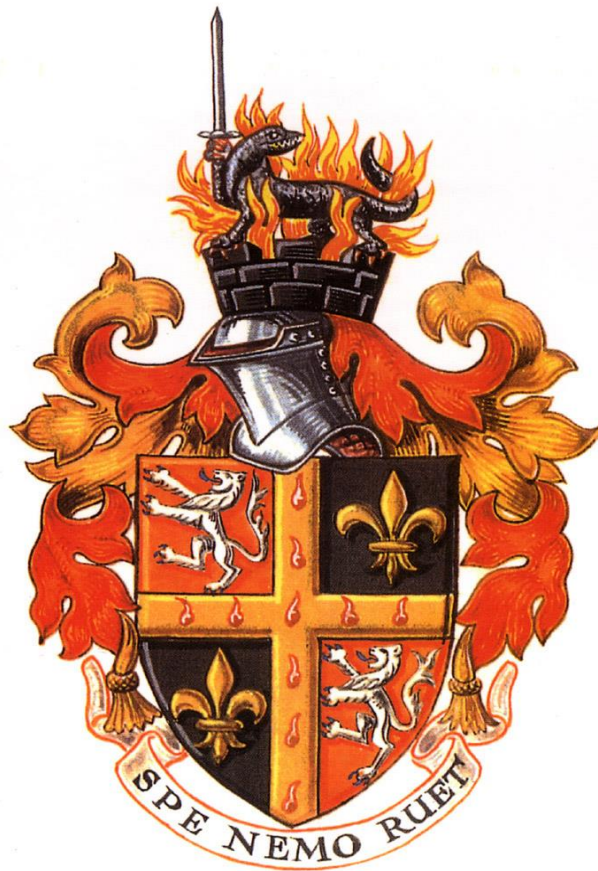


# SPENNYMOOR TOWN COUNCIL



## CONTRACTS AND PROCUREMENT POLICY

<b>Author of Policy:</b>	Town Clerk
<b>Date Effective From:</b>	24 <sup>th</sup> May 2022
<b>Policy Review: When &amp; By Whom</b>	12 <sup>th</sup> May 2022 Constitution Working Group
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## **1.0 Introduction and Status of the Standing Orders**

- 1.1** The policy for Contracts and Procurement provides the framework rules for the procurement of all works, goods, materials and services by the Council, and also sets out the Council's tendering and contract rules and procedures.
- 1.2** The policy is intended to help the Council to achieve value for money in the use of public resources, comply with legal requirements including the Public Contracts Regulations 2015, promote good purchasing practice, demonstrate public accountability and help to deter fraud and corruption in the undertaking of all procurement.
- 1.3** The Finance Manager is responsible for undertaking an annual review of the policy and submitting any revisions to the Council at the Annual General Meeting. The policy may only be amended or varied by resolution of the Council.
- 1.4** The Finance Manager is also responsible for issuing financial procedures, advice, and training to underpin this policy.
- 1.5** The requirements of this policy apply to every Member and Officer responsible for undertaking procurement activity on behalf of the Council.
- 1.6** Managers, under the direction of the Finance Manager and Town Clerk, are responsible for ensuring that all staff in their service areas with responsibility for raising purchase orders are made aware of the existence and content of this policy and that they comply with their requirements whenever the Council engages in any procurement activity.
- 1.7** Managers must ensure that they are able to demonstrate the achievement of value for money in the use of public resources by having regard to a combination of economy, efficiency and effectiveness in undertaking all procurement activity.
- 1.8** All officers with responsibility for drawing up contracts on behalf of the Council or a Committee, to which the power of making contracts has been delegated, must ensure that they comply with the requirements of the policy and the Public Contracts Regulations 2015.
- 1.9** In order to ensure that the policy is flexible to the Council's operational requirements, a list of exemptions from the main provisions of this policy is available in section 6. Application for exemptions from the Standing Orders must be formally requested and approved by the Town Clerk and Finance Manager.
- 1.10** This policy will not apply in those circumstances where works, goods, materials or services are to be purchased under agency arrangements with another local authority or public sector body. In such cases, the procurement of the works, goods, materials or services will be made in accordance with that organisation's own Standing Order rules for procurement. In particular, where using a contract let by a central purchasing body, which the Council is entitled to access, these standing orders will be deemed to have been fully complied with.

**1.11** No other exception can be made from the provisions of this policy, unless in an emergency or other exceptional circumstances with the approval of the Town Clerk. All such exceptions must subsequently be reported to, and approved by, the Council and the report must specify the emergency or exceptional circumstances by which the exception has been justified.

## **2.0 Procurement Responsibilities**

### **Authorised Officers of the Council**

**2.1** All officers with responsibility for raising and certifying purchase orders and drawing up contracts on behalf of the Council must comply with the provisions of this policy.

**2.2** Only a Senior Officer of the Council may authorise invoices for payment. Senior officers are currently as follows:-

- Town Clerk
- Finance Manager
- Facilities Manager
- Grounds and Estates Officer

**2.3** Managers must also ensure that the appropriate procurement records are kept in line with this policy and that any contracting and tendering procedures are undertaken in accordance with the specific procedures set out in sections 10 to 20.

**2.4** The Town Clerk and Finance Manager are available to provide advice and training to officers around undertaking procurement activity and to assist with interpretation and application of this policy.

## **Town Clerk, Finance Manager and Internal Auditor**

- 2.5** The Finance Manager and Town Clerk are responsible for ensuring compliance with this policy and for approving the use of any exemptions from requirements of the policy.
- 2.6** The Finance Manager is responsible for the annual review and update of the Policy and reporting this to the Annual General Meeting of the Council each year.
- 2.7** The Finance Manager is responsible for ensuring that a file record for each individual tender and contract is maintained, and that all original contract documents are securely held on Council premises.

## **3.0 Definition of Contracts and Procurement Activity**

- 3.1** For the purposes of this policy, contracts and procurement activity is defined as being:-

*“A commitment to future expenditure arising from any arrangement or agreement made by or on behalf of the Council for the carrying out of work, the supply of goods and materials or the delivery of services.”*

This definition therefore encompasses the arrangements for all areas of procurement relating to all Council Budgets and includes the following:

- The supply of goods, materials, vehicles, plant, machinery or equipment;
- The hire, lease or rental of vehicles, plant, machinery or equipment;
- The execution of works to land or buildings;
- The delivery of services including training of staff, servicing of vehicles and machinery, consultancy, cash collection, sub-contract work and stock taking services.

