

Part 8

CONTRACT STANDING ORDERS

1. INTRODUCTION, COMPLIANCE, DEFINITIONS AND THRESHOLDS

1.1 Introduction

1.1.1 These Standing Orders (issued in accordance with Section 135 of the 1972 Local Government Act) are intended to promote good practice and public accountability and deter corruption. They provide a corporate framework for the procurement of all goods, services and works for the Council.

1.1.2 Standing Orders are designed to ensure that all procurement activity is conducted with openness, probity and accountability. Officers responsible for entering into contracts, purchasing or disposal must comply with the statutory requirements of both the European Union and the United Kingdom Government. Officers must also comply with Standing Orders and Financial Regulations; the Code of Conduct; the Anti-Fraud and Corruption Policy and the Procurement Strategy and Policies. Officers must ensure that any Agents, Consultants and contractual partners acting on their behalf also comply.

1.1.3 Breach of these rules will be taken very seriously as they are intended to both protect public money and demonstrate that the Council takes its role as a guardian of public money very seriously. Should an Officer be found to be in breach of these rules then it may be treated as gross misconduct and could result ultimately in the dismissal of the employee. Similarly, anyone having knowledge of a failure to follow these rules must report a breach of these rules to the Monitoring Officer as soon as possible afterwards. Any failure to report a breach by a member of staff may also be treated as gross misconduct and could result in the Officer being dismissed.

1.2 Compliance

1.2.1 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. No waiver is permitted where a proposed contract is likely to exceed the EU Threshold as a failure to comply with European legislation may result in a legal challenge with consequent financial and reputational risk.

1.2.2 Every contract made by the Council shall, except where specifically authorised by the Council (or by one of the four Policy Committees to whom the power of making contracts has been delegated) comply with these Standing Orders and the Council's Procurement Strategy and

express note shall be made in the Council's minutes of any exception or waiver from Standing Orders and the reasons for such exception or waiver.

1.2.3 Tenders and quotations are defined as:

- a) Tenders – A response to a written invitation from an authorised officer to price for a supply or service, received in a sealed envelope by a specific date, opened at an agreed time in accordance with Rules 10 & 11.
- b) Quotation – A verbal or written priced offer to undertake a supply or service received in response to an invitation from an authorised officer. To be processed routinely as opposed to the sealed bids defined by the tender route.

1.2.4 In estimating relevant contract values, officers shall have regard to aggregation rules. This is the whole of the value or estimated value for a single contract, purchase or disposal calculated as follows:

- Where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period.
- Where the purchase involves recurrent transactions in the coming twelve months.
- Where the contract is for an uncertain duration, by multiplying the monthly payment by 48.

1.2.5 Officers shall also have regard to a contract whole life cost when estimating the contract value as follows:

Whole life cost is the value expected to be paid for the contract duration. A three year contract valued at £20,000 per annum would equate to a £60,000 whole life cost.

1.2.6 Contracts exceeding four years are treated as being four years for the purpose of calculating the whole life cost.

1.2.7 Values expressed in terms of Special Drawing Rights (SDRs) or Euros are recalculated every two years to provide expenditure thresholds. Details of financial thresholds are available from the Head of Resources.

1.3 Definitions

1.3.1 Purchasing Consortia - all purchases made via a local authority purchasing and distribution consortium are deemed to comply with these Standing Orders and no exemption is required. However, purchase above the EU threshold must be let under EU procedures unless the consortium has satisfied this requirement already by letting

their contract in accordance with the EU Procedures on behalf of the authority and other consortium members.

- 1.3.2 All contracts procured through collaboration with the local authorities or other public bodies, where a competitive process has been followed that complies with the standing orders of the lead organisation, will be deemed to comply with these standing orders and no exemption is required.

1.4 Partnerships

- 1.4.1 Contract Standing Orders apply to any proposal for the Council to become involved in a joint venture or partnership, including the monitoring of any such arrangement.

