

REPLACEMENT AGENDA

CONSTITUTION COMMITTEE AGENDA



PLEASE NOTE CHANGE OF DATE

Thursday 30th March, 2006

at 4:00 p.m.

in Committee Room 'C'

MEMBERS: CONSTITUTION COMMITTEE:

The Mayor, Stuart Drummond,

Councillors: Fenwick, Flintoff, Griffin, James, A Marshall, J Marshall, Dr. Morris,
Preece Richardson and Young

1. **APOLOGIES FOR ABSENCE**
2. **TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
3. **MINUTES**
 - 3.1 To confirm the minutes in respect of the meeting of the Constitution Committee held on 31st January 2006 (attached)
 - 3.2 To receive the minutes in respect of the meeting of the Constitution Working Group held on 9th March 2006 (attached)
4. **ITEMS REQUIRING DECISION**
 - 4.1 Honorary Aldermen and Freemen – Process for Election – *Chief Solicitor*
 - 4.2 Contract Procedure Rules – *Chief Solicitor and Head of Procurement and Property Services*
5. **ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

CONSTITUTION COMMITTEE

MINUTES AND DECISION RECORD

31 January 2006

Present:

Councillor Marjorie James (In the Chair)

Councillors Bob Flintoff, Sheila Griffin, Ann Marshall, John Marshall,
Dr George Morris, Arthur Preece and David Young.

Officers Tony Brown, Chief Solicitor
Ralph Harrison, Head of Public Protection and Housing
David Cosgrove, Principal Democratic Services Officer

29. Apologies for Absence

The Mayor, Stuart Drummond and Councillor Richardson.

30. Declarations of interest by members

None.

31. Confirmation of the minutes of the meeting held on 30 November 2005

Confirmed.

32. Constitution Working Group - Minutes of the meeting held on 17 January 2006

Received.

33. Honorary Aldermen and Freeman – Process for Election (*Chief Solicitor*)

The Chief Solicitor reported that the meeting of the Working Group held on 17 November 2005 when considered a draft procedure for the selection of Honorary Aldermen and Freeman, requested that a reminder be sent to Group Leaders and Secretaries seeking their views on the proposed amendments to the process. The replies received by the Democratic Services Team following their letter were set out in the report. The Committee requested that formal

responses from the Groups be sought and reported to the next Committee.

Decision

That consideration of this issue is deferred to the next meeting of the Committee and that the political groups are requested to submit formal responses.

34. Proposed Consolidation of Licensing Committees

(Head of Public Protection and Housing)

The Working Group considered and supported a proposal to amalgamate the Licensing and Licensing Act Committees at its meeting on 17 January 2006. Full details of the background to the establishment of the Licensing Act Committee following the introduction of the Licensing Act 2003 were set out in the report.

It was proposed that the two committees be amalgamated now that the transitional period of the Licensing Act had passed. The proposals had been submitted to a joint meeting of the two committees and the Head of Public Protection and Housing reported that the joint meeting supported the proposals as reported to the Constitution Working Group but also made the following comments: -

- That as well as the five three person sub committees to deal with Licensing Act 2003 matters, the joint committee meeting proposed that a five person sub committee (with a quorum of three) be established to deal with hackney carriage and private hires licensing.
- That the powers and duties of the Licensing Committee be revised to include only those that relate to licensing matters with the other duties being transferred to another committee, potentially the General Purposes Committee.

In relation to the second point made by the joint meeting, the Head of Public Protection and Housing indicated that this related to those functions set out as points 2-8 on Appendix 1 to the report.

The Constitution Committee supported the proposals agreed by the Working Group and also the amendments to that proposed by the joint meeting of the Licensing and Licensing Act Committees. Members also supported the transfer of the non-licensing functions highlighted by the joint meeting to the General Purposes Committee.

Decision

That Council be recommended to -

1. Amalgamate the existing Licensing Committee and Licensing Act Committee into a new Licensing Committee and that the new committee have a membership of 15 Councillors.
2. Approve the continuation of the five three-member sub committees to

consider those matters as set out in the Licensing Act 2003.

3. Approve the establishment of a new five-member sub committee to consider hackney carriage and private hire licensing applications, with a quorum of three.
4. Set the functions and delegation scheme for the new Committee as an amalgamation of those for the current Licensing and Licensing Act Committees, subject to the transfer of those powers set out in functions 2-8 of the current Licensing Committee (as detailed in Section B "Council Functions and Delegation Scheme" of Part 3 of the Council's Constitution) to the General Purposes Committee, where those powers have not been superseded by new legislation.

35. Any Other Business

General Exception and Special Urgency Procedures

The Vice-Chair, Councillor James, raised an issue which she wished to refer to the Constitution Working Group for investigation. This related to the operation of the General Exception and Special Urgency Procedures. The Special Urgency procedure included the seeking of the approval of the Chair of the Scrutiny Coordinating Committee (SCC) for late / urgent items to be included on executive agendas. Under the General Exception procedure the Chair of SCC was only informed of key decision items to be included on executive agendas that had not been previously listed in the Forward Plan. The Vice-Chair was concerned that the General Exception process gave no scope for the Chair of SCC to comment, agree or disagree.

The Vice-Chair commented that these concerns had been highlighted by the recent issue of the Briarfields allotments. An initial report seeking a key decision had been included on a Cabinet agenda by use of the General Exception procedure. A further key decision report to Cabinet had also been included on a subsequent agenda despite the fact that there had been time to include the matter in the Forward Plan. The Vice-Chair considered that this matter warranted further investigation by the Working Group.

The Chief Solicitor stated that the Special Urgency procedure allowed for the taking of urgent decisions within the statutory five day notice period. The General Exception procedure applied to decisions that were still relatively urgent and had not been included in the forward plan but were included on an executive agenda with the required five days notice.

The Chief Solicitor agreed that in the case of the second Briarfields decision, referred to by the Vice-Chair, this should have been included in the forward plan. Unfortunately this had not been the case and this had only come to light when he had been asked to look at this matter in early January.

The Vice-Chair and Members of the Committee were concerned that the

procedures could be used to 'get around the decision making system'. The Chief Solicitor indicated that in every case these procedures had been applied he had always been involved. The procedures were only used when matters came forward urgently or unexpectedly. The Chief Solicitor stated that there was nothing in any of the application of these two procedures to date where he considered that officers were seeking to avoid part of the democratic process.

Decision

That the application of the General Exception and Special Urgency Procedures be investigated by the Constitution Working Group.

M. JAMES

CHAIRMAN

CONSTITUTION WORKING GROUP

MINUTES AND DECISION RECORD

9th March 2005

Present:

Councillor Richardson (In the Chair)

Councillors Flintoff, James, A Marshall, J Marshall, Dr Morris, Preece and Young

In accordance with Council procedure 4.2 Councillor Cook was in attendance as substitute for Councillor Griffin.

An apology for absence was submitted on behalf of the Mayor, Stuart Drummond and Councillor Griffin

Officers: Mic Bannister, Principal Procurement and Finance Officer
 Tony Brown, Chief Solicitor
 Graham Frankland, Head of Procurement and Property Services
 Amanda Whitaker, Democratic Services Team Manager

28. Declarations of interest by members

None

29. Minutes of the meeting held on 17th November 2005 and 17th January 2006

Confirmed

30. Contract Procedure Rules (*Head of Procurement and Property Services and Chief Solicitor*)

Further to minute 26 of the meeting of the Working Group held on 17th January 2006, a briefing paper presented by the Head of Procurement and Property and the Chief Solicitor set out proposed changes to the Contract Procedure Rules. The proposed changes arose from the adoption of a revised Procurement Strategy which had been approved by Cabinet on 24th January 2005 and subsequently revised by the Performance Management Portfolio Holder on 8th August 2005

The changes brought about by the Procurement Agenda had resulted in a revised Procurement Strategy being adopted by the Council, the adoption of

an e-Procurement Strategy, the production of the “Selling to the Council Guide” and the review and re-launching of the procurement guidance as the “Officers Guide to Procurement”. The work carried out to formulate these documents had also identified the need to review and amend the Contract Procedure Rules (CPR), as part of the Council’s Constitution, in order to reflect the changing procurement environment brought about by the procurement agenda. A CPR subgroup had been formed from members of the Corporate Procurement Group consisting of representatives from legal, procurement, property and audit to consider the necessary changes. The resultant draft CPRs had been presented to the Corporate Procurement Group for approval.

