

**NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL**

**POLICY DEVELOPMENT GROUP – 9 JULY 2012**

Title of report	<b>UPDATE OF THE COUNCIL'S CONSTITUTION AND CONTRACT PROCEDURE RULES</b>
Contacts	<p>Councillor Nicholas Rushton 01530 412059 <a href="mailto:nicholas.rushton@nwleicestershire.gov.uk">nicholas.rushton@nwleicestershire.gov.uk</a></p> <p>Chief Executive 01530 454500 <a href="mailto:christine.fisher@nwleicestershire.gov.uk">christine.fisher@nwleicestershire.gov.uk</a></p> <p>Head of Legal and Support Services 01530 454762 <a href="mailto:elizabeth.warhurst@nwleicestershire.gov.uk">elizabeth.warhurst@nwleicestershire.gov.uk</a></p>
Purpose of report	To seek Scrutiny's comments on the draft report to Council (18 September 2012) which proposes various amendments to the Constitution and in particular a thorough review of the Contract Procedure Rules.
Reason for Decision	To update the Constitution and improve the effectiveness of the governance arrangements of the Authority, and to facilitate small and medium local enterprises' engagement with the Authority's supply chain and to have effective scrutiny of the same.
Council Priorities	Providing value for money Supporting businesses and creating jobs
<p>Implications:</p> <p>Financial/Staff</p> <p>Link to relevant CAT</p> <p>Risk Management</p> <p>Equalities Impact Assessment</p> <p>Human Rights</p> <p>Transformational Government</p>	<p>None.</p> <p>Business Corporate Action Team.</p> <p>A clear and up to date Constitution will minimise the risk of the Authority failing to comply with statutory requirements and assist in delivering its priorities and objectives.</p> <p>Not applicable.</p> <p>Not applicable.</p> <p>Clear and robust governance arrangements and procedures assist with the effective and efficient delivery of services and proper decision making.</p>

Comments of Head of Paid Service	The report is satisfactory.
Comments of Section 151 Officer	The report is satisfactory.
Comments of Monitoring Officer	The report is satisfactory.
Consultees	Statutory Officers. Head of Legal and Support Services. Procurement and Partnership Manager.
Background papers	None.
Recommendations	<b>THAT THE POLICY DEVELOPMENT GROUP PROVIDE COMMENTS TO THE MONITORING OFFICER ON THE DRAFT COUNCIL REPORT (18 SEPTEMBER 2012) ENTITLED "SUPPORTING BUSINESS AND JOBS – UPDATE OF THE CONTRACT PROCEDURE RULES".</b>

## 1.0 BACKGROUND

1.1 Full Council regularly considers items relating to updates to the Constitution. The updates are generally required due to legislative and organisational changes or to clarify and improve processes within the Authority to reflect best practice. Members may recall that, in response to comments and suggestions made by members at Council, the Deputy Leader undertook to ensure that:

- (i) the Constitution underwent one main annual review - around the time of Annual Council;
- (ii) any remaining changes or matters arising after this date would be dealt with by way of one mid year review;
- (iii) further reviews or changes would only be suggested outside this process if legislation or national guidance required it;
- (iv) there was some "scrutiny" of the main annual review report whilst in draft and prior to its publication;
- (v) there would be informal consultation / engagement with members on the mid year and other reviews.

## 2.0 ROLE OF SCRUTINY

2.1 Following consideration of the Constitution it is considered that it would be appropriate to ask Policy Development Group to consider the draft Council report.

2.2 Scrutiny is asked to provide comments to the Monitoring Officer on the proposed changes.

### **3.0 BETTER SELLING FOR NORTH WEST LEICESTERSHIRE BUSINESSES (“Buying Local”)**

3.1 As part of the Council's priority to promote the growth of local businesses and creation of jobs, the Council has developed a Buying Local initiative. The aim of the initiative is to improve local economic prosperity and sustainability by enhancing the ability of local businesses to respond to the Council's procurement needs.

3.2 Buying Local will benefit the local economy by:

- (i) Directly contributing to the development of the local economy and support sustainable growth;
- (ii) Improve our ability to provide sustainable services to our citizens;
- (iii) Help the creation of employment and business opportunities for local residents by supporting local growth;
- (iv) Promote skills development, sustainable employment creation and entrepreneurship;
- (v) Help stimulate local markets and development through our supply chain.

### **4.0 DRAFT REPORT TO COUNCIL – 18 SEPTEMBER 2012**

4.1 The report proposes changes to the Constitution in the following areas.

- (i) Contract Procedure Rules:

Members will know that the Contract Procedure Rules set out how the Authority will purchase supplies, works and services. It is important that the standing orders are clear, comprehensive and easy to follow, to ensure that Officers can use them easily and efficiently and that businesses can understand the way in which the Authority procures supplies, works and services, in furtherance of the Buying Local initiative.

The Contract Procedure Rules have been amended to further the aims of the initiative and will have a substantial, positive impact on the district. Local businesses will be able to easier understand the opportunities for selling to the Authority and a culture of Officers engaging with local businesses will develop within the framework of the Rules.

A summary of the proposed amendments has been prepared to assist Members in reviewing the proposed changes, deletions and introductions and is annexed to the draft report to Council. The draft report to Council details some of the benefits to be gained in making these changes. A significant proportion of the changes are necessary to rationalise and clarify the Rules for Officers and do not entail a substantial change to procedure or delegation of powers.

- (ii) Financial Procedure Rules

The changes to the Contract Procedure Rules require additional changes to be made to section C.53 of the Financial Procedure Rules, to avoid inconsistencies. These are shown in tracked changes annexed to the draft Report to Council.

- (iii) Amendment to Executive Functions

Under section 7 (Scheme of Delegation to Staff) (4) Executive Function (xv), the Chief Executive is authorised to agree the grant and renewal of leases of land and buildings where the annual rent is £20,000 or less.

Commercial rents have increased considerably in recent years and are predicted to continue to increase. A significant number of the Authority's properties have rental values that have increased and are approaching this threshold. To assist the efficient running of the Estates Management Team, it is proposed that the amount of annual rent in this section be increased to £40,000. This should protect the Authority's position in this regard for at least the next 5 years.

(iv) Amendment to Council's Policy Framework

The Food Law Enforcement Service Plan is currently required to be laid before Council under Part 2, Article 4, 4.01(a) (Policy Framework). The Framework Agreement between the Food Standards Agency (FSA) and the Authority has been amended substantially since this was first introduced. The FSA no longer requires this to be considered by Members.

However, it is proposed that this plan continues to receive some scrutiny by Members and that the plan be removed from the above section of the Constitution and the following text added to the list of Cabinet functions at Part 3, Section 4, 2:

"To oversee the Authority's Food Law and Enforcement Service Plan"

4.2 The report and appendices are attached.

**APPENDIX 1**

**NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL**

**COUNCIL – 18 SEPTEMBER 2012**

Title of report	<b>SUPPORTING BUSINESS AND JOBS - UPDATE OF THE CONTRACT PROCEDURE RULES</b>
Contacts	<p>Councillor Nicholas Rushton 01530 412059 <a href="mailto:nicholas.rushton@nwleicestershire.gov.uk">nicholas.rushton@nwleicestershire.gov.uk</a></p> <p>Chief Executive 01530 454500 <a href="mailto:christine.fisher@nwleicestershire.gov.uk">christine.fisher@nwleicestershire.gov.uk</a></p> <p>Head of Legal and Support Services 01530 454762 <a href="mailto:elizabeth.warhurst@nwleicestershire.gov.uk">elizabeth.warhurst@nwleicestershire.gov.uk</a></p>
Purpose of report	To seek Council's approval of the proposed amendments to the Constitution, to support the Council's priority of business and jobs.
Council Priorities	Providing value for money Business and Jobs
<p>Implications:</p> <p>Financial/Staff</p> <p>Link to relevant CAT</p> <p>Risk Management</p> <p>Equalities Impact Assessment</p> <p>Human Rights</p> <p>Transformational Government</p>	<p>None.</p> <p>Business Corporate Action Team.</p> <p>A clear and up to date Constitution will minimise the risk of the Authority failing to comply with statutory requirements and assist in delivering its priorities and objectives.</p> <p>Not applicable.</p> <p>Not applicable.</p> <p>Clear and robust governance arrangements and procedures assist with the effective and efficient delivery of services and proper decision making.</p>