- 1.4.2 Procurement processes for strategic partnerships shall where relevant 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 defined.
- 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 SMEs.
- The inclusion in invitations to tender (or take part in competitive dialogue) for partnerships a requirement on bidders to submit optional priced proposals for the delivery of special social benefits which are relevant to the contract and add value to the community in accordance with the Council's commitment to use procurement to help deliver core policy objectives.

1.5 Framework Agreements

- 1.5.1 The new EU consolidated public sector directive includes the provision of framework agreements. A framework agreement allows the Council to call off supplies, goods and services from purchasing organisations for example National Consortia (ESPO, OGC) provided that:

- The purchasing organisation has advertised the procurement in accordance with EU provisions.
- Cited the council as being a customer of the purchasing organisation or is within a defined boundary area (eg all councils within the East Midlands).
- Has prior agreement to act on behalf of the Council.

1.5.2 A framework allows for the calling off of supplies without reopening competition providing the terms laid down in the Framework Agreement are sufficiently precise as to cover the call off. A framework is limited to a four year contract period.

1.6 A Schedule of Rates and Prices is defined as:

An itemised list or schedule of envisaged works and quantities for a wide range of jobs (similar in appearance to a traditional bill of quantities). Contractors are invited to price against the itemised jobs in the knowledge that they may be requested to undertake works on the schedule at a given occasion. Payment for the works would be made by applying the price/rate for the works and quantity (if applicable), as shown on the Schedule of Rates and Prices. The application of a Schedule of Rates and Prices allows scheduled works to be undertaken by employing the contractor whose priced schedule is the most favourable in cost price. There is no requirement once contractors have submitted their schedules, to subject individual works to further competitive tender or quotation. Schedule of Rates and Prices may or may not be tendered for exclusive contracts.

1.7 Thresholds

1.7.1 Value up to £25,000

- Refer to Financial Regulations
- Standing Orders relating to contracts need not apply

1.7.2 Value between £25,000 and £173,934

- Financial Regulations apply.
- Standing Orders relating to Contracts apply.

1.7.3 Value over £173,934

- Financial Regulations apply.
- Standing Orders relating to Contracts apply.

1.8 Contracts Subject to European Legislation

1.8.1 Thresholds for local authorities 1 Jan 2012 to 31 Dec 2013

	Supplies	Services	Works
Aggregate contract value	£173,934	£173,934*	£4,348,350
Indicative notice	£652,253	£652,253	£4,348,350

*Part A services to which full regime applies. For Part B services the threshold is £173,934.

1.8.2 Public Sector Contracts Regulations 2006

Contracts for all categories of procurement where the cost is over £25,000 must be advertised to comply with the EU Directive except for those occasions defined in Rule 7.3. The obligation of transparency, based on the individual circumstances of the procurement and the advertisement method chosen must allow the services market to be opened up to competition and the impartiality of the procurement to be reviewed. The advertisement will include details of contracts to be awarded and the award method. Examples of where such advertisements may be placed include;

- Portal websites specifically created for contract advertisements (Source Derbyshire)
- The Council's website – Source Derbyshire Dales
- National official trade journals/local press
- The official Journal of the European Union (OJEU/Tenders Electronic Daily (TED))

1.8.3 Thresholds for utilities

In some circumstances a local authority may be acting as a utility (e.g. in relation to provisions of sewerage facilities). Specific advice should be sought from the legal section and procurement team on thresholds should such matters arise.

