

APPENDIX 1

Draft Contracts Procedure Rules

1. Compliance

1.1 Every contract entered into by the Council shall be entered into pursuant to or in connection with the Council's functions and shall comply with:

- (a) all relevant statutory provisions;
- (b) the relevant European procurement rules (i.e. the EC Treaty, the general principles of EC law and the EC public procurement directives implemented by the UK Regulations);
- (c) the Council's Constitution including these Contracts Procedure Rules, the Authority's Financial Regulations and Financial Procedure Rules and Appendix 2- Responsibility for functions; and
- (d) the Authority's corporate priorities, Corporate Strategy , Corporate Procurement Strategy and other policies.

1.2 The highest standards of probity are required of all officers and members involved in the procurement, award and management of Council contracts. It is essential to maintain effective audit trails at all stages throughout the procurement procedure particularly where approval or agreement is required.

1.3 As a general rule members and officers must not accept from contractors or potential contractors or from any firm or organisation with whom the Council has had, is having or may have any dealings of any kind –

- (a) any gift (other than an inexpensive seasonal gift such as a calendar or diary for use in the office); or
- (b) any hospitality without the written authorisation of a Service Head and members and officers should comply with the Council's Code of Conduct in this respect.

1.4 Service Heads must immediately enter in a register kept for this purpose by the Council particulars of –

- (a) any gift (including how it has been returned to the giver or otherwise disposed of e.g. donated to the Mayor for charitable purposes) ;and
- (b) any hospitality.

1.5 Hospitality includes drink, meals, entertainment, overnight accommodation, travel and holidays, but does not include a lift in a private or company car or a taxi or refreshments in the course of office duty (e.g. a working lunch).

1.6 All staff must enter in their own departmental register:

- (a) any gift (including how it has been disposed of); and
- (b) any hospitality.

1.7 Service Heads are responsible for the maintenance of the hospitality register for their service area.

2. Procurement Plan

2.1 For each financial year, the Council shall agree a Procurement Plan setting out its current contracts and contracts to be procured for the forthcoming three financial years.

2.2 At the beginning of each financial year, the Council shall publish a PIN in the OJEU listing the above threshold (See Appendix 1) contracts for services and supplies which it expects to procure for that financial year. In relation to contracts for works, the Council shall publish a PIN in the OJEU when the works are approved.

2.3 To achieve 2.1 and 2.2 above Service Heads must ensure that the Corporate Procurement Officer is notified in writing prior to the end of the financial year of contracts planned for the next three years.

3. Delegated Authority

3.1 Any procurement carried out on behalf of the Council may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Constitution Appendix 2 Responsibility for Functions.. Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge appropriate to the task. Officers shall be informed by his/her Service Head, in writing, of the extent of any delegated authority and any applicable financial thresholds for each procurement.

3.2 Within approved budgets and in accordance with the Annual Procurement Plan where applicable, Authorised Officers may authorise members of their staff to place orders against Framework Agreements which have been entered into by the Council.

3.3 Any contracts awards above £75,000 or those which involve any potential transfer of the Council's employees to a Supplier shall be referred to the Executive Cabinet for a decision.

4. Exempt Contracts

4.1 The following contracts are exempt from the requirements of these Contracts Procedures Rules:

- (a) individual agency contracts for the provision of temporary staff (The arrangements with staffing agencies, however, should be subject to a competitive procurement process in accordance with these Contracts Procedure Rules);
- (b) employment contracts and
- (c) contracts relating solely to disposal or acquisition of an interest in land.

5. Pre-Procurement Procedure

5.1 Before commencing a procurement, it is essential that the Authorised Officer leading the procurement has identified the business need and fully assessed any options for meeting those needs. Consideration shall be given to the Council's Corporate Procurement Strategy as appropriate.

5.2 Before undertaking a procurement the Authorised Officer shall:

- (a) consider all other means of satisfying the need (including recycling and reuse where appropriate);
- (b) prepare an estimate of expenditure in accordance with Rule 6;
- (c) establish a business case for the procurement;
- (d) for high value, complex, service procurements complete the Council's Options Appraisal Model in accordance with Appendices A and B of the Council's Corporate Procurement Strategy;
- (e) for high value, complex procurements complete a Procurement Risk Register;
- (f) consider whether there is an appropriate Framework Agreement that should be used;

The level of resource and detail deployed in carrying out the requirements of 5.1 and 5.2 shall be appropriate to the nature and the value of the Procurement.

