



**South
Derbyshire**
District Council

South Derbyshire District Council

Contract Procedure Rules and Procedures Manual

Date: May 2011
Version No: Final
Dept: Procurement & Business Improvement

CONTENT

1.	Definitions
2.	Compliance with the Rules and Relevant Legislation
3.	Contracts to which the Rules do not apply
4.	Exemptions from the Rules
5.	Contracts to which Rules on Tendering (Rules 12-18) do not apply - General
6.	Contracts to which Rules on Tendering (Rules 12-18) do not apply – Service Specific
7.	Register of Exemptions
8.	Schemes of Delegation
9.	Contract Records
10.	Establishing the Value of the Contract/Expenditure per Contract
11.	Finance and Authorisation
12.	Pre-Qualification Requirements
13.	Competitive Quotes and Tenders
14.	Invitations to Tender
15.	Receipt of Tenders (including under Framework Agreements) and Opening of Tenders
16.	Evaluation Criteria and Evaluation of Tenders
17.	No Material Changes to Contract Post Tender
18.	Award of Contracts
19.	Signing and Sealing of Contracts
20.	Commencement of Contracts
21.	Terms and Conditions of Contracts
22.	Variations, Extensions and Renewals of Contracts
23.	Non-Compliance with the Rules
24.	Performance Indicators
25.	Seeking Advice

Appendix 1	Business Case Content
Appendix 2	EU Procurement Regulations – Thresholds
Appendix 3	Ethics in Purchasing – Codes of Conduct
Appendix 4	Green Procurement Guide
Appendix 5	Contract Procedure Rules – Exemption Procedure
Appendix 6	Quotations and Tenders Flowchart

CONTRACT PROCEDURE RULES – for the Supply of Goods, Services and Works**1. DEFINITIONS****1.1 Definitions**

For the purposes of the Rules:

- 1.1.1 Authorised Officers** means those officers of the Council identified as such by the Director of Operations and Head of Corporate Services in their Schemes of Delegation and approved by the section 151 Officer to undertake procurement and contracting on behalf of the Council (including authorisation of expenditure, preparing and/or negotiating contract documentation, awarding and signing contracts and/or managing contracts) and any Agents as defined in Rule 2.5 with such authority;
- 1.1.2 contract** means an agreement which:
- i. may be oral, written, partly oral and partly written or implied from conduct between the Council and another person;
 - ii. gives rise to obligations which are enforceable or recognised by law (i.e. legally binding); and
 - iii. commits the Council to paying or doing something;
- 1.1.3** and, where the context requires, a reference to a contract means a contract to which the Rules apply and a **“Call-off Contract”** means an order made/call-off contract entered into under a Framework Agreement;
- 1.1.4 Designated Opening Officers** means officers designated by the Head of Corporate Services to carry out the functions allocated to them in the Rules (see also the Council’s Procedures for Receipt and Opening of Tenders) including any third parties (such as consultants) approved by the Head of Corporate Services;
- 1.1.5 Director** means the Director of Operations, Head of Corporate Services and officers to whom the Director of Operations and the Head of Corporate Services have delegated functions in accordance with the relevant Scheme of Delegation;
- 1.1.6 EU Tender** means a tender procedure, which needs to be carried out under European Union public procurement legislation;
- 1.1.7 Framework Agreement** means a contract with a supplier or suppliers which establishes the terms and conditions (in particular as to price) under which Call-off Contracts can be made during the length of the Framework Agreement. This includes government pre-negotiated contracts;
- 1.1.8 person** means any individual, partnership, local authority or incorporated or unincorporated body;
- 1.1.9 Head of Corporate Services/Section 151 Officer** means the Head of Corporate Services with charge over Finance and Property Services, Legal Services and the Chief Finance Officer appointed under s151 Local Government Act 1972 and officers to whom the s151 Officer has delegated his or her functions in accordance with the relevant Scheme of Delegation; and
- 1.1.10 Scheme of Delegation** has the meaning given to it under Rule 8 of the Contract Procedure Rules.

2. COMPLIANCE WITH THE RULES AND RELEVANT LEGISLATION

2.1 The Rules apply to all contracts for the provision of goods, services and works to the Council unless otherwise specified in the Rules. This means;

- i. **Purchase Orders** - All third party expenditure should be covered by an official purchase order to enforce the **‘No Purchase Order, No Pay’** policy throughout the Council.
- ii. **Payment Policy** – It is Council policy to settle all outstanding supplier liabilities by BACS, with the use of cheques phased out.

- iii. **Goods Receipt** – All goods, services and works covered by an official purchase order must be receipted before payment will be made against any invoices received by the Council – receipt must be made in accordance with the instructions specified in the Financial Procedure Rules, Appendix B1, and section 8, Purchasing Code of Practice. Evidence of receipts should be kept by the recipient for audit purposes. All invoices received need to quote the official purchase order and be sent directly to Finance for invoice registration to ensure prompt processing. Invoices not quoting the purchase order will be returned to the supplier for clarification.

2.2 All contracts must comply with:

- i. European law; and
- ii. English law (including the Council's statutory duties and powers); and
- iii. the Rules and the Financial Procedure Rules; and
- iv. any relevant Council policies; and
- v. any legal requirement stipulated by the Head of Corporate Services.

2.3 All contracts must comply with the following principles of EU law:

- i. free movement of goods and services; and
- ii. non-discrimination; and
- iii. openness/transparency; and
- iv. equal treatment for all; and
- v. proportionality.

2.4 The intention and spirit of the Rules must be adhered to.

2.5 The Rules must be complied with by all officers of the Council and all other persons who are authorised to carry out procurement and contracting on behalf of the Council (such as the Council's agents for property services) ("**Agents**"). It must be a term of all contracts between the Council and its Agents that the Agents comply with the Rules. No Agents shall be authorised in respect of contracts with a value of £25,000 or more.

2.6 The Rules must be read in conjunction with the *Procurement Strategy*, which provides guidance on compliance with the Rules.

3. CONTRACTS TO WHICH THE RULES DO NOT APPLY

3.1 The Rules do not apply to:

- 3.1.1** contracts which are not for the provision of goods, services or works (e.g. grants or contracts relating to land). Note, therefore, that the Rules do not apply to contracts of employment but they do apply to consultancy contracts, which are contracts for services.
- 3.1.2** low value purchases which may be made from procurement cards (or petty cash for exceptional circumstances) provided that they are in accordance with any operational instructions and financial limits issued by the s151 Officer.

4. EXEMPTIONS FROM THE RULES

4.1 Contracts with a value of £25,000 or more

4.1.1 The Director of Operations or Head of Corporate Services may seek an exemption from any of the Rules from:

- i. the Committee acting under delegated powers; or
- ii. the Chief Executive acting under delegated powers along with the Leader of the Council.