Comments of Head of Paid Service	
Comments of Section 151 Officer	
Comments of Monitoring Officer	As author of the report, the report is satisfactory
Consultees	Chief Executive Head of Legal and Support Services Procurement and Partnership Manager Policy Development Group
Background papers	The proposed revised draft Constitution is available to Members electronically by logging onto the AKS system.  Report to Policy Development Group – 9 July 2012, available by logging onto the AKS system.  Summary of proposed amendments to the Contract Procedure Rules, attached at Appendix 1.
Recommendations	<ol style="list-style-type: none"> <li>1. <b>THAT COUNCIL CONSIDERS THE COMMENTS OF POLICY DEVELOPMENT GROUP ON THE PROPOSALS AND CONSIDER IF FURTHER CONSTITUTIONAL CHANGES ARE REQUIRED.</b></li> <li>2. <b>THAT COUNCIL AGREES THE PROPOSED CHANGES TO THE CONTRACT PROCEDURE RULES AND CONSTITUTION FOR IMMEDIATE IMPLEMENTATION.</b></li> <li>3. <b>THAT COUNCIL AUTHORISES THE HEAD OF LEGAL AND SUPPORT SERVICES TO MAKE THE AGREED AMENDMENTS TO THE CONSTITUTION AND RE-ISSUE THE DOCUMENT.</b></li> </ol>

## 1.0 INTRODUCTION

- 1.1 The Local Government Act 2000 requires each Local Authority to prepare, keep up to date and publicise the document known as the Constitution.
- 1.2 The Constitution should be logical, integrated and accessible to members, officers, local people and anyone else interested in the way a local authority makes its decisions. There is also a statutory requirement on the Council's Monitoring Officer to keep the Constitution up to date, and accordingly the update of the Constitution is an on-going process.

1.3 Section 135 of The Local Government Act 1972 authorises a Local Authority to make standing orders in respect of the making of contracts by that Authority.

## **2.0 BETTER SELLING FOR NORTH WEST LEICESTERSHIRE BUSINESSES (“Buying Local”)**

2.1 As part of the Council's priority to promote the growth of local businesses and creation of jobs, the Council has developed a Buying Local initiative. The aim of the initiative is to improve local economic prosperity and sustainability by enhancing the ability of local businesses to respond to the Council's procurement needs.

2.2 Buying Local will benefit the local economy by:

- (i) Directly contributing to the development of the local economy and support sustainable growth;
- (ii) Improve our ability to provide sustainable services to our citizens;
- (iii) Help the creation of employment and business opportunities for local residents by supporting local growth;
- (iv) Promote skills development, sustainable employment creation and entrepreneurship;
- (v) Help stimulate local markets and development through our supply chain.

## **3.0 PROPOSED CHANGES TO THE CONTRACT PROCEDURE RULES**

3.1 Members will know that the Contract Procedure Rules set out how the Authority will purchase supplies, works and services, including full European tendering in accordance with the Public Contracts Regulations 2006. It is important that the standing orders are clear, comprehensive and easy to follow, to ensure that Officers can use them easily and efficiently and that businesses can understand the way in which the Authority procures supplies, services and works, in furtherance of the initiative's aims.

3.2 In furtherance of the Buying Local initiative, the Contract Procedure Rules have been reviewed to introduce processes by which Officers can source their requirements from businesses within the district, which will result in increased capacity within the local area. The Rules have also been reviewed to make them easier for Officers to use and for businesses to understand where opportunities to sell to the Authority arise.

3.3 A summary of proposed amendments has been prepared to assist Members in reviewing the proposed changes, deletions and introductions and is attached to this report at Appendix 1. A significant proportion of the changes, have been made to rationalise and clarify the Rules and do not entail a substantial change to procedure or delegation of powers.

3.4 The main changes are:

- (i) The introduction of a new contract threshold and clarification of the process to be followed by Officers. The 'Threshold Table' at Rule 5.7 shows 'at a glance' the new levels. This is tied to a new business database, referred to as the preferred supplier solution, which will open up £3.7 million in contract opportunities for local

businesses. For larger spend, there are new requirements to advertise the contracts locally, which will give local businesses a further £1.9 million of work to bid for.

- (ii) Various provisions in the current Rules refer to conditions of contracts. These have been drawn from across the Rules and consolidated into a comprehensive section, to ensure Officers and Contractors can see what will be required.
- (iii) New wording has been introduced in relation to Framework Agreements, Types of Tender and Contract and Performance Management, to assist Officers and to secure Value for Money for the Authority, not just at the time of contract award, but after provision of the supplies, works and services has commenced.

3.5 A copy of the Contract Procedure Rules with the proposed changes shown is appended to this report at Appendix 2.

3.6 The proposed changes in the Contract Procedure Rules require some changes to the Finance Procedure Rules. The proposed amendment to section C.53 of the Financial Procedure Rules is to reflect the new Contract Procedure Rules and future-proof the Constitution against subsequent changes. A tracked changes version of section C.53 of the Financial Procedure Rules, showing the amendments, is appended to this report at Appendix 3.

#### **4.0 FURTHER MINOR CHANGES TO THE CONSTITUTION**

4.1 Whilst reviewing the Contract Procedure Rules, it was considered opportune to ask Council to consider other minor changes which have been put forward in the interests of business efficiency.

4.2 Amendment to Executive Function

Under section 7 (Scheme of Delegation to Staff) (4) Executive Function (xv), the Chief Executive is authorised to agree the grant and renewal of leases of land and buildings where the annual rent is £20,000 or less.

Commercial rents have increased considerably in recent years and are predicted to continue to increase. A significant number of the Authority's properties have rental values that have increased and are approaching this threshold. To assist the efficient running of the Estates Management Team, it is proposed that the amount of annual rent in this section be increased to £40,000. This should protect the Authority's position in this regard for at least the next 5 years.

4.3 Amendment to the Council's Policy Framework

The Food Law Enforcement Service Plan is currently required to be laid before Council under Part 2, Article 4, 4.01(a) (Policy Framework). The Framework Agreement between the Food Standards Agency (FSA) and the Authority has been amended substantially since this was first introduced. The FSA no longer requires this to be approved by Members.



However, it is proposed that this plan continues to receive consideration and oversight by Members and that such consideration falls within Cabinet's remit. It is proposed that the plan be removed from the above section of the Constitution and the following text added to the list of Cabinet functions at Part 3, Section 4, 2:

"To oversee the Authority's Food Law and Enforcement Service Plan"

## **5.0 COMMENTS FROM CORPORATE GOVERNANCE SCRUTINY COMMITTEE AND OTHER MEMBERS**

- 5.1 The draft Council Report was considered by Policy Development Group on 9 July 2012. The following comments were made: [to be completed following Committee]

**4.7: CONTRACT PROCEDURE RULES**

Rule	Subject	Page
1:	Introduction	Deleted: 148
2:	<u>Value for Money</u>	Deleted: Definitions Deleted: 148
3:	<u>Special Circumstances (Waiver and Exemption)</u>	Deleted: Best Value Deleted: 149
4:	<u>Framework Agreements</u>	Deleted: Standing Orders Relating to Specialised Work or Special Circumstances Deleted: 151
5:	<u>Types of Contracts</u>	Deleted: Tenders Deleted: 152
6:	Contracts to which the Public Procurement Regulations Apply	Deleted: 154
7:	Types of Tender	Deleted: 155
8:	Submission of Tenders	Deleted: 157
9:	Opening and Acceptance of Tenders	Deleted: 157
10:	Tender Evaluation and Award of Contracts	Deleted: 158
11:	<u>Contract Conditions</u>	Deleted: Nominated Sub-contractors and Suppliers Deleted: 159
12:	<u>Contract and Performance Management</u>	Deleted: Contract Conditions Deleted: 159

## 1. INTRODUCTION

1.1 These Standing Orders are made pursuant to s135 of the Local Government Act 1972.

1.2 These Standard Orders set out how the Authority will invite tenders, obtain quotations and award contracts for the supply of supplies, services or works. Their role is to ensure that contracts are appropriate for their purpose, provide the right balance between price and quality and are procured in an open way that demonstrates probity and compliance with the Authority's policies. They apply equally where payment is expected to be received or where payment is to be made by the Authority.

1.3 It shall be the responsibility of the Heads of Service to ensure that staff within his or her Service comply with these Standing Orders.

1.4 No contract shall be entered into unless adequate budgetary provision has been made for the award of that contract.

1.5 These Standing Orders have been prepared in accordance with the Authority's policies and to facilitate small and medium enterprises in the local area to enter the Authority's supply chain. This is through a combination of rationalising the previous rules to assist procuring officers and clarifying the Authority's approach to procurement, to direct businesses to the opportunities available.