6. Estimating the Contract Value

6.1 Contract values should be calculated exclusive of VAT in accordance with the Regulations, even when the Regulations are not applicable for consistency. Where contracts are of a regular nature, 12 months expenditure of the commodity should be aggregated to identify which procedure should be followed. For a period (specified term) contract, the value of the contract shall be the value of the full contract period, or, where the contract is for an indefinite period, or where its term cannot be defined, the monthly value multiplied by 48. The Council should make the best use of its purchasing power by aggregating purchases wherever possible. Particular supplies, services or works shall not be split in an attempt to avoid the applicability of these contract Procedure Rules or the Regulations.

6.2 If, following calculation of the estimated value, the intermediate route (below £75,000) is selected, and, after evaluating in accordance with the evaluation criteria, the preferred offer is valued at over £75,000, then the matter shall be referred to the Director of Legal Services for further advice. The Director of Legal Services shall be given full details including how the estimated value was calculated, the amount of the estimated value, the value of all quotations received and the evaluation model applied leading to selection of the preferred offer.

6.3 If, after following the intermediate route, some of the quotations received are valued at over £75,000, but the preferred quotation is less than £75,000, then the preferred quotation may be accepted in accordance with these Contracts Procedure Rules.

7. Low Value Procurement: Below £10,000

7.1 Officers with appropriate delegated authority shall, on behalf of the Council, procure works goods and services with an estimated value of below £10,000. Service Heads are responsible for ensuring that best value is achieved and that the arrangements made secure the best available terms to the Council. A written or electronic quotation shall be obtained from the Supplier before a formal purchase order can be issued. The purchase order form shall specify the services, supplies or works to be provided and set out the price and terms of payments. Any appropriate Framework Agreements in place shall be used regardless of value, provided the standing order requirements in relation to delegated authority are met. An effective audit trail shall be maintained in compliance with Rule 1.2.

8. Intermediate Value Procurement: £10,000 to £75,000 (Quotations)

8.1 For procurements valued over £10,000 but at or below £75,000 at least 3 written Request For Quotations shall be invited before a formal purchase order is issued specifying the supplies, services or works to be provided.

8.2 Unless considered inappropriate, quotation documentation shall be made available on the Council's Website (Current Contract Opportunities).

8.3 Where practicable completed quotations shall be submitted electronically to the Council's secure folder set up specifically for this purpose. Further information may be obtained from the Corporate Procurement Team. Quotations which are submitted in hard copy shall be submitted to the Corporate Procurement Officer in a plain sealed envelope, clearly marked with the contract title. The Corporate Procurement Officer will arrange for all quotations to be opened at one time in the presence of 2 officers and for the results to be recorded in a Quotation register.

8.4 The Authorised Officer must notify the Corporate Procurement Officer of the eventual outcome of the procurement exercise for entry into the Contracts Register.

8.5 Where the risk in a specific procurement is perceived to be high, then that procurement shall be treated as a High Value Procurement.

8.6 Any procurement that may involve a transfer of staff shall be treated as a High Value Procurement.

9. High Value Procurements: Above £75,000 (Tenders)

9.1 All high value procurements shall be advertised (and quotation documents made available as portable document files (pdf) on the Council's website (Current Contract Opportunities), a trade journal and where considered appropriate, the local press.

9.2 For procurements valued at above £75,000, a contract award procedure shall be conducted in accordance with these contract procedure rules. The outcome of the contract award procedure shall be recorded in the Contracts Register.

9.3 For all procurements valued at above £75,000 prior approval of the proposed

contract award procedure including the evaluation criteria to be applied, shall be sought from the relevant Executive Cabinet Portfolio Member

9.4 One of three contract award procedures shall be used as appropriate for the particular procurement i.e. open, restricted or negotiated. (See 11, 12 and 13 below)

10. Contracts Subject to the Regulations: Above the EU Threshold

10.1 Where an estimated value of a contract exceeds the current EU threshold then the contract shall be tendered in accordance with the Regulations. A Summary of the current thresholds and timescales under the Regulations is included at Appendix 1 of these Contracts Procedure Rules.

