

PART 6

Contract Procedure Rules

November 2015

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<u>SECTION 1: COMPLIANCE, PURPOSE AND SCOPE OF THE RULES</u>

1. COMPLIANCE

1.1 Compliance with these Rules is a requirement not discretionary. Every officer involved in buying goods or services or ordering building or engineering works must be aware of the Rules and comply with them. Failure to do so could result in disciplinary action.

1.2 Officers undertaking procurements for goods, services or works of £5,000 and above shall comply with these rules and have regard to the procurement guidance available on iDerby. In case of doubt advice must be sought from the Procurement Unit before proceeding.
(See *Rule 8.3*)

2. GUIDANCE

2.1 Further information on procurement generally is given in the Council's Procurement Code and throughout this document links are included to;

- ◆ iDerby Procurement pages
- ◆ Source Derbyshire
- ◆ Other helpful documents

2.2 In addition advice on specific procurement issues and how to apply the Rules can be obtained by contacting the Procurement Unit in the Resources Department or the Director of Legal and Democratic Services.

2.3 A flow chart has also been included at *Appendix 1* to help identify how to proceed initially.

- 2.4 Each Directorate will have at least one representative on the Procurement and Commissioning Board, members will provide a link to disseminate procurement strategy to Directorates, manage risks and resolve issues which may impact on the successful delivery of procurement and commissioning projects.

3. PURPOSE

The purpose of the Rules is to:

- ◆ achieve value for money (Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.)
- ◆ be consistent with the highest standards of integrity
- ◆ ensure fairness in allocating public contracts
- ◆ comply with all legal requirements
- ◆ support the Council's Procurement Strategy
- ◆ prevent fraud and corruption
- ◆ protect the interests of Council employees

4. WHEN THESE RULES APPLY

- 4.1 These Rules apply to the following types of procurement on behalf of the Council:

- ◆ purchasing any goods or materials, including information technology (*See Rule 46*)

- ◆ purchasing of any services, including consultancy services (*See Rule 45*)
- ◆ hiring, renting or leasing of any goods or equipment (*See Rule 49*)
- ◆ ordering the carrying out of building or engineering works (*See Rule 51*)
- ◆ purchasing any goods or services using external funding (*See Rule 50*)

4.2 **Schools:** Are covered by the Rules but as modified or extended under the Council's Scheme for Funding for Schools. They are entitled, but not required, to use the Corporate Contracts. Academies are not covered by these rules.

All publicly funded schools are subject to EU and UK Public Contract Regulations.
(*See Rule 12*)

4.3 **Partnership Arrangements:** These Rules will apply where the Council is part of a partnership (e.g. Derby Community Safety Partnership) and it is the lead or accountable body and/or goods, services or works are being ordered in its name.

5. EXEMPTIONS

5.1 The Rules do **NOT** apply to:

- ◆ contracts of employment with individual employees
- ◆ land transactions (sales, purchases, leases, licences, easements etc.)
- ◆ performing artists contracts
- ◆ contracts entered on behalf of individual users of Adult Social Care Services who have been awarded personal budgets to support their social care needs.

- ◆ goods and services which a school is obliged to purchase from a Contractor under the terms of a Private Finance Initiative (PFI) contract where the competition requirement has already been satisfied.
- ◆ provision of grant funding (*but contracts with voluntary organisations for the supply of services, goods and works are covered by the Rules*).

5.2 *Exemption is only provided to these rules below the EU Threshold. If the total value is over the EU Threshold for these services then they must comply with the Public Contract Regulations 2015 (*See Rule 15*)

- ◆ *contracts for the placement of individual clients by Social Services until such time as formal contracting arrangements are in place.
- ◆ *commissioning of post 16 educational provisions which is covered by the Young People's Learning Agency National Funding Formula and Commissioning Framework together with associated audit and quality assurance arrangements.

6. INTERPRETATION

6.1 The Director of Legal and Democratic Services will advise on the implementation and interpretation of the Rules and his/her views will be binding.

SECTION 2 - REQUIREMENT TO OBTAIN QUOTES OR TENDERS

7. COMPETITION REQUIREMENTS

7.1 The nature of the procurement process to be undertaken will depend on the estimated total value of the contract.

(See Rule 16.1)

7.2 Where the estimated total value of the proposed contract is within the values the first column the award procedure in the second column must be followed, unless one of the alternative methods to Tendering is chosen *(See Section 4 – Alternatives To Tendering)* or a waiver is obtained *(See Rule 57)*.

TOTAL VALUE	AWARD PROCEDURE
Below £5,000	<p>* Must use existing relevant Corporate Contract if there is one and if not get at least one Quote and then place an official order or use Purchasing (VISA) Card. See Purchasing Card Procedures on iDerby.</p> <p>* <i>Good practice to get three Quotes and include at least one local supplier if possible.</i></p>

<p>From £5,000 up to £25,000</p>	<p>Must, before placing an order get at least three written Quotes* (using standard form quotation on iDerby or other form of quotation approved by the Head of Procurement). At least one quotation should be requested from a local supplier where possible. The Procurement Unit will advise on local suppliers on request.</p> <p>* Directors may waive this requirement but must inform the Head of Procurement in writing of their reasons. (<i>See Rule 57.14</i>)</p>
<p>From £25,000 up to the EU threshold</p>	<p>Must Tender by Public notice inviting Tenders. ("Open Procedure"; see Rule 20)</p> <p>NB. The facility to use the restricted procedure for below EU threshold procurements has been withdrawn under the Public Procurement Regulations 2015</p> <p>The Public Procurement Regulations 2015 mandate the advertising of contract opportunities over £25,000 using the 'Contracts Finder' website.</p>

Above EU Threshold
(See Rule 15)

Must tender in accordance with EU Procedures. The Procurement Unit must be involved in the process and advice sought.

<u>SECTION 3 – OFFICERS', DIRECTORS' AND AGENTS' ROLES AND RESPONSIBILITIES</u>
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8. OFFICERS

- 8.1 Each Directorate's Scheme of Delegation should identify those job roles which are required and authorised to procure goods, services or works of £5,000 or over. The Scheme of Delegation is a written scheme for each Department which identifies which officers are authorised to procure goods, works or services and the extent of their authority.
- 8.2 Budget Holders and Managers of post holders in identified job roles should ensure that the post holder follows Procurement Guidance available on iDerby or seeks advice/guidance from the Procurement Unit prior to commencing procurement processes and that they are aware of their obligations under these rules.
- 8.3 Post holders of roles identified in 8.1 should ensure they refer to Procurement guidance on iDerby and seek advice from the Procurement Unit before commencing any element of a procurement process about which they are unsure.

9. DIRECTORS

- 9.1 Directors, delegating as necessary to Heads of Service, must take all reasonable measures to ensure that procurement carried out by their department complies with these Rules and that:

9.2 Training

- 9.2.1 Adequate training in these Rules, provided or approved by the Procurement Unit, is given to:

- ◆ All holders of post identified under 8.1
 - ◆ The Line Managers of holders of posts identified under 8.1
 - ◆ Heads of Service
 - ◆ Other Officers with procurement responsibilities
 - ◆ Tender Receipt Officers
- (See Rule 27.2)

9.2.2 The level of training to be given will depend on the officers' responsibility for and involvement in procurement and may, if approved by the Head of Procurement, be provided on line.

9.3 **Contract Register**

9.3.1 A Contract Register of all contracts of £25,000 or over is set up and maintained by the Procurement Unit. Officers undertaking procurements must ensure the award details are forwarded to the Procurement Unit for inclusion on the register.

(See Rule 32.2.1)

9.4 **Quotes/Tender Receipt Officers and Register**

9.4.1 Appropriate arrangements in place for the receipt and opening of Quotes and Tenders between £5,000 to £25,000.

(See Rule 27)

9.4.2 Tenders with a value estimated over £25,000 must be managed electronically using the corporate procurement e-tendering system. The Procurement Unit will provide guidance and support in the use of this system.

