

APPENDIX A - PROPOSED AMENDMENTS TO THE CONTRACT PROCEDURE RULES

| ITEM | PROPOSED AMENDMENT | EXPLANATION |
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| New Rule | Insert the following new rule as Rule 1: <p style="text-align: center;">RULE 1 Compliance</p> Officers must comply with these Rules. Failure to do so may result in disciplinary action | The importance of complying with the Rules is made explicit from the beginning |
| 2 (i) | Amend to read as follows: for <u>only</u> the acquisition <u>or disposal</u> of any interest in land; | Stops the exception being applied to the acquisition or disposal of land where there is also a development agreement, therefore potentially bringing the transaction within the scope of the EU Consolidated Procurement Directive as a Works contract |
| 6 (b) | Amend to read as follows: The following clause will be included as a standard term and condition in every written contract in accordance with Rule <u>22(c)</u> : "The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things..." | Rule 22(a), to which 6(b) currently refers, relates to form of contract rather than what constitutes a default on the terms of contract. It is rule 22 (c) which defines what constitutes a default on the terms of contract |
| 6 (b) | Amend the standard term stipulated as having to be included into every written contract, so that it reads as follows: The Council may terminate this contract and recover all its loss <u>from the Contractor</u> if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things: | The legal robustness of the clause is enhanced by explicitly stating that the loss is to be recovered from the Contractor in the circumstances listed |
| 9 (b) | Amend to read as follows: All contracts with an Estimated Value of £50,000 or more must be referred to ESPO, <u>subject to any general exceptions agreed with ESPO</u> , prior to the commencement of the Procurement Exercise by the Procuring Officer unless the Procuring Officer acting on advice of the Category Manager considers that the Council can better comply with its duty of Best Value by not using ESPO. All such cases must be confirmed in writing to the Director of Corporate Resources. | By adding, "subject to any general exceptions agreed with ESPO", the rule is more closely aligned with the Memorandum of Understanding agreed with ESPO |
| 9 (d) | Amend to read as follows: Where any Centrally Negotiated Contracts or <u>Standing Lists (Rule 24)</u> have been set up for supplies, services or works | It is made clearer that when using existing Standing Lists which comply with Rule 24, as well as Centrally Negotiated Contracts, there is no need to further apply the Contract Procedure Rules |

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| | then these Rules are deemed to have been satisfied when the arrangement was set up and do not have to be further applied, if appropriately used . When the Centrally Negotiated Contract is a Framework Agreement then the Procuring Officer must comply with Rule 25(c). <u>When using a Standing List the Procuring Officer must comply with Rule 24.</u> | |
| 9 (e) | Add the following rule: Where the EU threshold is reached as a result of aggregating a number of contracts each of the contracts will be covered by the Rules except small contracts (known as small lots) the value of which falls below the de minimus level provided by the Public Contract Regulations 2006 (clause 8(12)), where advised by the Category Manager | It is made clear that the Contract Procedure Rules do not negate the Public Contract Regulations 2006 small lots provision |
| 10 (b) | Amend to read as follows: In the case of a Procurement Exercise with an Estimated Value of £50,000 or more the award methodology must be agreed in consultation with the appropriate Category Manager and recorded in writing by the Procuring Officer in advance of the issue of the Invitation to Tender and a copy retained on file. | Delete mention of “shortlisting methodology” as this rule should simply relate to the award methodology to be used based on threshold |
| 10 (c) | Amend to read as follows: In all cases where the Estimated Value is equal to or exceeds the EU threshold <u>the process for identifying a most economically advantageous Tender, including evaluation criteria</u> , must be prepared in consultation with the Category Manager in advance of the issue of the Invitation to Tender and a copy retained on file. | By adding the need to have the evaluation process, as well as evaluation criteria, prepared ahead of the issue of the Invitation to Tender, the rule takes fuller account of recent EU case law that requires evaluation criteria, sub-criteria and matrices to be prepared ahead of the issue of the Invitation to Tender |
| 11 (b) | Amend to read as follows: The publication of the notice must be made at least <u>fifteen days</u> before the last date for receipt of Tenders or Quotations. | It is felt that 15 <u>working</u> days notice of a contract opportunity with a value of between £50k and the EU threshold is excessive as a minimum, and 15 days is more appropriate |
| 13 (a) | Amend to read as follows: Under Restricted Tendering, Procuring Officers need only send Invitations to Tender to: (i) not less than <u>five</u> of the Persons who respond to the public notice and who best meet the short-listing methodology agreed in <u>Rule 13 (b)</u> ; or (ii) where fewer than <u>five</u> Persons have applied or are considered suitable, to all those Persons who equal or exceed | Mention of shortlisting criteria for the Restricted Tendering procedure is effectively moved from rule 10 (which should focus on the award methodology to be used based on threshold – see 10 (b) above) to rule 13 which deals with the Restricted Tendering procedure. Therefore, rule 13 (a) now refers to the newly proposed 13 (b) rather than rule 10, as is currently the case Also, the minimum number of Persons to which to send an Invitation to |