1.6 Any officer, whether a direct employee of the Authority or engaged through an external organisation or supplier who is engaged to work on behalf of the Authority shall, if they become aware of any relationship (current or past), whether pecuniary or not, with any supplier or potential supplier, make a Declaration of Interest to the relevant Head of Service at the earliest opportunity.

1.7 An officer with an interest in a contract shall take no part in advising on the Authority's dealing with that contract. If the officer is present at a meeting when the contract is discussed, he or she shall forthwith declare that interest and withdraw from the meeting while it is under discussion, unless the chair of the meeting invites him or her to remain.

1.8 The Chief Executive shall record in a book, to be kept for the purposes of recording any notice given by an officer of the Authority, under 1.6 above and/or Section 117 of the Local Government Act 1972 and the book shall be open during office hours to the inspection of any member of the Council.

1.9 Officers should have regard to the Procurement Toolkit.

## 2. VALUE FOR MONEY

### Initial Considerations

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1.3 Every contract made by or on behalf of the Council or the Cabinet shall comply with all relevant European Union and United Kingdom legislation as well as with the provisions of the Constitution.¶

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1.6 It shall be a condition of any Agreement between the Council and any person (not being an officer of the Council) who is required to supervise a contract between the Council and a third party on the Council's behalf that, in relation to such contract, he/she shall comply with the requirements of these Standing Orders as if he/she were an officer of the Council.¶

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1.8 An officer with an interest in a contract shall take no part in advising on the Council's dealing with that contract. If the officer is present at a meeting when the contract is discussed, he or she shall forthwith declare that interest and withdraw from the meeting while it is under discussion, unless the meeting invite him or her to remain.¶

¶ 2. DEFINITIONS¶

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2.1 The Authority is under a duty to ensure that funds are spent in a way that achieves “value for money” for the Authority. Officers involved in procuring supplies, services or works should be mindful of this duty.

2.2 When an officer has identified a need to procure new supplies, services or works, they shall first consider these options in turn:

2.2.1 any current arrangements in existence in-house;

2.2.2 any existing contracts entered into by the Authority;

2.2.3 any provision available through ESPO; and

2.2.4 any provision available through other third party contracts or framework agreements, including those provided by Buying Solutions and other buying consortia, where they can be shown to offer value for money for the Authority.

2.3 Where the officer determines that no provision is available from the above sources, they shall have regard to these Standing Orders in determining which procurement option is the appropriate one to follow.

### 3. SPECIAL CIRCUMSTANCES (WAIVER AND EXEMPTION)

3.1 Notwithstanding the provisions of these Standing Orders and subject only to the requirements of statute or regulation:

3.1.1 Exemption from any of the provisions of these Standing Orders may be granted by the Council acting through the Chief Executive (or where appropriate, Acting Chief Executive), in consultation with the Chief Finance Officer and the Monitoring Officer, upon it being shown to their satisfaction that there are **special circumstances** justifying such exemption. Such special circumstances shall fall under at least one of the following categories:

- (a) only one supplier is available for technical or artistic reasons;
- (b) extreme urgency exists for unforeseen reasons which are not attributable to the Authority and the various time limits cannot be met.

3.1.2 Any request under 3.1.1 above shall be made in writing on the approved form which shall be certified by the officers specified in 3.1.1 above.

3.1.3 The Cabinet shall be informed of the exercise of any authority pursuant to this Standing Order by the Director or Chief Executive and any such report will include confirmation that the officers specified in 3.1.1 have been consulted and such exemption granted.

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3.2 If, in exceptional circumstances, authority is sought to waive these Standing Orders, the report to Cabinet must give adequate reasons and specify precisely the procedures to be waived and must first be approved by the Monitoring Officer.

#### 4. FRAMEWORK AGREEMENTS

4.1 Where it is determined to use a framework agreement to meet the identified need of the Authority, the officer shall seek the advice of the Procurement Team and Legal Services in relation to the use of such framework and the contractual arrangements.

4.2 When calling-off supplies, services or works under a framework agreement, the selection procedure, including award criteria, from within the framework agreement shall be used. Officers must comply with all rules and regulations set out within a framework agreement in relation to direct call-off of contracts and re-opening of competition between providers appointed on to that framework (mini-competition).

#### 5. TYPES OF CONTRACTS

##### Initial Considerations

5.1 In relation to any contract for the supply of supplies, services or works to the Authority the functions described in Section 17(4) of the Local Government Act 1988 shall be exercised without any reference to any of those matters set out in Section 17(5) of that Act. (Section 17.4 describes the functions to which this legislation applies and Section 17.5 details what is regarded as non commercial issues that must be ignored when entering into a contract for the supply of supplies, services or works). This shall at all times be subject to the provisions of 5.2 below.

5.2 In relation to any contract for the supply of services not through an existing framework or existing arrangement, the officer shall have regard to the considerations set out in the Public Services (Social Value) Act 2012. Specifically, the officer must consider how the services might (in addition to the service requirement) improve the economic, social and environmental well-being of the district and how the procurement itself might be conducted to secure that improvement.

##### Procedures for Determining Which Procurement Option to Follow

5.3 When an officer has identified the need to procure supplies, services or works, the relevant Head of Service shall assess the value of the proposed arrangement.

5.4 Whenever possible, purchases should be aggregated to make the best use of the Authority's purchasing power. Where a recurring pattern of purchases can be identified for similar supplies, services or works, consideration shall be given to whether one or more framework agreements would represent better

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3.2 In all areas of tendering, negotiating, letting or renewing, performing, reviewing, amending, discharging or terminating any contract to which the Council is either a party or of which it is a beneficiary, regard shall be had to the requirements of economy, efficiency and effectiveness specified in Section 3 of the Local Government Act 1999 ("the Act") and, in particular to any performance indicators or performance standards specified by the Secretary of State under Section 4 of the Act.¶

¶  
3.3 In relation to any contract to which the Council is a party, it shall be an express term of any invitation to tender or treat and of any contract which may result, that any other party to the contract and any subcontractors or agent of any other party to the contract appointed in respect of the contract shall be, throughout the duration of the contract, under a continuing duty to the Council:¶

¶  
3.3.1 To make arrangements to secure continuous improvement in the performance of its obligations to the Council having regard to a combination of economy, efficiency and effectiveness and, in particular to any performance indicators or performance standards specified by the Secretary of State under Section 4 of the Act and to the provisions of any Best Value Performance Plan promulgated by the Council under Section 6 of the Act.¶

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3.3.2 To supply such information as the Council may from time to time reasonably request relating to the contract and/or to the performance by that party of its obligations to the Council under that contract.¶

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3.3.3 To co-operate fully with the Council in discharging the Coun... [2]

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5.1 Any contract specifications are to be prepared in accordance with ... [3]

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value in terms of price, service, invoicing or other administrative costs. It is the Head of Service's responsibility to have due regard to the aggregation of contract values.

5.5 The principles of aggregation in EU procurement law are designed to ensure that authorities do not deliberately split contracts which have similar characteristics into separate contracts so that they fall below the relevant thresholds.

5.6 Nothing in this rule shall prohibit, where appropriate, the sub-division of procuring supplies, services or works into lots, facilitating access for small and medium enterprises.

5.7 When the officer has assessed the value of the proposed arrangement, the appropriate procurement route shall be determined in accordance with the Threshold Table (below).

**Deleted:** As soon as is practically possible after deciding to seek offers in relation to a proposed contract the Director shall estimate the value of the proposed contract. The value shall be calculated in accordance with any rules or regulations for the time being contained in the Public Procurement Regulations as are applicable to a contract of that type or which would be so applicable if the value of the contract were in excess of the threshold specified in the Public Procurement Regulations. Supplies, services or works shall not be split so as to avoid these Standing Orders or the Public Procurement Regulations.¶

**Threshold Table**

Contract Value		Process	Award Procedure based on	Contract Opportunity	Documentation
From	To				
£0	£9,999	Verbal Quotation	Minimum of three verbal quotations	Source from preferred supplier solution in first instance	Employee to record details for Audit purposes
Band A (Minor)					
£10K	£34,999	Written Quotation	Minimum of three written quotations	Source from preferred supplier solution in first instance	Must be based on a written specification provided to the supplier.
Band B (Small)					
£35K	£74,999	RFQ (Request for quotation)	Three written quotations based on a RFQ template with simplified T&C's	Source Leics NWL Web site	Must be based on a written specification provided to the supplier.
Band C (Medium)					
£75K	EU	Formal Tender	Full Tender Process	Source Leics NWL Web site Specialist publication if appropriate	PQQ & ITT documentation with sealed bids. Should wherever possible be submitted using NWL E-tendering portal
Band D (Large)					
EU	Above	Formal Tender	Full Tender Process	OJEU Source Leics NWL Web site Specialist publication if appropriate	PQQ & ITT documentation with sealed bids. Should wherever possible be submitted using NWL E-tendering portal
Band E (EU)					

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**Band A (Minor) contracts**

5.8 For any single contract, not related to or part of any larger procurement, whose value is less than £10,000, three verbal quotations shall be obtained.