9.4.3 In exceptional circumstances when a manual paper based return is required this should be addressed to the Business Support Hub who will responsible for the receipt and safekeeping of the

tender responses. The Officer issuing the tender must liaise with the Business Hub to schedule the handing over of the tender following the receipt deadline and follow the guidance in *APPENDIX 5. Reasons for the justification of requiring a manual paper based return must be recorded (See Rule 27.4.2)*

9.5 Management Review

9.5.1 The Directorate Management Team should meet:

- ◆ Quarterly to consider contracts of £75,000 and over that need letting or re-letting and who will be responsible for them and the timetable for doing so. The Strategic Procurement Board member for the Directorate will provide this information to the Procurement Unit for inclusion in procurement plans.
(See Rule 9.3)
- ◆ Quarterly to review its contracts listed on the Contract Register to ensure that effective contract management is undertaken. (See Rule 56)
- ◆ At least annually to review the operation for the receipt, safekeeping & opening of tenders to ensure it is in compliance with *Rule 27*.
(See Rule 9.4)
- ◆ At least annually to review the designation of job roles required to undertake procurements for Goods, Services or Works under the Departmental Scheme of Delegation.
(See Rule 8)

9.6 Directorate Procurement Link

9.6.1 To appoint at least one officer to sit on the Procurement and Commissioning Board , who must be at least Head of Service level, whose role will include:

- ◆ Providing a primary link between the Directorate and the Head of Procurement and Procurement Unit
- ◆ raising significant procurement issues at the Department's Management Team meetings
- ◆ Ensuring that the details of job roles undertaking procurements in the Departmental Scheme of Delegation are kept up to date.
(See Rule 8.1)

10. AGENTS/CONSULTANTS

10.1 Any agent or consultant appointed to act for the Council in a procurement exercise must be required to comply with these Rules. A consultant is someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role.

SECTION 4 – ALTERNATIVES TO TENDERING

11. ALTERNATIVE PROCUREMENT METHODS: GENERAL

11.1 Before approaching the market for any supplies, services or works a Procuring Officer must establish if there are any of the following he/she could use:

- ◆ A Corporate Contract
- ◆ A Framework Agreement

12. CORPORATE CONTRACTS

12.1 The Council has Corporate Contracts which cover many items required on a daily basis such as stationery, office furniture, printing and desk top equipment.

12.2 Details of these Corporate Contracts are can be found on the procurement section of iDerby.

12.3 Corporate Contracts must be set up in accordance with these Rules but once established a product or service included in one can, subject to 12.4, be ordered from the approved supplier, using the Council's order system, without any need for Quotes or Tenders.

12.4 Where there are multiple suppliers of a product on a Corporate Contract, the Officer ordering the product must compare prices and chose the cheapest unless there are compelling reasons why not. In this instance the Procurement Unit must have been consulted.

13. DYNAMIC PURCHASING SYSTEM

13.1 A Dynamic Purchasing Systems (DPS) the A DPS is a completely electronic system which can be established for the purchase of

commonly used goods, services or works and must be limited to a maximum duration of 4 years.

13.2 A DPS allows the addition of new providers during the life of the agreement subject to them meeting the selection criteria and complying with the Service specification

13.3 The Head of Procurement will review the appropriateness of the use of a DPS and must approve its use prior to commencement of the tender process. The Procurement Unit will support the DPS tender process development in conjunction with the department requiring the service.

14. FRAMEWORK AGREEMENTS

14.1 A Framework Agreement may be set up for goods, services or works that are needed on a regular basis.

14.2 Before advertising the setting up of a new or using an existing Framework Agreement, which is not approved in 14.9, the Head of Procurement must be consulted.

14.3 Once the Head of Procurement's approval for a new Framework Agreement has been given an advertisement for inclusion in the Framework must be advertised in Source Derbyshire, Contracts Finder, and if the EU Threshold has been exceeded, Official Journal of the European Union (OJEU) as a minimum, and other publications agreed with or stipulated by the Head of Procurement.

14.4 Selection of organisations onto the Framework Agreement must follow a Tender process and be in accordance with these Rules.

14.5 The Head of Procurement following consultation with the relevant Cabinet Member should agree the use of a new Framework Agreement with the Directorate as the best procurement solution for the Council.

14.6 A Framework Agreement must not exceed four years (*See Rule 42.2*).

14.7 Where more than one Contractor is appointed to provide a service under a Framework Agreement, individual contracts may unless the Framework Agreement says differently, be awarded by using one or more of the following principles:

- ◆ by re-opening competition (further competition)
- OR
- ◆ by value (lowest price)

14.8 Any re-opening of competition to award a contract under *Rule 14.7*:

14.8.1 Must be based on the criteria used to establish the Framework Agreement and therefore can include technical expertise and capacity if these were part of that original criteria.

14.8.2 Should have an award notice published on Contracts Finder and be recorded on the Contracts Register (Check with Procurement Unit for further advice)

14.8.3 Constitutes a formal contract and will need to be signed by the authorised Officer(s) (*See Rule 36*), depending on the total value of the further competition.

14.9 Framework Agreements procured by other local authorities, public bodies or purchasing consortia, for example Crown Commercial Service (CCS) Members of the Pro 5 local government procurement consortia or East Midlands Property Alliance / Scape, may be used if the Head of Procurement and a Cabinet Member has approved their use on being satisfied that the Council can lawfully use them and that it is in the Council's interest to do so. A list of approved frameworks is available on iDerby.

14.10 The Head of Procurement will keep a record of all Framework Agreements approved under this Rule including those set up by other public bodies that are compliant and available to the Council to use.

SECTION 5 – EU PROCUREMENT

15. REQUIREMENTS AND THRESHOLDS

15.1 Contracts for the supply of goods or services or works which are estimated to be over the EU Threshold must be Tendered in accordance with the Public Contract Regulations 2015 (EU Regulations) and the Procurement Unit must be consulted and their advice taken on how to comply with the EU Regulations.

(See Rule 15.3)

15.2 The EU Thresholds change every two years and are quoted in Euro.
The sterling equivalent is recalculated on 31 December every other year.

15.3 The EU Thresholds until 31 December 2015 are:

Supplies:	€207,000	£172,514
Services:	€207,000	£172,514
Social and other specific services:	€750,000	£625,050
Works:	€5,186,000	£ 4,322,012

15.4 The thresholds relate to the estimated Total Value of the contract net of VAT, not the annual value.

15.5 Where they apply, the EU Regulations impose requirements on such matters as:

- ◆ Conduct of each stage of the procurement process
- ◆ Preliminary market consultation, including consideration of the Public Services (Social Value) Act 2012 *(See Rule 17.2)*

- ◆ where the notices relating to advertising and awarding Tenders must be placed and their contents
- ◆ minimum Tender periods (Note: can be shortened if managed electronically)
- ◆ Selection and award criteria and procedures
- ◆ Reporting and documentation (*See Rule 39.2*)

SECTION 6 – STEPS PRIOR TO SEEKING QUOTATIONS OR INVITING TENDERS

16. CONTRACT VALUE, FUNDING AND CABINET APPROVAL

16.1 Estimated Contract Value

- 16.1.1 Before seeking Quotes or Tenders for any supplies, works or services the Procuring Officer must estimate the total value of the contract. This estimate will determine what competition requirements apply under these Rules (*See Rule 7*).
- 16.1.2 A written record of the total value estimate must be kept on the file for all contracts estimated to be over £5,000.
- 16.1.3 Contracts must not be artificially divided into two or more to avoid the application of the requirements under these Rules but should be packaged to ensure value for money.
- 16.1.4 The total value or estimated total value (in money or equivalent value) for a contract is 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 for the same type of item, by aggregating the value of those transactions in the coming 12 months.
 - ◆ where the contract is for an uncertain duration, by multiplying the monthly payment by 48.

- ◆ for feasibility studies, the value of the scheme or contracts which may be awarded as a result.
- ◆ for Nominated Suppliers and Sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the Nominated Supplier or Sub-contractor.

16.2 Funding

16.2.1 A Procuring Officer must not place an order or start a formal process for letting a contract unless he/she is satisfied that expenditure for it has been included in an approved capital or revenue budget and a Procurement Approval/Use of Consultants Control Form has been completed and approved.

16.2.2 Inclusion of approved capital or revenue budgets can be demonstrated by any of the means listed in *APPENDIX 4*.

16.3 Cabinet Approval

16.3.1 Cabinet approval must be obtained before procuring any contract which has an estimated total value of £75,000 or over unless;

- ◆ it is merely a re-Tendering of a current contract with no significant change.

OR

- ◆ it is in a capital scheme previously approved by Cabinet.

17. PRELIMINARY MARKET CONSULTATIONS

17.1 Soft Market Testing

17.1.1 Prior to the issue of the Invitation to Tender or advert asking for expressions of interest the Procuring Officer may wish to know the views of potential Tenderers about the nature, level, standard and packaging of the goods or services or works to be supplied so as to best ensure competition and value for money: this is called “soft market testing”.

17.1.2 The written consent of the Head of Procurement must be given before any soft marketing testing is carried out.

17.1.3 When carrying out soft market testing the Procuring Officer must:

- ◆ make it clear to participating organisations that they will receive no preferential treatment in the Tender process.
- ◆ keep a written record in the contract file of all enquiries, responses and any related meetings.

17.2 The Public Services (Social Value) Act 2012

17.2.1 For all Services contracts which exceed the EU Threshold, Officers must consider the various matters prescribed by the Public Services (Social Value) Act 2012. Cabinet Office guidance however, recommends where appropriate following the requirements of the act for lower value services and goods and works contracts, although this is not compulsory.