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| | the minimum requirements for the short-listing methodology agreed in Rule 13 (b) . | Tender has been changed from four to five, so as to be in compliance with Public Contract Regulations 2006 (clause 16 (9) (b)) |
| 13 (b) | Add the following rule: In all cases where the Estimated Value is £50,000 or more the shortlisting criteria and process must be prepared (in consultation with the Category Manager) in advance of the issue of the Pre-Qualification Questionnaire and a copy retained on file | Mention of shortlisting criteria for the Restricted Tendering procedure is effectively moved from rule 10 (which should focus on the award methodology to be used based on threshold – see 10 (b) above) to rule 13 which deals with the Restricted Tendering procedure |
| New Rule | Insert the following new rule as Rule 10: RULE 10 Selection and Award Evaluation Criteria (a) A Procurement Exercise must include both selection and award criteria. (b) Selection criteria must be included in the evaluation process where employing the Open Tendering procedure (<i>currently</i> Rule 12) or must be the only criteria used for the shortlisting methodology where employing the Restricted procedure (<i>currently</i> Rule 13). | By making the distinction between selection and award criteria account is taken of recent EU case law that highlights the need to treat the two types of criteria separately, particularly when following an Open Tendering Procedure |
| New Rule | Insert the following new rule as <i>current</i> Rule 10 (b): Before a contract can be awarded the supplier must meet the minimum standard for the selection criteria where included in the evaluation process where employing the Open Tendering procedure (<i>currently</i> Rule 12) or where the only criteria used for the shortlisting methodology where employing the Restricted procedure (<i>currently</i> Rule 13) | The other proposed amendments (on the previous page) to the current Rule 10 result in the rule focusing on award methodology. Therefore, it is necessary to ensure that selection criteria are not overlooked when the current Rule 10 is being read in isolation |
| 20 (f) | Amend to read as follows: The Appropriate Chief Officer shall have the authority to accept a Tender or Quote but in any particular circumstance may decline to give approval and refer the decision to the Executive. | The Appropriate Chief Officer does not have the authority to accept <u>any</u> Tender or Quote, as the rule currently reads, as the procurement exercise must comply with the Council's Contract Procedure Rules, and National and European legislation and principles |
| 25 (c) | Amend to read as follows: All suppliers on the Framework Agreement must be invited to participate in a further competition unless it is clear from the terms of the Framework Agreement which supplier best meets the award methodology set out in the Framework Agreement in which case that supplier may be selected. | Ensures that the terminology is consistent with that used in the Public Contract Regulations 2006, by referring to further competition rather than tender when referring to Framework Agreements |
| 27 (b) | Amend to read as follows: | Ensures that the Appropriate Chief Officer is only required to authorise |