## 4.0 Public Contracts Regulations 2015

4.1 The Public Contracts Regulations 2015 implement the Public Sector Procurement Directive (2014/24/EU) which provides modernised rules for the procurement of goods, services and works, above certain thresholds, by public authorities.

4.2 Most of the requirements of the regulations only apply in relation to procurement over the value of the EU Thresholds of £213,477 for the supply of goods and services, and £5,336,937 for public works contracts, and are therefore very unlikely to apply to the Council.

4.3 A summary of the requirements of the Public Contracts Regulations 2015, as they are relevant to town and parish councils, is set out below:-

- Any contract opportunity or contract award with an estimated value of £25,000 or above must be advertised on the "Contract Finder" website whether or not it has been advertised elsewhere;
- *However, where a contracting authority is satisfied it is lawful not to advertise a contract opportunity and chooses not to advertise the opportunity at all, the requirement to advertise on Contracts Finder does not apply to that contract.* This may be the case where, for example, a contracting authority has a policy/standing order stating that advertising is not required for contracts with a value below a certain amount, and there is no legal requirement to advertise the contract. This means that, for example, if a contracting authority is dealing with a procurement worth £40,000; its policy/standing orders state that contracts with a value below £49,999 need not be advertised; it is satisfied there is no legal requirement to advertise, and it does not voluntarily advertise the procurement, then there is no requirement to advertise the procurement on Contracts Finder.
- Where the contracting authority chooses to advertise the procurement on Contracts Finder, the information to be published must include the time by which interested parties must respond, how and to whom to respond, and any other requirements to enable participation in the procurement;
- Where a council publishes information on Contracts Finder it must by means of its website, offer unrestricted and full direct access, free of charge, to any relevant contract documents;
- Councils must not include a pre-qualification stage in a procurement exercise whereby the council assesses the suitability of candidates with a view to reducing the number of candidates who will proceed to a later stage of the process.
- Councils may ask candidates to answer 'suitability assessment questions' relevant and proportionate to the subject of the procurement, such as whether candidates meet minimum standards of suitability, capability, legal status or financial standing;

- When a contract is awarded, the council must publish on the Contracts Finder website the name of the contractor, the date on which the contract was entered into, the value of the contract, and whether the contractor is a SME (small or medium sized enterprise);
- Councils must ensure that all contracts contain suitable provisions stating that valid, undisputed invoices will be paid within 30 days, and that contractors include similar provisions in their contracts;
- Council must publish on their websites each financial year, statistics showing the proportion of invoices paid within 30 days in the preceding financial year; and,
- In complying with any of the above requirements, the Council must have regard to any guidance issued by the Minister for the Cabinet Office.

**4.4** As highlighted above, the Public Contracts Regulations 2015 require local authorities undertaking procurement over the value of £25,000 to register the contract under the Government 'Contract Finder' website.

**4.5** *However, where a local authority has existing standing orders in place that have a higher value for advertising procurement opportunities, the higher value applies rather than £25,000.*

**4.6** For the purposes of implementing the requirements of the Public Contracts Regulations 2015, the Council will publish contract opportunities on the Contracts Finder portal where the contract value is estimated to be £50,000 or above, and where a section 6 Exemption has not been applied.

**4.7** Local authorities are still required to post contract award notices on Contracts Finder for *all* contract awards above £25,000, irrespective of the limits set in these Standing Orders and whether or not a section 6 Exemption has been applied.

**4.8** The Council will therefore advertise the award of any contract over the value of £25,000 on the Contracts Finder portal.

**4.9** Procurement under the value of £50,000 will be undertaken within the requirements of this policy and the Council's Financial Regulations.

## 5.0 Table of Financial Thresholds for Procurement

5.1 The following table shows the financial thresholds that will apply to the procurement of all works, goods, materials and services and the associated procurement and tendering procedures:-

Procurement Amount	Procurement and Tendering Procedure
Up to and including £5,000	<p><b>No written quotations or tenders will be required.</b></p> <p>However, the principles of value for money i.e. having regard to the achievement of economy, efficiency and effectiveness in the use of public money must be observed and, where possible, evidenced at all times.</p> <p>Please refer to point 9.</p>
£5,001 up to and including £49,999	<p><b>At least three written quotations must be sought.</b></p> <p>This will help to demonstrate and provide evidence of the achievement of value for money.</p> <p>Please refer to point 10.</p>
£50,000 up to and including the EU Thresholds of £213,477 for goods and services and £5,336,937 for works	<p><b>The procurement opportunity must be registered on the Government's Contracts Finder website in accordance with the requirements of the Public Contracts Regulations 2015, unless a Standing Orders Exemption has been approved by the Council.</b></p> <p>Please refer to point 11.</p>
Over the EU Thresholds of £213,477 for goods and services and £5,336,937 for works	<p><b>EU Procedure is mandatory over the EU Threshold.</b></p> <p>OJEU notice is required and at least three tenders must be sought, ensuring that the tender process complies with current EU Directives.</p> <p>Please refer to point 12.</p>

5.2 However, it is important to note that the Council has the power to waive the requirements of this policy in specific circumstances.

5.3 There are a number of exemptions that may be applied for procurement below the Public Contracts Regulations thresholds of £213,477 for goods and services and £5,336,937 for works, and these exemptions are set out in detail in the following section of this policy.



## **6.0 Exemptions to the Application of this policy**

- 6.1** The Council has the power to waive the requirements of this policy in specific instances.
- 6.2** In such instances, an exemption must be applied for and approved by the Council under this policy.
- 6.3** However, it is important to note that exemptions cannot be applied where the proposed procurement is likely to be above the Public Contracts Regulations thresholds of £213,477 for goods and services and £5,336,937 for works.
- 6.4** An exemption granted under this policy allows a contract for the procurement of goods, materials, works or services to be placed via direct negotiation with one or more suppliers, rather than in full accordance with the requirements of this policy.
- 6.5** However, in applying for an Exemption from the policy, the responsible officer must still ensure that the principles of value for money i.e. having regard to the achievement of economy, efficiency and effectiveness in the use of public money have been observed at all times and evidence this as far as possible.
- 6.6** All applications for exemptions, and the reasons for them, must be recorded using the appropriate form, signed by the responsible officer and countersigned by the Finance Manager and Town Clerk. The Contracts and Procurement Exemption Application Form is attached in Appendix 1.
- 6.7** Exemptions in respect of all expenditure over the value of £25,000 must be reported to and considered by the appropriate Committee of the Council and subsequently approved by Full Council.
- 6.8** Exemptions in relation to expenditure below £25,000 may be approved by the Town Clerk and Finance Manager and do not need to be reported to Committee.
- 6.9** The following exemptions may be applied for, subject to the relevant approval requirements as set out above:-
- a) Contracts for **mandatory works by statutory contractors**;
  - b) **Grants** to other public sector organisations, community organisations or charities;
  - c) The goods, materials, works or services to be purchased are **sold at a fixed price**;
  - d) The goods or materials are **patented** and only available directly from one supplier, or the goods, materials, works or services are of a **proprietary or specialised nature** and for which it is not, therefore, possible to obtain competitive prices;