17.2.2 Whilst staying within the EU Regulations, Officers must before the formal procurement process starts consider:

- ◆ How what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area and;
- ◆ How, in conducting the process of procurement, it might act with the aim of securing that improvement.

17.2.3 It is not specified who should be consulted but Officers could include service user representatives, voluntary and community groups and suppliers of the services in order to be able to shape the service required to maximise social value.

17.2.4 Further guidance on consultation principles can be obtained at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf.

Officers may wish to take account of those principles when deciding whether to consult and how to do it. The expectation is that consultations should be “digital by default” and carried out on line if at all possible but authorities should consider the types of services they are looking to procure and the best way of

getting the views of potential users who may not be familiar with modern IT.

- 17.2.5 Evidence gathered should be retained in case the Council is required to provide it at the request of the Cabinet Office Mystery Shopper Scheme. (*See Rule 39.2*)

18. CHOICE OF TENDERING PROCEDURE

18.1 Where there is a requirement in the Rules for a contract to be Tendered (*See Rule 7*) the following options are available:

18.2 **Open Procedure:** This is a one stage procedure where the contract is advertised and any interested organisation can obtain further information and submit a Tender. This procedure is not recommended where a large response is anticipated and/or detailed assessment of the bids will be necessary.

18.3 **Restricted Procedure:** This is a two stage procedure where firstly the contract is advertised and anyone who expresses an interest must complete a Pre-Qualification Questionnaire (PQQ). These are then evaluated and a number of selected organisations will be shortlisted and Invited to Tender (ITT).

18.3.1 The restricted procedure should not be used for procurements below the EU threshold as Pre-Qualifications Questionnaires are not permitted under the EU threshold (*See Rule 16.3*).

18.3.2 All procurement documents (PQQ and ITT) must be ready and available at the point of advertising the opportunity. (*See Rule 22 and 23*)

18.4 **Negotiated Procedure:** This procedure can be used where the nature of the service is such that specifications cannot be drawn up with sufficient precision to permit the award of the contract using the open or restricted procedures. This is especially useful for “intellectual services”. It can only be used with the written consent of the Head of Procurement.

18.5 Competitive Dialogue: This procedure is available where the Council is unable to define the financial, legal or technical elements of the project. It is really intended for complex procurement exercises such as Private Finance Initiatives (PFI). It can only be used with the consent of the Head of Procurement.

18.6 Innovation Partnership: This procedure is available if the purchaser has a need for an innovative product, service or works that cannot be met by purchasing products, services or works already on the market. It can only be used with the consent of the Head of Procurement.

18.7 Light Touch Procedure: This procedure is available when the services procured fall under specific Common Procurement Vocabulary codes, the general description for these services are:

- ◆ Health social and related services
- ◆ Administrative social, educational healthcare* and cultural services
- ◆ Compulsory social security services
- ◆ Benefit services
- ◆ Other community, social and personal services
- ◆ Religious services
- ◆ Hotel and restaurant services
- ◆ Legal services (not litigation / advocacy which is exempt)
- ◆ Prison related services

18.7.1 This procedure allows for more flexibility to the requirements governing procurements over the EU Threshold for Social and other specific service (*See Rule 15.3*).

18.7.2 The Procurement Unit must advise whether the service is eligible for this procedure and provide guidance on how to use this procedure.

19. ADVERTISING CONTRACTS

19.1 Where a contract's estimated Total Value is £25,000 or over the contract has to be advertised in accordance with these Rules. It must be placed on Source Derbyshire and Contracts Finder (The use of Contracts Finder is mandated in the Public Procurement Regulations 2015). This can be done by completing the pro-forma on iDerby and sending it to the Procurement Unit.

(See Rule 7.2)

19.2 Depending on the nature, size or likely interest in the contract, consideration should also be given to placing the advert in:

- ◆ national trade/official journals
- ◆ local media
- ◆ the Official Journal of the European Union (OJEU) even if there is no requirement to do so

19.3 EU Adverts

19.3.1 Any contract above the EU Threshold must be advertised in OJEU and in all cases the Procurement Unit must manage this process.

(See Rule 15)

19.4 Open Procedure Advert

19.4.1 Under the Public Contracts Regulations 2015 all procurement documentation must be issued with the advertisement. This must include:

- ◆ a description of the scope of the contract and specification
- ◆ an invitation to Tender

- ◆ a statement of what Contractors have to do to Tender
- ◆ the closing date and time for Tenders
- ◆ the selection and award criteria
- ◆ the duration of the contract
- ◆ the quantity or value of supplies, nature of services and extent of services. If in lots, the detail for each lot.

(See Rule 18.2)

19.5 Restricted Procedure Advert

19.5.1 Any advertisement under the Restricted Procedure must contain the information above for open procedure and in addition:

- ◆ state where and by when requests to participate must be submitted.
- ◆ give brief details of the contract
- ◆ state the time periods for submission of completed Pre - Qualification Questionnaires.

(See Rule 18.3, 19.4.1 and 22)

19.6 Retention of Advert

19.6.1 Copies of adverts must be kept on the contract file together with details of when and where they were published.

20. SELECTION AND AWARD CRITERIA

20.1 Before placing an advert asking for Tenders or issuing Invitations to Tender the Procuring Officer must define the selection and award criteria for the contract which is best suited to the procurement exercise and is designed to secure value for money.

20.2 Selection Criteria

20.2.1 Selection (often referred to as pre-qualification stage) criteria involves an examination of the suitability and capability of the potential suppliers to perform the contract. Selection criteria include:

- ◆ Eligibility for public contracts in regard to the grounds specified in regulation 57 of the Public Contracts Regulations 2015.
- ◆ Economic and financial standing
- ◆ Suitability to pursue a professional ability
- ◆ Technical and professional ability

20.3 Award Criteria

20.3.1 The award criteria allowed under the Public Contracts Regulations 2015 is based on the Most Economically Advantageous Tender.

20.4 Most Economically Advantageous Criteria

20.4.1 Under the most economically advantageous criteria, considerations other than price apply but they must be relevant and linked to the subject matter, such as:

- ◆ quality of goods

- ◆ service
- ◆ running costs
- ◆ technical merit
- ◆ safety
- ◆ after sales service
- ◆ technical assistance
- ◆ delivery date
- ◆ quantity
- ◆ aesthetic and functional characteristics.

20.4.2 An evaluation model must be drawn up stating the weight to be given to each relevant consideration, including price, and this or the weighting to be given to each award criteria must be notified to Tenderers in the Invitation to Tender or before in the advertisement or scope document. Further guidance is provided on the procurement pages on iDerby.

20.4.3 The award criteria must not include any Non-Commercial Matters. These are listed in *Appendix 2*.

<u>SECTION 7 - PRE QUALIFICATION QUESTIONNAIRE: SELECTION OF TENDERERS</u>

21. SELECTION OF TENDERERS

21.1 The Public Contracts Regulations 2015 have created new rules regarding the use of Pre-Qualification Questionnaires.

21.2 The use of such questionnaires is now more controlled and Officers wishing to undertake a restricted process including a PQQ should contact the Procurement Unit at the earliest opportunity. Failure to undertake the process correctly could render the procurement exercise invalid.

22. PRE – QUALIFICATION QUESTIONNAIRE

22.1 Pre-Qualification Questionnaires must not be used for contracts with a value less than the OJEU threshold. This is designed to allow small and medium sized enterprises win public sector business. Instead only 'suitability assessment questions' may be asked.

22.2 For above threshold Contracts supplier selection questions may be used providing these are based on the Cabinet Office standardised selection questions or the industry standard PAS91 questions for construction projects.

22.3 The selection of Tenderer(s) must be carried out by a panel consisting of at least two officers one of whom must be the Procuring Officer.

22.4 A written record of the evaluation scoring, feedback, any moderation and correspondence against the stated selection criteria to determine the

selected Tenderer(s) invited to tender must be kept on the Contract File by the Procuring Officer.
(See Rule 31 and 39)

SECTION 8 – TENDER DOCUMENTS

23. SPECIFICATION

- 23.1 The Procuring Officer must make sure that the Tender documents include a specification giving details of the type and quality of goods or nature and standard of service or works to be supplied. It is vital that this is drawn up by or with the help of the Officer who is directly involved in the delivery of the goods, service or the works.
- 23.2 The length and detail of the specification will vary depending on the size, complexity and nature of the contract but it should be clear and include all the material details that the Contractor is obliged to comply with.
- 23.3 Technical specifications must be defined by reference to relevant European Standards. Where European Standards do not exist International or British Standards may be used but where they are the words “or equivalent” must be added.
- 23.4 The specification must not refer to a particular make or brand names unless it is identified as a permissible exemption under the EU Regulations and the Procurement Unit have been advised.