5.9 Officers shall first consult the Authority's preferred supplier solution, however if the officer is unable to obtain three verbal quotations from the Authority's preferred supplier solution, they may then seek quotations from providers outside the Authority's preferred supplier solution.

5.10 Where officers are seeking verbal quotations:

5.10.1 Heads of Service shall ensure that the selection process used is fair and equitable and in accordance with these Standing Orders;

5.10.2 officers must select the quotation which offers value for money for the Authority. In most Band A (Minor) contracts, value for money will normally be shown by choosing the most economically advantageous quotation and in assessing this officers should be mindful of price, quality and the added economic, social and environmental benefits that could be obtained by procuring supplies, services or works in a particular way;

5.10.3 The Head of Service shall keep a record for audit purposes, in a form agreed by the Chief Finance Officer of:

- (a) all those contractors that were requested to provide a quotation;
- (b) the reasons why those particular contractors were selected to provide a quotation;
- (c) if applicable, the reasons why less than three contractors were selected to provide a quotation; and
- (d) the reason for selecting the winning quote;

5.10.4 in the event that three quotations are not received the Head of Service can still proceed to award the contract provided that they can demonstrate that it is reasonable to do so and has obtained Director approval to do the same;

5.10.5 notwithstanding where the supplies, services or works sought are a repetition of a previous procurement, subject to the rules above in relation to aggregation, new quotations should be obtained each time, to ensure the prices paid represent value for money for the Authority;

5.10.6 in the case of any contract to carry out works to be carried out pursuant to Disabled Adaptation Grants, tenants are required to provide to the Authority two quotes and the Authority will establish the best price and this shall be recorded in a file for audit purposes.

### Band B (Small) Contracts

5.11 For any single contract not related to or part of any larger procurement, whose value is more than £10,000, but less than £35,000, the officer shall produce a

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5.4.3 . Call-off contracts called-off from a framework agreement which has been entered into by:¶

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<#> the Council in accordance with these Standing Orders; or . . .

¶  
<#> a local authority purchasing consortium, another local authority or central government department or agency or other contracting authority where the framework agreement has been tendered in accordance with the Public Procurement Regulations and includes this Authority specifically by name or generically by description of regional or national local authorities.¶

Deleted: 5.5 In any contract where the total estimated value exceed £10,000, but is less than or equal to £50,000, the Head of Service shall be responsible for approaching a minimum of three suppliers to obtain written quotations.

written specification for the supplies, services or works being sought and three written quotations shall be obtained.

5.12 Officers shall first consult the Authority's preferred supplier solution, however if the officer is unable to obtain three written quotations from the Authority's preferred supplier solution, they may then seek quotations from providers outside the Authority's preferred supplier solution.

5.13 Where officers are seeking written quotations:

5.13.1 Heads of Service shall ensure that the selection process used is fair and equitable and in accordance with these Standing Orders;

5.13.2 officers must select the quotation which offers value for money for the Authority. In most, but not all, Band B (Small) contracts, value for money will normally be shown by choosing the most economically advantageous quotation and in assessing this officers should be mindful of price, quality and the added economic, social and environmental benefits that could be obtained by procuring supplies, services or works in a particular way;

5.13.3 In the event that three quotations are not received the Head of Service can still proceed to award the contract provided that they can demonstrate that it is reasonable to do so and has obtained Director approval to the same;

5.13.4 The Head of Service shall keep a record for audit purposes, in a form agreed by the Chief Finance Officer of:

- (a) all those contractors that were requested to provide a quotation;
- (b) the reasons why those particular contractors were selected to provide a quotation;
- (c) if applicable, the reasons why less than three contractors were selected to provide a quotation; and
- (d) the reason for selecting the winning quote;

5.13.5 Notwithstanding where the supplies, services or works sought are a repetition of a previous procurement, new quotations should be obtained each time, to ensure the prices paid represent value for money for the Authority.

### **Band C (Medium) Contracts**

5.14 For any single contract, not related to or part of any larger procurement, whose value is £35,000 or more, but less than £75,000, the officer shall obtain three written quotations using the Request for Quotation form, available in the Procurement Toolkit. The Request for Quotation shall be accompanied by a written specification and a set of contract terms, prepared with advice from Legal Services.

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**5.15 Where officers submit a Request for Quotation:**

5.15.1 the Request for Quotation shall be uploaded to the Source Leicestershire website (in the format available from the Procurement Toolkit) and the Council's website by the Procurement Team and shall be open for a minimum of 5 working days or such shorter time as the relevant Head of Service may determine;

5.15.2 Heads of Service shall ensure that the selection process used is fair and equitable and in accordance with these Standing Orders;

5.15.3 officers must select the quote which offers value for money for the authority. In some Band C (Medium) contracts, value for money will normally be shown by choosing the most economically advantageous quotation and in assessing this officers should be mindful of price, quality and the added economic, social and environmental benefits that could be obtained by procuring supplies, services or works in a particular way;

5.15.4 in the event that three quotations are not received the Head of Service can still proceed to award the contract provided that he/she can demonstrate that it is reasonable to do so and has obtained Director approval to the same;

5.15.5 the Head of Service shall keep a record for audit purposes, in a form agreed by the Chief Finance Officer of:

- (a) all those contractors that were requested to provide a quotation;
- (b) the reasons why those particular contractors were selected to provide a quotation;
- (c) if applicable, the reasons why less than three contractors were selected to provide a quotation; and
- (d) the reason for selecting the winning quote;

5.15.6 Notwithstanding where the supplies, services or works sought are a repetition of a previous procurement, new quotations should be obtained each time, to ensure the prices paid represent value for money for the Authority.

**Band D (Large) Contracts**

**5.16 For any single contract, not related to or part of any larger procurement, whose value is £75,000 or more, but below the thresholds set out in the Public Contracts Regulations 2006 (as amended from time to time), tenders shall be sought in accordance with the procedures under Standing Order 7, below.**

**5.17 The contract opportunity shall be advertised on the Source Leicestershire website (in the format available in the Procurement Toolkit) and the Council's**

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5.5.2 Complete a Risk Assessment Matrix (see Procurement Connections on the intranet page).

website. Such adverts shall be uploaded by the Procurement Team. Where it is deemed appropriate and proportionate by the officer, the opportunity should also be advertised in relevant specialist publications.

5.18 The procuring officer must note that these Standing Orders contain minimum timescales for a procurement exercise and therefore it is imperative that advice is sought from both Legal Services and the Procurement Team well in advance of the commencement of the procurement exercise.

5.19 Head of Services shall be responsible for ensuring that any Band D contracts proposed to be entered into by the Authority in the coming financial year are notified to the Procurement Team by the end of February each year for inclusion in the procurement plan.

### Preferred Supplier Solution

5.20 The Authority has a preferred supplier solution which is operated and managed by the Authority's service provider. The preferred supplier solution is a directory of businesses and shall be used in accordance with these Standing Orders.

2.21 Where an Officer is seeking quotations for Band A and Band B contracts from the preferred supplier solution, they shall in the first instance restrict the selection of businesses to those based locally.

5.22 Details of the Preferred Supplier Solution are available from the Procurement Toolkit.

## **6. CONTRACTS TO WHICH THE PUBLIC PROCUREMENT REGULATIONS APPLY (BAND E - EU)**

6.1 For any contract whose value is more than the amounts set out in the thresholds in the Public Contracts Regulations 2006 (as amended from time to time), tenders shall be sought in accordance with those regulations.

6.2 Under the Public Contracts Regulations 2006 a contract may be tendered under the open, restricted or negotiated procedure or, in the case of complex procurements, under the competitive dialogue procedure.

6.3 The procuring officer must note that the Public Contract Regulations 2006 contain minimum timescales for a procurement exercise and therefore it is imperative that advice is sought from both Legal Services and the Procurement Team well in advance of the commencement of the procurement exercise.

6.4 The provisions of these Standing Orders shall continue to apply to such a contract only to the extent that they do not conflict with the provisions of the Public Procurement Regulations 2006.

