sport	British Library British Museum Commission for Architecture and the Built Environment The Gambling Commission Historic Buildings and Monuments Commission for England Imperial War Museum Museums, libraries and Archives Council National Gallery National Maritime Museum National Portrait Gallery National History Museum

Science Museum  
Tate Gallery  
Victoria and Albert Museum  
Wallace Collection

Crown Prosecution Service

Crown Estate Commissioners (Vote Expenditure Only)

Department for Education and Skills

Higher Education Funding Council for England  
Department for Environment, Food and Rural Affairs  
Agricultural Dwelling House Advisory Committees  
Agricultural Land Tribunals  
Agricultural Wages Board and Committees  
Cattle Breeding Centre  
Countryside Agency  
Plant Variety Rights Office  
Royal Botanic Gardens, Kew  
Royal Commission on Environmental Pollution

Department of Health

Dental Practice Board  
National Health Service Strategic Health Authorities  
NHS Trusts  
Prescription Pricing Authority

Department for International Development

Department of the Procurator General and Treasury Solicitor

Legal Secretariat to the Law Officers

Department of Trade and Industry

Central Transport Consultative Committees  
Competition Commission  
Electricity Committees  
Employment Appeal Tribunal  
Employment Tribunals  
Gas Consumers' Council  
National Weights and Measures Laboratory  
Office of Manpower Economics  
Patent Office

Department for Transport

Maritime and Coastguard Agency



Department for Work and Pensions

Disability Living Allowance Advisory Board  
Independent Tribunal Service  
Medical Boards and Examining Medical Officers (War Pensions)  
Occupational Pensions Regulatory Authority  
Regional Medical Service  
Social Security Advisory Committee

Export Credits Guarantee Department

Foreign and Commonwealth Office

Wilton Park Conference Centre

Government Actuary's Department

Government Communications Headquarters

Home Office

HM Inspectors of Constabulary  
Parole Board and Local Review Committees

House of Commons

House of Lords

Ministry of Defence

Meteorological Office  
Defence Procurement Agency

The National Archives

National Assembly for Wales

Higher Education Funding Council for Wales  
Local Government Boundary Commission for Wales  
Royal Commission for Ancient and Historic Monuments in Wales  
Valuation Tribunals (Wales)  
Welsh National Health Service Authorities and Trusts  
Welsh Rent Assessment Panels

National Audit Office

National Savings and Investments

Northern Ireland Assembly Commission

Northern Ireland Court Service

Coroners Courts  
County Courts  
Court of Appeal and High Court of  
Justice in Northern Ireland  
Crown Court  
Enforcement of Judgements Office  
Legal Aid Fund  
Magistrates' Courts  
Pensions Appeals Tribunals

Northern Ireland, Department for Employment and Learning  
Northern Ireland, Department for Regional Development  
Northern Ireland, Department for Social Development  
Northern Ireland, Department of Agriculture and Rural Development  
Northern Ireland, Department of Culture, Arts and Leisure  
Northern Ireland, Department of Education  
Northern Ireland, Department of Enterprise, Trade and Investment  
Northern Ireland, Department of the Environment  
Northern Ireland, Department of Finance and Personnel  
Northern Ireland, Department of Health, Social Services and Public Safety  
Northern Ireland, Office of the First Minister and Deputy First Minister

Northern Ireland Office

Crown Solicitor's Office  
Department of the Director of Public  
Prosecutions for Northern Ireland  
Forensic Science Laboratory of  
Northern Ireland  
Office of the Chief Electoral Officer  
for Northern Ireland  
Police Service of Northern Ireland  
Probation Board for Northern Ireland  
State Pathologist Service

Office of the Deputy Prime Minister

Rent Assessment Panels

Office of Fair Trading

Office for National Statistics

National Health Service Central  
Register

Office of the Parliamentary Commissioner for  
Administration and Health Service Commissioners  
Paymaster General's Office  
Postal Business of the Post Office  
Privy Council Office  
Public Record Office  
Royal Hospital, Chelsea  
Royal Mint  
Rural Payments Agency  
Scotland, Auditor-General