23.5 The specification must not include any requirement which unjustifiably discriminates against other EU member states.

23.6 Advice on drawing up a specification has been developed up by the Procurement Unit and they can, if requested, give further advice on specific contracts.

23.7 Pre-Tender Enquiries Regarding the Specification

23.7.1 The Public Contracts Regulations 2015 encourage pre-tender market engagement in order to ensure that specifications are as accurate as possible. For the Procuring Officer, when preparing a complex specification to consult potential Contractors about the detailed requirements of the specification but before doing so, the Officer should seek the advice of the Head of Procurement and then act in accordance with the requirements in *Rule 23.7.2*.

23.7.2 When making such pre-tender enquiries, the Procuring Officer must:

- ◆ Not draw up the specification wholly by reference to one Contractor or if they do, that organisation must be excluded from the Tender process.
- ◆ Keep a written record of all enquiries, responses and related meetings on the contract file.
- ◆ Consider the application of the Public Services (Social Value) Act and if so ensure meet the requirements in *17.2*.

24. INSTRUCTIONS TO TENDERERS

24.1 All invitations to Tender must include Instructions to Tenderers as well as:

- ◆ specification of the goods, services or works required
- ◆ contract conditions

24.2 All Instructions to Tenderers must include:

- ◆ the award criteria and, where applicable, weightings
(*See Rule 0*)
- ◆ the last time and date for receipt of Tenders
- ◆ the address to which Tenders must be delivered
- ◆ a check list of all documents that must be returned with the Tender, for example: method statements.
- ◆ a requirement that Tenders must be kept open for acceptance for no less than 60 days.
- ◆ for non-electronic Tenders, a requirement that the Tender must be submitted under the official pre-addressed label supplied with the invitation to Tender. (*See Rule 27.4*)
- ◆ where Tenders can be submitted electronically, full details of the time, date and method by which Tenders can be submitted through the Council's e-Tendering system.
- ◆ a statement that the Council is not bound to accept the lowest or any Tender unless the contrary has previously been agreed with the Head of Procurement.

- ◆ a statement that the Council will not be liable for the Tenderers expense in preparing their Tender.
- ◆ a statement that no Tender received after the closing date and time will be accepted.

24.3 All invitations to Tender should be issued at the same time with the same information and any supplementary information must be given on the same basis.

24.4 A written record must be kept of all those organisations to whom an Invitation to Tender was sent.

24.5 To assist Procuring Officers a pro-forma Instruction to Tenderers is available within in the template documents on the procurement pages of iDerby. The Procurement Unit can also give further advice.

25. CONTRACT CONDITIONS

25.1 General Requirement

25.1.1 All Contracts, irrespective of value, shall clearly specify:

- ◆ what is to be supplied (i.e. the works, goods, services)
- ◆ the provisions for payment (i.e. the price to be paid and when)
- ◆ the time, or times, within which the contract is to be performed

25.1.2 An official order must be placed for any contract irrespective of value prior to the commencement of any services, works or to formally purchase any goods.

25.2 Contracts from £5,000 up to £25,000

25.2.1 For contracts from £5,000 up to £25,000 whenever possible the following must be used:

- ◆ the Council's official order form and
- ◆ the Council's standard form of quotation
- ◆ the Council's standard terms and conditions or
- ◆ Standard form contracts

25.3 Contracts over £25,000

25.3.1 For contracts over £25,000 the Legal Department must approve the contract conditions unless:

- ◆ the Council's standard terms and conditions are being used

OR

- ◆ Standard form contracts issued by a professional body are being used

OR

- ◆ the Legal Department have previously approved or drafted the conditions

25.3.2 The contract conditions for contracts over £25,000 should include the provisions listed in *APPENDIX 3*.

25.3.3 No significant variation to the contract conditions sent out with Invitation to Tenders can be agreed without the approval of the Legal Department.

(See Rule 35 regarding contractor's own terms and conditions)

<u>SECTION 9 – SUBMISSION, RECEIPT, CUSTODY AND OPENING OF TENDERS</u>

26. PERIOD FOR SUBMISSION OF TENDERS

26.1 Tenderers must be given a reasonable period in which to prepare and submit a Tender having regard to the amount of detail that they have to prepare and the complexity of the contract requirements. Normally at least four weeks should be allowed. The EU Regulations lay down specific time periods.

27. RECEIPT, CUSTODY AND OPENING OF TENDERS / QUOTES

27.1 Contracts from £5,000 up to £25,000

27.1.1 Directors must make sure that there are procedures in place for the proper receipt, opening, recording and retention of quotes and Tenders whose estimated total value is from £5,000 up to £25,000 which as a minimum must ensure that:

- ◆ the Quotes/Tender are all opened at the same time and place and after the specified closing date and time.
- ◆ that at least two officers are present one of whom must be independent of the procuring process.
- ◆ that a written record is kept and retained on the contract file of the names of the Tenderers and their bid.

27.2 Contracts over £25,000

- 27.2.1 Directors must ensure officers arrange the receipt, custody and opening of the tenders with the Business Hub.

27.3 General Requirements for Contracts of £25,000 or Over

- 27.3.1 All contracts with an estimated value of £25,000 or over must be received, opened and recorded in accordance with the requirements in *APPENDIX 5*.

27.4 Electronic Tenders

- 27.4.1 Tenders should, wherever possible, be issued and received electronically through the Councils e-tendering system or alternative system approved by the Head of Procurement. The Procurement Unit should be contacted for advice.
- 27.4.2 EU Tender communication must be managed electronically unless there are justified reasons. These reasons must be recorded and reported as per the requirements of Regulation 84(1) of the Public Procurement Regulations 2015. (*See Rule 54*)

SECTION 10 - ALTERATION, CLARIFICATION AND EVALUATION OF TENDERS

28. ALTERATION AND CLARIFICATION OF TENDERS

28.1 No Tenderer will be permitted to alter its Tender after it has been received by the Council except with the Head of Procurement's consent to correct an arithmetical or typographical error or omission made in the Tender.

28.2 Should the Tender have been accepted before the error or omission is identified, then it can only remain so if in the opinion of the Head of Procurement it is still the most favourable to the Council following the correction.

29. ABNORMAL TENDER: CLARIFICATION

29.1 If the Procuring Officer considers the lowest or most economically advantageous Tender to be abnormal given the nature of the contract, the estimated contract value, and value for other Tenders he/she must ask the Tenderer to clarify in writing its Tender or parts of it. The Officer may take such explanation into account in deciding whether to consider the abnormal Tender as part of the evaluation. The explanations must be recorded and reported as per the requirements of Regulation 84(1) of the Public Procurement Regulations 2015. (See Rule 54)

30. POST TENDER NEGOTIATIONS

30.1 Discussions with Tenderers after submission of a Tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content must, other than under the Negotiated or Competitive

Dialogue only takes place in exceptional circumstances and in consultation with the Head of Procurement.

(See Rule 18)

- 30.2 If post-Tender negotiations are necessary after a single-stage Tender or after the second stage of a two-stage Tender, then such negotiations must only be undertaken with the Tenderer who is identified as having submitted the best Tender unless two are very close together in which case negotiations can be undertaken with both.
- 30.3 Negotiations must be conducted by at least two Officers, one of whom must be a Senior Officer or Principal Officer grade or above.
- 30.4 During negotiations Tendered rates and prices must only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the Tender documents.
- 30.5 Officers who carry out post-Tender negotiations must ensure that there are recorded minutes of the negotiation meetings.
- 30.6 Any change in specification or price arising from post Tender negotiations must be recorded in writing and signed by the Tenderer.
- 30.7 Where post-Tender negotiation result in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-Tendered. *(See Rule 44 – Contract Modifications)*

31. EVALUATION OF TENDERS

31.1 Tenders must be evaluated in accordance with the stated award criteria and where the criteria is other than the lowest price a written record must be kept of the evaluation with scores for each Tenderer on each of the stated award criteria.

(See Rule 0)

31.2 Interviews may be conducted with some or all of the Tenderers as part of the evaluation process but only, except in the Competitive Dialogue or Negotiated procedures, to clarify matters relating to the award criteria or where part of the published award criteria is an interview/presentation evaluation.

(See Rule 18)

SECTION 11 – CONTRACT AWARD, FUNDING AND OTHER THAN LOWEST TENDERS

32. AWARD PROCEDURE

32.1 Contracts must be awarded in accordance with the stated award criteria.

(See Rule 0)

32.2 Funding Approval and Register

32.2.1 Over £25,000 up to £75,000

32.2.1.1 No contract from £25,000 up to £75,000 can be awarded unless the expenditure for that contract has been included in the approved capital or revenue budgets and has been authorised by the Designated Budget Manager and an Procurement Approval/Use of Consultants Control Form has been completed and approved.