As the CPR’s were “Contract Standing Orders” within the Constitution, they were a non-executive function and therefore needed to be considered by the Constitution Working Group. The finalised CPR’s were submitted to the working group, with all amendments highlighted, by being typed in red. The CPR’s were preceded by explanatory notes of the key changes.

During the course of discussions the following issues were raised:-

- i) **Accountability** – Members sought clarification regarding the existence of ‘checks and balances’ to ensure that contract accountability concerns were addressed. The concerns related to the need for robust mechanisms to identify significant overspends, or other variations in the implementation of a contract and for member involvement in dealing with such issues. The Chief Solicitor reminded members that the CPR was purely a body of rules to be followed in letting a contract and suggested that rather than changes being made to the CPRs at this stage, he would come back to Members with details of current procedures which provided the level of control that members sought. The Working Group would then be able to consider whether they were satisfied that the existing controls addressed their concerns or whether additional controls needed to be considered in the context of the CPRs.
- ii) **Contract Scrutiny Panel** – The Working Group discussed the role of the Contract Scrutiny Panel. The use of the term ‘scrutiny’ within the title of the Panel was considered to be misleading. Views were also expressed that instead of the members of the Panel being selected from a rota, the Panel should be appointed at the Annual Council meeting. It was further considered that Officers should ensure that all appropriate information be presented to the Panel.
- iii) **Opening of Tenders** – Concern was expressed that it was proposed that ‘tenders shall be opened at one time and only in the presence of *at least one Member* of the Contracts Scrutiny Panel’. The Working Group agreed that the proposal should be amended to read that ‘tenders shall be opened at one time and only in the presence of *at least three Members* of the Contracts Scrutiny Panel’

- iv) **Headland Town Square Development** – In response to concerns expressed regarding the process adopted in relation to the appointment of the contractor for this Project, the Head of Procurement and Property Services undertook to investigate and write to Members of the Working Group advising of the outcome of his investigations.
- v) **Procurement Cards** – It was noted that procurement cards were charge cards which worked in a similar way to credit cards and could be used to purchase goods and services. They could be open to use by any suppliers or have controls placed upon them by the issuer to limit their use to certain suppliers and/or commodities. They were used to process low-value, high-volume transactions. In response to concerns expressed by Members, the Head of Procurement and Property Services undertook to circulate a note to members of the Working Group advising of control mechanisms for the Cards, how many cards existed and who held the cards.

RECOMMENDED – (i) That the amendments to Contract Procedure Rules, highlighted in the appendix, be approved subject to the following amendment:-

Section G, Paragraph 12 - 'That in relation to the opening of tenders, tenders shall be opened at one time and only in the presence of at least three members of the Contracts Scrutiny Panel.'

(ii) That as detailed above, further information be provided to members of the working group in relation to the following:-

- Accountability controls
- Headland town square development
- Procurement cards

(iii) That the role and remit of the Contracts Scrutiny Panel be examined

C RICHARDSON

CHAIRMAN

CONSTITUTION COMMITTEE

30th March 2006



Report of: Chief Solicitor

Subject: HONORARY ALDERMEN AND FREEMEN –
PROCESS FOR ELECTION

1. PURPOSE OF REPORT

To invite members to recommend to Council the adoption of a procedure for the election of honorary aldermen and freemen.

2. BACKGROUND

- 2.1 The Local Government Act 1972, Section 249, enables the Council to confer two honorary titles; those of Honorary Alderman and Honorary Freeman.
- 2.2 Arising from recent nominations for honorary titles to be conferred, the Constitution Working Group had been asked to consider the inclusion in the Constitution of provisions relevant to the process of nomination and conferring of these titles. This issue was considered at a number of meetings throughout 2005. It was recognised that, at present, there is no specific process for consideration of nominations, other than for full Council to agree to the conferring of the titles.
- 2.3 At the meeting of the group on 31st March 2005, the Chief Solicitor suggested that consideration be given to a process that included nominations being submitted to a group or committee for consideration of the merits of nominations. Noting the current practice to involve the political groups, the working group considered that there needs to be some clear criteria for the consideration of nominations and felt that this should not be at only lengthy intervals – they discounted for example 5 yearly nominations. Members supported some wider consultation with the community or other interested parties as to how such a process should be developed. The Chief Solicitor was requested to prepare a draft scheme.
- 2.4 A draft scheme was considered at the meeting of the group on 27th September 2005. In considering the proposed procedure, members considered a variety of issues, their comments on which have influenced the revision of the draft procedure -

- The prestige of the title of Freeman and the need to ensure that it was not devalued by increasing the frequency of awards. Concern was expressed that proposals for adverts in every issue of Hartbeat seeking nominations for election as freeman were too frequent and suggested that an invitation for submissions should appear in 2 editions prior to a closing date for nominations.
- The suspension of the title of Alderman should an ex-Councillor be re-elected until such a time as the individual ceases again to be an elected Member – though this occurs as a matter of law.
- The composition of a proposed Civic Honours Committee.

2.5 On that occasion the group asked that the draft document, incorporating the suggested amendments, be circulated to the political groups and independent members for comment, prior to being considered by this Committee. The only comment of any substance has come from the Labour Group, namely *“happy to leave the matter in the hands of the Constitution Working Party, but considered that more work was needed by the CWP to come up with a system which was fair and equitable, as well as being plainly perceived to be so”*.

2.6 The draft procedure is attached at Appendix 1 and members are invited to consider the draft in the light of all the issues raised. The committee may wish to consider two particular features

- Frequency of nominations, having regard to the working groups comments in this respect, and as the draft does not deal with this issue, and
- Consultation with the community on the process.

3. **RECOMMENDATION**

Subject to the Committees views on any outstanding issues, that the working group recommend Council to adopt the draft procedure.

Appendix 1

Draft Process relating to the nomination and election of Honorary Freeman Aldermen

1. Nominations

1.1. Freeman of the Borough of Hartlepool

1.1.1 Nominees for election as an honorary freeman should

- (a) have been born in the Borough, or
- (b) reside or have resided in the Borough, or
- (c) have or have had strong established links to the Borough or
- (d) in some manner have brought distinction upon the borough.

1.1.2 Nomination for election as honorary freeman may be made by any -

- (a) Hartlepool Borough Councillor
- (b) political party or group connected with the Council
- (c) voluntary organisation operating in the borough
- (d) corporate body with premises in the borough
- (e) public or charitable body, or
- (f) member of the public

1.1.3 The nominee must be either -

- (a) an individual person (not a body corporate), or
 - (b) a group of individual persons,
- but a person may not nominate him/herself

1.1.4 Nominations must be in writing and may be submitted to the Chairman of the Council, the Mayor or the Chief Executive. A nomination should state the person or body making the nomination and his/her/its address and include an explanation of why the person nominated is considered appropriate to be elected as honorary freeman.