Under the Regulations, the contract may be tendered under the open, restricted or, in exceptional circumstances exhaustively set out in the Regulations, the negotiated procedure. A contract notice in the prescribed form shall be published in the OJEU in order to invite tenders for or expressions of interest for Part A Services contracts and supplies and works contracts subject to the rules. Contracts for Part B Services do not need to be advertised in OJEU. However, the rules relating to technical specifications and the publication of contract award notices shall be observed for all contracts as shall the EC Treaty and the general principles of EC law including non-discrimination, equal treatment, proportionality and transparency.

10.2 The Regulations set out the minimum timescales for receipt of expressions of interest and tenders (bids for the negotiated procedure). Where the Council has published a Prior Information Notice announcing its forthcoming contracts for the year ahead, then the Council may rely on reduced timescales if appropriate.

11. Open Procedure

11.1 The Council publishes a notice. The notice shall contain details of the proposed contract including the last date and time for receipt of tenders. All contractors responding to the notice are invited to tender. Tender documents must be supplied to all companies who have expressed an interest within 6 working days from the receipt of their request provided the request is received within the date/time specified for expressions of interest if one is prescribed in the contract notice and any fee specified in the notice has been paid. Any requests from prospective suppliers received after the due time/date in the contract notice should not be provided with tender documents. A record should be made of all requests received and tender documents issued including dates.

11.2 If publication of a notice in the Official Journal of the European Union is not required then the notice shall be published on the Council's website, a trade journal, and, where considered appropriate, the local press, in order to target the relevant market for the particular contract. The advertisement shall contain details of the proposed contract and the relevant closing dates..

12. Restricted Procedure

12.1 The Council publishes a notice. Only those suppliers selected by the Council are invited to tender. Suppliers shall be selected on the basis of published pre-qualification criteria.

12.2 If publication of a notice in OJEU is not required the advertising requirements are the same as in the open procedure except that the notice shall state that a restricted procedure is being used. If the Regulations apply a minimum of five suppliers shall be invited to tender and in all other cases a minimum of three shall be invited to tender.

13. Negotiated Procedure

13.1 The Council publishes a notice. Only those suppliers selected by the Council are invited to negotiate. Suppliers are selected on the basis of published pre-qualification criteria.

13.2 If a publication of a notice in the OJEU is not required, the advertising requirements are the same as in the restricted procedure, except where the procurement falls within one of the exemption provisions of the Regulations. Any notice shall state that a negotiated procedure is being used.

13.3 A minimum of three suppliers should be invited to negotiate following publication of a notice.

13.4 At least two officers, at least one of whom shall be a Service Head or their authorised representative, shall be present at all times during the negotiations.

13.5 The Authorised Officer shall keep proper records of all negotiations and these shall be signed as such by all participants.

13.6 At all times during the negotiations, the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.

13.7 The negotiated procedure is not recommended for contracts valued at below the EU thresholds. The negotiated procedure will only be applicable in limited circumstances, usually where the Council is unable to ascertain prior overall pricing of the services or is unable to draw up specifications which are sufficiently precise.

13.8 Reliance on this flexible procedure is justified by the exceptional circumstances in which the contract has to be awarded and so is allowed only in the exceptions listed in the Directive and Regulations.

14. Pre-qualification

14.1 The Council shall only enter into a contract with a Supplier if it is satisfied as to the Suppliers –

- (a) eligibility;
- (b) financial standing.
- (c) technical capacity.

14.2 Technical capacity includes the Supplier's quality management systems including human resources, health and safety and environmental management systems where relevant to the performance of the contract.