(See Rule 16.2.1)

32.2.1.2 All contracts over £25,000 must be recorded in the Contracts Register.

(See also 9.4 and 33.1)

32.2.2 Over £75,000

32.2.2.1 No contract can be awarded for a contract over £75,000 without Cabinet approval unless:

- ◆ the contract is merely relating to any existing service with no significant change in service delivery

OR

- ◆ previous Cabinet approval has been given.
(See Rule 16.3.1)

OR

- ◆ it has been included in the capital programme

32.3 Acceptance of Tender Other Than the Most Economically Advantageous

32.3.1 For contracts over £25,000 Tenders must be accepted on the basis of the “most economically advantageous” tender. The winning bidder will be determined by using the criteria and process communicated to bidders in the tender.

32.4 EU Award Notice

32.4.1 The award of all contracts over the EU Thresholds must be advertised in OJEU through the Procurement Unit within 30 days after the award of the contract or the conclusion of a Framework.

33. INFORMING TENDERERS OF CONTRACT AWARD

33.1 Contracts under EU Threshold

33.1.1 Where a Contract's total value is over £25,000 but under the EU Threshold the Procuring Officer must as soon as possible following the identification of the successful bidder, notify all Tenderers simultaneously of the award of contract telling them the name of the successful Tenderer and the price difference compared to the successful bid. The notification should also include the reasons for the decision including ‘*the characteristics of the successful tender*’ (including, where relevant, why the tenderer did not meet the technical specifications).

33.2 Contracts above the EU Thresholds

33.2.1 Once a Preferred Tenderer has been identified the Procuring Officer must as soon as reasonably possible notify all Tenderers simultaneously of the intention to award the contract to the Preferred Tenderer.

33.2.2 The notification to unsuccessful tenderers must include:

- ◆ the Award Criteria applied
- ◆ the Tenderers score
- ◆ the name of the Preferred Tenderer(s)
- ◆ the Preferred Tenderers score
- ◆ the reasons for the decision including '*the characteristics and relative advantages of the successful tender*' (including, where relevant, why the tenderer did not meet the technical specifications).
- ◆ a precise statement of when the standstill period is expected to end and whether there are any factors which may impact on this, or alternatively the date before which the Contracting Authority will not enter into the contract.

33.2.3 The notification to the Preferred Tenderer must include:

- ◆ the Award Criteria applied
- ◆ the Tenderer's score
- ◆ if applicable, the name of any other the Preferred Tenderer(s)
- ◆ if applicable, the other Preferred Tenderer(s) score(s)
- ◆ the reasons for the decision including '*the characteristics of the successful tender*' (including, where relevant, why the tenderer did not meet the technical specifications).

- ◆ a precise statement of when the standstill period is expected to end and whether there are any factors which may impact on this, or alternatively the date before which the contracting Authority will not enter into the contract.
- ◆ a statement to provide clarity that the notification does not constitute an award. Award of the contract will be further notified following the successful completion of the standstill period.

33.2.4 The Procurement Unit must review all 'standstill letters' to ensure compliance with the EU Regulations.

33.2.5 The Procuring Officer notice under 33.2.1 to unsuccessful Tenderers must provide them with a period of at least ten (10) days in which to challenge the decision before the contract is awarded to the Preferred Tenderer. The 10 day period is extended to 15 days if non electronic means of communication are used.

33.2.6 The ten day “Standstill” period referred to in *Rule* 33.2.5 must:

- ◆ be extended if a public holiday comes within it
- ◆ be started the day after the award notification is sent
- ◆ end on a working day

33.2.7 If the decision is challenged by an unsuccessful Tenderer within the 10 day standstill period then the Procuring Officer must not award the contract but must instead immediately seek the advice of the Director of Legal and Democratic Services or Head of Procurement.

34. FORM AND PREPARATION OF CONTRACTS

34.1 Under £25,000

34.1.1 As a minimum all contracts under £25,000 must be made on the Council's Standard Order Form or Standard Form of Contract.

34.2 Under £75,000

34.2.1 All contracts between £25,000 and £75,000 must be made:

- ◆ on the Council's General Terms and Conditions
- OR
- ◆ on a Standard Form of Contract
- OR
- ◆ approved by the Procurement Unit or Legal Department

34.3 Over £75,000

34.3.1 Where the Total Value of a Contract is over £75,000 the advice of the Legal Department must be sought on contract conditions unless:

- ♦ the Council's standard terms and conditions are being used.

OR

- ♦ a Standard Form of Contract is being used.

OR

- ♦ the Legal Department have previously approved them.

35. CONTRACTOR'S OWN TERMS AND CONDITIONS

35.1 For contracts over £25,000 the contractors' own terms and Conditions must not be accepted without consulting the Legal Department.

36. SIGNING OF CONTRACTS

36.1 Contracts must be signed as follows:

VALUE	SIGNATURE
Up to £25,000	Any officer authorised under the Departmental Scheme of Delegation
£25,000 to £75,000	Any <u>two</u> officers authorised under the Departmental Scheme of Delegation
Above £75,000 (See 36.4 below)	By either of the following:- <ul style="list-style-type: none">♦ Director of Legal & Democratic Services and♦ <u>Head of Legal Services or one</u> DCC Principal Lawyer with delegated approval

	<p>by the Director of Legal and Democratic Services</p> <p>OR</p> <ul style="list-style-type: none"> ♦ <u>two</u> DCC Principal Lawyers with delegated approval by the Director of Legal and Democratic Services
<p>For Individual Agreements awarded pursuant to a properly tendered framework agreement (Social Care and Education)</p> <p>For the purposes of assessing the value of an Individual Agreement, the cumulative value must be used and therefore a reasonable assessment of the number of years such arrangement is likely to be in place must be made in assessing value.</p>	
Up to £25,000	Any officer authorised under the Departmental Scheme of Delegation
£25,000 to £75,000	<p>By:</p> <ul style="list-style-type: none"> ♦ a relevant Head of Service and ♦ <u>one</u> officer authorised under the Departmental Scheme of Delegation.
Over £75,000	<p>By:</p> <ul style="list-style-type: none"> ♦ a relevant Director and ♦ one officer authorised under the Departmental Scheme of Delegation.

36.2 Contracts should be signed prior to commencement of services, works or delivery of goods.

36.3 The Officer signing the contract for the Council must ensure that they have the authority to do so.

36.4 All contracts over £75,000 and submitted to Legal Services for signing or sealing must be accompanied by:

- ◆ a signed declaration from the Directorate Finance Officer certifying that there is sufficient funding for the contract in the Council's budget and that all necessary approvals have been obtained

OR

- ◆ a signed Scheme Commencement Report for Capital Contracts.

37. SEALING OF CONTRACTS

37.1 Where contracts are to be completed by each party adding their formal seal they must be submitted to the Legal Department for sealing together with a signed declaration from the Departmental Finance Officer, certifying that there is sufficient funding for the contract in the Council's budget and that all necessary internal consents and approvals have been obtained.

37.1.1 Contracts under seal must be signed by either of the following:-

- ◆ Director of Legal & Democratic Services
AND
- ◆ Head of Legal Services or one DCC Principal Lawyer with delegated approval by the Director of Legal and Democratic Services
OR
- ◆ two DCC Principal Lawyers with delegated approval by the Director of Legal and Democratic Services.

SECTION 12 - CONTRACT REGISTERS, RECORD KEEPING AND CONTRACT MANAGEMENT

38. CENTRAL RECORDS

38.1 Departmental Contracts Record

38.1.1 Directors must ensure that details of all contracts over £25,000 entered into by the Department are passed to the Procurement Unit for inclusion in the Contracts Register, which in addition to the details specified in 38.1.3 must include:

- ◆ whether it has been signed by a Department's Authorised Officer or submitted to the Legal Department for signing
- ◆ who signed on behalf of the Department and when or alternatively the date it was submitted to the Legal Department for signing and sealing

38.1.2 The Head of Procurement shall keep a record of all contracts over £25,000 which will be available on iDerby

38.1.3 The details under 38.1.1 and 38.1.2 must include:

- ◆ the name of the contractor/supplier/provider
- ◆ status of the contractor/supplier/provider (Small, Medium Enterprise, Voluntary and Community (SME) etc.)
- ◆ brief details of the nature of the contract
- ◆ the annual value of the contract
- ◆ amount of non-recoverable VAT
- ◆ the total value of the contract
- ◆ the duration of the contract and options for extension (if any)
- ◆ the process used to award the contract

- ◆ any contract notice period
- ◆ start and end date of the contract

39. CONTRACT FILE RECORDS

39.1 Where the total value is less than £25,000, the following records must be kept on the Contract File:

- ◆ invitation to quote/Tender
- ◆ any quotations/Tenders received
- ◆ a record of any waiver, exemption from these Rules and the reasons for it (*See Rule 70*)
- ◆ records of written communications with the successful contractor or an electronic record if a written record of the transaction would normally be produced.