Contracts Procedure Rules

Contents

	Page
1. Tender Procurement Options	7
2. Contract conditions applying to all types of contract	8
3. Allocation of work to other Council departments	8
4. Prevention of Corruption	9
5. Declaration of Interest	10
6. Contracts not exceeding £25,000	10
7. Contracts over £25,000 but not exceeding £173,934	11
8. Contracts over £173,934	13
9. Notice of invitation to tender	14
10. Opening of tenders	15
11. Acceptance of tenders	16
12. Probity	17
13. Tender Evaluation, Alterations	17
14. Post Tender Negotiations	18
15. Contract Payments – on Account and Final	18
16. Nominated Sub-Contracts	19
17. Appointment of Consultants	19
18. External Supervising Officers	20
19. Specification of Goods, Materials and Workmanship	20
20. Exception for Sale of Land, Borrowing Money and Employment of Officers	20

1. TENDER PROCUREMENT OPTIONS

There are four tender procurement options which the Council may use and these are fully explained in the Procurement Toolkit (see DalesNet). However, in précis they are:

Open All suppliers who request tender documentation will be invited to submit a tender by a set date. Following evaluation the contract will be awarded to the successful bidder.

The open tender procedure is normally only used where the known marketplace is limited, and the Council needs to seek out extra interest, or where the timescale does not allow the two stage restricted tender procedure to be followed

Restricted This is a two stage process. The first stage often involves a pre-qualification questionnaire (PQQ) where a short list of suppliers is identified. In the second stage suppliers are invited to respond to an Invitation to Tender (ITT). The contracts are awarded to the successful supplier following analysis of the ITT.

Competitive Dialogue This is used for more complex procurements. Following the OJEU Contract Notice and a selection process, the Council negotiates with companies to develop suitable solutions and to which chosen companies will be invited to tender. After the ITT has been issued no further negotiation is allowed, except discussion to clarify or fine tune the tender. An award is subsequently made.

Negotiated There are two types of negotiated procedure. Under the negotiated procedure without prior advertisement, the contracting Council is not required to issue an OJEU notice and may negotiate directly with the supplier of its choice. Under the negotiated procedure with prior advertisement, however, an OJEU notice must be published, inviting expressions of interest. From those meeting its selection criteria the Council may select a minimum number to be invited to negotiate. The

negotiated procedure is only used in exceptional circumstances, for example when a supplier is the sole source of the goods or service required, in cases of extreme urgency, or when the precise specification can only be determined by negotiation.

2. CONTRACT CONDITIONS APPLYING TO ALL TYPES OF CONTRACT

- 2.1 The Council's purchase order form should not normally be used as the form of contract where the value of the goods, service or works exceeds £25,000, or for more complex transactions of any value. In these circumstances the Head of Corporate Services will approve the appropriate form of contract to be used.
- 2.2 All contracts shall expressly prohibit the contractor from transferring, assigning or sub-letting the whole or any part of the contractor's contractual obligations without the prior written permission of the Council.
- 2.3 All procurement over £25,000 will be advertised in accordance with Public Sector Contract Regulations 2006 to enable markets to be opened up to competition and the impartiality of the procurement process to be reviewed, Rule 1.8.2. For contracts where risk is evident, and for all contracts over £173,934 the Procuring Officer is required to produce and maintain a documented risk register for the procurement process and for the eventual contractual relationship. Before entering into a contract the Procuring Officer must:
- Be satisfied that the contractors who are to be invited to bid are technically capable.
 - 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. Weighting between price and non-price elements of the tender will be strongly influenced by the contract type Goods or Services. Service type contracts need to weight the importance of the non-price elements against cost. Non-price elements of the evaluation criteria can include Equalities, Business Continuity, Environmental and Sustainability considerations.
 - Have sought the assurance that appropriate financial checks have been made for those contractors invited to bid. The Internal Auditor will undertake financial and resource appraisals on behalf of the Procuring Officers.

3. ALLOCATION OF WORK TO OTHER COUNCIL DEPARTMENTS

- 3.1 Where a Council department has a procurement need that:

- 3.1.1 Another Council department is capable of fulfilling
- 3.1.2 Does not have to be put out to tender under EC Tendering Rules then that procurement need can be fulfilled by the department directly, without competition, provided that :
- the direct allocation of work is not in breach of the Procurement Strategy
 - both departments are satisfied that the technical and financial terms of the arrangement are competitive and are in accordance with the principles of Best Value
- 3.1.3 In the event that no Derbyshire Dales District Council department is able to satisfy the procurement need identified in Rule 3.1 and that a Framework Agreement was inappropriate then, before initiating the tendering process set out below, the relevant department should consider, and if appropriate, implement a partnership or other innovative link with another local authority or private/voluntary sector organisation or Town/Parish Council as will ensure that a high quality value for money service is provided.