4.1.2 In order to request an exemption the Director of Operations or Head of Corporate Services must prepare a report setting out:

- i. the reasons why the exemption is being requested and which Rule(s) an exemption is being requested from;

- ii. the process which is intended to be followed instead;
- iii. a legal appraisal and financial appraisal from the Head of Corporate Services & s151 Officer.

4.1.3 An exemption will only be granted where the Committee or the Chief Executive and Leader of the Council is satisfied that the exemption is justified on its own special circumstances.

5. CONTRACTS TO WHICH RULES ON TENDERING (Rules 12-18) DO NOT APPLY - GENERAL

5.1 Competitive quotes or tenders are not required for the following:

5.1.1 Call-off Contracts

- i. Call-off contracts where the relevant Framework Agreement has been entered into by:
- ii. the Council in compliance with the Rules; or
- iii. another local authority, a local authority purchasing consortium or central government where the Framework Agreement has been tendered and awarded in accordance with EU public procurement legislation.

For the avoidance of doubt, Call-Off Contracts must be entered into in accordance with the terms of the Framework Agreement (e.g. selection by mini-competition) and mini-competitions under Framework Agreements must be run in accordance with CPR 2.3.

5.1.2 Discount

- i. Where there is a competitive market for goods, services or works contracts under which the Council receives those goods, services or works for a sum which is less than 50% of the benchmarked market price with the balance being paid by a third party PROVIDED THAT this has been certified by the s151 Officer and the Head of Corporate Services.

5.1.3 Emergency

- i. In cases of emergency, the Director of Operations or Head of Corporate Services may verbally authorise and record in writing an exemption from the Rules for goods, services or works PROVIDED THAT:
 - a. the emergency was brought about by events which were not reasonably foreseeable by, or attributable in any way to, the Council (e.g. flood); and
 - b. If the goods, services or works are not received immediately, there is a significant risk of:
 - 1. danger to life; or
 - 2. damage to property; or
 - 3. a major impact on the Council or its service users.
- ii. In these cases only goods, services or works necessary or appropriate to safeguard the Council's position or protect life and property can be procured before formal approval is obtained.
- iii. The Director of Operations (or Head of Corporate Services) must at the earliest opportunity inform the s151 Officer and the Head of Corporate Services of the action taken in dealing with the emergency. The Director of Operations must also submit a report to the relevant Policy Committee that details the circumstances of and justifications for granting exemptions made in accordance with this Rule.

5.1.4 No competitive market

- i. Proprietary or patented goods or services are proposed to be purchased which, in the opinion of the Authorised Officer, are only obtainable from one person, and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented goods is available; or
- ii. The Authorised Officer can demonstrate that no genuine competition can be obtained in respect of the purchase of particular goods, services or works; or

- iii. The Authorised Officer is satisfied that the works or services are of such a specialist nature that they can only be carried out by one person (e.g. statutory undertakers); or
- iv. Goods are proposed to be purchased by or on behalf of the Council at a public auction; or
- v. Goods are proposed to be purchased which are of a specialist nature (such as antiquities for museums), PROVIDED THAT in all these cases (except for works which are primarily the responsibility of a utility or statutory undertaker as defined in s329 Highways Act 1980).
 - a. the Authorised Officer prepares a written statement explaining why the relevant circumstances apply and including why it is in the best interests of the Council for the contract not to be tendered and setting out the course of action proposed to be followed; and
 - b. the Authorised Officer receives written agreement from the Director of Operations, the s151 Officer and the Head of Corporate Services to pursue the course of action set out in the statement; and
 - c. Authorised Officers, in conjunction with Legal Services, ensure that contract terms are appropriate taking into account all relevant factors (such as benefit and risk to the Council).

5.1.5 The exceptions in Rules 5.1.1 to 5.1.4 (inclusive) do not apply where the proposed course of action conflicts with EU public procurement legislation.

5.1.6 The rest of the Rules must still be complied with.

6. CONTRACTS TO WHICH RULES ON TENDERING (Rules 12-18) DO NOT APPLY – SERVICE SPECIFIC

6.1 Competitive quotes or tenders are not required for the following:

For the engagement of Counsel by the Head of Corporate Services.

6.1.1 The exceptions in Rules 6.1.1 does not apply where the proposed course of action conflicts with EU public procurement legislation.

6.1.2 The rest of the Rules must still be complied with.

7. REGISTER OF EXEMPTIONS

7.1 The Procurement Team will maintain a register of exemptions granted under Rule 4 (exemptions from the Council/Chief Executive/Committee) and will provide a copy of this register to the s151 Officer at least every six months, and otherwise as and when requested to do so by the s151 Officer.

8. SCHEMES OF DELEGATION

8.1 The Director of Operations and Head of Corporate Services must ensure that they have Schemes of Delegation identifying:

- i. Authorised Officers; and
- ii. the extent of Authorised Officers' delegated authority (including expenditure limits).

8.2 Authorised Officers may not, under any circumstances, act outside the delegated powers of the Director.

8.3 The Director of Operations and Head of Corporate Services must ensure that all Authorised Officers receive the necessary training to be and remain conversant with the Rules.

8.4 The Director of Operations and Head of Corporate Services must supply to and agree with the s151 Officer their Schemes of Delegation before the start of each financial year, and on making any amendments. The s151 Officer must keep a register of all Schemes of Delegation and supply a copy to the Head of Corporate Services at the beginning of each financial year, and notify the Head of Corporate Services of any subsequent amendments.

9. CONTRACT RECORDS

- 9.1** Authorised Officers must keep and maintain records in respect of each contract (from the time the project begins until the point at which the contract ends) in order to demonstrate the achievement of Best Value, openness, probity and compliance with the Rules including EU law.
- 9.2** Authorised Officers must inform the Procurement Team of all contracts (including Call-off Contracts) awarded promptly (and preferably within 5 working days of the date of the award) so that the:
- i. details of the contract can be added to the Council's contracts register on the Council's website; and
 - ii. Procurement Team has the necessary information for the annual statistical return to Derbyshire County Council and central government; and
 - iii. Procurement Team has the necessary information, in the case of a Call-off Contract, to report to the government if required.
- 9.3** For EU tenders, a legally compliant award notice must be published.

10. ESTABLISHING THE VALUE OF THE CONTRACT/EXPENDITURE PER CONTRACT

- 10.1** The value of a contract (that is, the expenditure per contract) 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 (e.g. a three-year contract with an option to extend for 2 years under which £20,000 is payable per annum has a value of £100,000).
- 10.2** Goods, services and works contracts must not be split into smaller contracts in order to avoid any of the Rules.
- 10.3** Framework Agreements must not be entered into for more than four (4) years (including options to extend) unless otherwise advised by the Head of Corporate Services.
- 10.4** For contracts of an indefinite length the value must be established on the basis that the contract will last for a period of 48 months. See also Rule 21.1.
- 10.5** **Aggregated Spend (Contract Aggregation)** – For contracts already in place for a service delivery, any additional spend identified that can be covered by that contract should be aggregated and included into the contract in place. Spend for new contracts needs to be aggregated for spend of like services identified across the council, as referenced in 10.2 above.

