



Bridgend County Borough Council Contract Procedure Rules

V1.0 October 2012

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1. INTERPRETATION

In these Contracts Procedure Rules:-

“the Cabinet” means the Executive established under Part II of the Local Government Act 2000.

“the Cabinet Members” means the Executive Leader and the members of the executive.

“the Cabinet Functions” means the functions for which the Cabinet is responsible.

“the appropriate Chief Officer” means whichever of the following is responsible in any particular case for inviting tenders or placing an official order:-

- The Chief Executive
- Assistant Chief Executive Legal and Regulatory Services
- Assistant Chief Executive Performance
- The Corporate Director - Children
- The Corporate Director - Wellbeing
- The Corporate Director – Communities.

“the Appropriate Body” means the Cabinet, and any committee, panel or other body to which power has been delegated to accept tenders for contracts of the category for which tenders are to be or have been invited.

“The Chief Audit Officer” means the Head of Audit Service for the Council.

“the Chief Finance Officer” means the nominated Section 151 officer under the Local Government Act 1972 for the time being having statutory responsibility for the administration of the Council's financial affairs.

“contract” means any form of contract or agreement entered into by the Council with any other party for the supply of goods, services or works, or any combination thereof.

“Contractor” means any person or organisation that undertakes a contractual relationship with the Council.

“contract value” means the total value of the contract over the whole term of the contract. If there is no fixed price then the value of the contract is to be calculated on the expected expenditure during that financial year, if there is no fixed term for the contract. In the case where there is a contract term but no fixed price then the value of the contract is to be calculated on the expected expenditure over the whole contract period. All contract values are exclusive of VAT.

“EU” means the European Union.

“framework agreement” means an agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms

governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

The “Corporate Procurement Manager” means the lead Officer for the Corporate Procurement Unit, who has functional responsibility for the delivery of Procurement strategy and guidance.

“internal providers” means an organisation managed, funded and staffed by the Council, which provides a service to various directorates and schools as its core business.

“marketplace” means the externally hosted transaction hub which stores pre-approved supplier catalogues against which orders are raised”.

"the Monitoring Officer" means the officer for the time being designated as such under Section 5 of the Local Government and Housing Act 1989.

“parties” means collectively the Council and any other party or more than one party entering into a contract or agreement.

"trade journal" means a newspaper or journal circulating among such persons or bodies as undertake contracts of the category for which tenders are to be invited.

Words importing the singular number only shall include the plural number and vice versa.

Any reference to any statutory provision shall include reference to any statutory modification amendment or re-enactment thereof and any subordinate legislation made under them.

2. COMPLIANCE WITH CONTRACT PROCEDURE RULES AND RELEVANT EUROPEAN AND UK LEGISLATION

2.1 Every contract for the sale, purchase or hire of goods by or the carrying out of works or provision of services for the Council shall comply with:

- (a) all relevant statutory provisions including in particular the Local Government Act 1988 Parts I and II, the Local Government (Contracts) Act 1997, the Local Government Act 1999 Part I, and the Public Contract Regulations 2006.
- (b) any relevant EU law, EU Treaty, and EU public procurement Directives as implemented in the legislation of England and Wales.
- (c) the Council's Constitution, including in particular Financial Procedure Rules, Scheme of Delegation Council's Contract Procedure Rules and the Corporate Procurement Strategy.

2.2 For the avoidance of doubt, the appropriate Chief Officer shall ensure that where the estimated value or amount of a proposed contract (or series of contracts) is likely to be equal to or to exceed the thresholds set by the EU

for the public procurement contracts referred to in Rule 2.1 above, then the tendering procedures to be adopted must be in accordance with the relevant EU Directive, and any statutory provision relating thereto.

- 2.3 Where an invitation to tender is in excess of £75000 the appropriate Chief Officer or Cabinet Member shall discuss the requirement with the Corporate Procurement Manager prior to the commencement of the tender process as to the appropriate procedure to be followed. Where the value of the tender exceeds £150,000 a project brief should be completed by the Service budget holder and submitted to the Corporate Procurement Manager and Chief Finance Officer for approval.
- 2.4 The appropriate Chief Officer shall ensure that the Chief Finance Officer is informed by the 1st February each year of all proposed contracts which are likely to be subject to the Public Contracts Regulations 2006 within the following financial year.
- 2.5. The procurement of goods, services or works shall not be divided into more than one contract where that would result in the avoidance of the Contracts Procedure Rules or would affect the application of the Contract Procedure Rules.
- 2.6 The procurement of goods, services and works shall not be artificially over estimated or under-estimated which would result in either the avoidance of the Contract Procedure Rules or which would affect the application of the Contract Procedure Rules.
- 2.7 It shall be a condition of contract between the Council and any person (not being an Officer of the Council) who is required to supervise a contract on its behalf that, in relation to such contract, s/he shall comply with the requirements of these Contract Procedure Rules and the Council's Financial Procedure Rules as if s/he were an appropriate Chief Officer.
- 2.8 The Monitoring Officer with the agreement of the Chief Finance Officer may issue procurement guidance or protocols, and all Chief Officers and any person who is required to supervise a contract on behalf of the Council shall have due regard to any such guidance or protocol.
- 2.9 Any failure by officers to comply with any of the provisions of these Contract Procedure Rules or associated guidance adopted by the Council may result in disciplinary action.
- 2.10 Any procurement carried out on behalf of the Council may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme of Delegation contained within the Council's Constitution.