- e) The goods or materials are only obtainable from a **limited number of suppliers** or the services or works can only be carried out by a limited number of **contractors**. However, in such cases a reasonable number of those suppliers or contractors must be invited to submit tenders;
- f) The price of the goods or materials to be purchased are **controlled by trade organisations** or for other reasons there is **no genuine competition** for the goods, materials, services or works;
- g) Any contract or sub contract that is substantially for the undertaking of specialist services or works in which the **exercise of professional knowledge is of primary importance**;
- h) The work to be executed or the goods or materials to be supplied relates to **emergency repairs** to or parts for buildings, vehicles, machinery, equipment or plant;
- i) The work to be executed, services required or the goods or materials to be purchased are required as a **matter of urgency** due to circumstances outside the Council's control, or which could not have been diligently foreseen;
- j) Officers and the Council are of the opinion that in any particular case **more favourable terms are likely to be obtained by negotiating a price** with a supplier or contractor for the goods, materials, services or works;
- k) The purchase is to be made by **auction**;
- l) The purchase of the goods, materials, services or works is to be made using **standing arrangements with another local authority or public sector body**;
- m) Where the procurement relates to an **extension of an existing contract where there is significant benefit to be gained by extending the contract, or where a change of supplier would cause:-**
  - **disproportionate technical difficulties**;
  - **diseconomies**; or
  - **significant disruption to the delivery of Council services**.

**6.10** Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property, other assets or serious disruption to Council services, the Town Clerk may authorise the exemption, (following consultation with the Chair of Policy and Resources and the Chairperson of the Council – where possible) and the exemption may be applied prior to approval by the Council.

**6.11** However, the Town Clerk must prepare a report for the next meeting of the appropriate Committee setting out details of the action taken and seeking retrospective approval.

## 7.0

# Flow Chart for the Application of this policy for the Undertaking of Procurement

## 7.1

### Procedure to follow prior to undertaking Procurement

Consider the nature of the procurement and determine exactly what will be required e.g. what needs to be procured, the contract specification, likely cost, budget available, availability of suppliers and the preferred procurement method.

Obtain approval from the appropriate spending Committee if the procurement relates to unbudgeted expenditure.

Is the proposed procurement less than £5,000?

Yes

The policy does not apply. No written quotations or tenders are required to be sought but regard to value for money must be observed in accordance with section 9.

No

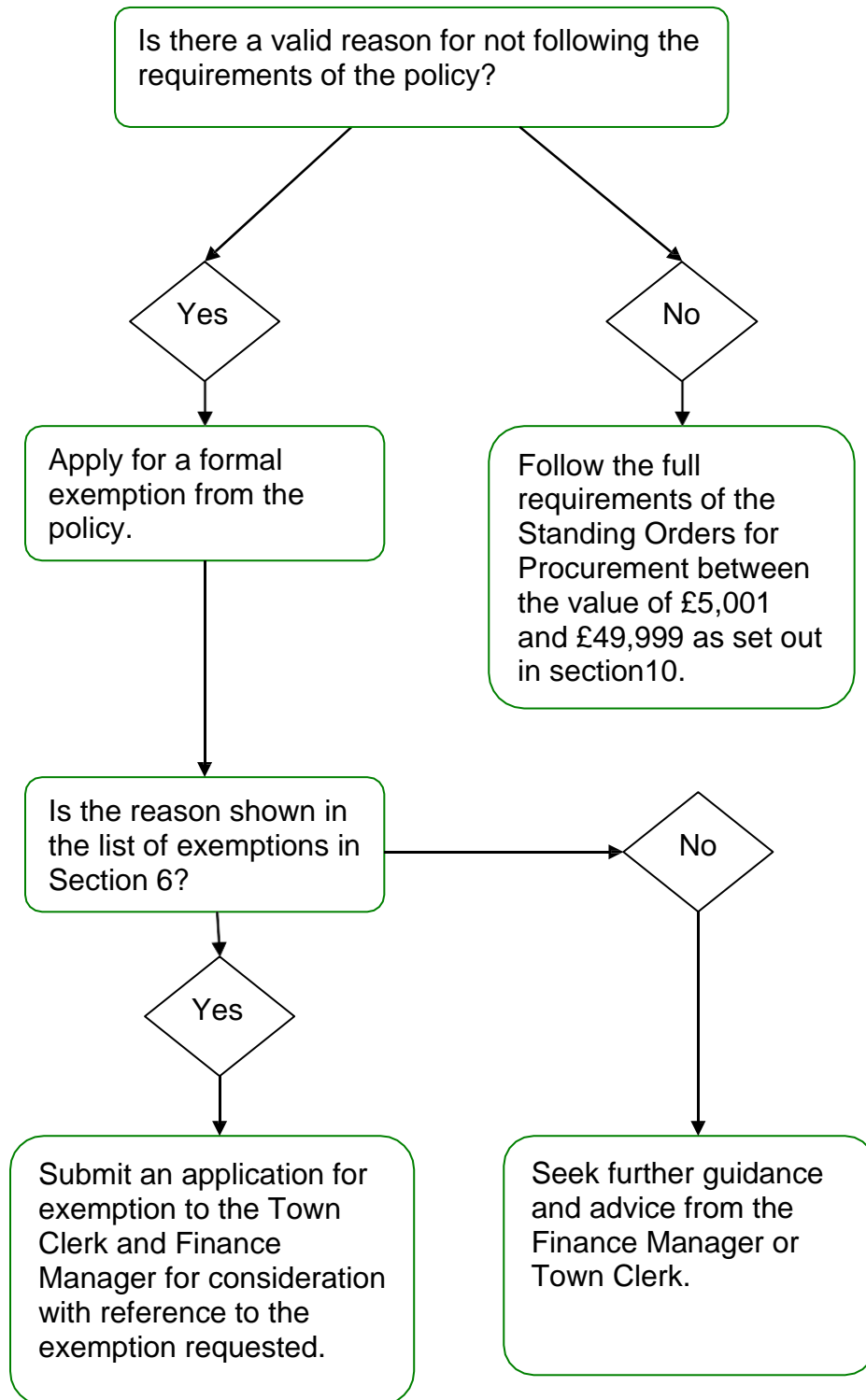
Is value less than £50,000?