14.3 Any procurements subject to the Regulations shall be in full compliance with those Regulations.

15. The Invitation to Tender

15.1 The ITT or ITN shall include details of the Authority's requirements for the particular contract including:

- (a) a description of the services, supplies or works being procured;
- (b) the procurement timetable including the tender return date and time, which shall allow a reasonable period for the applicants to prepare their tenders;
- (c) instructions for completing and returning the tender documentation
- (d) notification that tenders received after the closing date and time will not be considered
- (e) a specification and instructions on whether any variants are permissible;
- (f) the Council's terms and conditions of contract
- (g) the evaluation criteria including any weightings as considered appropriate;
- (h) in procurement processes for partnerships, a requirement on bidders to submit optional priced proposals for the delivery of specified community benefits which are relevant to the contract and can add value to the Community Plan
- (i) pricing mechanism and instructions for completion;
- (j) whether the Council is of the view that TUPE may apply;
- (k) form and content of method statements to be provided
- (l) in procurement processes for partnerships, inviting bidders to demonstrate their track record in achieving value for money through effective use of their supply chain, including the use of small firms; this should continue to be examined as part of contract management.
- (m) rules for submitting of tenders and whether tenders may be submitted electronically;
- (n) any further information which will inform or assist tenderers in preparing tenders.

16. Submission and Opening of Tenders

16.1 Tenders shall be submitted in accordance with requirements set out in the ITT or ITN. Any tenders received shall be addressed to the Corporate Procurement Officer in a sealed envelope clearly endorsed with the word "Tender" followed by the subject matter to which it relates. Tenders shall be date and time stamped on receipt and kept in a safe place by the Corporate Procurement Officer and remain unopened until the time and date specified for its opening. No tenders received after the specified date and time for receipt of tenders shall be accepted or considered by the Council.

16.2 Tenders shall be opened by a member of the Corporate Procurement Team and a representative from the procuring unit. Upon opening a summary of the main terms of the submission received shall be recorded in the permanent register of tenders, together with the name of the Tenderer and the date and time of tender opening.

16.3 The closing date for the receipt of tenders may be extended, in appropriate circumstances, at the discretion of the Director of Legal Services

17. Electronic Tendering

17.1 Where appropriate, and unless the restricted procedure is used, RFQ's and ITT's shall be posted on the Council's website to allow electronic downloading of the documents by prospective bidders.

The Council is considering the adoption of an e-tendering solution. If an e-tendering solution is implemented, the following Clause 17.2 will apply:

17.2 RFQs and ITTs may be transmitted by electronic means. Quotations and tenders may be submitted by electronic means provided that:

- (a) evidence that the transmission was successfully completed is obtained and recorded and;
- (b) electronic tenders are kept in a separate secure folder under the control of the Corporate Procurement Officer which is not opened until the deadline has passed for receipt of tenders.

18. Tender Evaluation

18.1 Tenders subject to the Regulations shall be evaluated in accordance with the relevant regulations and the evaluation criteria set out in the ITT. All other tenders shall be evaluated in accordance with the evaluation criteria which was notified to tenderers in the ITT. All contracts, except works contracts where lowest price was predetermined to be the appropriate criteria, shall be awarded on the basis of the offer which represents Best Value for Money to the Council. The evaluation criteria shall be predetermined and listed in the ITT documentation, in order of importance

In addition, the criteria shall be strictly observed at all times throughout the contract award procedure by any officer involved in the tender evaluation. The Authorised Officer shall keep comprehensive records of the evaluation exercise and the final selection record shall be signed by the lead officers of the evaluation team.

19. Post Tender Negotiation

19.1 Where a procurement is conducted pursuant to the Regulations through either the open or restricted procedures no post tender negotiations are permitted. The Council may seek clarification from Suppliers where appropriate.

19.2 At all times during the procurement (whether subject to the Regulations or not), the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.

20. Evaluation Team

20.1 For each contract subject to the Regulations or above the **£75,000** threshold, the Authorised Officer shall form an Evaluation Team with responsibility for evaluating

tenders. Advice on tender evaluation can be found in the Council's Staff Guide to Procurement published on the intranet, or, from the Corporate Procurement Team.

21. Bonds, Guarantees and Insurance

21.1 For high value procurements, the Evaluation Team shall consider as part of its prequalification assessment and evaluation process whether a performance bond and/or a parent company guarantee (if applicable) shall be required from the preferred Supplier.

21.2 The Evaluation Team shall consider the appropriate type (employee liability, public liability, professional indemnity, etc.) and level of insurance requirements for each contract.