## **7. TYPES OF TENDER**

**Deleted:** 5.5.3 Ensure compliance with Risk Management Guidelines on insurance levels; 10 million Employers' Liability; 10 million Public Liability (and 5 million Professional Indemnity where appropriate), unless the output for the Risk Assessment Matrix suggest a different level of indemnity be appropriate.¶

**Deleted:** 5.5.4 In selecting contractors who are to be requested to provide a written quotation, Heads of Service shall ensure that the selection process they are using is fair and equitable, and that no favouritism is shown to any one contractor. The approved list is the initial source for the selection of contractors for works and construction related services (see 7.2). For any service, supplies categories outside of the scope of the approved list, the Pre-qualification questions will be included in the quotation documentation. The Head of Service shall keep a record, in a form to be agreed by the Chief Finance Officer of:¶  
(i) all those contractors that were requested to provide a quotation; .  
(ii) the reasons why those particular contractors were selected to provide a quotation;¶  
(iii) if applicable, the reasons why less than three contractors were selected to provide a quotation. ¶

**5.6** Where the value of a proposed contract is £50,000 or more tenders shall be invited in accordance with whichever of Standing Orders 7.1, 7.2 and 7.3 shall apply or, where the EU threshold is exceeded, in accordance with one of the procedures specified in 6.2.¶

**Deleted:** Where the value of the contract is in excess of any threshold prescribed in the Public Procurement Regulations the contract shall be tendered in accordance with the Regulations

**Deleted:** .

**Deleted:** The current thresholds can be found on the Internet.

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**Deleted:** 6.3 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 the estimated value of which exceeds the relevant thresholds. Contracts for Part B services do not need to be advertised in OJEU, but must comply with the principles ( ... [4]

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## Restricted Tendering

7.1 This is a two stage procedure by which a contract is let following publication of an advertisement seeking expressions of interest from tenderers to participate. Following evaluation of the pre-qualifying submissions, no fewer than 5 qualified bidders shall be invited to tender for the contract. This route to the market is particularly suitable where a large response is anticipated.

7.2 The advertisement shall:

7.2.1 specify details of the supplies, services or works the Authority is procuring,

7.2.2 specify the contract duration and proposed commencement date;

7.2.3 invite persons or bodies to contact a specific officer to request a Pre-Qualification Questionnaire;

7.2.4 specify a contract reference number;

7.2.5 specify a time limit, being not less than 30 days from the date of the advertisement, within which such expressions of interest are to be received by the Authority;

7.2.6 where officers are using the authority's E-tendering solution, specify the appropriate tender box code and details of how to access documentation.

7.3 In relation to construction works or services only:

7.3.1 advertisements need not be placed in accordance with 7.2 (above) where no fewer than 5 bidders can be selected from the Authority's preferred supplier solution and invited to tender;

7.3.2 in the event that 5 bidders cannot be selected the Head of Service can still proceed to invite between 3 and 5 bidders provided that they can demonstrate that it is reasonable to do so and has obtained Director approval to do the same;

7.3.3 in the event that less than 3 bidders can be selected, an advertisement shall be placed in accordance with 7.2 (above).

7.4 After the expiry of the period specified in the advertisement and following proper evaluation of the returned Pre-Qualification Questionnaires, in accordance with the criteria specified, invitations to tender for the contract shall be sent to:

7.4.1 not less than 5 of the persons or bodies who returned a satisfactorily completed PQQ and has been shortlisted, selected by the Authority; or

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Deleted: This Standing Order shall apply where the Cabinet or officer duly authorised in that behalf, have decided that invitations to tender for a contract are to be made to some or all of those persons or bodies who have replied to a notice.

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7.1.2 For the purpose of this Standing Order, notice shall be given:¶  
¶  
(a) in at least one local newspaper/on Source Leicestershire website, and/or¶  
¶  
(b) in at least one newspaper or journal circulating among such persons or bodies who undertake such contracts, and¶

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Deleted: (c) submit their completed Pre-qualification Questionnaire as expression of interest in quoting for the requirement,

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Deleted: . Where the value of the contract exceeds the EU threshold the last date by which expressions of interest and/or questionnaires shall be submitted shall be a minimum of 37 days from the date of the despatch of the notice.¶  
¶

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7.4.2 where fewer than 5 persons or bodies have applied or have satisfactorily completed the PQQ, those persons or bodies which the Authority consider suitable.

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### Open Tendering

Deleted: 7.2 Approved List¶

¶  
7.2.1 The Council's Approved List is provided by Constructionline. The use of the List is in accordance with the Constructionline Code of Practice and User Guide. Quotations and invitations to tender for a contract are to be limited to those persons or bodies whose names shall be included in that list. This method of tendering is not permitted where the value of the contract or estimated value of contract is over the EU threshold.¶

¶  
7.2.2¶

¶  
7.2.2.1 Where value of work is below £10,000; enter the category and value requirements into Constructionline, also enter the office location of East Midlands to restrict the selection of contractors to those based locally. Specify a minimum of 3 persons or bodies to be selected from this list at random. Request a verbal quotation from the selected 3 contractors:¶

¶  
(a) where fewer than 3 persons or bodies are approved for a contract of the relevant category and amount of value, all of those persons or bodies.¶

¶  
7.2.2.2 Where the value of work is £10,000 or above and below EU threshold for Services or Works as appropriate. Enter the category and value requirements into Constructionline and specify random selection of a minimum of 4 persons or bodies, do not specify local office (this is against procurement regulation principles for contracts other than those of the lowest value). Invite these persons or bodies to tender:¶

¶  
(a) where fewer than 4 persons or bodies are approved for a contract of the relevant category and amount of value, all of those persons or bodies.¶

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Deleted: Standing Order shall apply where the Council, the Cabinet or officer duly authorised in that behalf, have decided that tenders for a contract are to be obtained by open competition.

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7.3.2 A public notice shall be given in one or more local newspapers/on Source Leicestershire website and/or in one or more newspapers or journals circulating among such persons or bodies as undertake such contracts. This notice will include brief details of the requirements, specifying a d... [5]

7.5 This is a procedure by which a contract is let following publication of an advertisement inviting all those expressing an interest in the contract to submit a bid at the same time. This route to the market is not recommended where a large response is anticipated. This is a one stage procedure.

7.6 The advertisement shall:

7.6.1 specify details of the supplies, services or works the Authority is procuring;

7.6.2 specify the contract duration and proposed commencement date;

7.6.3 invite persons or bodies to contact a specific officer to request an Invitation to Tender;

7.6.4 specify a contract reference number;

7.6.5 specify a date and time, being not less than 52 days from the date of the advertisement, by which such expressions of interest are to be received by the Authority; and

7.6.6 where officers are using the Authority's E-tendering solution, specify the appropriate tender box code and details of how to access documentation.

### Negotiated Procedure

7.7 This procedure may be considered where the nature of the service(s) 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. This procedure can only be used with the written consent of the Head of Legal and Support Services.

### Competitive Dialogue

7.8 This procedure is available for procurements in which the Authority is unable to define the financial, legal or technical elements of the project. This, like the restricted procedure, requires a pre-qualification stage, carried out with a call for competition. This is the most complex route to the market and will only be used in the most exceptional of cases and with the written consent of the Head of Legal and Support Services.

## **8. SUBMISSION OF TENDERS**

**Submission of Tenders for Band D (Large) contracts**

**8.1** Where in pursuance of these Standing Orders invitation to tender is made, every invitation shall state:

Deleted: . This Standing Order shall apply where tenders are invited under Standing Order 5.6.¶

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**8.1.1** if the tender process is being conducted electronically via the Authority's e-tendering solution, the process for registering and submitting tenders and the signed Form of Tender; or

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**8.1.2** if the tender is to be submitted by hard copy, that no tender will be considered unless it is enclosed in a plain sealed envelope which shall bear the word "Tender" - followed by the contract to which it relates but shall bear no other name or mark indicating the sender.

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**8.2** The tenders shall be returned to the relevant Head of Service, or such other officer of the Authority as may be nominated by that Head of Service and shall be kept by him or her in a secure place until the time and date specified for their opening.

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**8.3** No tender received after the time and date specified in the invitation shall be considered under any circumstances.

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**8.4** Every invitation to tender shall state:

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**8.4.1** that the Authority is not bound to accept any tender, including the lowest;

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**8.4.2** the tender evaluation criteria, with full explanation;

**8.4.3** a statement that the Authority will be obliged to comply with the Freedom of Information regime;

**8.4.4** closing date and time for receipt of tenders and the name and postal address or the web address to which tenders should be sent; and

**8.4.5** a requirement that the tenderers accept full responsibility for ensuring compliance with the terms of these Standing Orders and that any failure to do so may render that tender liable to disqualification.