Officers undertaking procurement activity between the value of £5,001 and £49,999 must follow the requirements of section 10 by either:-

- seeking at least three written quotes, or
- applying for an exemption which will allow an alternative course of procurement action to be followed.

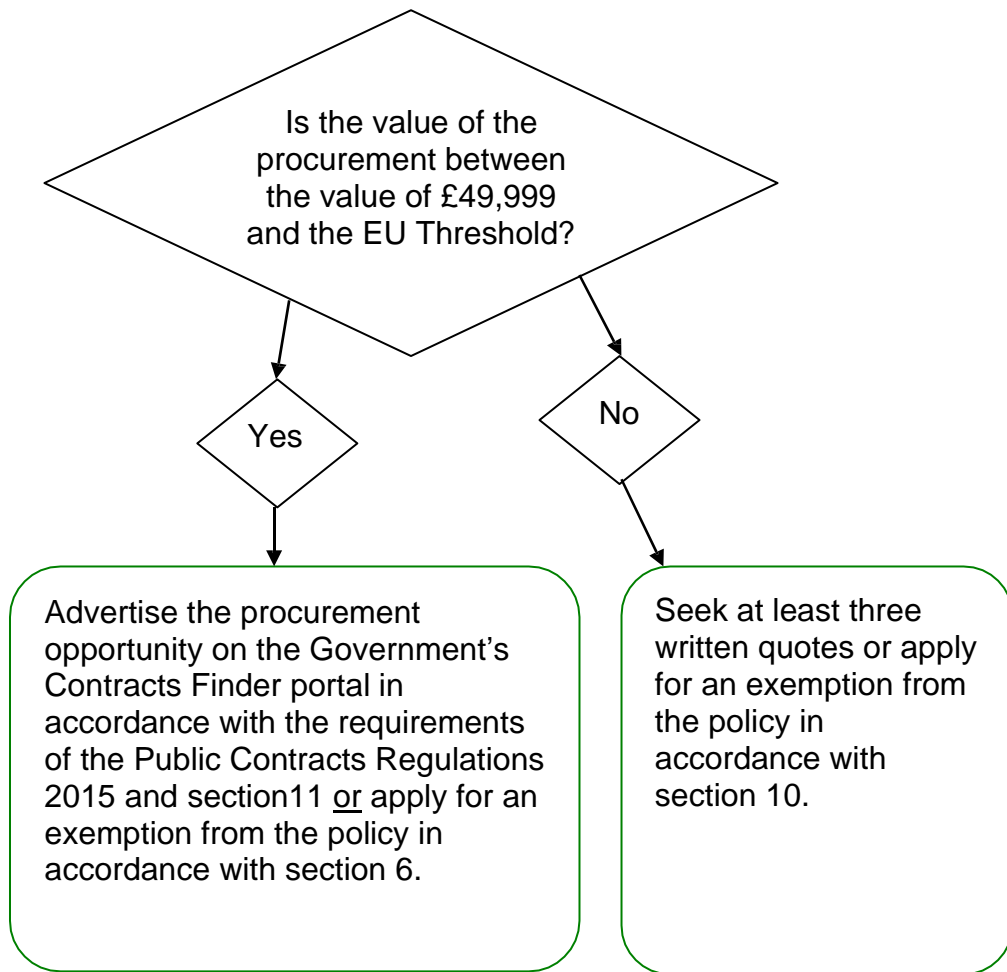
Exemption rules are set out in section 6.

## 7.2 Application for Exemptions from the Requirements of the Standing Orders for Procurement between the value of £5,001 and £49,999



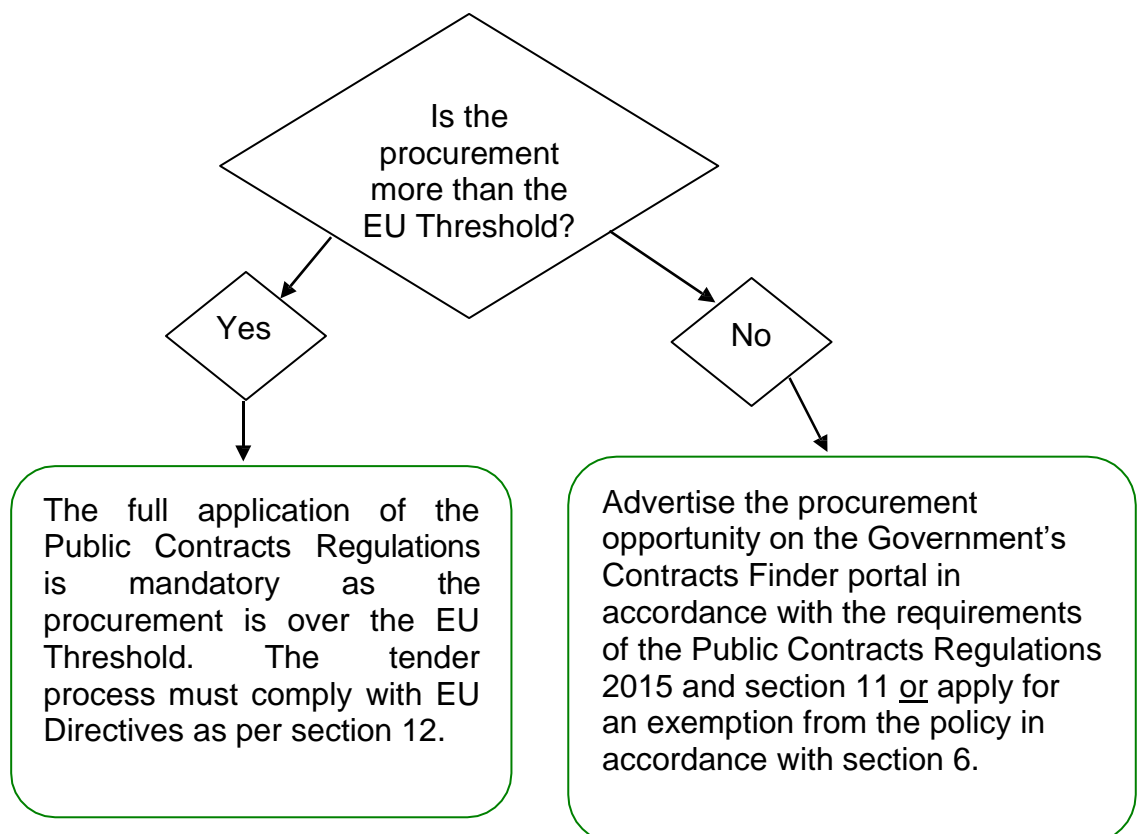
7.3

**Procedure to follow for all Procurement over the value of £49,999 and up to the EU Thresholds of £213,477 for goods and services and £5,336,937 for works**