39.2 Where the total value exceeds £25,000 the Procuring Officer must keep on the Contract File:

- ◆ evidence of approval (e.g. Procurement Approval/Use of Consultants Control Form or Cabinet approval)
- ◆ the advertisement (*See Rule 19*)
- ◆ the Award Criteria applied
- ◆ Tender documents sent to and received from Tenderers
- ◆ how the shortlist of Tenderers was drawn up
- ◆ names of selected and rejected candidates or Tenderers and reasons for their selection or rejection
- ◆ if applicable, reasons for the rejections of Tenders found to be abnormally low
- ◆ if applicable, conflicts of interest detected and subsequent measures taken
- ◆ if applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders

- ◆ if applicable, the reasons why the Council decided not to award the contract
- ◆ any details of soft market testing and Public Services (Social Value) Act 2012 consultation evidence (*See Rules 17 and 17.2*)
- ◆ details of post-Tender negotiation (to include minutes of meetings) (*See Rule 30*)
- ◆ selection and award evaluation documentation (to include individual panel members scores and comments, moderated scores and feedback)
- ◆ notifications to Tenderers (*See Rule 33*)
- ◆ successful and unsuccessful feedback letters
- ◆ letter to formally award the contract
- ◆ signed contract
- ◆ contract award notice
- ◆ any waiver under *Rule 70* together with the reasons for it

40. RETENTION OF CONTRACTS AND TENDERS

40.1 Records required by *Rule 39* must be kept for six years after the end of the contract. An accessible electronic copy stored on the Councils systems for the stated period will satisfy this requirement.

40.2 Procuring Officers must send all original signed contracts to the Procurement Unit.

40.3 The Procurement Unit will keep all original contracts for the period stated in *40.1*.

41. CONTRACT MANAGEMENT

41.1 The Procuring Officer or named Contract Manager has responsibilities to:

- 41.1.1 Schedule regular meetings with the contractor, alongside annual review meetings to include performance review and financial monitoring.
- 41.1.2 Obtain, record and monitor, management information and KPI data, to assist discussions regarding performance and finance monitoring.
- 41.1.3 Undertake financial monitoring to ensure expenditure is in line with that expected under the contract. The Contract Manager is to confirm to the Procurement Unit, on a six monthly basis, that expenditure is (or is not) in line with the contract.
- 41.1.4 Seek advice from the Procurement Unit, before amendments are made to the contract or framework, for example to vary the scope and / or price. Amendments are to be approved by Director of Finance and Procurement Unit before release to the supplier.
- 41.1.5 Should the contractor fail to meet requirements, notify the contractor of the issues, giving reasonable time for these to be addressed and rectified. If a contractor continually fails to meet the contract requirements, the process for managing non-compliance detailed within the terms and conditions of the contract must be followed.

<u>SECTION 13 - LENGTH OF CONTRACTS, EXTENSIONS AND MODIFICATIONS</u>
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42. DURATION OF CONTRACTS

42.1 No contract can be for longer than 5 years (including options to extend) unless they are:-

- ◆ tied to the completion of a specific job or
- ◆ tied to the supply contracts to a fixed quantity of goods
- ◆ express Cabinet approval has been given for a longer period.
- ◆ A software maintenance contract tied to a software licence.

42.2 Frameworks must be for a maximum period of 4 years (including options to extend) (*See Rule 14.6*).

43. CONTRACT EXTENSIONS

43.1 Exercising Options to Extend

43.1.1 Where a contract has been advertised with an option to extend beyond the original contract period and the contract includes such an option it may only be exercised if:

- ◆ the Procuring Officer or Contract Manager is satisfied that such an extension is in the best interests of the Council in the light of the contractor's performance
AND
- ◆ the extension is for no longer than two years in total
AND
- ◆ there is sufficient budget provision
AND
- ◆ the total contract value advertised has not been exceeded

43.1.2 Where the conditions in *Rule 43.1.1* are not met the written consent of the Head of Procurement must be given before an option to extend is exercised.

43.2 No Option to Extend

43.2.1 Contracts, other than those above EU Thresholds, which contain no option to extend in the original contract may be extended:

43.2.1.1 By up to six months by the Director in consultation with the Procurement Unit, if:

- ◆ it will cost less than £75,000
- ◆ a new procurement process will or has been started
- ◆ there are no material changes to the contract (*See Rule 44*)
- ◆ the value of the extension does not take the contract value over the EU Threshold.

43.2.1.2 By Cabinet if it will be for longer than 6 months or cost more than £75,000, if:

- ◆ a new procurement process will or has been started
- ◆ there are no material changes to the contract (*See Rule 44*)
- ◆ the value of the extension does not take the contract value over the EU Threshold.

43.2.2 PROVIDED that there is no requirement to get approval to extensions which a Contractor is entitled to under the terms of the contract, (e.g. for bad weather under a construction contract).

43.2.3 Contracts above the EU Threshold which contain no option to extend in the original notice can only be extended with the consent of the Director of Legal and Democratic Services.

44. CONTRACT MODIFICATIONS (MATERIAL CHANGE)

44.1 For contracts above the EU Threshold there are six grounds for permitted changes which do not require a new procurement procedure to take place.

44.1.1 Ground 1 – if:

- ◆ Clauses within the contract clearly state the scope and nature of permitted modifications (review options), as well as conditions under which they may be used
AND
- ◆ The modification does not alter the overall nature of the contract.

44.1.2 Ground 2 – Where additional works, services or supplies which have become necessary, were not included in the initial procurement and where a change of Contractor:

- ◆ cannot be made for economic or technical reasons; or
- ◆ would cause significant inconvenience or substantial duplication of costs for the Council.
AND
- ◆ Provided that any price increase is no greater than 50% of the original contract value.

44.1.2.1 In using this ground the Procuring Officer must publish an OJEU Modification Notice if the modification or cumulative value is over 10% of the original contract value for goods and services or 15% for works, via the Procurement Unit.

44.1.3 Ground 3 – Change is required due to circumstances which were unforeseeable, and;

- ◆ The modification does not alter the overall nature of the contract

AND

- ◆ Any price increase no greater than 50% of the original value.

44.1.3.1 In using this ground the Procuring Officer must publish an OJEU Modification Notice if the modification or cumulative value is over 10% of the original contract value for goods and services or 15% for works, via the Procurement Unit.

44.1.4 Ground 4 – Where a contractor is replaced due to:

- ◆ an unequivocal review clause or option; or
- ◆ complete or partial succession following corporate restructuring (e.g. take-over, merger, acquisition and insolvency) provided that new contractor meets the original contract Selection Criteria.

44.1.5 Ground 5 – Where modifications are not “substantial”

44.1.5.1 Substantial means:

- ◆ amended contract is materially different in character; or
- ◆ changes would have affected the outcome of the original procurement; or
- ◆ modification changes the economic balance in favour of the contractor in a manner not provided for in the contract; or
- ◆ modification extends the scope of contract considerably; or

- ◆ change in the identity of the contractor other than where permissible under Ground 4

44.1.6 Ground 6 – Value of the modification is below;

- ◆ The relevant EU threshold value
AND
- ◆ Less than 10% of initial value for service and supply contract or Less than 15% of initial value for works contract
AND
- ◆ The modification does not alter the overall nature of the contract

SECTION 14 - SPECIAL CASES

45. CONSULTANTS

45.1 The appointment of consultants should follow all the other Rules but in addition the following requirements in *Rule 45* also apply.

45.2 Register

45.2.1 Prior to the appointment of consultants, irrelevant of the value, approval should be sought from the Chief Officer Group (COG) using the Procurement Approval/Use of Consultants Control Form and procedure.

45.2.2 The Head of Procurement shall keep a record of all consultant contracts to include the following details:

- ◆ type of consultancy
- ◆ name of project
- ◆ name of consultant
- ◆ cost of consultancy
- ◆ date of appointment
- ◆ duration of consultancy (if known)

45.3 Contracts

45.3.1 Contracts for consultants below £25,000 must be appointed using the Council's Standard Consultancy Agreement.

45.3.2 For consultancy contracts over £25,000 a formal contract must be entered into which must either be:

- ◆ based on the Council's Standard Services Agreement

OR

- ♦ follow a Standard Form of Contract

OR

- ♦ be approved by the Director of Legal and Democratic Services

45.3.3 Contracts are to be sent to the Procurement Unit (*See Rule 40.2*)

46. INFORMATION TECHNOLOGY

46.1 The procurement of information technology should, subject to *Rule 46.3* follow all the other Rules but in addition the following requirements in *Rule 46* also apply.