Scotland, Crown Office and Procurator Fiscal Service  
Scotland, General Register Office  
Scotland, Queen's and Lord Treasurer's Remembrancer  
Scotland, Registers of Scotland  
The Scotland Office  
The Scottish Ministers  
Architecture and Design Scotland  
Crofters Commission  
Deer Commission for Scotland  
Lands Tribunal for Scotland  
National Galleries of Scotland  
National Library of Scotland  
National Museums of Scotland  
Royal Botanic Garden Edinburgh  
Royal Commission on the Ancient and Historical Monuments of Scotland  
Scottish Further and Higher Education Funding Council  
Scottish Law Commission  
Local Health Councils  
The NHS Education for Scotland Board  
Scottish Council for Postgraduate Medical and Dental Education  
Scottish National Health Service Authorities and Trusts  
The Office of the Accountant of Court  
High Court of Justiciary  
Court of Session  
HM Inspectorate of Constabulary  
Parole Board for Scotland and Local Review Committees  
Pensions Appeal Tribunals  
Scottish Land Court  
Sheriff Courts  
Scottish Criminal Record Office  
Scottish Crime Squad  
Scottish Fire Service Training Squad  
Scottish Police College  
Office of the Social Security Commissioners  
Rent Assessment Panel and Committees  
The Scottish Parliamentary Body Corporate  
Scottish Record Office  
HM Revenue and Customs  
The Revenue and Customs Prosecutions Office

HM Treasury

Office of Government Commerce  
United Kingdom Debt Management  
Office  
The Wales Office (Office of the  
Secretary of State for Wales)

# Appendix F

## Best practice advice when EU rules do not apply

If the contract does not exceed the relevant thresholds the EU treaty-based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality still need to be adhered to. In particular there must be no discrimination against suppliers, contractors or service providers on the grounds of their nationality or the member state in which they are based. Some degree of advertising appropriate for the scale of the contract is likely to be necessary, to ensure transparency.

If managing the procurement process for a client when the rules do not apply, it is still good practice to select a bidder by adopting practices involved with the EU procedures. It is important to:

- establish whether the contracting authority has an in-house policy on tender selection. If so, this needs to be adhered to as applicable.
- select the most appropriate procurement route for the project:
  - design and build
  - traditional
  - framework
  - management contracting
  - PPP
- decide on a suitable medium (i.e. specialist journal) for advertising the contract. Alternatively, approach potential bidders speculatively (based upon recommendation), inviting them to submit a bid
- develop and agree the following in consultation with the client, for issue to bidders:
  - project briefing
  - selection criteria
  - stages to be undertaken in the selection of a preferred bidder (e.g. tender, interview)
  - timeframe to be followed
- shortlist tenders in accordance with criteria
- invite short-listed participants to interview
- award the contract to the most economically advantageous tender (MEAT) based upon the submitted tender and interview
- notify participants of the outcome, providing feedback as requested

# Appendix G

## Pre qualification assessment:

The following information can be requested at the pre qualification stage.  
In relation to economic and financial standing:

- appropriate bankers' statements
- accounts
- turnover for (at least) the last two years
- turnover for the last three years in the area of practice concerned
- for service contracts, evidence of an appropriate level of professional indemnity insurance
- confirmation of compliance in respect to Regulation 23 of the Regulations (solvency, payment of taxes, criminal convictions etc)

In relation to technical ability for services contracts:

- relevant experience
- confirmation of absence of conflict of interest
- professional/educational qualifications
- principal services of a similar type
- average annual manpower/managerial staff over the last three years
- IT systems
- approach to, and knowledge of, best practice
- measures for ensuring quality
- any proportion of the contract to be subcontracted
- level of Professional Indemnity Insurance and details of any claims made or any items under dispute within the last three years

For works contracts:

- relevant experience
- professional/educational qualifications of managerial staff, for those responsible for carrying out the works
- list of works carried out over the last five years and certificates of satisfactory completion
- statement of plant, equipment, etc, available to carry out work
- average annual manpower and number of managerial staff over previous three years
- statement of technicians/technical services which may be called upon
- level of Professional Indemnity Insurance and details of any claims made or any items under dispute within the last three years