7.4

**Procedure for Procurement over the value of £213,477 for goods and services and £5,336,937 for works**



## **8.0 Procedure Prior to Procurement**

**8.1** Before commencing the procurement process, the responsible officer should ensure that they have:-

- Considered the objectives of the procurement and how this contributes towards the Council's strategic aims and targets;
- Considered the need to achieve value for money;
- Verified the lawful nature of the proposed procurement, particularly when the procurement activity relates to a new service or initiative or an irregular payment;
- Appraised the need for the expenditure and its priority;
- Ensured that sufficient Revenue or Capital Programme Budget provision exists;
- Informed the Finance Manager if the expenditure is unexpected, unbudgeted, or is likely to be material;
- Assessed the risks associated with incurring the expenditure (undertaking a formal risk assessment if necessary);
- Referred to the policy in order to determine the required procurement action;
- Considered which procurement method is most likely to achieve the purchasing objectives and achieve value for money e.g. negotiating with existing suppliers, testing the market, utilising professional advice e.g. County Council staff, surveyors, architects, etc.

**8.2** In all cases where the procurement is over £5,000 and relates to a capital programme project, approval must be sought from the appropriate committee before proceeding.

**8.3** All regular expenditure relating to the Budget that is less than £5,000 is not required to be reported to Committee but the procurement process must follow the requirements of the policy.

**8.4** However, if the procurement involves unbudgeted revenue or capital expenditure, approval must always be sought from the Policy and Resources Committee before proceeding.

**8.5** Responsible officers may consult with potential suppliers prior to the issue of any invitation to quote or tender, but only in general terms about the nature, level and standard of the supply and other general matters, provided that this does not prejudice any potential candidate.

**8.6** Where seeking more than one quote, responsible officers should avoid seeking technical advice from suppliers, as this may prejudice the equal treatment of all potential candidates.

## **9.0 Procurement up to and including £5,000**

- 9.1** Where the total value of the procurement is less than £5,000, this policy does not include a formal requirement to seek three written quotations or tenders, although there is nothing to stop responsible officers from seeking three quotes if they wish to do so.
- 9.2** What is important is that responsible officers are satisfied that value for money i.e. economy, efficiency and effectiveness in the use of public money, has been achieved.
- 9.3** This could be demonstrated by informally seeking prices from a number of alternative suppliers e.g. via an internet search, using suppliers that have provided a good service and value for money to the Council in the past, or negotiating a better deal with existing suppliers.
- 9.4** In terms of the keeping of records for procurement under the value of £5,000, all supplementary evidence relating to the purchase should be retained, including copy purchase orders, price lists, web page prints, emails, delivery notes and invoices.

## **10.0 Written Quotations (Procurement over £5,001 up to and including £49,999)**

- 10.1** Where the procurement of the goods, materials, services or works is in excess of £5,000 but below £50,000, at least three written quotations are required to be obtained, unless an exemption has been applied for and approved under the requirements of section 6.
- 10.2** The responsible officer will be required to set out, ideally in writing, the particulars of the procurement or a specification for the contract into which the Council wishes to enter, and to seek, via invitations to quote, at least three written quotations from relevant persons, suppliers or contractors able to provide the required goods, materials or services, or undertake the required works.
- 10.3** The Council does not have a select list of tenderers and the choice of suppliers should be based on the professional knowledge of the responsible officer undertaking the procurement.
- 10.4** Every effort should be taken to obtain at least three written quotations, and consideration should be given to seeking more quotes if more than three relevant suppliers are available.
- 10.5** If less than three quotes are actually received following the invitation to quote, this policy permits only those quotations actually received to be considered. Further quotes do not need to be sought.
- 10.6** Upon receipt of written quotations, the responsible officer will then be required to evaluate the quotes received against the requirements of the procurement or the contract specification and recommend the preferred contractor, including the reasons if the lowest price is not accepted or if less than three quotes were received.

- 10.7** All procurement relating to capital projects over £5,000 must be reported to the appropriate Committee. These reports must include the full background to the project, any exemption applied for from the section 6, details of the quotes sought and received, and the recommended contractor, including the reason if the lowest price has not been accepted.
- 10.8** There are a number of items of expenditure relating to the Revenue Budget which are over the value of £5,000. These include loan repayments, I.T. contracts, audit fees, insurance contract, CCTV running costs, bedding plants etc.
- 10.9** However, as these are all regular payments already well-established within the Revenue Budget, these Standing Orders do not require revenue expenditure to be reported to Committee outside of the normal reporting to Policy and Resources Committee.
- 10.10** However, a record of the decision to incur any revenue expenditure over the value of £5,000 must be published on the Council website in order to comply with the Openness of Local Government Bodies Regulations 2014. The Financial Regulations provide further information on the requirements of these regulations.
- 10.11** Please note that a contract award notice must be published on the Government Contracts Finder portal for all contract awards over the value of £25,000.
- 10.12** Additionally, if the procurement involves unbudgeted expenditure or a request to use the contingency sum, approval must be sought from Policy and Resources Committee before proceeding.
- 10.13** The following supporting records must be kept for all procurement activity between the value of £5,001 and £49,999:-
- Copies of the invitations to quote;
  - Copies of any contract specification;
  - Copies of all quotations received;
  - Reports to Committee or Council;
  - Purchase orders, emails, delivery notes and invoices;
  - Copies of any contract where relevant;
  - Standing Order Exemption Form, if an exemption is applied;
  - A record of the reasons if the lowest price was not accepted;
  - Copies of correspondence with the successful contractor;



## **11.0 Public Notice of Contract on Contracts Finder (Procurement over £50,000 up to and including £213,477 for goods and services and £5,336,937 for works).**