46.2 For information technology purchases estimated to be over £5,000, approval must be sought from the Director of ICT or an ICT Head of Service.

46.3 The purchase of any computer hardware or software (excluding standard desktop items), whatever the value, which is to be linked to the Council's network must have the prior written approval of the Director of ICT or an ICT Head of Service.

46.4 Any extension or additional modules to software may be procured without a Tendering process if:-

- ♦ the original system was procured through a full Tendering exercise
- ♦ the contracts for the system and any support and maintenance contracts are still in term
- ♦ the cost of the additional modules does not exceed 25% of the original purchase price
- ♦ the total cumulative price does not exceed the OJEU threshold

- ◆ the proposed purchase satisfies the following three tests;
 - technical assurance sign off by the Head of ICT
 - Financial appraisal and Value for Money Assessment sign off by the Head of Finance
 - Defined User requirements signed off by the Senior User.

46.5 All procurements of computer hardware or software should follow any advice on technical standards issued by the Head of ICT.

47. OUTSOURCING AND TRANSFERRING SERVICE CONTRACTS (TUPE)

47.1 Where the proposed contract is outsourcing work currently done “in House” or may involve the transfer of a service contract from one contractor to another the Procuring Officer must as soon as possible consult the Director of Legal and Democratic Services regarding TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) implications and in particular to the need to:

- ◆ compile and send out with the Invitation to Tender detailed information about the current workforce (Workforce Information)
- ◆ include specific reference to the possible TUPE transfer in the Invitation to Tender
- ◆ include TUPE clauses in the contract conditions

48. PROVIDING WORKS/SERVICES TO OTHER ORGANISATIONS

48.1 Where it is proposed to provide services or do works for other organisations then the prior consent of:-

48.1.1 The relevant Director must be given for contracts from £5,000 up to £25,000.

48.1.2 The Chief Executive and relevant Director for contracts between £25,000 and £75,000.

48.1.3 Cabinet approval for contracts over £75,000.

49. FINANCE OPERATING LEASES

49.1 No operating/finance lease including those for equipment and vehicles must be entered into without the prior written consent of the Chief Finance Officer

50. ECONOMIC REGENERATION DEVELOPMENT FUND (ERDF) PROJECTS OR OTHER EXTERNALLY FUNDED PROJECTS

50.1 Any procurement using ERDF money, other external funding or grants should follow all the other Rules in addition the following requirements in *Rule 50* also apply.

50.2 Officers

50.2.1 The Procuring Officer has responsibility to:

50.2.1.1 adhere strictly to the requirements set within the funding/grant conditions which may be more stringent than the Contract Procedure Rules, to avoid any reclaiming of monies.

50.2.1.2 When seeking advice from the Procurement Unit make it clear that the funding for the project is coming from an external source.

50.2.1.3 Keep accurate records throughout any procurement process which can be accessed for routine audits to check compliance.

(See Rules 38, 39, and 50.3).

50.3 Contract File Records

- 50.3.1 In addition to *Rules 38 and 39*, as per the ERDF funding conditions the Procuring Officer must keep on file:
- 50.3.1.1 Explanation of procurement procedure selected with justification
 - 50.3.1.2 Copy of OJEU notice or relevant advertisement and OJEU Prior Information Notice (PIN) if applicable (including for Framework Agreements)
 - 50.3.1.3 PQQ including the associated selection criteria (where used) and log of responses received
 - 50.3.1.4 Copy of tender specification with clear award criteria
 - 50.3.1.5 Log sheet for all tenders received (time and date)
 - 50.3.1.6 Copy of all tenders
 - 50.3.1.7 Copy of tender score sheets dated and signed by two people
 - 50.3.1.8 PQQ assessment scores
 - 50.3.1.9 Copy of OJEU award notice
 - 50.3.1.10 Copy of report on evaluation of tenders
 - 50.3.1.11 Copy of correspondence, including interview questions where appropriate
 - 50.3.1.12 Copy of letters to unsuccessful tenderers giving an appropriate “Alcatel” standstill period (where appropriate)
 - 50.3.1.13 Copy of award letter /signed contract
 - 50.3.1.14 Copy of notes from inception meeting
 - 50.3.1.15 Summary record of the above process to assist with future monitoring and audits.
- 50.3.2 Records of all procurement evidence must be maintained for verification until 3 years after the final payment made on the programme and at present this is likely to be until at least 2025. Grant recipients must ensure that delivery partners and sub-contractors also retain evidence.

50.4 Competition Requirements

50.4.1 Thresholds will be detailed within the funding/grant conditions, which may differ from *Rule 7.2*.

50.4.2 For clarity, if the funding/grant conditions are less stringent than the Contract Procedure Rules takes precedent and Procuring Officer must adhere to *Rule 7.2*.

50.4.3 If using a Framework due diligence must be done to check the eligibility to access Frameworks and to ensure that they have been procured compliantly in accordance with the Public Contract Regulations 2015.

50.5 Guidance

50.5.1 Further ERDF guidance notes can be found on the procurement pages of iDerby.

51. PROPERTY RELATED GOODS AND SERVICES

51.1 The procurement of property related goods and services should follow all the other Rules but in addition the following requirements in Rule 51 also apply.

51.2 For property related goods and services, irrelevant of value, must have approval from the appropriate Head of Service in the Property Services Management Team (Head of Strategic Asset Management and Estates, Head of Property Design and Maintenance or Head of Facilities Management) using the Procurement Approval/Use of Consultants Control Form.

51.3 Further Property Procedure guidance can be found on the procurement pages of iDerby.

SECTION 15 – AVOIDANCE OF CORRUPTION

52. CONFLICTS OF INTEREST

52.1 Conflicts of interest can lead to allegations of corruption. Therefore when an officer is directly involved in the award or management of a contract to a particular organisation he/she must, whenever possible avoid any personal dealings with that organisation. Where that is not possible the officer must act in accordance with *Rule 53*.

53. DECLARATIONS OF INTEREST BY OFFICER

53.1 Any officer who has a material interest, financial or otherwise, which may affect the Contract process at any stage must immediately he/she becomes aware of it declare it in writing to his/her Director and take no further part in the procurement process unless the Director of Legal and Democratic Services gives his written approval to the officer's continued involvement in the procurement exercise.

53.2 Each Director must maintain a register of interests, declared by Officers under *53.1* which must include:

- ◆ the name and grade of the officer
- ◆ the nature of the declaration

54. GIFTS AND REWARDS

54.1 No officer must accept any gift, fee or other material reward from any organisation in return for giving them more favourable treatment in a procurement exercise.

55. FAILURE TO COMPLY

55.1 A failure to comply with *Rules 54, 55 or 56* could be a criminal offence as well as being a disciplinary matter.

SECTION 16 - VARIATIONS TO THE RULES AND WAIVERS

56. VARIATIONS TO THE RULE

56.1 The Director of Legal and Democratic Services, after consulting with the Head of Procurement has power to make a minor amendment to these Rules but must subsequently report them to the Audit and Accounts Committee.

56.2 Any significant amendment to these Rules must be approved by full Council but only after consultation with the Audit and Accounts Committee.

56.3 Anyone with suggested amendments to the Rules should contact the Director of Legal and Democratic Services.

57. WAIVERS

57.1 Officers must in the first instance comply with the requirements of the Contract Procedure Rules. Waivers are not an alternative procurement method to tendering.

57.2 Any waiver is contrary to the overarching principles of the Treaty for the Functioning of the European Union (i.e. transparency, equal treatment, proportionality, non-discrimination and mutual recognition) and therefore exposes to the Council to a risk of a legal challenge.

57.3 Waivers should not be sought due to insufficient time to follow correct procedures (as this is evidence of failure to plan sufficiently) except in unforeseeable emergencies (e.g. fire, flood etc.).

57.4 In exceptional circumstances, waivers to the Rules may be granted by Cabinet or, in cases of urgency by the relevant Director and either the Director of Legal and Democratic Services or the Head of Procurement.

57.5 Potential acceptable ground for a waiver may be:

- ◆ Insufficient number of valid tenders received
- ◆ Specialist expertise is required and is available from only one source

57.6 Any request for a Cabinet waiver must, after consultation with the Head of Procurement or Director of Legal and Democratic Services, be submitted in writing to the Director of Finance and Procurement for inclusion in the “Contract & Financial Procedures Matters” report to Cabinet.

57.7 Any request for an urgent waiver must be submitted in the standard format to the Director of Legal and Democratic Services or Head of Procurement. The requestor must have gained prior approval from the relevant cabinet member.

57.8 In exceptional very urgent circumstances the waiver may be approved by the Director of Legal and Democratic Services or the Head of Procurement. The Head of Procurement will report the circumstances of the waiver to the Chief Officer Group retrospectively. If the Director of Legal and Democratic Services have approved the urgent waiver a copy must be provided to the Head of Procurement in order that it is included in Waiver reports.