1.1.5 **Publicity**

Invitation to submit nominations for election as freeman of the borough shall appear in two editions of Hartbeat prior to the closing date for nominations, and shall be posted on the Council's website www.hartlepool.gov.uk

1.2 **Honorary Aldermen**

1.2.1 Nomination for election as honorary alderman may be made by any -

- Hartlepool Borough Councillor
- Political party or group connected with the Council

1.2.2 Nominations must be of a person who has formerly served as a councillor of Hartlepool Borough Council

1.2.3 Nominations must be in writing and may be submitted to the Chairman of the Council, the Mayor or the Chief Executive. A nomination should be signed the person or on behalf of the group making the nomination and include an explanation of why the person nominated is considered appropriate to be elected as honorary alderman.

2. **Consideration of nominations**

2.1 Nominations for election as honorary freeman and honorary alderman considered by the proper officer to comply with the requirements of para 1 (but for this purpose disregarding para 1.1.1) shall be referred to the next meeting of the Civic Honours Committee. The committee will consider each nomination (including it's compliance with para 1.1.1) and may resolve to recommend the nomination to the Council. *The committee shall comprise*

- The Leaders/Co-ordinator of the three main groups (Labour, Liberal Democrat and Administrative Groups) or their subs
- An independent member (the Mayor or his/her substitute)
- One Resident Representative, and
- One representative from the Community Empowerment Network

2.2 A nominee whose nomination is resolved to be referred to the Council will be invited, on a confidential basis, to indicate whether s/he would accept the relevant honour if offered.

- 2.3 Following confirmation of the nominee's prospective acceptance, at the next ordinary meeting of the Council the Council will determine whether or not they are minded to elect the nominee as honorary freeman or alderman, as the case may be. Before the matter is considered the Chairman will invite the Council to resolve to exclude the press and public pursuant to Local Government Act 1972 sched 12A para 2.
- 2.4 If the Council resolve that they are minded to elect the nominee as honorary freeman or alderman the matter shall be deferred to be dealt with at an extraordinary meeting of the Council convened especially for that purpose.
- 2.5 The date for the extraordinary meeting to confer the honour shall be fixed either by the Council at the meeting referred to in para 3.4 or by the Chairman

(Note - the proper officer for the purposes of para 2.1 is the Chief Executive or his nominee)

Report of: Chief Solicitor and Head of Procurement and Property Services

Subject: CONTRACT PROCEDURE RULES

1. PURPOSE OF REPORT

- 1.1 To seek approval for proposed changes to the Contract Procedure Rules attached at **Appendix 2**.

2. BACKGROUND

- 2.1 At its meeting on 24th January 2005 Cabinet approved the revised Procurement Strategy for the Council, and the Portfolio Holder endorsed an updated version of this strategy on 8th August 2005. The amended Contract Procedure Rules were considered at the meeting of the Constitution Working Group on the 9th March 2006.

- 2.2 The officers' report to the Constitution Working Group is attached at **Appendix 1** (the included copy of the rules submitted to the working group having been amended as described below). In the course of discussion by the working group, a number of issues were raised which officers advised were not directly relevant to the approval of the Contract Procedure Rules – e.g. accountability, the role and remit of the Contract Scrutiny Panel, the incidence of procurement cards – in respect of which the working group requested further information. The group were of the view that the number of members of the Contract Scrutiny Panel who were present at the opening of tenders should be not less than 3. Subject to clarification of existing procedures providing appropriate accountability, the working group were content with the draft rules with one amendment, namely

Section G, Paragraph 12 - 'That in relation to the opening of tenders, tenders shall be opened at one time and only in the presence of at least three members of the Contracts Scrutiny Panel.'

- 2.3 The draft rules are included in the appendix, the required amendment having been made. Details of current procedures, such as to address the accountability issues raised by members of the working group, will be circulated prior to the meeting of the committee, or, if that is not possible, at the meeting.

4. RECOMMENDATION

- 4.1 That the Committee recommend to Council that the revised Contract Procedure Rules be approved and inserted in the Constitution in place of the current rules.

CONSTITUTION WORKING GROUP

9th March 2006

**Head of Procurement and Property Services
and Chief Solicitor Briefing Paper**

1.0 CONTRACT PROCEDURE RULES (CPRs)

At its meeting on 24th January 2005 Cabinet approved the revised Procurement Strategy for the Council, and the Portfolio Holder endorsed an updated version of this strategy on 8th August 2005.

The strategy is significant in bringing together several national agendas and setting them in a local context.

The main drivers are:

- The National Procurement Strategy and Milestones
- The Gershon Efficiency Agenda
- The Council's Way Forward

In order to facilitate the implementation of the Procurement Agenda the Council, as part of the Way Forward, appointed the Head of Procurement and Property Services (HPPS) to provide the necessary Senior Officer lead. Additionally, the Corporate Procurement Group made up of Senior Officers from all Departments was established and a small Procurement Unit was set up within the HPPS's Division.

The changes brought about by the Procurement Agenda have already resulted the revised Procurement Strategy being adopted by the Council (see above), the adoption of an e-Procurement Strategy, the production of the "Selling to the Council Guide" and the review & re-launching of the procurement guidance as the "Officers Guide to Procurement".

The work carried out to formulate these documents also identified the need to review and amend the CPRs, as part of the Council's Constitution, in order to reflect the changing procurement environment brought about by the procurement agenda. The opportunity has also been taken to clarify a variety of general issues.

A CPR subgroup was formed from members of the Corporate Procurement Group consisting of representatives for legal, procurement, property and audit to consider the necessary changes and the resultant Draft CPRs were presented to the Corporate Procurement Group for approval.

The finalised CPRs are attached for information, with all amendments highlighted, by being typed in red.

The CPR's are preceded by explanatory notes of the key changes. The explanatory notes, however, do not take in all minor amendments.

As the CPRs are "Contract Standing Orders" within the Constitution, they are a non-executive function and therefore need to be considered by the Constitution Working Group. If the proposals are acceptable they would then go to the next Council meeting on 16th February 2006 for final approval and implementation.

EXPLANATORY NOTES OF KEY CHANGES**To be read in conjunction with Draft CPRs – Paragraph/Headings refer to CPRs****INTRODUCTION****Note 1 - Central Purchasing Contracts** (Page 3)

Currently the paragraph on central purchasing and the use of NEPO/Central contracts appears at the end of the CPRs. It is considered appropriate to move this paragraph to the front of the CPRs and update it accordingly to emphasise the need to gain maximum benefit for the Council.

Note 2 – Strategic Partnerships (Page 4)

The current CPRs make no reference to Strategic Partnerships. Again with the introduction of such partnership (e.g. ICT, Maintenance and Minor Works) and the increased profile of such contracts it was considered appropriate to include this para at the beginning of the document.

Note 3 - The Rules and the In-house Provider (Page 4)

The current CPRs make no reference to In-house Providers. Again with the increased profile of such methods of provision within the Best Value Regime, and the importance of clarifying the non-contractual relationship when using such a provider, it was considered appropriate to include this para at the beginning of the document.

Note 4 - The role of Members – The Executive or the Council (Page 5)

As described in other sections of the Councils Constitution, the section clarifies that individual Portfolio Holders as well as full Cabinet can discharge the Executive function. The term “the Executive” has been added in various paragraphs to confirm this role.

A paragraph has been added to ensure Officers reports make clear the Officer actions that will follow once a decision is made by the Executive.

Note 5 - The role of Officers (Page 6 & 7)

The current CPRs make no reference to how Officers carry out their role within the CPRs under the Council’s delegation Scheme although in practice this takes place. The paragraph has been added for clarity.

Note 6 - Electronic Procurement (Page 7)

The current CPRs make no reference to electronic means of procurement. The National Procurement Strategy requires local authorities to use electronic means whenever possible. The paragraph has been added to confirm that any such electronic processes are within the Councils Constitution and/or covered by the CPRs.