4. PREVENTION OF CORRUPTION

- 4.1 Officers shall comply with the Employee Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of the contract. Officers will be required to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour may lead to dismissal and is a crime under the statutes referred to in Rule 4.4
- 4.2 Officers should not accept significant personal gifts from contractors and outside suppliers. Token gifts of a very small value like pens marked with a company name, or calendars, which might be seen as advertisements, are acceptable.
- 4.3 Officers should notify their line manager of any gifts received 'out of the blue' other than the token gifts outlined above. The officer should record receipt of the gift and decide whether the gift should be returned or forwarded to a local charity.
- 4.4 The following clause shall be put in every written Council contract:
"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone on the Contractor's behalf does any of the following:
a. Offer, give or agree to give to anyone, any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or

- b. Commit an offence under the Public Bodies Corrupt Practices Act 1889 to 1916 or Section 117 (2) of the Local Government Act 1972; or
 - c. Commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees
- Any clause limiting the Contractor's liability shall not apply to this clause".

5. DECLARATION OF INTEREST

- 5.1 If it comes to the knowledge of a member of the Council that a contract in which he/she has a financial interest has been or is proposed to be entered into by the Council, he/she shall immediately give written notice to the Monitoring Officer.
- 5.2 An employee's personal interests shall not conflict with their public duty. An official position or information acquired in the course of employment should not be used to further personal interests or for the interests of others.
- 5.3 Officers should declare in writing to the Monitoring Officer any personal interest which may be in conflict with their public duty. Any such declaration by a Chief Officer should be made in writing to the Chief Executive and copied to the Monitoring Officer.

6. CONTRACTS NOT EXCEEDING £25,000

- 6.2 Where practicable, alternative quotations shall be invited by the Head of Service for the execution of work, the supply of goods or the provision of services at a value of £25,000 or less.
- 6.2 Where it is considered appropriate to seek a tender, then the procedural requirements detailed in Rule 7 - Contracts over £25,000 but not exceeding £173,934 – shall be adhered to. All variations resulting in a change in contract value shall be supported by adequate documentation.
- 6.3 Every contract which is for the carrying out of work shall require the contractor to indemnify the Council against any claim which may be made in respect of personal injury to any person unless due to the negligence of the Council and against any claim for damage to property of third parties due the negligence of the contractor to the value approved by the Head of Resources. The contractor shall, when required by the Head of Corporate Services, produce satisfactory evidence that he/she is insured against any such claims.

7. CONTRACTS OVER £25,000 BUT NOT EXCEEDING £173,934

- 7.1 Every contract shall be in writing and in a form approved and executed by the Head of Corporate Services and shall specify the work, materials, matters or things to be furnished, had or done, the price to be paid with a statement of discounts or other reductions and the time or times within which the contract is to be performed.
- 7.2 Any contract which requires the additional limitation period of 12 years rather than 6 years for court proceedings in the event of default (Section 8 Limitation Act 1980) shall be sealed as a deed by the Head of Corporate Services.
- 7.3 Nothing in these Procedure Rules shall require competitive tenders to be advertised and invited in the case of contracts not exceeding £173,934 in value if in the opinion of the Council, either Policy Committees or commissioning Head of Service:
- the work to be executed or the goods, materials or services to be supplied constitute an extension of an existing contract, provided that such an extension has received the necessary approval;
 - the contract is for the execution of work or the supply of goods, materials or services certified by the appropriate Head of Service, following consultation with the Head of Corporate Services, as being required so urgently as not to permit the invitation of tenders, the award to be reported retrospectively to the appropriate Policy Committee;
 - the work to be executed or the goods or materials to be supplied consist of repairs to or the supply of parts of existing proprietary machinery or plant;
 - the procurement can be fulfilled via a Purchasing Consortia or Framework Agreement.
 - the procurement can, on the grounds of proportionality, be satisfied by seeking invitations to tender from a select list of specialist providers drawn up by the procuring officer(s)
- 7.4 Subject to adequate provision having been made in the approved estimates, the appropriate Head of Service is authorised :-
- to invite tenders for the execution of works, including Schedules of Rates and Prices or the supply of goods, materials or services to the Council;
 - to invite offers for the execution of works, the supply of goods, materials and services by the Council; and