- 11.1** This section shall have effect where the Council is undertaking a procurement exercise for the supply of goods, materials, services or works that is over the Council's procurement threshold of £49,999, but below the Public Contracts Regulations EU threshold of £213,477 for goods and services and £5,336,937 for works.
- 11.2** This section will only apply on the occasions that the Council itself manages the procurement exercise and not in cases where the contract is to be managed by another local authority.
- 11.3** This section may also be waived if an exemption has been applied for and approved under the requirements of section 6.
- 11.4** In all other cases where the Council is undertaking a procurement exercise between the value of £50,000 and £213,477 for goods and services and £5,336,937 for works, quotes or tenders will be sought following the advertising of the contract opportunity via the Government's Contracts Finder website, in accordance with the requirements of the Public Contracts Regulations as set out in section 4, whether or not it has been advertised elsewhere.
- 11.5** The public notice must set out the nature and purpose of the contract into which the Council wishes to enter and must include the time by which interested parties must respond, how and to whom to respond, and any other requirements to enable participation in the procurement.
- 11.6** The Council must also, by means of its website, offer unrestricted and full direct access, free of charge, to any relevant contract documents.
- 11.7** The Council must not include a pre-qualification stage in a procurement exercise whereby the council assesses the suitability of candidates with a view to reducing the number of candidates who will proceed to a later stage of the process.
- 11.8** The Council may ask candidates to answer 'suitability assessment questions' relevant and proportionate to the subject of the procurement, such as whether candidates meet minimum standards of suitability, capability, legal status or financial standing.
- 11.9** Detailed tendering procedures including instructions for tenderers, standard conditions of tender, submission, receipt and opening of tenders, shortlisting, evaluation and award of contract and the withdrawal of tenders are set out in sections 13 to 18.
- 11.10** The Council need only consider those expressions of interest or tenders received and if fewer than three organisations have responded to the public notice, the Council does not need to seek further tenders.

**11.11** When a contract is awarded, the Council must publish on the Contracts Finder website the name of the contractor, the date on which the contract was entered into, the value of the contract, and whether the contractor is a SME (small or medium sized enterprise).

**11.12** The following supporting records for all procurement between the value of £50,000 and £213,477 for goods and services and £5,336,937 for works would be expected to be retained:-

- A copy of the electronic notice published on the Contracts Finder website;
- Cuttings or copies of any newspaper or magazine advertisement(s);
- The tender document including contract specification if relevant;
- Completed tender documents received from candidates;
- The contract document, if relevant (see Standing Order 20);
- A record of the reasons if the lowest price was not accepted;
- Copies of all written correspondence with candidates during the tender process;
- Post tender correspondence with the successful contractor;
- Post contract evaluation and monitoring records.

### **Important Note Regarding Sections 12 to 19**

Given the small size of the Town Council and the lack of specialist in-house expertise in relation to professional knowledge e.g. surveyors, architects, it is unlikely that the Council would undertake a significant project involving a formal tender process without utilising the services of another local authority or public sector body.

It is therefore very unlikely that the tendering rules set out in the following sections 12 to 19 would ever need to be used by the Council.

In cases where procurement is managed by another local authority on behalf of the Council, attention is drawn to section 1.10 which states that:-

*“This policy shall not apply in the case where works, goods, materials or services are to be purchased in connection with the carrying out of works under agency arrangements with another local authority or public sector body. In such cases, the procurement the works, goods, materials or services will be made in accordance with that organisations own Standing Order rules”.*

However, some of the information contained in the following sections will be relevant to some of the smaller revenue budget-based contracts that may be awarded by the Council from time to time.

## **12.0 EU Procedure (Over £213,477 for goods and services and £5,336,937 for works)**

**12.1** This section shall have effect on the very rare occasions where a tender for specified categories of work or for the supply of specified categories of goods, materials or services, is at a value over the current EU Threshold of £213,477 for goods and services and £5,336,937 for works, and where such a contract is not to be managed by another local authority.

**12.2** In such instances the contract would be subject to the full requirements of the Public Contracts Regulations and EU Procedure whereby notice in the Official Journal of the European Union (OJEU) is required and at least three tenders sought, thereby ensuring that the tender process complies with EU Directives.

## **13.0 Invitation to Tender and Instructions for Tenderers**

**13.1** The invitation to tender must state that no tender will be considered unless it is received by the date and time stipulated. No tender delivered in contravention of this rule will be considered.

**13.2** All invitations to tender will include the following information:-

- A specification of the goods, materials, services or works that are required, describing the Council's requirements, including any British or European Standards that apply, in sufficient enough detail to enable the submission of consistent and competitive tenders;
- A requirement for the candidate to declare that the tender content, price or any other particulars concerning the tender have not been disclosed to any other party;
- A requirement for the candidate to complete fully and sign all tender documents;
- Notification that tenders are submitted to the Council on the basis that they are compiled at the candidates' expense;
- A description of the award procedure and a definition of the award criteria (see section 15 for further details);
- A stipulation that any tenders submitted by email, fax or any other electronic means will not be considered;
- The method by which any arithmetical errors discovered in submitted tenders will be dealt with, in particular whether the overall price prevails over the individual rates in the tender;
- A statement that the Council is not bound to accept the lowest tender, or any tender received;
- A statement that unless otherwise agreed by the Council, tenders for a part or parts of the works, services, goods or materials will be rejected.

**13.3** All candidates invited to tender must be issued with the same information, at the same time, and subject to the same conditions. Any supplementary information must also be given on the same basis.

- 13.4** All invitations to tender must specify the terms and conditions of the contract that will apply. The content of contract documents is covered in more detail in section 20.
- 13.5** Candidates invited to respond must be given an adequate period of time in which to prepare and submit a proper tender, consistent with the urgency of the contract requirement. This will normally be four weeks.
- 13.6** If so decided for any particular contract, the tender conditions should state that the Council may, in its absolute discretion, extend for all candidates the time and date for return.

#### **14.0 Submission, Receipt and Opening of Tenders**

- 14.1** Written tenders relating to formal contracts, and where an exemption to the policy does not apply, shall be received in an official envelope supplied by the Town Clerk for that purpose.
- 14.2** Such envelopes shall not bear any name or mark indicating the sender and shall remain sealed in the custody of the Town Clerk until the time appointed for their opening.
- 14.3** On receipt by the Council, the envelope shall be initialled by the receiving officer and stamped with the date and time of receipt.
- 14.4** The Council shall be under no duty to consider any tender which is received after the time notified to candidates for return of tender or which otherwise does not comply with these instructions.
- 14.5** Tenders shall be opened at the appointed time and date by an authorised officer in the presence of at least two unrelated Members of the Council. All tenders will be opened at the same time and each tender will be signed and dated by both the Town Clerk and Members.
- 14.6** The Finance Manager will maintain a record on the appropriate contract file of all tenders received, including those opened and those tenders that have been returned as not complying with these instructions.