PART A – SCOPE OF CONTRACT PROCEDURE RULES**Note 7 - Application of Contract Procedure Rules** (Page 8)

Changes in the way professional services are provided mean that on some occasions, “contractors” rather than individual persons provide such services. The words “or contractors” have therefore been added to sub-para ii).

PART B – SELECTED TENDERERS LISTS**Note 8 - Compilation of Selected Tenderers Lists** (Page 9)

With the increasing importance and profile of Health & Safety in the workplace, whether the provider is the Council or one of its sub-contractors, it was considered important that this should be emphasised within the CPRs. The statement “the CPSO is satisfied that H&S is adequate”, has therefore been added to the approval paragraph.

The current CPRs only require that all Selected Tenders Lists be referred to Members at least every 5 years. It was considered that Members might wish to be involved on a more frequent basis, but not to an extent where their involvement would become onerous if the use/number of Lists was to increase. The new system of 4 yearly reviews, together with 2 yearly updates (as well as “time to time” amendments) is therefore suggested to fulfil this.

Note 9 - INFORMAL / QUOTATION PROCEDURES (Page 10)

The current CPRs allow for informal procedures (i.e. quotations) to be used when the values of the Contract are greater than £5K and £30K or less for works, or £10K or less for goods/services. These limits were set when the HBC constitution was written following Local Government Reorganisation in 1996. Average inflationary increase would increase these limit to £45K and £15K respectively. These increases have therefore been included. However the limit of £5K to £45K for works was considered to be too wide to be attached to one method of obtaining the contract i.e. 3 written quotes, and therefore the following staged procedures are suggested

Informal Quotations Procedure - Works contracts £5K to £20K

It is therefore suggested that 3 quotation would be appropriate for such values, and

Formal Quotations Procedure – Works £20K to £45K

Would be appropriate for these values. Plus it is suggested that the limit for In-house bid contract be increased from £60K to £75K in line with inflation.

Note 10 - BEST PRICE PROCEDURES (Page 11)**Works Contracts over £45K & goods/service Contracts over £15K plus In-house bid contracts over £75K**

Limits increased in line with inflation.

PART E – PRICE/PERFORMANCE PROCEDURES**Note 11 - Price/performance Contract Provisions** (Page 13)

In order to avoid duplication of Members and Officers effort with regard to reporting of the use of contractors from Select Tenderers Lists, it is suggested that the amendment to sub-para (ii) will avoid the same list being reported twice.

PART F – PARTNERING CONTRACTS**Note 12 - Partnering Contract Provisions** (Page 15)

Suggested amendment as Note 11.

PART G – GENERAL PROVISIONS**Note 13 - Opening of tenders** (Page 16)

Suggested amendments to sub-para (ii) to reflect role of Head of Procurement and Property Services in the opening of tenders obtained by In-house providers. (Previously refereed to Head of Direct Services)

Note 14 - Tenders to be returned in a sealed envelope (Page 16)

Sub para (ii), to be amended to Head of Procurement & Property Services as above

Note 15 - Liquidated Damages and Performance Bonds (Page 17)

Value of contracts requiring Bond, suggested increase from £75K to £100K in line with inflation.

Note 16 - Signature of contracts (Page 19)

Suggested increase to £100K as above.

PART H – GLOSSARY

Note 17 – (Page 23) Definitions of types of e-Procurement and “Executive” added to aid clarity.

DRAFT CONTRACT PROCEDURE RULES
All amendments in Red

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4. Works Contracts £5,000 - £20,000 - Informal Quotations Procedures

5. Works Contracts to £45,000 etc - Formal Quotations Procedures.

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APPENDIX 2

- 20. Signature of contracts
- 21. Tenderers withdrawal
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- 23. Nominated sub-contractors

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- 24. Interpretation

CONTRACT PROCEDURE RULES

INTRODUCTION

Contracts covered by the rules

The following procedure rules apply to contracts entered into by the Council whether under authority exercised by the Executive (in respect of executive functions), Full Council (in respect of non-executive functions), a committee of either the Executive or the Council or an officer. The contracts to which they are applicable are contracts for the acquisition of goods, materials or services or for the execution of works, with certain exceptions set out in the rules.

The rules do not represent a total procedure package – rather they stipulate a number of requirements that must be complied with within any contract letting procedures adopted. For **further** details of the procedures to be followed in the procurement of goods and services, reference should be made to the Procurement Guidance (*Officers Guide to Procurement*), which gives a wider explanation of the Council's procurement policies and practices. Where significant expenditure is contemplated, the rules establish requirements in the context of 3 contract-letting concepts –

- Best Price basis - lowest price where price to be paid by Council; highest price where price to be received by Council;
- Price/Performance – contractor to be selected on basis of combination of price and quality
- Partnering – contract includes:
 - establishment of partnering team
 - pricing policy
 - open-book policy
 - savings sharing formula.

Central Purchasing Contracts

Where goods or services are to be acquired of a nature in respect of which a central contract has been established by the North East Purchasing Organisation (NEPO) or the Council's Procurement Unit, such goods and services will be purchased through that contract unless the Chief Officer, following consultation with the Head of Procurement & Property Services, considers a special exemption can be made. Goods or services for which the Council has accepted a tender submitted to NEPO are outside the scope of the Contract Procedure Rules and will be obtained from the relevant supplier in accordance with the NEPO procedures.

NOTE 1

Strategic Partnerships

Where goods or services are to be acquired of a nature in respect of which the Council has established a Strategic Partnership with another provider, such goods and services will be purchased through that Strategic Partnership. Only in exceptional circumstances

NOTE 2

and following consultation with the Head of Procurement & Property Services and the Chief Solicitor, will exemptions be made.

The rules and an In-house Provider

These rules do not apply when a decision is taken to have work executed by an in-house provider such as Neighbourhood Services, without competitive process. In such circumstances, the provider being a department or division of the Council, there is no contract as it is a fundamental principle of contract law that a party cannot contract with itself. Even where a competitive process has taken place and the work is awarded to the in-house provider on the basis of their bid, there is no contract.

NOTE 3

This has the consequence that, when it is necessary for the in-house provider to have some part of the work done by an outside contractor, the contract with the outside contractor is a 'contract', rather than a 'sub-contract' (requiring specific contract provision regulating the relationship between the in-house provider and the external contractor which is outside the scope of this commentary). For the purposes of their bid as part of a competitive process, the in-house provider may wish to include elements of cost for an external contractor and provision is made for a higher limit for Informal/quotations procedures to be followed in such circumstances. Costs established through those informal/quotation procedures can then be used as the basis of the contract with the external contractor without further tendering procedures being followed. In these rules, such contracts are referred to as "In-house Bid Contracts".

Criteria for selection of Price/Performance and Partnering Contracts

Contracts will be of the Best Price type unless a decision has been taken that either a Price/performance contract or a Partnering contract is to be established. Considerations which will inform such a decision are likely to include: -

- Value of contract
- Nature of project - e.g. is the work involved of a specialist nature where the contractor's techniques, design talents, contacts with government departments, national agencies etc are likely to be material to any choice
- Frequency of need for services/work
- Importance of adherence to budget
- Client input throughout the project

Roles and Responsibilities

Responsibility for decision making and action under contract letting procedures and for monitoring of the application of the contract procedures will be spread over the Council, in the interests of both efficiency and probity. Statutory guidance indicates that there should be delegated to officers greater responsibility for discharge of executive functions.