- to enter into contracts or place orders on the Council's behalf accordingly, provided that :
 - this authority shall not extend to any tender, contract or order where the original total estimated value exceeds £173,934;
 - where a Head of Service invites tenders for the execution of works including Schedules of Rates and Prices and the supply of goods, materials or services he/she shall where practicable invite at least three alternative tenders.
 - the award of a contract is based on a Tender which is either (i) the lowest price or (ii) the most economically advantageous tender in accordance with the pre-determined evaluation criteria. The decision to award based on lowest price will have been prior approved following advice from either the Head of Corporate Services or Legal Section.
 - They have sought advice from either the Head of Corporate Services or the Legal Section
 - a contract for the supply of goods or materials shall provide that if a contractor fails to deliver part or all of the goods or materials within the time(s) specified the Council may determine the contract either wholly or in part and purchase other goods or materials of the same or similar description:
 - to make good such default; or
 - in the event of the contract being wholly determined to acquire goods or materials remaining to be delivered.
 - A hard copy of the signed contract is provided to The Head of Corporate Services for execution and storage in the strong room.
- 7.5 The contract shall also provide that the amount by which the cost of purchasing other goods or materials exceeds the corresponding amount which would have been payable to the contractor shall be recoverable from the contractor.
- 7.6 A contract for the execution of works shall provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed.
- 7.7 Every contract which is for the carrying out of works shall require the contractor to indemnify the Council against any claim which may be made in respect of personal injury to any person unless due to the negligence of the Council and against any claim for damage to property by third parties due to the negligence of the contractor to the value approved by the Head of Resources. The contractor shall, when

required by the Head of Corporate Services, produce satisfactory evidence that he/she is insured against any such claims.

- 7.8 The Head of Service may as part of a risk assessment decision require the contractor to provide a default performance bond up to a maximum of 10% of the contract sum. The Head of Resources approval MUST be sought where the bond provision is waived. Such an approval should be in writing and documented on the file.
- 7.9 All variations resulting in a change in contract value shall be supported by adequate documentation.

8. CONTRACTS OVER £173,934

- 8.1 Contract awards which are estimated to exceed £173,934 in value or amount shall be subject to a provider selection process. Procurement of the supply of services, goods or materials or the execution of work shall be advertised as a minimum on Source Derbyshire and as appropriate for the individual procurement, a trade journal or local press could also be considered sufficient to allow the services market to be opened up to competition. The advertisement will seek expressions of interest from businesses believed to be capable of fulfilling procurement requirements. A select list will be compiled from businesses who have satisfied financial appraisal and trade reference accreditation. Where the contract is covered by European Commission requirements, a contract notice must be published in OJEU. All EU contract notices shall be referred, in advance of sending to the OJEU, to Legal Section to advise on wording before OJEU submission.
- 8.2 No fewer than four of the persons/organisations who have been included on a select list shall be invited to tender for the contract or if fewer than four persons/organisations have been included, those persons/organisations shall be invited.
- 8.3 Every contract shall be in writing and in a form approved and executed by the Head of Corporate Services and shall specify the work, materials, matters or things to be furnished, had or done, the price to be paid with a statement of discounts or other reductions and the time or times within which the contract is to be performed.
- 8.4 Any contract which requires the additional limitation period of 12 years rather than 6 years for court proceedings in the event of default (Section 8 Limitation Act 1980) shall be sealed as a deed by the Head of Corporate Services.
- 8.5 A contract for the supply of goods or materials shall provide that if the contractor fails to deliver part or all of the goods or materials within the time(s) specified the Council may determine the contract either wholly or in part and purchase other goods or materials of the same or similar description:

- to make good such default; or
 - in the event of the contract being wholly determined to acquire goods or materials remaining to be delivered.
- 8.6 The contract shall also provide that the amount by which the cost of purchasing other goods or materials exceeds the corresponding amount which would have been payable to the contractor shall be recoverable from the contractor.
- 8.7 A contract for the execution of works shall provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed. The amount to be specified in each such contract shall be determined by the Head of Service in consultation with the Head of Corporate Services.
- 8.8 Every contract which is for the carrying out of works shall require the contractor to indemnify the Council against any claim which may be made in respect of personal injury to any person unless due to the negligence of the Council and against any claim for damage to property of third parties due to the negligence of the contractor to the value approved by the Head of Resources. The contractor shall, when required by the Head of Corporate Services, produce satisfactory evidence that he/she is insured against any such claims.
- 8.9 The Head of Service may as part of a risk assessment decision require the contractor to provide a default performance bond up to a maximum of 10% of the contract sum. The Head of Resources approval shall be sought where the bond provision is waived.
- 8.10 All variations resulting in a change in contract value shall be supported by adequate documentation.

9. NOTICE OF INVITATION TO TENDER

- 9.1 Tenderers shall be given an adequate period in which to prepare and submit a proper Tender, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of Tenders. The EU Procedure lays down specific time periods.
- 9.2 All invitations to tender shall state:
- a. that all tenders shall be in a sealed envelope (bearing the distinctive label supplied with the tender form) which is to be devoid of any mark or wording which might identify the sender;
 - b. that the tender envelope shall be sealed and addressed to the Head of Corporate Services and either sent by post or delivered by hand to his/her office;

- c. that failure to comply with any of the foregoing requirements will render a tender liable to disqualification.
- d. the closing date and time for the receipt of tenders and that no tenders received after that date and time will be considered.
- e. Electronic systems may be introduced to the whole or any part of the tender process, following the written agreement of and in accordance with any requirements specified by the Head of Resources and Head of Corporate Services.
- f. Any electronic system used in the tender process shall be capable of emulating any manual process and retain compliance to these Contract Standing Orders, including robust processes for identifying potential tenderers, invitation and selection, tender submission, freedom from collusion, transparency, scrutiny, tender analysis and secure storage before the electronic system is introduced to the tender process. Any new system may substitute entirely for paper versions of any aspects of the tender process.

10. OPENING OF TENDERS

- a. All tenders for any contract shall remain in the custody of the Head of Corporate Services until the time appointed for their opening; they shall be opened at one time by two employees independent of the procuring officers as soon as practicable after the closing time fixed for the receipt of such tenders.
- b. On opening each tender, a record shall immediately be made in the tender register of each firm who tendered, the date tenders opened, the value of the tenders, reasons if any given for firms declining to tender, who opened the tenders and their initials. In cases where the tender sum is not immediately apparent the members of staff shall sign and date each page containing the pricing schedules.
- c. Where the circumstances so warrant a Head of Service in consultation with the Head of Corporate Services may postpone, for a reasonable period, the closing time and date for receipt of tenders, provided that all persons from whom tenders have been invited are notified by the same method and that no tenders have been opened.
- d. Any tenders inadvertently opened before the closing time fixed for the receipt of such tenders shall be immediately passed to the Head of Corporate Services with a written explanation of the circumstances. The Head of Corporate Services shall then decide whether the tender will be considered.