11. FINANCE AND AUTHORISATION

- 11.1** Before entering into any process, which will or may result in the incurring any expenditure for the supply of goods, services or works be it capital or revenue, Authorised Officers must ensure that:
- i. where it is a key decision, the requirements of Article 13 Section 13.2 of the Constitution have been complied with;
 - ii. adequate financial provision is included in the Council's approved revenue budget or capital programme (as appropriate) and that such expenditure continues to be available in accordance with the Financial Procedure Rules; and
 - iii. the provisions of the Financial Procedure Rules have been complied with (including, without limitation, FPR Section D, D2.15 to D2.22); and
 - iv. one of the following written authorisations has been obtained (unless authorisation has been obtained under FPR Section D, D2.15 to D2.22):

Table 1 Goods and Services

Cumulative expenditure per contract	Authorisation
Up to but not exceeding £25,000	Authorised Officers in accordance with their delegated financial limits
Above £25,000	The Director of Operations OR Head of Corporate Services (as chief finance officer)

	under S151 statute) OR The Chief Executive.
--	---

Table 2 Works

Cumulative expenditure per contract	Authorisation
Up to but not exceeding £25,000	Authorised Officers in accordance with their delegated financial limits
Above £25,000	The Director of Operations OR Head of Corporate Services (as chief finance officer under S151 statute) or Chief Executive

- 11.2** The Head of Corporate Services must be notified before officers enter into any process which will or may result in the incurring of any expenditure for the supply of goods, services or works, where:
- i. the estimated value of the proposed contract is £25,000 or more; or
 - ii. the proposed contract is for the benefit of two or more directorates or parties.
- 11.3** The Head of Organisational Development must be notified before officers enter into any process which:
- i. will or may result in any transfers of staff under the Transfer of Undertakings (Protection of Employment) Regulations;
 - ii. ("TUPE") and any of the staff are or were previously Council employees; or
 - iii. will or may result in any transfers of staff under TUPE who are members of the Council's Pension Scheme.
- 11.4** The Head of Corporate Services must be notified before officers enter into any process, which will or may result ;
- i. in a contract that confers exclusive possession of the Council's premises or
 - ii. in the acquisition by the Council of a property interest.
- 11.5** Where there is a corporate contract (i.e. contract for the benefit of the Council as a whole) for the supply of goods, services or works, no other contract may be used for the supply of those goods, services or works unless this has been authorised in advance in writing by the Head of Corporate Services and in consultation with the Procurement Manager.

12. PRE-QUALIFICATION REQUIREMENTS

- 12.1** Authorised Officers are responsible for ensuring that all persons invited to quote or tender for the supply of goods, services or works to the Council have met the Council's pre-qualification requirements as advised by the Procurement Team.

13. BEST VALUE – COMPETITIVE QUOTES AND TENDERS

- 13.1** For contracts worth less than £25,000, Authorised Officers must take practicable steps to secure value for money through a combination of cost and quality by clearly defining the business requirement and seeking offers at the lowest cost commensurate with meeting that business requirement.
- 13.2** For contracts worth £25,000 or more, Authorised Officers must take practicable steps to secure value for money through a combination of cost, quality and competition. Authorised Officers must also comply with the requirements of Rule 16 relating to the drawing up of evaluation criteria.
- 13.3** For all contracts of £25,000 or above competitive quotations or tenders must be sought as follows, and in accordance with advice from the Procurement Team:

Table 3 Goods, Services and Works

Estimated cumulative expenditure per contract	Competition
Up to £25,000 (Quotations)	Authorised Officers must ensure genuine competition by inviting sufficient numbers of persons who have met the pre-qualification requirements (see Rule 12) (good practice indicates a minimum of 3 selected impartially) to submit written quotations for the goods, services or works required by the Council. Some degree of advertising may be required, preferably on the Source Derbyshire Portal.
£25,000 or above but less than the relevant EU directive threshold. (Tenders)	Authorised Officers must ensure genuine competition by inviting sufficient numbers of persons who have met the pre-qualification requirements (see Rule 12) (EU rules require a range of between 5 and 20 and non-EU good practice indicates a minimum of 3 selected impartially) to submit tenders for the goods, services or works required by the Council. Contracts must be advertised on the Source Derbyshire Portal and/or elsewhere if appropriate.
Equal to or exceeding the financial thresholds stated in the relevant EU Directive	There are four different award procedures, which can be followed for EU Tenders. These are as follows: open, restricted, negotiated and competitive dialogue. The restricted procedure is the most common one and must be followed unless advised otherwise by the Procurement Team.

- 13.4** Call-off Contracts must be entered into in accordance with the terms of the relevant Framework Agreement and mini-competitions must be held where relevant. Where a Framework Agreement has been set up following an EU Tender, there must be full compliance with EU regulations when awarding Call-Off Contracts under it.
- 13.5 Suppliers** – All proposed new suppliers must be approved by the Procurement Team prior to any contract or works award. Procurement will control the supplier vetting process, in some case this will require working with the line manager to ensure all Health and Safety requirements e.g.: safety cases, meet the Council standards. In the case of contracts with a value of over £25,000, suppliers will be selected via PQQ's returned from advertised opportunities such as through Source Derbyshire.
- 13.6 Local Suppliers** – The Council has a stated objective to wherever possible, try and support local business. To help achieve this objective, low value tenders between £10,000 to £25,000 should be conducted as a mini competition using advertised opportunities in the Source Derbyshire portal and involve at least 1 local supplier. For the purposes of these CPRs a local supplier is deemed to be a supplier who pays local business rates to South Derbyshire District Council OR is based within a 25 mile radius of DE11 0AH.

14. INVITATIONS TO TENDER

14.1 All invitations to tender must:

- i. clearly specify the goods, services or works that are required (subject to appropriate adjustment where the negotiated or competitive dialogue procedure is being used);
- ii. for EU Tenders, list the criteria on which the tender(s) will be evaluated (see Rules 16) showing the weighting of the various criteria unless otherwise advised by the Procurement Team and Legal Services.
- iii. include a requirement for tenderers to declare that the tender content, price and all other figures or particulars concerning the tender have not been disclosed by the tenderer to any other party;

- iv. include a requirement for tenderers to complete fully and sign all tender documents including certificates confirming that no canvassing or collusion has taken place; and
- v. state that the contract will be on the Council's standard terms and conditions of contract which are to be enclosed with the invitation to tender and also available on the Council's website.