The role of Members

The Executive or the Council

NOTE 4

Most contracts will relate to executive functions and regulations provide that those functions may only be discharged by the Executive (either full Cabinet or an individual Portfolio Holder, as the case may be). In respect of contracts relating to their executive functions, the Executive will have the responsibility: -

- To determine the project including general aims of the construction, or service to be acquired
- To establish the level of expenditure for the project
- To approve lists of selected tenderers prepared under Rule 2
- To determine the nature of the contract – best price, price/performance or partnering
- To determine the Price/Quality ratio in respect of a price/performance Contract or a Partnering Contract or other basis of assessment
- To determine the Budget Price in respect of a Partnering Contract
- To waive any element of the Contract Procedure Rules in the case of an individual contract or class or group of contracts

Occasionally, the necessity for a contract may arise in connection with non-executive functions. In such a case the roles set out above, to the extent that they may be relevant, will be discharged by the Council.

In preparing a report inviting a decision to enter into a contract, the responsible officer should structure the report so as to cover the matters which require decision as set out above thus ensuring that the nature of the action to be taken by officers following the decision is clear.

The Contracts Scrutiny Panel

In order to ensure probity and transparency in the award of contracts, the Contracts Scrutiny Panel will participate in the letting of contracts by monitoring their compliance with the Contract Procedure Rules at a number of stages, both during and after the completion of the contract procedure. In respect of any contract the Panel will have the responsibility:

- To receive and examine tenderers lists
- To open tenders

- To receive and examine reports on the outcome of price/performance and partnering contracts letting procedures

The role of Officers - The Chief Officer/Officer Team

The Chief Officer/Officer Team will have the responsibility:

- To prepare the specification
- To approve use of selected tendering list or, if none available, to determine the tendering list for the contract
- To advertise/issue invitations for expressions of interest
- To determine a marking mechanism for each contract or for categories of contracts
- To select contractors for participation in Price/performance and Partnering contracts procedures
- To interview contractors
- To evaluate proposals & contractors and allocate scores
- To approve the successful contractor

It is presumed that officers responsible for procuring goods, works and services under these rules are familiar with the powers delegated to officers under the Council's delegation scheme, at least to the extent that those powers enable an officer to take action without a specific authority from Members. Where an officer is given power to take action (e.g. to incur expenditure for which budgetary provision has been made), that power includes the power to enter into any contract necessary to secure the goods, works or services involved. In the interests of transparency, the requirement for tenders to be opened by the Contract Scrutiny Panel applies to contracts undertaken by an officer under delegated powers, but the responsible officer, rather than the Chief Solicitor would sign such a contract.

NOTE 5

Electronic Procurement (e-Procurement)

The Council's E-procurement Strategy requires that whenever possible procurement shall be carried out electronically. All procurement carried out, on any e-procurement system approved by the Chief Solicitor and the Head of Procurement & Property Services, is subject to these Rules.

NOTE 6

General

4.2 APPENDIX 2

In the event of conflict between this Introduction and the following Contract Procedure Rules, the latter shall prevail

These rules are made in pursuance of Section 135 of the Local Government Act 1972 and the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.

PART A - SCOPE OF CONTRACT PROCEDURE RULES

1 Application of Contract Procedure Rules

- i) These rules apply to every contract for the supply of goods, materials or services or for the execution of works, so far as they are relevant to a contract of the type determined by the Executive or the Council (as the case may be), except as provided in (ii) below.
- ii) With the exception of (vii) below, these rules do not apply to contracts with professional persons **or contractors** for the execution of works or the provision of services in which the professional knowledge and skill of these persons **or contractors** is of the primary importance or where the contract is for the provision of caring services to children or vulnerable persons.
- iii) No exception from any of the rules shall be made otherwise than by direction of the Executive or the Council or in any case of urgency, the Chief Officer after consultation with the Monitoring Officer. A record of any exception from any of the provisions of these procedure rules shall be reported to the Contracts Scrutiny Panel at their next meeting, and shall specify the case or urgency by which the exception shall have been justified.
- iv) For the purposes of any financial limit referred to in the rules, if the application of the rules to a particular contract cannot be identified until after opening of any tender, the value of the contract shall be as estimated by the Chief Officer.
- v) Reference in these rules to any decision, authority or action of the Council, the Executive, the Contracts Scrutiny Panel or an officer shall be deemed to include reference to a decision approval or action of the responsible body or officer prior to as well as after the adoption of these rules.
- vi) The letting of any contract shall also comply with any legislation or regulations relevant to the contract, Health and Safety Regulations, the European Directive on public procurement, the Council's Financial Regulations and the Council's Procurement Strategy.
- vii) In respect of any contract to which, for whatever reason, the procedures set out in these rules do not apply, there shall be followed a procedure which:
 - has been determined and recorded prior to its commencement
 - ensures a level of competition consistent with the nature and value of the contract
 - is transparent and auditable

NOTE 7

- provides value for money, and
- records the reasons for choosing the successful contractor

PART B - SELECTED TENDERERS LISTS

2 Compilation of Selected Tenderers Lists

- i) This rule applies where a decision has been made that a list shall be kept of persons to be invited to tender for contracts for the supply of goods, materials or services of specified categories, values or amounts, or for the execution of specified categories of work and such a list is not to be compiled in accordance with the Constructionline procedure formulated by or on behalf of the Department of Trade and Industry
- ii) The list shall include at least eight persons and shall:
 - be approved by the Executive and (subject to paragraph IV below) be maintained on behalf of the Executive by the Chief Officer;
 - contain the names of all persons who wish to be included in it and are approved by the Executive or Chief Officer/Head of Department, subject to no persons being included until the appropriate technical officer is satisfied that they have the capacity to undertake the contracts envisaged, **the Chief Personnel Services Officer is satisfied that they have adequate Health and Safety arrangements** and the Chief Financial Officer is satisfied that they are financially sound; and
 - indicate whether a person whose name is included in it is approved for contracts for all or only some of the specified values or amounts of categories.
- iii) At least four weeks before the list is first compiled, notices inviting applications for inclusion in it shall be published in one or more local newspapers circulating in the district, and in one or more newspapers or journals circulating among such persons as undertake contracts of the specified values or amounts or categories.
- iv) **The list may be amended by the appropriate Chief Officer as required from time to time and shall be reviewed as follows:**
 - **Review to be carried out at intervals not exceeding 4 years, where an update of the list is carried out and notices inviting applications for inclusion in the list shall be published in the manner provided by para. (iii) of this standing order.**

NOTE 8

- Update to be carried out at intervals not exceeding 2 years, where each person whose name appears in the list shall be asked whether s/he wishes his/her name to remain therein.

Any such amendment or update shall be reported to the Executive. Any such review shall be presented to the Executive for approval and then reported to the Contract Scrutiny Panel.

PART C - INFORMAL / QUOTATION PROCEDURES

NOTE 9

3 Informal Procedure - Contracts under £5,000

For a contract for less than £5,000, reasonable enquiries shall be made to determine that the price is fair and reasonable.

4 Informal Quotations Procedure - Works contracts £5,000 - £20,000

For a contract for the execution of work up to £20,000 three quotations shall wherever possible be obtained.

5 Formal Quotations Procedure - Works contracts £20,000 - £45,000 Goods materials or Services Contracts £5,000 - £15,000 (In-house bid contracts £5,000 - £75,000)

In respect of contracts:

- for the execution of work up to £45,000 (£75,000 for In-house bid contracts): or
- for the supply of goods materials or services up to £15,000 (£75,000 for In-house bid contracts)

at least three written quotations shall wherever possible be obtained.