11. ACCEPTANCE OF TENDERS

- 11.1 In the case of contracts below £173,934, Rule 7.4 applies.
- 11.2 In the case of contracts exceeding £173,934, where a contract is to be awarded based on the most economically advantageous tender (MEAT), unless the Council or relevant Policy Committee has specifically decided otherwise in respect of any particular contract, the commissioning Head of Service shall be empowered to accept the preferred tender in consultation with the Chairman of the relevant Policy Committee.
- 11.3 Return tenders are evaluated against the pre-determined criteria and evaluation will focus on examining how each tender proposes to deliver the contract against the said criteria. At a minimum MEAT criteria should evaluate quality and price, although it is highly likely that other criteria will need to be considered. The balance between quality and price (and other criteria) will depend on the type of contract to be delivered, eg Goods or Services. Any quality criteria may be used to evaluate the tenders provided they are legitimate, appropriate, notified in advance, or of a commercial nature, not anti-competitive and stated in the tender documents. Tenders must only be awarded against the criteria stated in the tender documents. The said criteria, including areas covered/ranking/weighting, should be determined and agreed with the Head of Service prior to the invitation of tenders and should be included in the information sent with the invitation to submit a tender.
- 11.4 As a consequence of the decision in the “Alcatel” case, all procurements covered by the EU Directives require a minimum of 10 calendar days (excluding Bank Holidays) mandatory standstill period between the communication of the notification of the award decision and contract conclusion, with day 1 being the day after the award decision is issued, by fax or email and in writing to all tenderers. This is to allow companies an opportunity to challenge the decision.

The notification of the award decision, based on the most economically advantageous tender, should contain:

- The award criteria
 - The score the tender obtained against those award criteria
 - The score of the winning tender achieved
 - The name of the winning tenderer
- 11.5 When contacting a successful tenderer it is essential that the tenderer is advised that they are successful without formally committing the Council to an implied form of contract. If a standard form of contract is stipulated in the tender documents this should be prepared by Legal Section. No works on site should commence nor services be provided until the formal contract is executed and all terms and conditions have been agreed between the parties concerned.

12. PROBITY

- 12.1 For every contract awarded there shall be a record of the process, which will 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
 - c. A copy of the business case and risk assessment (where appropriate)
 - d. Copies of all tenders and PQQs
 - e. Copy of the evaluation process and reasons for the decisions to accept or reject every tender
 - f. Copy of the award letter (including 'Alcatel', and other notification letters)
 - g. Copy of the final contract
 - h. Copy of the contract review and management process including the officer responsible for on-going contract management
- 12.2 All contracts for goods, services and works MUST be recorded on the Corporate Contracts Register and the original contract documents held centrally and securely in Legal Section.
- 12.3 Tenderers shall be offered a debrief, whether successful or not, to assist them in preparing future bids. The relevant officer should also retain a record of all debrief requests and responses. (This will preempt any Freedom of Information requests).
- 12.4 In accordance with the 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. Any instances where a service has information relating to these practices must contact the Chief Internal Auditor.

13. TENDER EVALUATION - ALTERATIONS

All tenders are required to be evaluated in accordance with the contract evaluation criteria, defined within the tender documentation. Where on examining tender submissions an error or discrepancy is identified which would affect the preferred tender the tenderer is to be given details of such error or discrepancy and afforded an opportunity of confirming or withdrawing their tender. An exception to this procedure may be authorised only by a Policy Committee after consideration of a report by the commissioning Head of Service concerned.

14. POST TENDER NEGOTIATIONS

Post tender negotiations shall only be by exception and in accordance with principles as set out in European Directives and the results from which shall be reported to the relevant Policy Committee before acceptance. Officers shall ensure that there are recorded minutes of any meetings with Contractors and that actions are agreed in writing by both parties.