22. Awarding Contracts

22.1 The Council shall only award a contract where this is the Best Value for Money.

22.2 A contract may only be awarded by an officer with the requisite delegated authority to award contracts. The Authorised Officer should ensure that the budget holder responsible for the contract has sufficient funds in place to sustain the contract prior to award. For all procurements valued at above £75,000 the decision to award a contract shall be made by the Executive Cabinet or relevant Executive Cabinet Portfolio Member. A Tender acceptance pro-forma must be completed for all procurements above £75,000.

23. Debriefing

23.1 The Authorised Officer responsible for each procurement shall provide a debriefing to unsuccessful tenderers on written request. Where the Procurement is subject to the Regulations, the Council must, within 15 days of a written request, inform any contractor who was unsuccessful, of the reasons why they were unsuccessful, and, if an admissible tender was submitted, the characteristics and relative advantages of the successful tender. The name of the person awarded the contract (subject to certain exceptions e.g. commercial confidentiality) must also be provided.

24. Contract Award Notice

24.1 Where a contract has been tendered pursuant to the Regulations, the Council shall publish a contract award notice in OJEU no later than 48 days after the date of award of the contract. Contract award notices are not required for Part B Services except where the Council published a contract notice prior to commencement of the procurement.

25. Letters of Intent

25.1 Letters of intent shall only be used in exceptional circumstances and, by prior agreement with the Director of Legal services, as follows:

(a) Where a Supplier is required to provide services, supplies or works prior to formal written acceptance by the Council; or

(b) Where the Council's form of tender does not include a statement that until such time as a formal contract is executed, the Council's written acceptance of a tender shall bind the parties into a contractual relationship

26. Contract Terms and Conditions

26.1 Contracts shall be entered into on the Council's terms and conditions, which shall be included with each purchase order and invitation to tender or negotiate. Exceptions to this rule must be approved by the Director of Legal Services.

26.2 Where contracts are subject to the Regulations, the rules relating to technical specifications shall be followed and any reference to a technical standard, make or type shall be prefaced with the words "or equivalent". This requirement applies to both Part A and Part B Services.

27. Execution of Contracts

27.1 Any contracts valued at above £75,000 shall be executed as a deed unless otherwise agreed with the Director of Legal Services. All other contracts may be signed by an officer with appropriate delegated authority.

27.2 Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Director of Legal services

28. Records of Tenders and Contracts/ Contracts Register

28.1 The Authorised Officer with delegated authority in respect of a particular procurement shall maintain a list of all tenders received.

28.2 Each Chief Officer shall maintain his/her own register of all other contracts entered into by his/her department.

28.3 A Contracts Register of all contracts awarded above £75,000 shall be maintained by the Corporate Procurement Officer. A further register of intermediate value (£10,000 to £75,000) contracts will also be maintained by Corporate Procurement. These Contracts Registers may be maintained electronically.

28.4 For every individual contract a Contracts file shall be maintained.

28.5 Authorised Officers shall notify the Corporate Procurement Officer of all intermediate and high value contract awards for entry into the appropriate Contracts Registers.

29. Approved Lists

29.1 The Council may maintain approved lists of Suppliers that meet its pre-qualification requirements. Quotations and tenders for contracts that are not subject to the Regulations may be invited from Suppliers included on an approved list. Where the Authority intends to use an approved list for services, supplies or works contracts, the

selection of which contractors should be included on such list should itself be advertised.

30. Nominated and Named Sub-contractors

30.1 If a sub-contractor, supplier or sub-consultant is to be nominated or named to a main contractor quotations or tenders must be invited in accordance with these Contracts Procedure Rules and the terms of the invitation shall be compatible with the main contract.

31. Framework Agreements

31.1 Framework Agreements are flexible arrangements that enable the Council to procure goods, works and services for low risk, low value requirements. Initially tendered in accordance with these Contracts Procedure Rules, framework agreements allow the Council to make specific purchases (call-offs) throughout the term of the agreement, without the need to conduct further tendering exercises.

31.2 Where the Council has entered in to a framework agreement through procurement or is able to call off from existing framework agreements procured by central government agencies, then the Council may benefit from using those agreements without entering into a separate procurement.