- 14.2** Wherever possible, contracts must require goods, services and works to be in accordance with a specified European Standard or equivalent, or British Standard implementing a European Standard. Only if no European Standard exists should a British or other equivalent standard be stated.
- 14.3** The list of requirements in Rule 14.1 is not exhaustive and any and all additional requirements of the Procurement Team must also be met.

15. RECEIPT OF TENDERS (INCLUDING UNDER FRAMEWORK AGREEMENTS) AND OPENING OF TENDERS

- 15.1** Authorised Officers must comply with the Council's Procedures for Receipt and Opening of Tenders.
- 15.2** Paper tenders must be addressed to the Council (not to named officers) and put in a sealed envelope endorsed with the word "Tender" followed by the subject matter to which they relate.
- 15.3** All tenders, including mini-tenders under Framework Agreements, received must remain unopened and be kept secured until the specified closing date and time for receipt of tenders has passed.
- 15.4** Electronic tenders, including mini-tenders under Framework Agreements, must be delivered to a secure electronic system owned or operated on behalf of the Council.
- 15.5** A Designated Opening Officer, in the presence of another officer nominated by the Authorised Officer, must open all tenders, including mini-tenders under Framework Agreements.
- 15.6** The Designated Opening Officer must, immediately upon opening each tender, record it on a Schedule of Tenders (see Procedures for Receipt and Opening of Tenders).
- 15.7** The Schedule of Tenders must be signed by everyone present at the tender opening session and passed to the relevant Authorised Officer with the tender documents.

16. EVALUATION CRITERIA AND EVALUATION OF TENDERS

- 16.1** In determining the relevant evaluation criteria on which tenders are to be assessed, Authorised Officers, in consultation with the Procurement Team where appropriate, must consider all factors relevant to their requirement, including environmental and social considerations, so far as this is lawful.
- 16.2** The evaluation process will clearly demonstrate that the Council is seeking to identify the Best Value tender (see Rule 13).
- 16.3** Authorised Officers must ensure that appropriate directorate or other Council technical and financial officers evaluate all tenders, including mini-tenders under Framework Agreements, in accordance with the evaluation criteria specified in the invitation to tender.
- 16.4** The arithmetic in compliant tenders, including mini-tenders under Framework Agreements, must be checked. If arithmetical or clerical errors are found they should be notified to the tenderer, which should be requested to confirm the correct figures/wording or withdraw its tender.
- 16.5** Authorised Officers must compare submitted tender prices with any project appraisal or pre-tender estimates. All differentials must be considered. For tender prices of £25,000 or more where the differential is more than:
- i. 20% above or below the project appraisal or pre-tender estimate, this must be reported to the Director of Operations OR Head of Corporate Services; and
 - ii. 50% above or below the project appraisal or pre-tender estimate, this must be reported to the Director of Operations AND Head of Corporate Services.
- 16.6** In cases as set out in Rule 16.5 for goods and services, a tender must not be accepted unless

this has been authorised by the Director of Operations and/or the Head of Corporate Services (as applicable). For capital expenditure authorisation of acceptance of variations must be in accordance with FPR Section B, B2.38 of the Finance Procedure Rules.

17. NO MATERIAL CHANGES TO CONTRACT POST-TENDER

- 17.1** No material changes must be made to the proposed arrangements and terms and conditions post tender. See Rule 22 for requirements when the contract has been entered into.

18. AWARD OF CONTRACTS

- 18.1** Contracts may only be awarded by the Council if there has been full compliance with the Rules and the Financial Procedure Rules.

- 18.2** Tenders may be evaluated and recommended for acceptance by the following officers:

Table 4 Goods and Services

Cumulative value of contract	Acceptance by
Tender not exceeding £25,000	Authorised Officers in accordance with their delegated financial limits
Above £25,000	The Director of Operations OR the relevant Head of Service

Table 5 Works

Cumulative value of contract	Acceptance by
Tender not exceeding £25,000	Authorised Officers in accordance with their delegated financial limits
Above £25,000	The Director of Operations OR the relevant Head of Services

- 18.3** No tender can be accepted or contract awarded unless this is on the basis of the evaluation criteria sent out with the invitation to tender.
- 18.4** Successful and unsuccessful tenderers (and, for EU Tenders, and those persons who expressed an interest in the contract) must be notified of the award of the contract for which they have submitted a tender. This notification letter must be in a form approved by the Procurement Team.
- 18.5** Where there has been an EU Tender, and in such other circumstances as the Head of Corporate Services may advise, the award of the contract must be subject to the legally-required standstill period to enable unsuccessful bidders to challenge the award prior to completion of the contract (see Rule 19.1). Where there is a court challenge prior to completion of the contract then the contract must not be completed without the authorisation of the Head of Corporate Services and the Director of Operations.
- 18.6** Where a key decision was required to authorise the entering into of the procurement process under Rule 11, the contract must not be awarded unless that decision has been complied with (for example, a new decision may be required prior to award or if any of the risk factors have changed).
- 18.7** Where a key decision was not required to authorise the entering into of the procurement process under Rule 11 but due to the price of the winning bid it has become a key decision, the requirements of Article 13 Section 13.2 of the Constitution must be complied with before the contract is awarded.

19. SIGNING AND SEALING OF CONTRACTS

- 19.1** Contracts, which are not call-off Contracts

- 19.1.1** Where there has been an EU Tender, and in such other circumstances as the Head of Corporate Services may advise, the contract must not be entered into with the successful tenderer unless and until the mandatory standstill period has elapsed without a challenge from an unsuccessful tenderer (see also 18.5).

- 19.1.2** One Authorised Officer with delegated powers must sign contracts up to £25,000 in value (see Rule 8).
- 19.1.3** Save as set out in Rule 20.1.1, two Authorised Officers of the Council with delegated powers must sign all contracts which are worth £25,000 or more in value as follows (for the avoidance of doubt no elected or co-opted Member of the Council may sign any contract for or on behalf of the Council):

Table 6 Goods, Services and Works

Cumulative value of contract	Signed By
Up to £25,000	Authorised Officers in accordance with their delegated financial limits, and one other officer designated by the Director of Operations under the Scheme of Delegation.
Above £25,000	The Director of Operations or relevant head of service.