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**Evaluation Criteria**

Deleted: any other matters directed by these Standing Orders to be included

**8.5** Evaluation criteria must be designed to secure an outcome providing value for money for the Authority. The basic criterion shall be one of:

**8.5.1** Lowest price – where payment is to be made by the Authority;

**8.5.2** Highest price – where payment is to be received by the Authority;

8.5.3 Most Economically Advantageous Tender – where considerations other than just price apply. If relying on this criterion, appropriate sub-criteria must also be included referring to relevant considerations and guidance should be given to tenderers on how their responses will be scored. Further advice can be provided by the Procurement Team.

**8.6 Evaluation criteria must not include:**

8.6.1 Non-commercial considerations, save as expressly set out in these Standing Orders;

8.6.2 Matters which discriminate against suppliers from the European Economic Area;

8.6.3 A general provision allowing for the highest mark to be awarded for tenders which exceed the specification.

**8.7 Within every invitation to tender there shall be reference made to the requirements on public bodies with regard to the Freedom of Information Act 2000. Such a reference shall include notice to the tenderer that:**

8.7.1 the Authority has a duty of 'openness' under the act;

8.7.2 it is the Authority and not the tenderer who makes the decision on the release of information within a tender;

8.7.3 any claim by the tenderer that information within a tender is exempt under the act will be considered by the Authority. However, a simple assertion that any disclosure would prejudice commercial interests is not sufficient. The assertion must be supported by reasoned argument and where practical, by empirical evidence; any decision to treat all or some information within a tender as exempt may be reviewed if any further requests are received over time;

8.7.4 the Authority will consult with them before making any disclosure;

8.7.5 the Authority has a system for dealing with any appeals under the act.

**Submission of Tenders for Band E (EU) contracts**

**8.8 Tendering processes shall comply with the procedures described above, together with further requirements in compliance with the Public Contracts Regulations 2006. In the event of a conflict between these Standing Orders and the Public Contracts Regulations 2006, the latter shall take precedence.**

**8.9 Head of Services shall be responsible for ensuring that any Band E contracts proposed to be entered into by the Authority in the coming financial year are**

notified to the Procurement Team by the end of February each year for inclusion in the procurement plan.

**8.10** The EU procurement regime requires a standstill (or Alcatel) period of a minimum of 10 days from the date on which the outcome of the tender is notified to all the bidders. Should a challenge from an unsuccessful bidder be received during this period, the award of the contract shall be delayed until the challenge is resolved. If no challenge is received within the standstill period, the contract may be awarded in accordance with the Constitution.

**8.11** An award notice must be placed in the Official Journal of the European Union within 48 days of contract award. The award notice must be approved by the Procurement Team.

## **9. OPENING AND ACCEPTANCE OF TENDERS**

**9.1** This Rule shall apply to Band D (Large) and Band E (EU) contracts.

**9.2** Tenders received under these Standing Orders shall be opened at one time and only in the presence of:

9.2.1 the Head of Legal and Support Services or duly appointed representative;

9.2.2 the Head of Finance or duly appointed representative; and

9.2.3 the appropriate Head of Service or duly appointed representative.

**9.3** Provided that no Head of Service or any member of his or her staff shall be present if a tender has been submitted in his name,

**9.4** All tenders received shall be recorded and all officers present shall sign the tender book.

**9.5** A register of all tenders accepted shall be kept and maintained by the Head of Legal and Support Services. Such register shall for each contract specify the name of the contractor, the works to be executed, the services to be supplied or the goods to be supplied and the contract value. The register shall be open to inspection by any member of the Council during normal office hours.

**9.6** Tenderers shall be notified of the acceptance or rejection of their tenders.

**9.7** Face to face feedback on a tenderer's submission shall be offered to those tenderers that are small or medium enterprises (being a business with less than 250 employees).

## **10. TENDER EVALUATION AND AWARD OF CONTRACTS**

**10.1** All tenders shall be properly evaluated by the Director or nominated officer in accordance with the published award criteria and in accordance with any

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specific requirements of any relevant EU Directive or English legislation. A member of the Procurement Team shall be invited to participate in the evaluation process.

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10.2 Any tenderer whose tender is found to contain a qualification which will give that tenderer an unfair advantage over other tenderers will be asked either to withdraw the qualification or withdraw the tender.

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10.3 A tenderer's error in the computation of the pricing of their tender will be corrected and the tenderer asked by the Director to stand by the corrected tender or to withdraw the tender.

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10.4 Post tender negotiations shall only be by exception and in accordance with Public Procurement Regulations. Authority to enter into post tender negotiations may only be granted by the Chief Executive or Director of Services. Officers who are authorised to carry out post-tender negotiations shall ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

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10.5 Where award is based on lowest or highest price, a tender other than the lowest tender if payment is to be made by the Authority or the highest tender if payment is to be received by the Authority, shall not be accepted except where there are justifiable reasons for doing so, for instance:

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10.5.1 the procurement of a named product required to be compatible with an existing product, i.e. computer software;

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10.5.2 an alternative pre-tender evaluation criteria has been determined;

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in such circumstances the Statutory Officers shall be consulted and written confirmation of their agreement retained for audit purposes.

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10.6 If the Director considers the lowest priced tender, highest priced tender or most economically advantageous tender (as appropriate) to be abnormal given the nature of the contract, the tenderer shall be asked to clarify in writing the reasons for its tender and the Director shall take that explanation into account in deciding which tender will be accepted.

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**11. NOMINATED SUB-CONTRACTORS AND SUPPLIERS¶**  
<sp>¶

11.1 . Where a main contractor indicates in their tender submission the use of sub-contractors, the Procuring Officer will ensure that:¶

¶  
(i) . the main contractor verifies they have vetted the sub-contractor to ensure that they meet the standards in all areas that the main contractor has undertaken to meet in their submission;¶

¶  
(ii) . the insurance levels of the sub-contractor meet the levels required in the tender document;¶

¶  
(iii) . the goods, works services, they have been sub-contracted by the main contractor to provide, remains the responsibility of the main contractor.¶

10.7 Contracts shall be awarded by:

10.7.1 the cabinet (in accordance with Cabinet Function no. 30 at Part 3, Section 4(2) of the Constitution); and

10.7.2 officers (in accordance with the general delegations to be discharged by the Chief Executive and Director - no. (iv) at Part 3, Section 7(3) of the Constitution).

10.8 All contract awards shall be notified promptly to the Procurement Team.

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## 11. CONTRACT CONDITIONS



11.1 Every procurement which exceeds £35,000 in value shall be a formal contract in writing. The procuring officer should seek the advice of Legal Services at the earliest opportunity in this regard. No contract shall be entered into without the prior approval of the Head of Legal and Support Services or their nominated officer.

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11.2 Such contract shall, unless the Head of Legal and Support Services deems it disproportionate:

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11.2.1 specify the supplies, services or works to be supplied or executed; the price to be paid together with a statement as to the amount of any discount(s) or other deduction(s); the period(s) within which the contract is to be performed and such other conditions and terms as may be agreed between the parties or specified in these Standing Orders;

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11.2.2 where a contract exceeds £200,000 and the Head of Finance deems appropriate, contain a requirement that a contractor give sufficient security for the due performance of the contract provided that this shall not apply where the goods and materials are supplied and payment is not made until completion of works;

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11.2.3 include provisions for the termination and recovery of any sums paid where there has been evidence of bribery or corruption or any breach of the Bribery Act 2010 or section 117(2) Local Government Act 1972;

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11.2.4 include provisions entitling the Authority to terminate part or all of the contract or to obtain substituted provision of the supplies, services or works to be supplied under the contract in the event of a breach of contract by or the insolvency of the contractor;

11.2.5 include prohibitions on the contractor from sub-contracting, assigning or otherwise transferring the contract without the prior written consent of the Authority and providing that the contractor shall remain liable to the Authority for any part of the contract that may be sub-contracted;

11.2.6 include provisions securing the contractor's compliance with relevant legislative requirements, including as a minimum in relation to:

- (a) Health and Safety;
- (a) Human Rights;
- (c) Freedom of Information;
- (d) Data Protection;
- (e) Workforce transfer regulations;
- (f) Bribery and corruption; and
- (g) Equalities and discrimination.