PART D - BEST PRICE PROCEDURES

NOTE 10

5 Works contracts over £45,000 Goods materials or Services Contracts over £15,000 (In-house bid contracts over £75,000)

- i) Except for contracts described in rule 6(ii), no contracts which exceed £45,000 (£75,000 in the case of an In-house bid contract) in value or amount for the execution of any work, or £15,000 (£75,000 in the case of an In-house bid contract) in value or amount for the supply of goods, materials or services shall be made unless public notice has been given in accordance with the Public Notice provisions (see rule 7).

ii) Rule 6(i) does not apply to contracts which have been determined should be let under

- the Selected Tenderer provisions (see rule 8)
- the Price/Performance contracts provisions (see rule 10) or
- the Partnering contracts provisions (see rule 11)

or which relate to the following matters: -

(a) Purchase by auction;

(b) Work to be executed or goods, materials or services to be purchased which are a matter of urgency;

(c) The work to be executed or the goods, materials or services to be supplied consist of repairs to or parts for existing machinery or plant;

(d) The goods, materials or services to be purchased are such that a substantial proportion of the price is likely to be attributable to haulage;

(e) The purchase of goods, materials or services which are obtainable only from a limited number of contractors, but in such case a reasonable number of contractors shall be invited to submit tenders.

(f) Purchase or repair of patented or proprietary article or articles sold only at fixed price;

(g) The goods, materials or services to be purchased are such that effective competition is prevented by government control;

(h) The prices of the goods, materials or services to be purchased are controlled by a trade organisation or for other reasons there would be no genuine competition.

7 Public Notice provisions

i) At least ten days public notice shall be given

- in one or more local newspapers circulating in the district,
- also, wherever the value or amount of the contract exceeds £100,000 in the case of execution of any works or exceeds £30,000 in the case of supply of goods, materials or services, in one or more newspapers or journals circulating among such persons as undertake such contracts,

expressing the nature and purpose of the contract, inviting tenders for its execution and stating the last date (not less than 10 days after appearance of the public notice) when tenders will be received.

- ii) After the date specified in the public notice, invitations to tender for the contract shall be sent to not less than three of the persons who applied for permission to tender, selected by the Chief Officer in the approved manner, either generally or in relation to a particular contract or category of contract or, if fewer than three persons have applied and are considered suitable, to all such persons.

6 Selected tenderers provisions

This rule applies where it has been determined that the invitation to tender for a contract is to be limited to persons whose names appear on a Selected Tenderers list compiled under rule 2. An invitation to tender for that contract shall be sent to at least three of those persons included in the list as being approved for a contract for that value or amount or of that category, or, if there are fewer than three such persons, to all such persons. If there are three or more such persons, the persons to whom invitations are sent shall be selected by the Chief Officer in the manner approved, either generally or in relation to a particular contract or to a category of contracts.

9 Acceptance of tender

A tender –

- other than the lowest tender if payment is to be made by the Council or
- other than the highest tender if payment is to be received by the Council,

shall not be accepted without the fact of and reason for the acceptance being recorded and notified to the Contracts Scrutiny Panel at their next meeting.

PART E - PRICE/PERFORMANCE CONTRACTS

10 Price/performance Contracts Provisions

This rule applies when it has been determined by **the Executive**, that the contractor shall be chosen on the basis of a combination of price and performance and for which a price/performance ratio has been determined.

- (i) (a) Where there is a relevant Select List of Contractors for the nature of work or service involved in the project, the Chief Officer shall invite such number of contractors from the list as s/he considers appropriate to indicate whether they are interested in undertaking the proposed works and, if so, to provide a list of all clients for whom they have worked in the 2 years prior to the invitation.

- (b) Where there is no Select List of Contractors the Chief Officer shall compile for examination by the Contracts Scrutiny Panel a list of contractors to whom the invitation referred to in para (a) above will be submitted.
- (ii) The Chief Officer shall select from the contractors who confirm their interest and provide relevant details those contractors who will be invited to submit tenders and shall compile a list of those contractors for examination by the Contracts Scrutiny Panel, **unless the list is identical to the one previously reported following para 10(i)(b) above.**
- (iii) Contractors invited to submit tenders will be required to provide method statements relevant to the contract.
- (iv) Not fewer than 4 of the contractor's former clients will be requested to complete a Referee's Questionnaire (see Rule 24) except in the case of a contractor for whom Referee's Questionnaires have been obtained during the previous 6 months.
- (v) An Agreed Marking Mechanism (see Rule 14) shall be applied to calculate the Price/performance Score of each contractor
- (vi) The contractor with the highest Price/performance Score will **usually** be awarded the contract.
- (vii) The Price/performance Score of each contractor shall be entered into a Price/performance Score Matrix (see Rule 24) which shall be submitted to the Contracts Scrutiny Panel without any indication of the identity of the Contractor to which each Price/performance Score relates at their next meeting.
- (viii) No notification of the identity of the successful contractor shall be given to the successful or any other contractor or otherwise made public prior to the meeting of the Contracts Scrutiny Panel to which the Price/performance Score Matrix has been submitted.

NOTE 11

NOTE 12

PART F - PARTNERING CONTRACTS

11 Partnering Contracts Provisions

This rule applies when it has been determined **by the Executive** that there shall be a Partnering Contract, namely a contract which includes all of the following provisions: -

- the establishment of a partnering team
- the stipulation of a Pricing Policy, being a statement of the prices to be charged by the contractor for the purchase of the materials and items set out in the statement

- a facility for the Council to examine all aspects of the contractors accounts for the contract and
- a Savings Sharing Formula being a formula for the sharing between the contractor and the Council of savings achieved within a Partnering Contract
- (i) (a) Where there is a relevant Select List of Contractors, the Chief Officer shall invite such number of contractors from the list as s/he shall consider appropriate to indicate whether they are interested in undertaking the proposed works under a partnering contract and, if so, to provide a list of all clients for whom they have worked in the 2 years prior to the invitation.

(b) Where there is no Select List of Contractors the Chief Office shall compile for examination by the Contracts Scrutiny Panel a list of contractors to whom the invitation referred to in para (a) above will be submitted.
- (ii) The Chief Officer shall select from the contractors who confirm their interest and provide relevant details those contractors who will be given further consideration and shall compile a list of those contractors for examination by the Contracts Scrutiny Panel, **unless the list is identical to the one previously reported following para 11(i)(b) above.**
- (iii) In respect of each of the contractors so selected not less than 2 of the contractor's former clients shall be requested to complete a Referee's Questionnaire except in the case of a contractor in respect of whom Referee's Questionnaires have been obtained during the previous 6 months.
- (iv) Responses to the Referee's Questionnaires shall be evaluated according to an Agreed Marking Mechanism and each of the 4 highest scoring contractors (or such greater number as may be determined by the Chief Officer) shall be invited to confirm their ability to complete the project for the project budget.
- (v) Contractors who so confirm will be invited to-
 - provide details of the contractor's proposed overhead costs, profit element, contractors net project cost, and preliminaries costs, and
 - to attend interview by an Interview Panel who will allocate an interview score for each contractor.
- (vi) The Partnering Score of each Contractor will be calculated by reference to an Agreed Marking Mechanism and entered into a Partnering Score Matrix which shall be submitted to the Contracts Scrutiny Panel without

NOTE 12

any indication of the identity of the Contractor to which each Partnering Score relates.

- (vii) The proposal of the contractor with the highest Partnering Score will **usually** be accepted.

G - GENERAL PROVISIONS

12 Opening of tenders

- (i) Tenders shall be opened at one time and only in the presence of: -
- **at least three members** of the Contracts Scrutiny Panel; and
 - the Chief Executive or an official of the Council designated by him/her.
- (ii) Paragraph (i) of this Order shall not apply to tenders obtained by the **In-house Provider** for the purpose of compiling a bid as tender for submission by the **In-house Provider**, which tenders shall be opened by the **Head of Procurement & Property Services and the relevant Head of Service or their nominated Officers**.