15. CONTRACT PAYMENTS – ON ACCOUNT AND FINAL

- 15.1 The Head of Resources shall be informed as soon as possible of all contracts, agreements, awards or other instruments involving the payment or receipt of money on behalf of the Council.
- 15.2 Payment to contractors on account of contracts shall be authorised only on a certificate signed by the duly authorised officer of the appropriate department showing the total amount of the contract, the value of the work executed to date, retention of money, amount paid to date, VAT and tax and the amount certified.
- 15.3 Every variation on a contract for building or construction works shall be authorised in writing by the appropriate Head of Service/Supervising Officer or other responsible officer nominated by him/her in writing for that purpose. A copy of the priced variation shall be forwarded to the Head of Resources promptly.
- 15.4 Changes which result in an increase in the amount of an accepted tender or estimate by 10% or £50,000 whichever is the lower, shall be reported to the relevant Policy Committee as soon as possible with an estimate of the probable new cost.
- 15.5 The final certificate on a contract or accepted estimate shall not be issued by the appropriate Head of Service until he/she has produced a detailed statement of account (the final account) together with such vouchers and documents as the Head of Resources may require relating to prime cost items, contingencies and provisional sums and particulars of additions and omissions, and the Head of Resources shall have audited the amount to be certified.
- 15.6 The Head of Resources shall to the extent he/she considers necessary examine final accounts and shall be entitled to make all such enquiries and receive such information and explanation in order to be satisfied as to the accuracy of the accounts.
- 15.7 Contracts which exceed the approved contract sum by more than 5% must be submitted, after agreement of the account, to the Policy Committee within three months to explain the reasons for the additional costs.

15.8 The duties of the Head of Service under this Rule shall be exercisable by any qualified, authorised Architect, Engineer or Surveyor when employed by the Council as a Consultant, where the circumstances require it when approved in the consultancy terms (or contract).

16. NOMINATED SUB-CONTRACTS

16.1 In these Procedure Rules any reference to a contract shall, where appropriate, also be taken to include a sub-contract.

16.2 The appropriate Head of Service or person nominated by him/her shall, after advertising the procurement in accordance with Rule 1.8.2 , regardless of the value of the sub-contract, be authorised to nominate to the main contractor the person/organisation whose tender or quotation is, in his/her opinion, the most economically advantageous tender.

16.3 The terms of the invitation shall require an undertaking by the tenderer that if he/she is selected he/she will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his/her obligations under the main contract in relation to the work or goods included in the sub-contract.

17. APPOINTMENT OF CONSULTANTS

17.1 The appointment of any Architect, Engineer, Surveyor or other Consultants will be in accordance with the expenditure levels defined in Procedure Rules 6,7 or 8.

17.2 Consideration should be given to using framework agreement contracts for business, professional and ICT consultancy services. See Compliance 1.5.

17.3 All consultancy commissions are to be defined by written agreement, the form being approved by the Head of Corporate Services.

17.4 Commissions can also be awarded using official Derbyshire Dales District Council letters incorporating an original signature from an appropriately authorised officer.

17.5 All consultancy bids are required to be evaluated in accordance with the consultancy evaluation criteria defined in the invitation to bid.

17.6 A tender other than the most economically advantageous tender may only be awarded under a commission after the relevant Policy Committee has considered a report on the matter.

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

18. EXTERNAL SUPERVISING OFFICERS

It shall be 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 he/she shall comply with Contract Standing Orders and Financial Regulations as if he/she were a Head of Service of the Council.

19. SPECIFICATION OF GOODS, MATERIALS AND WORKMANSHIP

Wherever possible, Contracts shall require goods and materials used in their execution and all workmanship to be in accordance with a specified European Standard or British Standard implementing a European Standard. Only if no European Standard exists should a British or other Equivalent Standard be stated.

20. EXCEPTION FOR SALE OF LAND, BORROWING MONEY AND EMPLOYMENT OF OFFICERS

These Procedure Rules shall not apply to contracts for the purchase or sale of land or of any interest therein, for the lending or borrowing of money, or for the employment of any whole-time or part-time officer or servant.