- 19.1.4** Any contract requiring the additional limitation of 12 years rather than the 6 years for court proceedings in the event of default must be sealed as a deed by the Head of Corporate Services. This is particularly relevant to construction contracts in the case of latent defects.
- 19.2** Call-off Contracts
- 19.2.1** *Council Framework Agreement with no new terms:* Where a Call-off Contract is entered into under a Framework Agreement which has been set up by the Council and no new terms are being introduced (e.g. under a mini-competition), the Call-Off Contract does not have to be signed or sealed (unless required in accordance with the terms of the Framework Agreement) BUT the Call-off Contract must be authorised as set out in Rule 11 and under the Financial Scheme of Delegation and orders made in accordance with the E-Procurement procedures.
- 19.2.2** *Council Framework Agreement with new terms:* Where a Call-Off Contract is entered into under a Framework Agreement which has been set up by the Council and new terms have been introduced (e.g. following a mini-competition), the Call-Off Contract must be signed or sealed as set out in 19.1.1 to 19.1.3 (inclusive) unless otherwise agreed by the Head of Corporate Services.
- 19.2.3** *Third Party Framework Agreements:* Where a Call-off Contract is entered into under a Framework Agreement which has been set up by a third party, the Call-Off Contract must be signed or sealed as set out in 19.1.2 to 19.1.3 (inclusive) unless otherwise agreed by the Head of Corporate Services.

20. COMMENCEMENT OF CONTRACTS

- 20.1** No supply of goods, services or works must commence until all contract documentation is duly completed (see Rule 19), except:
- 20.1.1** in cases of emergency falling under Rule 5.3, in which case the contract must be completed at the earliest opportunity.
- 20.1.2** where there has been a tender for works (but not goods or services) and the contract price only holds good for a limited period or there is some other circumstance beyond the Council's control delaying completion of formal contract documentation. In that case a contract may be formed by letter (which records all the provisions of the contract and is signed in accordance with the relevant Scheme of Delegation) and formal contract documentation must be completed at the earliest opportunity and signed or sealed as appropriate depending on its value. This procedure must not be used if there are any outstanding or unresolved contract provisions unless this is agreed by the Head of Corporate Services.
- 20.1.3** where otherwise approved by the Head of Corporate Services.

21. TERMS AND CONDITIONS OF CONTRACTS

- 21.1** Any contract, which is of indefinite duration, must be in accordance with any terms and conditions prepared or approved by the Head of Corporate Services so as to ensure that the

termination provisions are satisfactory.

- 21.2** Terms and conditions for all contracts for goods, services and works with a value of £25,000 or more (and preferably all other contracts, particularly consultancy contracts) must be in accordance with the Council's standard terms and conditions prepared or approved by the Head of Corporate Services unless otherwise agreed by the Head of Corporate Services.
- 21.3** All contracts with a value of £25,000 or more must include a clause empowering the Council to terminate the contract for corruption and to recover from the supplier the amount of any loss resulting from such termination in a form approved by the Head of Corporate Services.

22. VARIATIONS, EXTENSIONS AND RENEWALS OF CONTRACTS

- 22.1** Where an Authorised Officer wishes to exercise an option in a contract to extend that contract, this must be referred to the Procurement Team and Legal Services for advice.
- 22.2** Where an Authorised Officer wishes to re-negotiate the price payable under a contract, vary the contract materially or extend/renew a contract where there is no option to extend it in the contract, this must be referred to Legal Services and the Procurement Team before negotiations are entered into as there may be a new contract in these circumstances to which the Rules must be applied.
- 22.3** Where an extension or significant variation to a contract does not need to be tendered:
- i. you must have a price for the additional work in writing from the existing provider;
 - ii. the Authorised Officer, the Head of Corporate Services and the Director of Operations must certify that it is in the best interests of the Council to accept such price; and
 - iii. for capital expenditure approval must have been obtained in accordance with FPRs Section D, D2.15 to D2.22 of the Financial Procedure Rules.

23. NON COMPLIANCE WITH THE RULES

- 23.1** Any non-compliance with any of the Rules must be notified to the Director of Operations and Head of Corporate Services (as s151 Officer) by the Authorised Officer at the earliest opportunity. The Director will act in accordance with the Council's Contract Procedure Rules – Breach Policy.
- 23.2** If the non-compliance cannot be remedied by the taking of any appropriate steps or measures, the matter must be formally notified to the Head of Corporate Services by the Director of Operations. Where a particular course of action is specified by Head of Corporate Services (as s151 Officer) this must be complied with.
- 23.3** If non-compliance has given rise to, or is likely to give rise to illegality or maladministration, the Head of Corporate Services (as s151 Officer) will notify the Monitoring Officer.
- 23.4** If the Rules are not complied with, this will not invalidate any contract entered into by or on behalf of the Council, except where European or English law provides to the contrary.

24. PERFORMANCE INDICATORS – Levels of Contracted Spend

The Procurement Strategy carries with it a level of contracted spend along with target levels for compliance. The figures for compliance will be collected by the Procurement Team and measured annually against the targets set from the Procurement Strategy Appendix 1.

25. SEEKING ADVICE

Officers requiring advice on procurement practice and EU requirements should contact the Procurement Team.

Jessica Horton
(Procurement & Business Improvement Manager)
Carl Veal
(Programme & Project Manager)
Steven Betteridge
(Procurement Assistant)

Phone: 01283 228726
Email: jessica.horton@south-derbys.gov.uk
Phone: 01283 595889
Email: carl.veal@south-derbys.gov.uk
Phone: 01283 228759
Email: steven.betteridge@south-derbys.gov.uk

Officers requiring contracts, terms and conditions or legal advice should contact Legal Services.



APPENDIX 1 – BUSINESS CASE CONTENT

Content of the Business Case

A full copy of the content for the business case can be located on the council intranet under Corporate Services/Procurement and Business Improvement.

1.1 Strategic fit: the strategic case

This aspect of the business case should explain how the scope of the proposed project / procurement fits within the existing business strategies (where relevant) and aligns with the objectives of the Council, to meet existing and future operational needs of the organisation.

Minimum content needed for this section:

- description of the business need and its contribution to the Council's business strategy and objectives
- why it is needed now
- key benefits to be realised
- key risks
- critical success factors
- how they will be measured; and the main stakeholders.

Questions you must address:

- How well does the proposed way of meeting the requirement support the Council's objectives and current priorities?
- If it is a poor fit, can the scope be changed?
- Is the project needed at all?
- Have the stakeholders made a commitment to the project?
- Does the proposal conflict with any existing Council policies or strategies?

2.1 Options appraisal: the economic case

This aspect of the business case, should document the wide range of options that have been considered within the scope identified, in response to the Council's existing and future business needs. It aims to arrive at the optimum balance of whole life cost, benefit and risk.

Minimum content needed for this section:

- high level cost/benefit analysis of (ideally) at least three options for meeting the business need (where applicable)
- include analysis of 'soft' benefits that cannot be quantified in financial terms
- identify preferred option and any trade-offs.

Note that options appraisal must be carried out in detail before selecting a preferred option.