#### **15.0 Award Criteria and Evaluation of Tenders and Contracts**

- 15.1** Shortlisting and evaluation of tenders must have regard to the standards set out in the tender or contract specification and the award criteria for the tender or contract.
- 15.2** The responsible officer must ascertain if any British or European standards apply to the subject matter of the contract. These standards should have been clearly set out in the invitation to tender and contract specification as set out in section 13 and are necessary in order to properly describe the required quality of the contract.
- 15.3** The responsible officer must also define the award criteria appropriate to the evaluation of the tenders and shortlisting of candidates. Award criteria must be designed in order to ensure an outcome that achieves

value for money for the Council, and demonstrates economy, efficiency and effectiveness in the use of public resources.

**15.4** The basic award criteria where price is the only consideration to be taken into account, would be as follows:-

- Lowest price to be accepted where payment is to be made by the Council;
- Highest price to be accepted where payment is to be received by the Council;

**15.5** However, in most cases there will be a number of considerations other than price that need to be taken into account and in these cases, it should be stated that the 'most economically advantageous' tender will be accepted.

**15.6** If the 'most economically advantageous' criteria is to be adopted, the award criteria must be further defined by reference to the various non-financial sub criteria.

**15.7** Sub criteria may refer to a number of relevant considerations and these may include:-

- Quality of goods or service quality;
- Future running costs;
- Technical requirements;
- Previous experience with the supplier or contractor;
- Delivery date;
- Environmental considerations;
- Functional characteristics e.g. security and control features;
- Safety considerations;
- After sales service;
- Technical support e.g. IT software support contract;
- Any other relevant matters

**15.8** Award criteria cannot include:-

- non-commercial considerations;
- matters which are deemed to be anti competitive within the definitions in the Local Government Act 1988.

**15.9** All tenders must be checked for arithmetic accuracy. If arithmetic errors are found, they should be notified to the tenderer, who should then be requested to reconfirm the figures or withdraw the tender.

**15.10** Where the Council seeks clarification of a tender, this must either be requested in writing or by way of a meeting during which recorded minutes must be taken.

## **16.0 Post Tender Negotiation**

**16.1** Post tender negotiation is defined as negotiations with any tenderer after the submission of a tender, but before the award of the contract, with a view to obtaining an adjustment in price, delivery or content.

**16.2** However, if post tender negotiation results in a fundamental change to the contract specification, the contract must be re-tendered.

- 16.3** Post tender negotiation must not be conducted where EU Procedure applies, as this may distort competition with regard to price.
- 16.4** Post tender negotiation must be carried out by the appropriate responsible officer and one other senior officer of the Council, preferably the Town Clerk.
- 16.5** Post tender negotiations should only be undertaken with the tenderer who has previously been identified as submitting the lowest or most economically advantageous tender.
- 16.6** Tendered rates and prices can only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the tender documents and contract specification.
- 16.7** The responsible officer must ensure that all post tender negotiations are properly recorded by way of minutes of any meetings held and that agreement to any amendments is made in writing between the tenderer and the Council.

## **17.0 Acceptance and Award of Tenders**

- 17.1** All contracts must be evaluated and awarded in accordance with the contract specification and the award criteria as detailed in section 15.
- 17.2** The responsible officer, in consultation with the Town Clerk, will be responsible for evaluating the tenders received and recommending the acceptance of the lowest or most economically advantageous tender.
- 17.3** Full details of the procurement, including the tender process followed, contract specification, tenders received, and the recommended award of the tender should be reported to the appropriate Committee of the Council. Where the lowest priced tender is not recommended, full details must be given of the award criteria and the non-financial considerations that have been taken into account.
- 17.4** The Committee will then consider the tender and make a final recommendation to the Council in respect of the matter.
- 17.5** If the lowest tender exceeds the agreed budget set aside for that matter, then a written report by the responsible officer or the Town Clerk must also be made to the next meeting of the Policy and Resources Committee requesting approval for the additional budget.
- 17.6** Unless otherwise decided by the Council, acceptance of any tender will not give rise to a contract until a purchase order or formal contract document is completed and signed. Where the invitation to tender stipulates a form of contract or specific contract terms, the form of contract or terms submitted by the tenderer shall not be deemed to be accepted by virtue of the tender being received.

**17.7** Following acceptance of a tender by the Council, the responsible officer will write to all tenderers who submitted a bid, informing them that at they were unsuccessful.

## **18.0 Withdrawal of Tender**

**18.1** In the event of any person or organisation withdrawing a tender or declining to sign a form of contract on being called upon to do so after the tender has been accepted by the Council, no further tender from such person or organisation, will in the absence of a satisfactory explanation, be considered by the Council.

## **19.0 Nominated Sub-Contractors or Suppliers**

**19.1** This section will have effect where the Council approves a contract for the execution of work with a main contractor and also proposes to nominate to the main contractor one or more sub contractors or suppliers for the execution of the work or the supply of goods, materials or services within the main contract.

**19.2** Where a sub-contractor or supplier is to be nominated to the main contractor, tenders for the nomination will be made in accordance with the normal provisions of this policy and based on the financial thresholds detailed in section 5.

**19.3** The terms of the invitation shall require an undertaking by the sub-contractor that if selected they will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main contract in relation to the work or goods including in the sub-contract.

**19.4** The tenders shall be opened, evaluated and awarded in accordance with sections 14, 15, 16 and 17 and reported to the appropriate Committee of the Council.

## **20.0 Content of Contract and Contract Conditions**

**20.1** Procurement of goods, materials, services or works, for which only written quotations are required, will be made by the issue of an official purchase order, duly certified by the appropriate responsible officer.

**20.2** However, in specific cases, for example where the services or works to be procured are of a specialised or technical nature a written contract may also be required, signed by the Town Clerk and the Mayor of the Council and an authorised representative of the contractor and sealed on behalf of the Council, prior to the issue of an official purchase order.