32. Joint Procurement

32.1 Any joint procurement arrangements with other local authorities or public bodies including membership or use of Purchasing Consortia shall be approved by the Director of Finance and the Director of Legal Services prior to the commencement of any procurement on behalf of the Council.

32.2 Approval shall only be given where the joint procurement arrangement assures compliance with the Regulations and the Council's Policy Framework for Partnership Working.

33. Procurement by Consultants

33.1 Any consultants used by the Council shall be appointed in accordance with these Contracts Procedure Rules. Where the Council uses consultants to act on its behalf in relation to any procurement, then the Authorised Officer shall ensure that the consultants carry out any procurement in accordance with these Contracts Procedure Rules. No consultant shall make any decision on whether to award a contract or who a contract should be awarded to. The Authorised Officer shall ensure that the consultant's performance is monitored

34. Statistical Returns

34.1 Each year the Council shall make a statistical return to the OPDM for onward transmission to the European Commission concerning the contracts awarded during the year under the European rules.

34.2 Corporate Procurement is responsible for this statistical return and will make the necessary arrangements for information to be collected annually. Chief Officers shall comply with these arrangements.

35. Contract Extension

35.1 Any contract may be extended in accordance with its terms. Where the terms do not expressly provide for extension, contracts subject to the Regulations may be extended by negotiation in accordance with the rules set out in the Regulations. Such extension shall be notified to the Executive Cabinet. Any extension exceeding £75,000 in value shall require the approval of the Executive Cabinet or relevant Executive Cabinet Portfolio Member.

35.2 Other contracts may be extended by negotiation in the same circumstances. The Authorised Officer shall always be satisfied that extension will achieve Best Value for Money and is reasonable in all the relevant circumstances. Such extension shall be notified to the Executive Cabinet

36 Termination of Contract

36.1 For any contract exceeding £75,000 in value, termination shall be approved by the Executive Cabinet. Contracts of a lesser value may be terminated early by agreement prior to the expiry date or in accordance with the termination provisions set out in the contract. Legal advice should be sought as appropriate.

37 Waivers of Contract Procedure Rules

37.1 Waivers of any of these contract Procedure Rules shall only be given in exceptional circumstances and only with the prior written approval of the Director of Legal Services and the Director of Finance. If this is considered necessary, the appropriate Service Head must notify the Corporate Procurement Officer, in writing, via the Contracts Procedure Rule Waiver Form, which can be downloaded from the Procurement area on the intranet. On receipt of a fully completed form the Corporate Procurement Officer will record the request and seek the approval of the Director of Legal Services and the Director of Finance. Waivers may not be made retrospectively.

38 Review and Amendment of Contracts Procedure Rules

38.1 These Contracts Procedure Rules shall be reviewed and updated on a regular basis, not less than annually. Amended Contracts Procedure Rules shall be agreed and adopted by the Council

Definitions

“Annual Procurement Plan”

A plan identifying major projects so that appropriate resources can be identified. It also provides a basis for PINs and other information provided to suppliers to give advance notice of bidding opportunities;

“Authorised Officer”

A person with appropriate delegated authority under Appendix 2 of the Constitution-Responsibility for Functions to act on the Council’s behalf;

“Council”

“Council” means Chorley Borough Council

“Best Value for Money”

The optimum combination of whole life costs and benefits to meet the customer’s requirement. Such term equates to the EU procurement requirement “most economically advantageous offer”;

“Contracts Register”

A register held and maintained by the Corporate Procurement Officer containing details of contracts entered into by the Authority

“Framework Agreement”

An agreement which allows the Council to call off from a supplier to provide supplies, services or works in accordance with the terms of the agreement. The Framework Agreement itself usually constitutes a non binding offer with no obligations on the Authority to call off from the Supplier. If the Council calls off from the Supplier a binding contract comes into being. A Framework Agreement can be a binding agreement where it is executed as a deed;

“ITN”

Invitation to negotiate;

“ITT”

Invitation to tender;

“OJEU”

Official Journal of the European Union;

“PIN”

Prior Information Notice for publication in OJEU;

“Regulations”

The UK regulations implementing the EC public procurement directives;

“RFQ”

Request for quotations;

“Supplier”

Any person or body of persons providing, or seeking to provide, supplies, services or works to the Council.