Questions you must address:

- Has a wide range of options been explored?
- Have innovative approaches been considered and/or collaboration with others?
- If not, why not?
- Has the optimum balance of whole life cost, benefit and risk been identified? If not, what trade-offs need to be made, for example, foregoing some of the benefits in order to keep costs within budget; taking carefully considered risks to achieve more substantial benefits?

3.1 Commercial aspects: the financial case

Where there is an external procurement, this section should outline the potential commercial arrangement.

Minimum content required for this section:

- proposed sourcing option, with rationale for its selection

- key features of proposed commercial arrangements (for example, contract terms, contract length, payment mechanisms and performance incentives)
- the procurement approach/strategy, with supporting rationale.

Questions you must address:

- Can value for money be obtained from the proposed sources (for example, partners, and suppliers)?
- If not, can the project be made attractive to a wider market?

4.1 Affordability: the financial case

This aspect of the business case should assess the affordability and available funding of the project, and link proposed expenditure to available budget and existing commitments.

Minimum content for this section:

- Statement of available funding and broad estimates of projected whole-life cost of project, including departmental costs (where applicable).

Questions you must address:

- Can the required budget be obtained to deliver the whole project?
- If not, can the scope be reduced or delivered over a longer period?
- Could funding be sought from other sources?

5.1 Achievability: the project management case

This section should address the 'achievability' aspects of the project. Its primary purpose is to set out the project structure and actions which will be undertaken to support the achievement of the intended outcomes, including the procurement activity (where applicable) or a detailed study with existing providers.

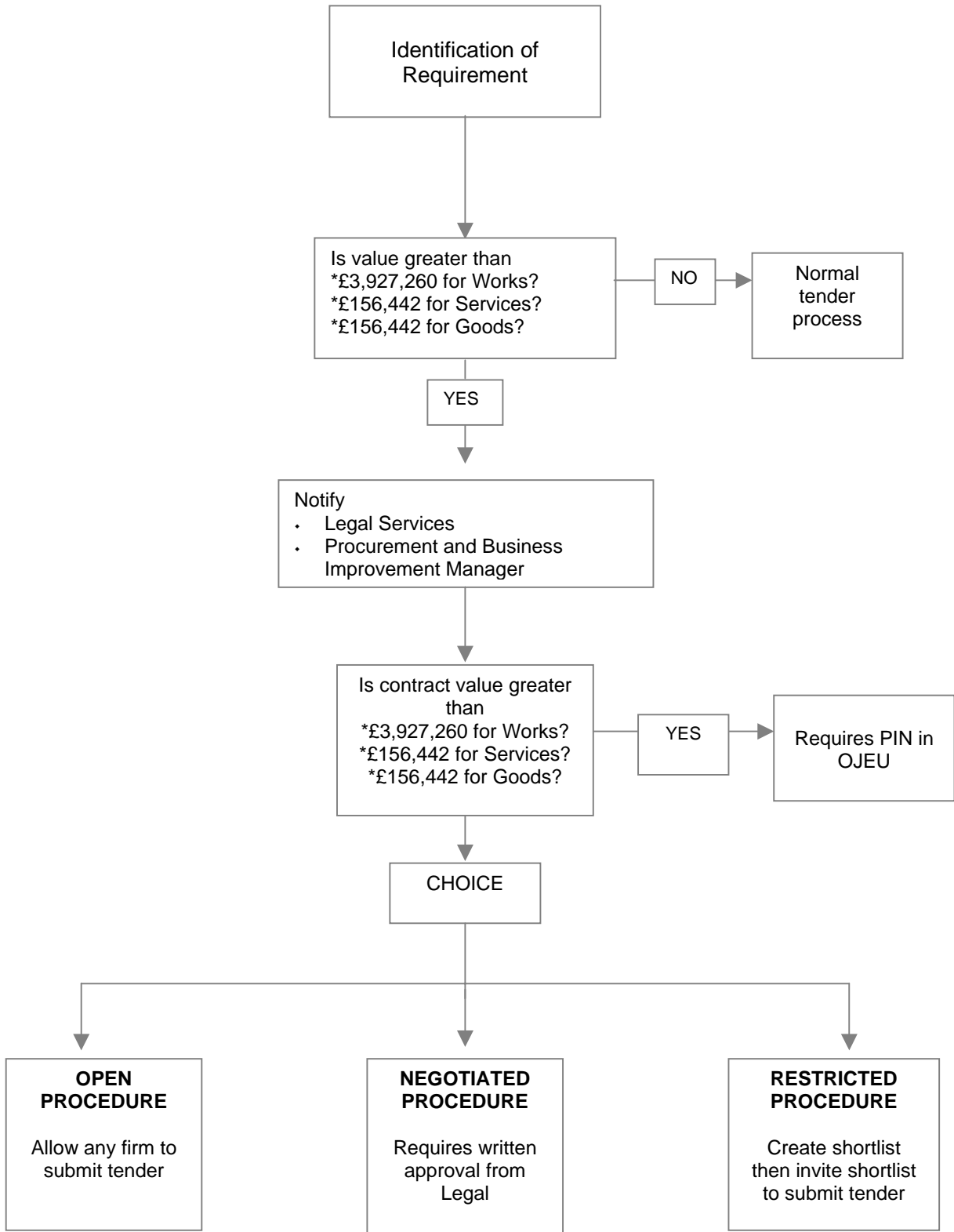
Minimum content for this section:

- high level plan for achieving the desired outcome, with key milestones and major dependencies (for example, interface with other projects)
- key roles, with named individual as the project's owner
- outline contingency plans e.g. addressing failure to deliver service on time; major risks identified and outline plan for addressing them
- provider's plans for the same, as applicable, skills and experience required.

Questions you must address:

- Can this project be achieved with the Council's current capability and capacity?
- If not, how can the required capability be acquired?
- Can the risks be managed – for example, scale, complexity, uncertainty?
- Does the scope or timescale need to change?

APPENDIX 2 – EU PROCUREMENT REGULATIONS - Thresholds



Competitive Dialogue Procedure – Seek advice from the Procurement and Business Improvement Manager

Appendix 3 - Ethics in Purchasing – Codes of Conduct

1.1 Introduction

Staff purchasing on behalf of the Council shall undertake to work to exceed the expectations of the following Codes of Conduct, and will regard these Codes as the basis of best conduct when purchasing on behalf of the Council.

Staff should raise any matter of concern of an ethical nature with their immediate line manager or another senior colleague if appropriate, irrespective of whether it is explicitly addressed in these Codes.

1.2 Principles

Staff purchasing on behalf of the Council shall always seek to uphold and enhance the standing of these Ethical codes and will always act professionally and selflessly by:

- maintaining the highest possible standard of integrity in all their business relationships both inside and outside the Council
- rejecting any business practice which might reasonably be deemed improper and never using the Council for personal gain
- optimise the use of resources which they influence and for which they are responsible to provide the maximum benefit to the Council
- complying both with the letter and the spirit of:
 - i. UK law
 - ii. Contractual obligations.