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| | <p>In the case of a contract with a Total Value of £5,000 or more <u>any extra(s) or variation(s) worth 10% or more of the Total Contract Value, where this equates to a value of over £1,000</u>, must be authorised in writing by the Appropriate Chief Officer. In the case of contracts with a Total Value of £50,000 or more this shall be done in consultation with the appropriate Category Manager. This authorisation must be issued before the work is carried out, or in the case of an emergency immediately thereafter.</p> | <p>significant contract variations, as opposed to any contract variation for contracts with a Total Value of £5k or more, as the rule currently reads</p> |
| 28 (a)-(d) | <p>Replace with the following Rule 28 (a)-(f)</p> <p style="text-align: center;">RULE 28</p> <p style="text-align: center;">Contract Extensions</p> <p>(a) If the contract was originally approved by the Executive and where the duration of the planned extension is more than three months then authority must be gained from the Executive</p> <p>(b) If the Total Value of a contract is under £50,000 and the contract provides for an extension the Appropriate Chief Officer shall be authorised to extend the contract.</p> <p>(c) If the Total Value of a contract is £50,000 or more and the contract provides for an extension the Appropriate Chief Officer shall be authorised to extend the contract in consultation with the Category Manager.</p> <p>(d) If the Total Value of a contract is under £50,000 and the contract does not provide for an extension the Appropriate Chief Officer shall be authorised to extend the contract on a one-off basis, provided that the extension does not exceed 6 months or a Total Value of £25,000, whichever is the greater.</p> <p>(e) If the Total Value of a contract is £50,000 or more and the contract does not provide for an extension the Appropriate Chief Officer must gain prior approval of the Director of Corporate Resources to extend the contract.</p> <p>(f) In the case of contracts tendered in accordance with the EU Directives any extension will only be permissible if this was properly described in the original OJEU notice.</p> | <p>By replacing the current Rule 28 (a)-(d) with the proposed Rule 28 (a)-(f):</p> <ul style="list-style-type: none"> • The need to gain authority from the Executive where the Executive has placed any limitations or restrictions on an arrangement is more prominently recognised by moving to 28 (a) • There is a need to gain authority from the Executive where the Executive has placed any limitations or restrictions, rather than simply inform the Executive • The authorisations required to extend contracts with a Total Value of under £50,000, both where provided for and not provided for by the contract, is now explicitly stated (at 28 (b) & (d) respectively) |
| 28 (d) | <p>Amend to read as follows: In the case of contracts tendered in accordance with the EU Directives any extension will only be permissible if this was</p> | <p>Contracts may be below the EU threshold but tendered in accordance with the EU Directives. Therefore, reference to OJEU notice is not applicable, hence the addition of “where applicable” to the end of the</p> |

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| | properly described in the original OJEU notice, <u>where applicable.</u> | rule |
| 33 (a) | Amend to read as follows: The Procuring Officer shall ensure that it is a condition of any contract between the Council and any Person (not being an Officer of the Council) who is <u>involved in a procurement exercise or the management of a contract</u> on behalf of the Council that in relation to that contract he must comply with the requirements of these Rules and other reasonable requirements of the Council. | The rule has been changed to stipulate that a broader range of third party roles acting on behalf of the Council (beyond supervising a contract) must comply with the Contract Procedure Rules |
| Schedule 1, 5. | Delete definition of "concession" | Ensures that the definition is consistent with that EU Consolidated Procurement Directive |
| Schedule 1 | Add definition of Public Works Concession: A "public works concession" is a contract of the same type as a public works contract except for the fact that the consideration of the works to be carried out consists either solely in the right to exploit the work or in this right together with payment. | |
| Schedule 1 | Add definition of Public Service Concession: A "public service concession" is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment. | |
| Schedule 1 | Add definition of Further Competition: A further competition is undertaken where not all the terms of a proposed contract are laid down in a framework agreement. It involves re-opening competition between the economic operators which are parties to the framework agreement and which are capable of performing the proposed contract, on the basis of the same or, if necessary, more precisely formulated terms, and where appropriate other terms referred to in the contract documents based on the framework agreement. | |
| | | Clarifies the term Further Competition, which it is proposed is used in rule 25 (c) – see above |