3. EXEMPTIONS AND WAIVER

- 3.1 Exemption from any of the following provisions of these Contract Procedure Rules may be made:-

- 3.1.1 In an emergency situation in which injury or damage to persons or property is threatened in which case the appropriate Chief Officer may take any necessary action but must report the circumstances and the action taken to the next meeting of the appropriate body.
- 3.1.2 For the acquisition or disposal of land, unless it involves a development agreement which would require a tender process.
- 3.1.3 In the case of contracts for services entered into in pursuance of powers under the National Health Service and Community Care Act 1990 the Children Act 1989 and Children's Leaving Care Act 2000 for the benefit of an individual client, the Corporate Director Wellbeing or the Corporate Director Children's Services (as the case may be), insofar as it is consistent with the law, will make appropriate arrangements for provision.
- 3.1.4 In the case of professional arrangements between the Councils Solicitor and Counsel or external Solicitors, the Assistant Chief Executive Legal and Regulatory Services will not be expected to comply with the requirements of this code when instructing and briefing Counsel or Solicitors. The Assistant Chief Executive Legal and Regulatory Services will make arrangements to ensure that a record is kept of all such instructions or briefs together with a record of Counsel's/ Solicitors fees.
- 3.1.5 Where goods, services and works are procured by another public body on behalf of the Council or through collaborative arrangements awarded via the Welsh Purchasing Consortium or North Wales Procurement Partnership or by the Council through a contract properly let by another such organisation, then those organisations Procurement / Contract Procedure Rules will apply subject to compliance with European Union and Procurement Law of England and Wales.
- 3.1.6 Where a tendering procedure is prescribed by legislation.
- 3.1.7 For the carrying out of security works where the publication of documents in accordance with the tendering procedure could prejudice the security of the work to be done, provided the method of tendering has been approved by the appropriate body.
- 3.1.8 Contracts which can only be performed by a statutory undertaker
- 3.1.9 Employment contracts which make an individual a direct employee of the Council
- 3.2 Waiver from obtaining quotations or tendering will only apply to the criteria listed below and must be obtained from the appropriate body.
 - 3.2.1 Where no quotes or tenders have been received in response to the Council's procedure for obtaining competitive offers. This to include

the open procedure, restricted procedure, negotiated procedure where procurement falls within the scope of the Public Contract Regulations 2006 which implement EU Procurement Directives.

- 3.2.2 The contract involved is purely for the purpose of research, experiment, study or development under the conditions stated in the Public Contract Regulations 2006 which implement EU Procurement Directives
- 3.2.3 The works/goods/services can be provided only by a particular Tenderer for reasons that are technical, artistic, or connected with the protection of exclusive rights
- 3.2.4 Extreme urgency brought about by events unforeseeable by the contracting authority and in accordance with the strict conditions stated in the Public Contract Regulations 2006 which implement EU Procurement Directives
- 3.2.5 Where an existing contract is extended by the ordering of new goods, works or services which will increase the value of the contract, provided the approval of the appropriate body is obtained if the total value of any extension or series of extensions exceeds £100,000 or 10% of the original contract sum, whichever is lower (subject to a de-minimus variation of £10,000), and provided that any extension is not breach of any legislation, and provided that provision for such extension has been made in the original contract.
- 3.2.6 New works/services, constituting a repetition of existing works/services and ordered in accordance with the strict conditions stated in the Public Contract Regulations 2006 which implement EU Procurement Directives.
- 3.2.7 Service contract awarded to the successful candidate or one of them after a design contest.
- 3.2.8 For supplies quoted and purchased on a commodity market.
- 3.2.9 For the purchase of supplies on particularly advantageous terms from a supplier which is definitely winding up its business activities, or from the receivers or liquidators of an insolvency, bankruptcy, an arrangement with creditors or a similar procedure.
- 3.2.10 For contracts to be awarded on the basis of a framework agreement in conformity with the Public Contract Regulations 2006 which implement EU Procurement Directives, where it is necessary to run a further mini competition. Any subsequent mini-tender must be treated on the terms of the original collaborative arrangement, and the rules of the framework applied by those that undertook the collaborative arrangement. Except for the requirement to advertise and those stages in the procurement that are not applicable to a framework.