Staff should never allow themselves to be deflected from these principles.

1.3 Guidance

In applying these principles, staff should follow the guidance set out below:

- **Declaration of interest** - Any personal interest which may affect or be seen by others to affect a member of staff's impartiality in any matter relevant to his or her duties should be declared.
- **Confidentiality and accuracy of information** - The confidentiality of information received in the course of duty should be respected and should never be used for personal gain. Information given in the course of duty should be honest and clear.
- **Competition** - The nature and length of contracts and business relationships with suppliers can vary according to circumstances. These should always be constructed to ensure deliverables and benefits. Arrangements which might in the long term prevent the effective operation of fair competition should be avoided.
- **Business gifts** - Business gifts, other than items of very small intrinsic value such as business diaries or calendars, should not be accepted.
- **Hospitality** - The recipient should not allow him or herself to be influenced or be perceived by others to have been influenced in making a business decision as a consequence of accepting hospitality. The frequency and scale of hospitality accepted should be managed openly and with care and should not be greater than the Council is able to reciprocate.
- Where gifts or hospitality are offered, members are reminded of the provisions of the Members Codes of Conduct and officers are reminded of the provisions of the Officer's Codes of Conduct. Registers of Interest are kept by the Council for both members and staff, to record all instances where gifts or hospitality have been offered.

1.4 Decisions and Advice

When it is not easy to decide between what is and is not acceptable, advice should be sought from the member of staff's immediate line manager, another senior colleague, internal audit or the Chartered Institute of Purchasing and Supply as appropriate.

Appendix 4 – The Green Purchasing Guide

1.1 Guidance on Green Purchasing

A full copy of the Council's Green Purchasing Guide can be located on the intranet within Corporate Services/Procurement and Business Improvement.

Introduction

This document sets out the Council's policies on environmental purchasing.

It is the Council's responsibility to ensure that negative impacts on the environment are kept as low as possible. The Council is a major purchaser of goods and services and can therefore have a significant effect on the local environment.

The purchase of environmentally friendly products has two potential benefits – the market for such products is created and supported, and bulk purchases can bring about cheaper prices for such products.

An environmental purchasing policy helps to minimise the following, potentially harmful effects:

- Emissions to air, water and land during production, operation and disposal of goods (including carbon dioxide emission from energy consumption and associated air pollution and global climate change)
- Depletion of the world's resources, particularly those which are scarce or non-renewable
- Associated waste products, including packaging

Any purchasing policy must be based on value for money, and buying green could be defined as: *the optimum combination of whole life cost (including cost to the environment in terms of environmental impact) and quality (or fitness for purpose) to meet the user's requirements.*

Making the right environmental choices is not always easy or straightforward. Product claims may be made which are not substantiated. Labels on goods may not give you the information you need.

There is currently no environmental standard for product marketing, although the EC "Eco-labelling" scheme is helping in some areas by giving the buyer a guarantee that the item has been assessed using strict environmental criteria and can be promoted as better for the environment.

It is the policy of South Derbyshire District Council to:

- ✓ Purchase goods and procure services, which as far as possible reflect up-to-date specifications or standards for environmental sustainability.
- ✓ Make it a requirement of Council contracts or specifications that, when working for the Council, contractors and suppliers maintain environmental standards equivalent to the Council's own standards.
- ✓ **Ban** the use of environmentally damaging products or processes by the Council where a less environmentally damaging alternative is available. Specifically banned are:
 - Chlorofluorocarbons (CFCs) and other ozone depleting chemicals
 - All timber or timber products which do not have Forest Stewardship Council (FSC) certification or equivalent (see information at the end of this document)
 - Virgin paper (even if FSC approved or equivalent) unless specially authorised
 - Leaded petrol
 - Asbestos in the composition of any products (under exceptional circumstances, where it is essential to performance, Chrysolite (white) asbestos may be used subject to prior agreement.
- ✓ **Restrict** the use of the following products by using practical alternatives:
 - Peat and peat-based products
 - PVC and PVC products

- Chlorine bleach
 - Aerosol containers
 - Solvent-based products
 - Hazardous and deleterious materials such as pesticides, weed killers and preservatives, where it is not possible to avoid these, appropriate suppliers will be instructed to ensure that the required COSHH data accompanies all deliveries of hazardous products.
- ✓ **Reduce** the purchase of new products by re-using, repairing or refurbishing existing products.
 - ✓ **Specify** products that are made from recycled material.
 - ✓ **Specify** products that can be recycled.
 - ✓ **Specify** products that cause minimal damage to the environment in their manufacture, distribution, use and disposal.
 - ✓ In order to reduce the negative impact of vehicles, purchase Euro 3 specification lean burn diesel engine vehicles.
 - ✓ **Paper:**
 1. Where paper is to be used for printing, letterheads or photocopying, purchase 100% recycled paper that comprises 100% post consumer waste.
 2. Other paper and paper products should be at least 75% post consumer waste recycled content, with envelopes being at least 70% recycled (brown manila) or 30% recycled (white manila).
 3. Virgin paper (even if FSC approved or equivalent) should only be used for specialist printing or specialist applications where it can be proved that an alternative use is not possible with available technology or reasonable modifications. Any use of virgin paper should be authorised in writing by the Head of Service. Any virgin paper purchased should be FSC certified or equivalent.
 4. Paper disposables (toilet paper, towels, etc) should be 100% post consumer waste recycled.
 5. Any unwanted paper should be re-used or recycled.
 - ✓ Where possible, buy second-hand or refurbished furniture and equipment.
 - ✓ Where possible, purchase local products and services. Care must be taken to ensure there is no breach of UK or EU Procurement Regulations.

Appendix 5 – Contract Procedure Rules: Exemption Procedure

Section 1 – Background

Section 2 – Procedure

Section 3 – Pro Forma Report

SECTION 1

CONTRACT PROCEDURE RULES – EXEMPTION PROCEDURE

Background

1. The Contract Procedure Rules (“CPRs”) form part of the Financial Procedural Rules and support the Council’s corporate governance framework. They seek to ensure two objectives; that the Council:
 - a. obtains value for money; and
 - b. complies with national and EU procurement law.
2. It should be borne in mind that the primary function of national and EU procurement law is to create fair and open competition and to protect the interests of all potential suppliers – it is not to protect the interests of the Council and there may at times be tension between these interests.
3. Contracts over a certain threshold value are subject to the full rigours of the EU procurement regime as set out in the Public Contracts Regulations 2006.
4. EU Threshold Values (excluding VAT) for the period 01/01/2011 – 31/12/2011 are as follows:

Goods (Supplies) Contracts – £156,442

Services Contracts – £156,442

Works Contracts – £3,927,260

5. These Regulations must be adhered to and cannot be circumvented by use of the CPRs exemption procedure; therefore this exemption procedure does not apply to those contracts.
6. Exemptions from the CPRs are only granted in exceptional circumstances. An exemption may be sought from any aspect of the CPRs. The majority of exemption requests relate to tendering requirements.
7. Generally, a lack of foresight and planning resulting in insufficient time to carry out a lawful tendering process will not constitute adequate justification.