11.2.7 provide for indemnities in favour of the Authority for any breach of the above and for the acts and omissions of the contractor in carrying out the contract;

11.2.8 provide for compliance with those of the Authority's policies relevant to the provision of the supplies, services or works;

11.2.9 provide for the protection of the Authority's intellectual property rights, where appropriate;

11.2.10 provide for, where the supplies, services or works require it, appropriate restrictions or conditions precedent in relation to the protection of vulnerable persons, including requiring Criminal Records Bureau checks;

11.2.11 provide for the Authority's right to monitor and audit the supplies, services or works under the contract and for the contractor's provision of assistance in such monitoring and in securing improvements in economy, efficiency and effectiveness, as specified in Section 3 of the Local Government Act 1999. Such assistance may include setting performance indicators, benchmarking implementing performance plans and/or periodically reviewing the services;

11.2.12 provide for adequate confidentiality and data protection provisions;

11.2.13 be governed by the laws of England and subject to the exclusive jurisdiction of the Courts of England;

11.2.14 comply with the laws of England and any applicable EU legislation or regulation.

11.3 Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current at the date of the tender, every contract shall require that all goods and materials used or supplied, and all the workmanship shall be at least of the standard required by the appropriate British Standard Specification or Code of Practice.

11.4 Every contract which exceeds £250,000 shall be in writing and under the Common Seal of the Authority.

11.5 Where a contract exceeds £50,000 in amount or value, provide for the payment of liquidated damages by the contractor where he fails to complete the contract within the time specified, where the appropriate Head of Service considers it appropriate.

11.6 The provisions of these Standing Orders do not prevent the use of a formal contract for a procurement less than £35,000 where the appropriate Head of Service considers it appropriate.

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Deleted: 12.4 There shall be inserted in every written contract a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if:¶

¶ the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council, or¶

¶ for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council, or¶

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

¶ if in relation to any contract with the Council the contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972.¶

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11.7 It shall be a condition of any agreement between the Authority and any person (not being an officer of the Authority) who is required to supervise a contract between the Authority and a third party on the Authority's behalf that, in relation to such contract, he/she shall comply with the requirements of these Standing Orders as if he/she were an officer of the Authority.

11.8 In all areas of tendering, negotiating, letting or renewing, performing, reviewing, amending, discharging or terminating any contract to which the Authority is either a party or of which it is a beneficiary, regard shall be had to the requirements of economy, efficiency and effectiveness specified in Section 3 of the Local Government Act 1999.

11.9 Ensure compliance with Risk Management Guidelines on insurance levels and require such insurances as the relevant Head of Services determines appropriate in consultation with the Section 151 Officer.

11.10 Where a main contractor indicates in their tender submission the use of sub-contractors, the officer will ensure that:

11.10.1 the main contractor verifies they have vetted the sub-contractor to ensure that they meet the standards in all areas that the main contractor has undertaken to meet in their submission;

11.10.2 the insurance levels of the sub-contractor meet the levels required in the tender document;

11.10.3 the supplies, services or works they have been sub-contracted by the main contractor to provide, remains the responsibility of the main contractor.

11.11 Where a framework agreement is used to meet the Authority's need for supplies, services or works, this Standing Order shall only apply to the extent that the framework's call-off terms do not include these provisions and the framework agreement does not provide for a variation to such terms.

## 12. CONTRACT AND PERFORMANCE MANAGEMENT

12.1 Contract management arrangements shall be set out in any invitation to tender and incorporated into any subsequent contract.

12.2 A named contract manager shall be appointed for each Band C, D and E contract.

12.3 The Head of Legal and Support Services may agree the variation or novation of any contract originally awarded by the Director. The variation or novation of a contract originally awarded by the Cabinet shall only be agreed by the Cabinet.

12.4 No contract entered into by the Authority may be extended by duration or value unless:

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Deleted: A Head of Service may agree the variation or novation of any contract originally awarded by a Director. The variation or novation of a contract originally awarded the Cabinet shall only be agreed by the Cabinet.

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12.4.1 where the contract is a Band E contract, such extension was provided for in the original OJEU notice and contract documentation;

12.4.2 where the contract is a Band D contract or of lesser value, such extension would not mean that, had it been included in the original contract, the overall value would have exceeded the EU threshold; and

12.4.3 alternative options have been considered and the relevant Head of Service is satisfied that this option represents value for money and is in the best interests of the Authority in light of the contractor's performance.

12.5 All extensions to Band D and Band E contracts shall be promptly notified to the Procurement Team.

12.6 A contract is a live document. Contract managers and officers shall have regard to the provisions of the contract in observing and monitoring performance of the contract, handling disputes and terminating a contract. Where officers are unclear of the provisions or operation of a contract they should promptly seek advice from Legal Services.

Deleted: 14. FREEDOM OF INFORMATION ACT 2000¶

<sp>¶

14.1 . Within every invitation to tender there shall be reference made to the requirements on public bodies with regard to the Freedom of Information Act 2000.¶

¶ 14.2 . Such a reference shall include notice to the tenderer that:¶

¶ . the Council has a duty of 'openness' under this Act;¶

¶ . it is the Council not the tenderer who makes the decision on the release of information within a tender;¶

¶ . any claim by the tenderer that information within a tender is exempt under the Act will be considered by the Council but that a simple assertion that any disclosure would prejudice commercial interests is not sufficient. The assertion must be supported by reasoned argument and where practical, by empirical evidence; any decision to treat all or some information within a tender as exempt may be reviewed if any further requests are received over time;¶

¶ . the Council will consult with them before making any disclosure;¶

¶ . the Council has a system for dealing with any appeals under the Act.¶

¶ 15. SCHEDULE OF RATES¶

<sp>¶

15.1 . This Standing Order shall apply where the Cabinet or officer authorised in that behalf has decided that work shall be allocated in accordance with a Schedule of Rates.¶

¶ 15.2 . For the purposes of this Standing Order, public notice shall be given in at least one local newspaper/on Source Leicestershire website and/or in at least one newspaper/journal circulating among such persons or bodies as undertake such contracts.¶

¶ 15.3 . Unless EU Regulations apply, the public notice shall:¶

¶ (a) . specify details of the contract into which the Council wish to enter,¶

¶ (b) . invite persons or bodies interested, to request a Pre-qualification Questionnaire, and¶

¶ (c) . submit their completed Pre-qualification Questionnaire as expression of interest in tendering for the requirement,¶

¶ (d) . specify a time limit not less than 30 days, within which such applications are to be submitted to the Council.¶

¶ ... [6]

- 1.8** An officer with an interest in a contract shall take no part in advising on the Council's dealing with that contract. If the officer is present at a meeting when the contract is discussed, he or she shall forthwith declare that interest and withdraw from the meeting while it is under discussion, unless the meeting invite him or her to remain.

## **2. DEFINITIONS**

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- 2.1** 'Contract' means a legally binding agreement with another party for:

1. the supply of goods or materials
2. the performance of services
3. the undertaking of works

under which the Council incurs a liability for payment or receives payment in value or kind. It excludes a contract of employment or a contract for the acquisition or disposal of land or an interest in land;

- 2.2** 'EU threshold' means the current European Union threshold values for advertisement under the Public Procurement Regulations;

- 2.3** 'Framework agreement' is an agreement for up to four years with a provider which sets out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement;

- 2.4** 'OJEU' refers to the Official Journal of the European Union;

- 2.5** 'PIN' refers to a Prior Information Notice for publication in OJEU;

- 2.6** 'Public Procurement Regulations' means the Public Contract Regulations 2006 or any amendment thereof;

- 2.7** 'Chief Finance Officer' means the officer designated under Section 151 of the Local Government Act 1972;

- 2.8** 'Supplier' means any person or body providing, or seeking to provide, supplies, services or works to the Council;

- 2.9** 'Tender' means the terms on which a contractor is willing to supply goods or materials, perform services or undertake works. It will be preceded by invitations from the Council to submit a tender and will conclude with the Council's

consideration of the tenders submitted and the selection of a contractor for the goods, services or works concerned;

- 2.10** 'Value' means the actual or estimated amount payable by the Council to the supplier for the goods, services or works (excluding VAT) over the length of the contract. For contracts of an indefinite length the value should be established on the basis that the contract will last for a period of forty eight months.

- (d) no provisions available through OGC contracts.

- 3.2** In all areas of tendering, negotiating, letting or renewing, performing, reviewing, amending, discharging or terminating any contract to which the Council is either a party or of which it is a beneficiary, regard shall be had to the requirements of economy, efficiency and effectiveness specified in Section 3 of the Local Government Act 1999 ("the Act") and, in particular to any performance indicators or performance standards specified by the Secretary of State under Section 4 of the Act.