57.9 A record of all urgent waivers must be kept by the Head of Procurement.

57.10 All approvals of urgent waivers must be reported to the next Cabinet meeting by the Head of Procurement.

- 57.11 All waiver approvals, departmental, urgent and by Cabinet must be reported on a quarterly basis by the Head of Procurement to the Council's Audit & Accounts Committee who will monitor the use of waivers.
- 57.12 A waiver cannot be given where the contract value exceeds the EU threshold unless the Director of Legal and Democratic Services has confirmed in writing that an exemption is available under the EU Procurement Regulations.
- 57.13 The Head of Procurement will inform the applicant when the waiver has been approved. Officers must not enter into contracts under waiver until confirmation of its approval has been received.

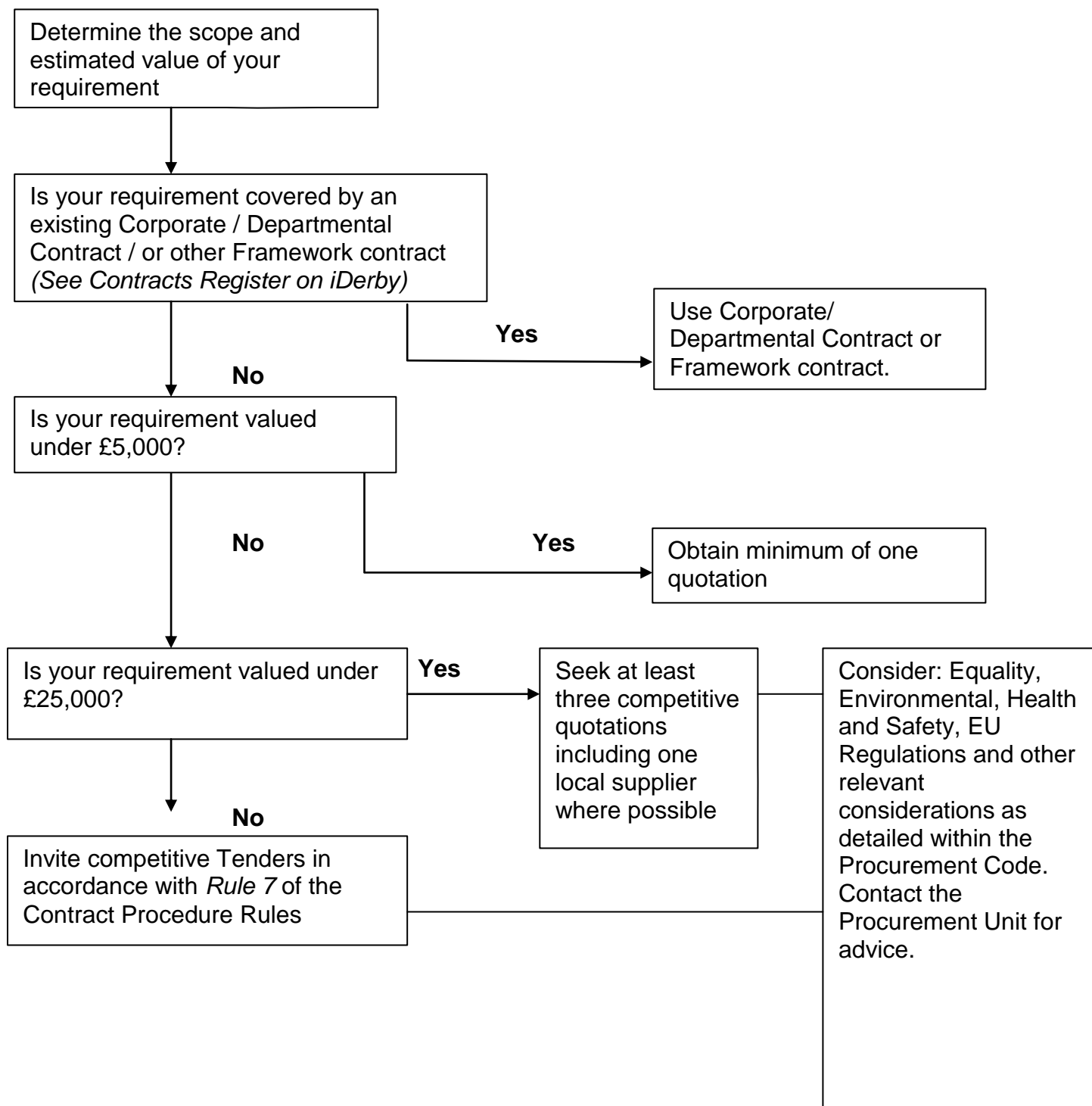
57.14 Departmental Waiver

- 57.14.1 Directors may approve a waiver to obtain three written quotes for under £25,000 procurements (*See Rule 7.2*) only on the grounds set out in *Rule 57.5*.
- 57.14.2 Directors must send a copy of the signed waiver to the Head of Procurement detailing of their reasons for inclusion in the report to Audit and Accounts Committee (*See Rule 57.11*).

APPENDIX 1

FLOW CHART

Deciding How to Proceed Flowchart



APPENDIX 2

NON COMMERCIAL MATTERS

Non-commercial Considerations

- (a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').
- (b) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.
- (c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.
- (d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').
- (e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.

- (f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.
- (g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.
- (h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.
- (i) Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply.

APPENDIX 3

STANDARD CONTRACT CONDITIONS

Every Contract over £25,000 must also state clearly state as a minimum:

- ◆ that the Contractor may not assign or sub- contract without prior written consent
- ◆ indemnity and insurance requirements
- ◆ health and safety requirements (where relevant)
- ◆ data protection requirements (where relevant)
- ◆ freedom of Information act requirements
- ◆ where Agents are used to let contracts, that Agents must comply with these rules
- ◆ a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant
- ◆ termination where evidence of bribery or corruption
- ◆ compliance with other applicable legislative requirements

APPENDIX 4

Inclusion in approved capital or revenue budgets can be demonstrated by:

for capital schemes:

- ◆ a scheme cost in the approved capital programme
- ◆ a signed Expenditure Approval for where expenditure is within a block scheme in the approved capital programme, a budget plan showing proposed individual projects and commitments against the total, to indicate that there is sufficient funding remaining

for revenue schemes:

- ◆ a budget heading against which only the contract cost is charged or if this does not exist
- ◆ a budget plan showing commitments against a total budget for the cost centre, to indicate that there is sufficient funding remaining
- ◆ Cabinet approvals for virements, use of reserves or changes to the capital programme demonstrating specific earmarked capital or revenue funding to fund the contract cost.

APPENDIX 5

PROCEDURES FOR THE RECEIPT, OPENING AND RECORDING OF TENDERS OVER £5,000

Receipt

1. On receipt a Tender envelope must be marked with the date and time of receipt and be signed by the receiving officer. The Tender envelope must remain in the custody of a Tender Receipt Officer until they are opened in accordance with this appendix.
2. No Tender received after the deadline for receipt must be considered unless it can be proved that the Tender was delayed within the Council offices through no fault of the Tenderer and arrived before the other Tenders had been opened.
3. The reason for rejecting any Tender envelope, for example it is late, must be recorded in a register by a Tender Receipt Officer.

Opening Tender

4. Tenders other than later Tenders will be opened:
 - ◆ after the deadline for Tender submissions
 - ◆ at the same time and place
 - ◆ in the presence of a Tender Receipt Officer and an employee involved in inviting the Tenders.

5. The Tender Receipt Officer must at the time of opening Tenders record the following details:
 - ♦ the date and time
 - ♦ the name of each Tenderer
 - ♦ the amount of each Tenderand this record must be signed by all persons present at the Tender opening. The Tender Officer must sign after the last Tenderer's name to prevent any addition to the record.
6. The Tender Receipt Officer and any other person present at the opening of Tenders must also initial the Tender form page and any other page of the Tender on which the Tenderer has entered a final price. Tenders received through the e-Tendering system will not require any form of signature.
7. All Tenders received and opened will be retained by the inviting department. Unsuccessful Tenders will be kept for one year after opening. The successful Tender will be kept for the period specified in Rule 40. Tenders received through the e-tendering system will be retained electronically within the system for the same time periods.
8. If an Internal Provider submits a bid, no employee involved in the preparation or submission of that bid must be present when the Tenders are opened.

9. A Tender Receipt Officer must consult and follow the advice of the Director of Legal and Democratic Services if in any doubt as to whether to consider a Tender for any reason, including its late submission.
- 10 Electronic tenders may be received via the Council's e-tendering system, or such system as approved by the Head of Procurement. The recording of information requirements listed above applies equally to e-tenders as well as hard copy (paper) tenders.