NOTE 13

13 Tenders to be returned in sealed envelopes

- (i) Every notice of invitation to tender shall state that no tender will be received except in a plain sealed envelope which shall bear the word "Tender" - followed by the subject to which it relates - but shall not bear any name or mark indicating the identity of the sender. Envelopes shall be returned to the Chief Executive and once received shall remain in the custody of the Chief Executive or his/her nominee until the time appointed for their openings.
- (ii) The Chief Executive or the **Head of Service of the In-house Provider** (as the case may be) shall keep a record of all tenders received.
- (iii) (a) A Schedule of all tenders received (except tenders to which rule 12(ii) applies) shall be circulated to the Contracts Scrutiny Panel or shall be tabled by the Chief Executive at the Contracts Scrutiny Panel meeting at which they are under consideration;
- (b) No information shall be included in such schedule or given to the Panel by which **any tenderer may be identified**.

NOTE 14

14 Agreed Marking Mechanism

No Price/performance procedure or Partnering procedure shall be commenced unless there has been agreed between the Chief Officer and the Council's Chief

Internal Auditor, in respect of the particular contract, or in respect of contracts of the nature of the contract in general, an Agreed Marking Mechanism complying with Rule 24. The contractors shall be informed of the elements to be marked and of the comparative importance of each element as a percentage of the available marks.

15 Contracts to be in writing

Every contract which exceeds £2,000 in value or amount shall be the subject of a Council order or other formal contract and shall specify

(a) the work, materials, matters or things to be furnished, had or done; (b) the price to be paid, with statement of discounts or other deductions; and (c) the time or times within which the contract is to be performed.

16 Liquidated Damages and Performance bonds

Every contract which exceeds **£100,000** in value or amount and is either for the execution of works or for the supply of goods, materials or services, shall, unless the Chief Officer otherwise decides after consultation with the Chief Solicitor, provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed, and the Council shall also require and take sufficient security for the due performance of any such contract. In the case of any such contract for the execution of works such security shall be provided by requiring the retention of a proportion of the contract sums payable until the work has been satisfactorily completed and maintained and, unless the Chief Officer, after consultation with the Chief Solicitor considers it unnecessary in any particular case, additional provision of a bond for due performance.

NOTE 15

17 Other remedies for breach

In every contract for the supply of goods, materials or services which exceeds £2,000 in value or amount a clause shall be inserted to secure that, should the contractor fail to deliver the goods, materials or services or any portion thereof within the time or times specified in the contract, the Council, without prejudice to any other remedy for breach of contract, shall be at liberty to determine the contract either wholly or to the extent of such default and to purchase other goods, or materials of the same or similar description to make good (a) such default or (b) in the event of the contract being wholly determined the goods, materials or services remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods, materials or services exceeds the amount which would have been payable to the contractor in respect of the goods, materials or services replaced by such purchase if they had been delivered in accordance with the contract shall be recoverable from the contractor.

18 British Standards

Where an appropriate British Standards Specification or British Standard Code of Practice, issued by the British Standards Institution or Euronorm Standard, is

current at the date of the tender, every contract shall require that all goods and materials used or supplied and all workmanship shall be in accordance with that Standard.

19 Prevention of Corruption

- (1) There shall be inserted in every written contract a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, in any of the following circumstances: -

(a) if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward –

- for doing or forbearing to do, or for having done or forborne to do, anything in relation to the obtaining or execution of the contract or any other contract with the council or
- for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council; or

(b) if the like acts shall have been done by any person employed by him/her or acting on his/her behalf (whether with or without the knowledge of the contractor) or

if in relation to any contract with the Council the contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117 Local Government Act 1972.

- (2) The form of invitation to tender shall include an assurance in writing from the tenderer that s/he will not follow, or has not followed, in relation to that tender, the undermentioned practices: -

- (i) communicating to a person other than the person calling for tenders for the execution of the work, the amount of any proposed tender in accordance with any agreement or arrangement so to communicate.
- (ii) adjusting the amount of any proposed tender for the execution of the work in accordance with any agreement or arrangement by the proposed tenderer, and any person other than the person calling for tenders for the execution of such work.

20 Signature of contracts

- i) Except for contracts entered into by an officer in exercise of delegated powers, the Chief Solicitor shall be the agent of the Council to sign on

NOTE 16

behalf of the Council all contracts agreed to be entered into by or on behalf of the Executive or the Council.

- ii) Contracts which are for a value of £100,000 or more shall be either-
 - executed by the Chief Officer and the Chief Solicitor or the Chief Financial Officer or
 - executed under the Council's seal (to be affixed in the presence of the Chief Solicitor (or in his/her absence, the Chief Executive)).

21 Tenderers withdrawal

In the event of any person or firm withdrawing a tender, or declining to sign a form of contract upon being called on to do so after his/her or their tender has been accepted (whether accepted subject to the Council's approval or not) no further tender from such a person or firm shall, unless the Executive or the Council otherwise resolve, be considered for a period of three years.

22 Post contract variations and negotiations

- i) Except for a variation –
 - (a) which does not substantially affect the nature of the works services goods, materials or services to be supplied to the Council and does not increase the payment to be made by the Council, or
 - (b) is made in accordance with paragraph (ii)

a contract shall not without the authority of the Executive or the Council depart from the description of the works, goods, materials or services for which the quotation or tender was received.

- ii) This paragraph applies where all of the tenders received exceed the budget allocated for the project and the Chief Officer and the Head of Service relevant to the contract consider that amendments may be made to the specification which would result in a price in accordance with the budget. The lowest tenderer and the next 2 lowest tenderers (if any) whose prices are not more than 125% of the price of the lowest tenderer shall each be provided with a schedule of variations and invited to submit a statement of the reductions to their tender which would apply to the variations.
- iii) Apart from discussions with contractors for the purpose of clarification of any element of a tender, or for the correction of arithmetic or other details, negotiations following receipt of tenders shall only take place in the following circumstances: -

4.2 APPENDIX 2

- (a) where a single tender has been received and the Chief Officer considers that negotiation may lead to more favourable terms to the Council, or
 - (b) when tenders cannot readily be evaluated and compared without discussion with the tenderers or
 - (c) with the approval of the Chief Financial Officer and the Chief Solicitor and the Monitoring Officer (if different) and any negotiations shall be conducted in accordance with paragraph (iv)
- iv) Discussion with tenderers for the purpose of negotiations under paragraph (iii) shall
- take place only on Council premises
 - take place only with the knowledge of all tenderers
 - be attended by not less than 2 Council officers
 - be at a pre-determined time during normal office hours
 - be the subject of a comprehensive written record, signed by the Council officers in attendance and submitted to the Chief Financial Officer, the Chief Solicitor or the Monitoring Officer (if different) for approval

23 Nominated sub-contractors

This rule applies where a sub-contractor or supplier is to be nominated to a main contractor and the selection of the sub-contractor has not been undertaken in accordance with the Price/performance Contracts provisions (Rule 10) nor within the context of a project undertaken under the Partnering Contracts provisions (Rule 11).