- 3.3** In relation to any contract to which the Council is a party, it shall be an express term of any invitation to tender or treat and of any contract which may result, that any other party to the contract and any subcontractors or agent of any other party to the contract appointed in respect of the contract shall be, throughout the duration of the contract, under a continuing duty to the Council:

3.3.1 To make arrangements to secure continuous improvement in the performance of its obligations to the Council having regard to a combination of economy, efficiency and effectiveness and, in particular to any performance indicators or performance standards specified by the Secretary of State under Section 4 of the Act and to the provisions of any Best Value Performance Plan promulgated by the Council under Section 6 of the Act.

3.3.2 To supply such information as the Council may from time to time reasonably request relating to the contract and/or to the performance by that party of its obligations to the Council under that contract.

3.3.3 To co-operate fully with the Council in discharging the Council's duty under Section 3 of the Act including, as and where appropriate;

Setting benchmarks by which to measure performance under the contract

Incorporating into the contract any applicable performance indicators or performance standards specified by the Secretary of State, whether prior to or during the course of the contract

Establishing performance plans for the contract either alone or together with other similar or related contracts

Undertaking regular periodic reviews of the performance of the contract

- 3.4** Whenever possible, purchases should be aggregated to make the best use of the Council's purchasing power. Where a recurring pattern of purchases can be seen for similar supplies, services or works, consideration should be given to whether one or more framework agreements would represent better value in terms of price, service, invoicing or other administrative costs.

#### **4. STANDING ORDERS RELATING TO SPECIALISED WORK OR SPECIAL CIRCUMSTANCES**

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- 4.1** Notwithstanding the provisions of these Standing Orders and subject only to the requirements of statute or regulation:

4.1.1 Exemption from any of the provisions of these Standing Orders may be granted by the Council acting through the Chief Executive (or where appropriate, Acting Chief Executive), in consultation with the Chief Finance Officer and the Monitoring Officer upon it being shown to their satisfaction that there are **special circumstances** justifying such exemption. Such special circumstances shall fall under at least one of the following categories:

- (a) one of the tendering methods detailed in Standing Order 7 has been used and has resulted in either unacceptable, irregular or no tenders;
- (b) only one supplier is available for technical or artistic reasons;
- (c) the procurement is a repetition of work awarded on an earlier contract that was subject to a formal tendering procedure. This procedure shall only be used where the expiration of the earlier contract is less than one year and in the opinion of the officers stated above, the value of the previous successful tender was sufficiently competitive in comparison to the second lowest tender, that best value can be secured;
- (d) extreme urgency exists for unforeseen reasons which are not attributable to the Council and the various time limits cannot be met;
- (e) the procurement of a named product or service required to be compatible with an existing product or service previously provided in relation to the same matter.

4.1.2 Any request under 4.1.1 above shall be made in writing on the approved form which shall be certified by the officers specified in 4.1.1 above.

4.1.3 The Cabinet shall be informed of the exercise of any authority pursuant to this Standing Order by the Director or Chief Executive and any such report will include confirmation that the officers specified in 4.1.1 have been consulted and such exemption granted.

### **Definitions relating to the Standing Orders Concerning Tenders**

**5.1** Any contract specifications are to be prepared in accordance with any rules or regulations for the time being contained in such of the Public Procurement Regulations as are applicable to a contract of that type or which would be so applicable if the value of the contract were in excess of the threshold specified in the Public Procurement Regulations.

**6.3** 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 the estimated value of which exceeds the relevant thresholds. Contracts for Part B services do not need to be advertised in OJEU, but must comply with the principles of the EU Regulations and the award notice be placed in OJEU.

**6.4** The Public Procurement Regulations set out the minimum timescales for receipt of expressions of interest and tenders. Where the Council has established a PIN announcing its forthcoming contracts for the year ahead, the Council may, if appropriate, rely on reduced timescales. Reduced timescales are available in other specific circumstances.

7.3.2 A public notice shall be given in one or more local newspapers/on Source Leicestershire website and/or in one or more newspapers or journals circulating among such persons or bodies as undertake such contracts. This notice will include brief details of the requirements, specifying a date being a minimum of 30 days for receipt of tender documents.

7.3.3 Where the value of the contract exceeds the EU threshold the last date by which tenders shall be received shall be a minimum of 52 days from the date of the despatch of the notice.



## 14. FREEDOM OF INFORMATION ACT 2000

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**14.1** Within every invitation to tender there shall be reference made to the requirements on public bodies with regard to the Freedom of Information Act 2000.

**14.2** Such a reference shall include notice to the tenderer that:

the Council has a duty of 'openness' under this Act;

it is the Council not the tenderer who makes the decision on the release of information within a tender;

any claim by the tenderer that information within a tender is exempt under the Act will be considered by the Council but that a simple assertion that any disclosure would prejudice commercial interests is not sufficient. The assertion must be supported by reasoned argument and where practical, by empirical evidence; any decision to treat all or some information within a tender as exempt may be reviewed if any further requests are received over time;

the Council will consult with them before making any disclosure;

the Council has a system for dealing with any appeals under the Act.

## 15. SCHEDULE OF RATES

---

**15.1** This Standing Order shall apply where the Cabinet or officer authorised in that behalf has decided that work shall be allocated in accordance with a Schedule of Rates.

**15.2** For the purposes of this Standing Order, public notice shall be given in at least one local newspaper/on Source Leicestershire website and/or in at least one newspaper/journal circulating among such persons or bodies as undertake such contracts.

**15.3** Unless EU Regulations apply, the public notice shall:

- (a) specify details of the contract into which the Council wish to enter,
- (b) invite persons or bodies interested, to request a Pre-qualification Questionnaire, and
- (c) submit their completed Pre-qualification Questionnaire as expression of interest in tendering for the requirement,

- (d) specify a time limit not less than 30 days, within which such applications are to be submitted to the Council.
- 15.4** After the expiry of the period specified in the public notice the Council or the Cabinet (or a duly authorised officer) shall award the contract to successful contractor(s) to whom work shall be allocated on the basis of the Schedule of Rates.
- 15.5** Work falling to be allocated under the Schedules of Rates shall:
- (a) only be allocated to contractors on the contract referred to above;
  - (b) be allocated to the contractor on the Schedule of Rates contract who submitted the lowest price for the relevant type of work, provided that their total workload allows them to undertake it within the time required.
- 15.6** A contract awarded under this Standing Order shall have effect for no more than 4 years.
- 15.7** The prices submitted for work allocated under this Standing Order shall have effect for the term of the contract. The tender and contract documents will include reference to contractors being able to request an uplift to prices after the 1 year anniversary of the contract commencement. The prices submitted shall be substituted and work allocated accordingly. At the end of the fourth year, the list shall cease to have effect and a fresh list shall be compiled.

## **16. AUTHORITY TO WAIVE CONTRACT PROCEDURE RULES**

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- 16.1** If, in exceptional circumstances, authority is sought to waive Contract Procedure Rules, the report to the Cabinet must give adequate reasons and specify precisely the procedures to be waived and must first be approved by the Monitoring Officer.

## APPENDIX 3

### PROPOSED CHANGES TO THE FINANCIAL PROCEDURE RULES

#### 4.8 FINANCIAL PROCEDURE RULES (FINANCIAL REGULATIONS)

C.53 Subject to the expenditure on such matters being included in approved estimates, all orders or contracts for the supply of goods or materials or for the execution of work shall comply with the Contract Procedure Rules.

**Deleted:** following direction:¶

¶  
(i) . where the estimated value of a single or repeat order exceeds £50,000 in total, the Contracts Procedure Rules shall be observed.

**Deleted:** (ii) . Where the estimated value of a single or repeat order exceeds £10,000, but is less than or equal to £50,000, in total the Head of Service shall be responsible for formally seeking not less than three quotations. This is a formal procedure which will include written specifications and quotation documents, the opening of quotations on specified dates and recording of the quotations received by the Head of Service. Quotations need not be invited in respect of contracts called-off from a framework which has been entered into by:¶

¶  
<#>the Council in accordance with these Financial Regulations; or .

¶  
<#>another local authority, a local authority purchasing consortium, a central government department or agency or other contracting authority where the framework agreement has been tendered and awarded, in accordance with the Public Procurement Regulations and in respect either specifically or collaboratively for NWLDC.¶

¶  
. Where appropriate, the principle of Contracts Procedure Rule 4 may be applied to these Financial Procedure Rules.