Who grants exemptions?

8. An exemption may be authorised by the:
 - a. Direction of Full Council or Committee or sub committee.
9. Before taking the process any further, the Authorised Officer must discuss with legal services which route is appropriate for the exemption. This may entail some preliminary discussions with the relevant Policy Committee.
10. Where it is decided to seek an exemption from the relevant Policy Committee exercising delegated powers Authorised Officers must follow their directorate's procedures on reports to the Policy Committee. For information on preparing a report to the Chief Executive, contact Democratic Services, or the relevant person within your directorate, for advice.

What does the report need to cover?

11. Exemption reports must set out in detail why the exemption is being requested and what process will be followed instead. For further details see Section 2 (Procedure) and Section 3 (Pro Forma Report).

SECTION 2 PROCEDURE

1. Authorised Officer (see definition in the CPR 1.1) notifies the Head of Corporate Services (or "HF") that a request for an exemption may be required. A preliminary meeting with one or more of these teams may be appropriate at this stage. The Head of Corporate Services (Democratic) must be notified at this stage to enable the decision to be added into the Forward Plan (a statutory document containing items requiring a Policy Committee decision over the coming 4 months).
2. Authorised Officer produces a draft report, which covers matters set out in Section 3 (Pro Forma Report). It is recommended that this is undertaken in consultation with the Procurement Team and the Finance Business Partner.
3. Authorised Officer sends the draft report to:
 - a. Director/Head of Service
 - b. Finance Business Partner
 - c. Legal Services
 - d. Head of Corporate Services
4. Draft report is finalised following input from officers, or their nominees, mentioned in 3 above as required. Authorised Officer sends final report to these officers or their nominees.
5. Finance Business Partner produces Financial Appraisal and arranges review of procurement-related issues by the Head of Corporate Services/their representative. The Financial Appraisal, including amendments agreed with the Head of Head of Corporate Services/their representative is returned by the Finance Business Partner to the Authorised Officer.
6. Contract Lawyer prepares draft Legal Appraisal for scrutiny by the Council's legal representatives and forwards final version of Legal Appraisal to Authorised Officer.
7. Where the exemption is to be considered by the relevant Policy Committee this needs to follow the Council's requirements in respect of the Constitution on Delegated Decisions by the Policy

Committee Members.

8. Where the exemption is to be considered by the Chief Executive, the Authorised Officer sends the approved report and attachments to the Head of Corporate Services (Democratic) to arrange submission of the documents to the Chief Executive for authorisation. The Head of Corporate Services (Democratic) notifies the Authorised Officer if and when the Chief Executive has given approval and provides the Authorised Officer with a copy of the relevant resolution.

9. Timescales

The Financial Appraisal and the Legal Appraisal must be completed no later than 7 days after receipt of the final report from the Authorised Officer, in the format set out in Section 3.

10. Register of Exemptions

Whenever a request for an exemption is approved, the Authorised Officer must arrange for a copy of the final exemption to be sent to Legal Services (email to: cprexemptions@south-derbys.gov.uk) promptly for inclusion on the Register of Exemptions (see CPR7) and notify operational and other relevant officers whether the exemption has been granted.

SECTION 3 PRO FORMA REPORT

TO: Policy Committee/Chief Executive

FROM: [Name of Director and/or Authorised Officer]

1. Background

[Provide sufficient detail in the report to give the Chief Executive/Policy Committee the necessary background information relating to the contract and leading up to the request for exemption.]

2. Reason for requesting exemption from Contract Procedure Rules

[The report must explain why the Contract Procedure Rules cannot be followed. Sufficient detail must be included to enable the Chief Executive/Policy Committee to make a decision including information about the service provider/supplier, details about the goods/services/works and the context in which they are being provided/procured; details of the value and duration of the proposed contract and of the special circumstances justifying exemption (e.g. demonstrable added value brought by service provider/supplier - as a result of service provider having access to other sources of grant funding; extensive community involvement in/consultation on choice of service provider; lack of competition from other providers.)]

3. Probity and Value for Money

[The precise terms of the exemption being requested must be specified and information demonstrating probity and value for money for the council should be provided, e.g. details of benchmarking exercises/selecting or encouraging future partners to open up competition; evidence of compliance with EU principles of transparency, equality of treatment, proportionality etc.]

4. Consequences if the proposed action is not approved

[A statement must be included which informs the Chief Executive/Policy Committee of the consequences of the proposed action not being approved and/or other costed options should any exist. Details should include, but not be limited to, possible delays to the programme due to the need to advertise the requirement, vet responses prior to undertaking a tendering exercise etc. An indication of the possible increased costs involved in undertaking this process should also be given if available. There should also be a risk analysis.]

5. Future procurement strategy

[A statement must be included covering intended future procurement strategy e.g. benchmarking, selecting or encouraging future partners to open up competition which meets the requirements of the CPRs.]

6. Legal Appraisal and Financial Appraisal

[State whether the legal appraisal and financial appraisal support the exemption and, if so, on what

conditions (if any).]

7. Recommendation

The Chief Executive/Policy Committee is recommended to approve this exemption from the Council's Contract Procedure Rules.

8. Financial Appraisal

[This appraisal is prepared by the Finance Business Partner in conjunction with the Head of Corporate Services covering whether the exemption proposal is sound from their viewpoint, concluding with a recommendation on whether the exemption should be granted or not.]


- a. Background details in relation to overall financial and budgetary position.
- b. Assessment of business case.
- c. Assessment of financial risk to the council.
- d. Assessment as to whether exemption specified is appropriate in terms of effective procurement by the council.
- e. Where necessary, identification of action to be taken before recommendation for exemption can be made in Financial Appraisal.
- f. Whether additional changes are necessary in procurement practice for future contracts.
- g. Recommendation as to whether exemption should be granted.

9. Legal Appraisal

[This appraisal is prepared by Legal Services and approved by the Head of Corporate Services.]

- a. Appraisal of legal issues relevant to request, e.g. application of the CPRs, EU regulations, competition law.
- b. Assessment of risk to the council of legal challenge.
- c. Assessment of alternative courses of action and likely legal impact on the council.

Recommendation as to whether exemption should be granted and, if so, on what basis.



APPENDIX 6 – QUOTATIONS AND TENDERS DECISION FLOWCHART