- (i) Where the estimated amount of the sub-contract or the estimated value of goods to be supplied by the nominated supplier does not exceed £5,000 then unless the Chief Officer is of the opinion in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders: -
 - (a) The Chief Officer shall invite not fewer than three tenders for the nomination. The terms of the invitation shall require an undertaking by the tenderer that if s/he is selected s/he will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his/her own obligations under the main contract in relation to the work or goods included in the sub-contract;

4.2 APPENDIX 2

- (b) The tenders shall be opened at one time and only in the presence of the Chief Executive or an officer designated by him/her;
 - (c) The Chief Executive shall maintain a record of all such tenders received;
 - (d) The Chief Officer or an officer designated by him/her shall nominate to the main contractor the person whose tender is, in his/her opinion, the most satisfactory one, provided that, where the tender is other than the lowest received, the circumstances shall be reported to the next meeting of the Contracts Scrutiny Panel.
- (ii) Where the estimated amount of the sub-contract or the estimated value of goods to be supplied by a nominated supplier exceeds £5,000 then unless the Chief Officer (for reasons to be reported to the Contracts Scrutiny Panel at their next meeting) determines in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders: -
 - a) Tenders for the nomination shall be invited in accordance with Rules 4, 5, 6, 7 or 8 as the case may be, and Rule 13(i) shall apply as if the tender were for a contract with the Council. The terms of the invitation shall require an undertaking by the tenderer that if s/he is selected s/he will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his/her own obligations under the main contract in relation to the work or goods included in the sub-contract;
 - b) The tenders shall be opened at one time and only in the presence of the Chief Executive or an officer designated by him/her and the Chief Officer or an officer designated by him/her.
 - c) The Chief Executive or an officer designated by him/her shall maintain a record of all such tenders received.
 - d) The Chief Officer or an officer designated by him/her shall nominate to the main contractor a person whose tender is in his/her opinion the most satisfactory, provided that where the tender is other than the lowest received, the circumstances shall be reported to the next meeting of the Contracts Scrutiny Panel.
- (iii) It shall be a condition of the employment by the Council of any person (not being an officer of the council) to supervise a contract that in relation to such contract s/he shall comply with the requirements of paras. (i) and (ii) of this Rule 24 as if s/he were a Chief Officer of the Council.
- (iv) Lists of tenders and quotations received in accordance with this Rule 24 shall be retained by the Chief Officer concerned and shall be available for

inspection by the Members of Contracts Scrutiny Panel and the Chief Executive and the Chief Financial Officer.

PART H - GLOSSARY

24 Interpretation

Unless the context otherwise indicates, the following terms used in these rules have the meanings stated: -

“Agreed Marking Mechanism” is the mechanism which (before the issue of any invitation to tender or attend interview) has been agreed between the Chief Officer and the Council’s Chief Internal Auditor for the allocation of marks making up the Price/performance Score. The Agreed Marking Mechanism shall include the composition of an evaluation team being a panel of officers who shall allocate marks according to the Agreed Marking Mechanism. (see also Rule 14)

“Chief Officer” is the Chief Officer of the Council who is responsible for letting and supervising the completion of a contract or of contracts of a particular nature.

“Contractor’s Net Project Cost” is the balance of the budget price after deduction of the aggregate of the contractors expected profit and overheads or any other element of the contract which is identified by the Agreed Marking Mechanism as being deductible for the purpose of assessment of the Contractors Net Project Cost.

“Electronic Procurement (e-Procurement)” is a fully electronic procure-to pay process from initial requisition and ordering through to invoicing and payment, and can include e-Auctions, e-Purchasing, e-Tendering and Procurement Cards.

NOTE 17

“e-Auctions” is the means of carrying out purchasing negotiations via the Internet. A real time event that occurs online allowing multiple suppliers in different geographic locations to place and modify bids simultaneously.

“e-Purchasing” is a system to automate and extend manual buying processes from the creation of a requisition through to the payment of suppliers. It encompasses back office systems, e-marketplaces and portals and supplier websites.

“e-Tendering” is systems or solutions to enable the tendering process to be conducted via the Internet. Including advertisement of requirement, documentation production, supplier registration, electronic exchange of documents between supplier and buyer, opening of tenders, evaluation of submissions, contract award and publication.

“Executive” is the executive members of the Council acting together as the Cabinet or individually in accordance with the Executive Delegation Scheme currently applicable.

“Interview Panel” is a panel comprising:

- 2 officers appointed by the Chief Officer
- 2 officers appointed by the Client Department, and
- a representative(s) of any other relevant body or department

and who, when meeting, shall be accompanied by an observer appointed by the Chief Officer.

“Partnering Contract” is a contract which includes all the following provisions: -

- i) the establishment of a partnering team
- ii) the stipulation of a Pricing Policy, being a statement of the prices to be charged by the contractor for the purchase of the materials and items set out in the statement
- iii) a facility for the Council to examine all aspects of the contractors accounts for the contract and
- iv) a Savings Sharing Formula being a formula for the sharing between the contractor and the Council of savings achieved within a Partnering Contract

“Partnering Score Matrix” is a matrix showing in respect of all contractors each element of their Partnership Score and their total scores.

“Price/performance Score Matrix” is a matrix showing in respect of all contractors each element of their Price/performance Score and their total scores.

“Price/performance Contract” is a contract for which the contractor is to be chosen on the basis of a combination of price and performance.

“Price/performance Ratio” is the comparative importance of price and performance of the product or service expressed as a percentage ratio.

“Procurement Cards” are charge cards which work in a similar way to credit cards and can be used to purchase goods and services. Can be open to use by any suppliers or have controls placed upon them by the issuer to limit their use to certain suppliers and/or commodities. They are usually used to process low-value, high-volume transactions.

“Project information” comprises: -

- i) Drawings, if any, showing outline of the construction works required
- ii) A cost plan, if available, indicating the total budget for the project
- iii) A specification of materials from which the cost plan has been prepared

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- iv) The timescale for the construction works
- v) The substantial form of the contract
- vi) Any other information necessary to enable the contractor to assess the nature and likely cost of the project

“Referee’s Questionnaire” is a questionnaire addressing the following aspects of a contract, namely:

- performance;
- quality;
- adherence to timetable;
- health and safety issues; and
- any other matters considered by the Chief Officer to be relevant to assessment of the service provided by the contractor.

NOTE FOR MEMBERS OF CONSTITUTION COMMITTEE

CONTRACT OVERSPENDS

At their meeting on 9th March, members of the Constitution Working Group requested details of the procedures in place to deal with instances of overspend on contracts; they wished to be assured that the Council have in place robust arrangements in dealing with overspends.

There are a variety of reasons for overspend situations on projects and contracts, such as –

- unexpected site conditions
- reduction or withdrawal of external funding
- within-project changes to the project specification
- approved contract variations allowing for issues beyond the contractor's control.

Depending upon the scale and nature of the occurrence, financial regulations permit, within limits, the relevant chief officer or director to authorise increased expenditure. Members must bear in mind that, generally speaking, in order to overspend on one project or contract, there must be an underspend on other projects or contracts in a director's/chief officer's control from which to fund the 'virement'.

The current arrangements consist of a number of controls incorporated in the Council's Financial Regulations, and standard accountancy practice, the effect of which are to

- limit the ability of officers to commit unbudgeted funds to contracts and projects,
- require that the deviation of funds beyond the limits is brought to the relevant portfolio holder, and Council where necessary, and
- in the event of an internal control failure, to bring the matter to the attention of the Audit Committee.

The Council's Financial Regulations provide that, to ensure good financial management, flexibility must exist to allow transfer of resources – this includes transfer from revenue to capital, and vice versa subject to continued service delivery and, in relation to capital expenditure flexibility is necessary in order to cover transfers between projects. The relevant elements of the controls provided for by the Financial Regulations are -

- There is freedom of transfer as between budget heads, but transfers between service areas and between directors' budgets are limited to the lower of £80,000 or 5% of the budget head.

- The limit on the underspends that can be transferred from one year to the following year is 10% of the directors/chief officer's budget. The approved 'Managed underspend' policy provides the regime for such transfers.
- Specifically in relation to capital, the limit on transfer of resources from one project to another is £10,000 for projects up to £100,000, and on projects above £100,000 the lower of £50,000 or 10%
- All transfers must be referred to the Chief Financial Officer for his prior agreement.
- Transfers in excess of the limits must be approved by the portfolio holder and, as it will generally involve a budget departure, Council

The Chief Financial Officer also draws attention to the recent establishment of the Audit Committee through which members are able to monitor the authority's performance under the Financial Regulations and audit practice. In particular, good audit practice requires that any failure of financial control be reported to the Audit Committee.

JAB
29/3/06