**20.3** Written contracts must, as a minimum, clearly state the following:-

- Signed and sealed Form of Agreement between the Council and the Contractor;
- Definitions of the terminology used within the Contract;
- Contract period if applicable;
- Full description of the services or works to be provided;
- The time and dates for the delivery of goods, materials or services to be supplied or the performance of works to be delivered;
- Any penalties for not meeting the terms of the contract
- Staffing requirements and rules;
- Contract monitoring, inspection and audit arrangements;
- Use of Council premises and equipment;
- Confidentiality rules;
- Security arrangements;
- Contract price and payment terms;
- A statement that the contract is subject to the appropriate laws for the prevention of corruption;
- Contract default rules;
- Contract termination rules;
- Arbitration rules;
- Assignment, transfer and sub-letting rules;
- Income Tax rules;
- Indemnity to the Council;
- Insurance requirements;
- Health and Safety Act requirements;
- Data Protection Act requirements;
- Equalities legislation requirements;
- Right of access to relevant documentation and records of the contractor for monitoring and audit purposes

**20.4** All contracts must be concluded formally in writing before the supply, service or works begins, except in exceptional circumstances, with the consent of the Town Clerk. An award letter is not sufficient for these purposes.

**20.5** All contracts for the execution for services or works must include a condition that the contractor will be responsible for ensuring that all persons employed by them, and by any sub contractor, are in the contractor's or sub contractor's direct employment.

**20.6** It is expressly agreed that the contractor and sub contractor will not use 'lump labour'. The expression 'lump labour means the practice of individual work people or groups of work people contracting as independent labour only sub contracts, and not being in the direct employment of the contractor or sub-contractor.

**20.7** The following clauses regarding the prevention of corruption must be included in every written contract:-

*The Council may terminate a contract immediately and recover all of its losses if the contractor, its employees or anyone acting on the contractor's behalf:-*

- *Offer, give or agree to give any inducement, reward or consideration of any kind (other than the tender itself) to any person in relation to the listing or selection of any tenderer or the award of any contract with the Council, whether or not the contractor has knowledge of those acts;*
- *Commit any offence under the Prevention of Corruption Acts 1889 to 1916 (or equivalent law);*
- *Give any fee or reward, the receipt of which is an offence under Section 117 of the Local Government Act 1972 (or equivalent law);*
- *Is shown to have knowingly or recklessly given materially false information to the Council within a tender.*

**20.8** If the Council terminates the contract under section 19.8 it shall be entitled to recover from the contractor the amount of any loss caused to the Council. The Council shall not be liable to the contractor for any loss (including loss of profit) caused to the contractor by the termination.

**20.9** The contractor will indemnify the Council against all liability, loss, damage, death or personal injury arising out of the performance of the contract. The contractor will have both employers' and public liability insurance to the minimum value that the Council requires and will provide evidence of current insurance cover to the Council.

**20.10** The contractor shall pay to the Council liquidated and ascertained damages if the contractor fails or delays in performance. The amount of damage for each period or instance of failure or delay will be set out in the contract and shall be a genuine estimate of the Council's loss. This clause may be omitted where the Town Clerk considers it impractical or unreasonable to apply.

**20.11** The contractor shall ensure that all sub-contractors employed to undertake the contract are contractually bound to comply with the requirements of this section and that all such sub-contractors also comply with these requirements.

## **21.0 Declarations of Interest**

- 21.1** If it comes to the knowledge of a Member or a senior officer of the Council, that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she must give written notice to the Town Clerk, who will report such declarations to the Council.
- 21.2** Those Members or officers would then be excluded from taking part in any discussions relating to the contract or voting thereon at the Committee meeting at which the procurement is to be discussed.

## **22.0 British and European Standard Specification**

- 22.1** Where an appropriate British Standard Specification or Standard Code of Practice issued by the British Standards Institution, or any relevant European Standards issued by the European Union, is current at the date of the tender, the contract shall require that all goods and materials used or supplied, and all workmanship shall be in accordance with those standards. Where more than one such standard exists, equivalent standards shall be accepted.

## **23.0 Engagement of Consultants**

- 23.1** The engagement of consultants must be procured in line with the overall requirements of this policy.
- 23.2** In considering the need to engage consultants, responsible officers must have a clear understanding of:-
- (1) The precise nature of the work involved and the reasons why it cannot be undertaken by existing staff;
  - (2) Whether sufficient budget provision exists to employ the consultant(s);
  - (3) The procurement action required in accordance with this policy;
  - (4) The fees or fee scale payable, and when payable, including details of any instalments;
  - (5) The basis on which the fee or fee scale is calculated;
  - (6) What, if any, additional payments or expenses are payable and on what basis;
  - (7) What provision there is if the work is aborted part way through or if an extension or addition to the work is required;
  - (8) Provision for consultants to give the Council ownership of or copyright in any documentary work on completion of the contract.

- 23.3** The engagement of consultants will be subject to the completion of a formal written letter, contract of appointment or brief.
- 23.4** Where the value of the consultancy is more than £5,000 per year, approval should be sought from the appropriate committee prior to engaging the consultant in line with the main rules of this policy unless an Exemption to the policy has been applied for and approved.
- 23.5** Where an architect, engineer, surveyor or other consultant is responsible for the supervision of a contract he/she shall comply with the Council's Standing Orders, this policy and Financial Regulations as though he/she were an officer of the Council and shall produce to the Town Clerk all records kept in relation to the contract.

## **24.0 European Union**

- 24.1** In the event of any provision of this policy being inconsistent with the provisions of any directive or rule issued by the EU which has legal effect in the United Kingdom, this policy shall be varied so far as it is inconsistent with such directive or rule and the EU requirements will be applied accordingly.

## Appendix 1 - Contracts and Procurement Standing Orders Exemption Application Form

Description of Procurement / Contract Activity	Responsible Officer	Procurement Amount £
<i>Please provide a brief description of the procurement activity or the contract to be entered into.</i>		
<b>Description of the Goods, Materials, Services or Works to be Procured:</b>		
<i>Please provide a detailed description of the goods, materials, services or works to be procured</i>		
<b>Name of Contractor / Supplier:</b>		
<i>Please provide details of the preferred contractor or supplier,</i>		
<b>Exemption Claimed:</b>		
<i>Please refer to section 5.5 and select an Exemption from the list.</i>		
<b>Reason for Application for Exemption:</b>		
<i>Please provide details of the reasons for the application for an Exemption from the Contracts and Procurement Policy.</i>		
<b>Date to be Reported to Committee:</b>		
<i>Please insert the date of the meeting of the appropriate committee to which application for the Exemption is to be requested.</i>		
<b>Manager Authorisation</b>		
<b>Signature</b>	<b>Designation</b>	<b>Date</b>
	<b>Town Clerk</b>	
	<b>Finance Manager</b>	