- 3.3. Purchasing arrangements made for the Council by the Corporate Procurement Manager do not constitute exceptions as such, because they are made under the full provisions of these rules. Correct use of these arrangements, as advised by the Corporate Procurement Manager will however be sufficient to ensure officers meet their responsibilities for compliance. Such arrangements include:
- 3.3.1 Purchasing Frameworks endorsed for use by the Council, where items are specified and costed i.e. no requirement to undertake a further mini competition
 - 3.3.2 Collaborative procurement arrangements undertaken by, or in consultation with the Corporate Procurement Manager
 - 3.3.3 Electronic systems and catalogues endorsed for use by the Council in procurement.
- 3.4 If the Chief Officer is seeking exemption or waiver, a report must be provided to the appropriate body where a report is required under these rules, setting out the reason for requiring the exemption or waiver and the contract procedure rule(s) from which the exemption or waiver is required. The report shall include a legal and financial statement and shall highlight any future commitments (whether or not of a financial character) which the proposed contract might entail.
- 3.5 Where waiver is sought by a responsible officer in respect of obtaining quotations or tendering the report, shall in addition to the requirements of 3.2 justify the use of an alternative method of client selection so that propriety, value for money and compliance with European Union and the legislation of England and Wales can be demonstrated. For consistency in reporting and to demonstrate compliance with the principles of the legislation, the definitions in Public Contract Regulations 2006 which implement EU Procurement Directives will apply to all procurement, whether or not the quotation or tender falls within the scope of the regulation.
- 3.6 Single tender procedure shall only be permitted when a single firm or contractor or a proprietary item or service of a special character is required and justified. Single tender action shall only be employed following an approval of waiver of contract procedure rules. All single tender action and extension of contracts must be recorded and reported where applicable subject to Council policy.
- 3.7 The appropriate Chief Officer must ascertain whether there is a framework agreement approved by the Corporate Procurement Manager for use by the Council. Where currently valid frameworks are available, the framework must be used in accordance with the guidance provided by the Corporate Procurement Manager.

Any joint procurement arrangements with other local authorities and or public sector bodies including membership or use of any consortia must be approved by the Corporate Procurement Manager.

Established framework and consortia arrangements endorsed by the Corporate Procurement Manager for use by the Council shall be mandatory except where there is an applicable waiver or exemption, a copy of which shall be sent to the Corporate Procurement Manager.

- 3.8 These Contract Procedure Rules do not apply to contracts let by school or college governing bodies acting in accordance with their approved schemes of delegation or contract procedure rules.

4. DELEGATED AUTHORITY TO ENTER INTO CONTRACTS

- 4.1 Each Cabinet Member has been allocated the following functions under Scheme A of the Council's Schemes of Delegations (Scheme for the Allocation of Cabinet Functions to Individual Cabinet Members) in respect of any proposed contract relating to services falling within the Cabinet Member's portfolio having an estimated value exceeding £1,000,000 but not exceeding £5,000,000:

- (a) To accept the lowest tender received where payment is to be made by the Council or the highest tender received where payment is to be received by the Council, or
- (b) To invite or accept a tender other than the lowest tender received where payment is to be made by the Council, or other than the highest tender received where payment is to be received by the Council where there are special reasons approved by the Section 151 Officer for not accepting the lowest tender or the highest tender as the case may be.
- (c) To authorise invitation of tenders, to accept a tender or enter into a contract in accordance with any exemption under the Council's Contract Procedure Rules.

- 4.2 Each appropriate Chief Officer has been allocated the following functions under Scheme B2 of the Council's Schemes of Delegations (Scheme for the Allocation of Functions to Executive Directors) in respect of any proposed contract relating to services administered by their Directorate/Office having an estimated value not exceeding £1,000,000:

- (a) To invite or accept a tender other than the lowest tender received where payment is to be made by the Council, or other than the highest tender received where payment is to be received by the Council where there are special reasons approved by the Corporate Procurement Manager in respect of tenders not in excess of £100,000 and by the Section 151 Officer in respect of a tenders in excess of £100,000 for not accepting the lowest tender or the highest tender as the case may be.
- (b) To authorise invitation of tenders, to accept a tender or enter into a contract in accordance with any exemption under the Council's Contract Procedure Rules.

5. DECLARATION OF INTEREST

- 5.1 No member, employee or agent of the Council shall improperly use their position to obtain any personal or private benefit from any procurement entered into by the Council.
- 5.2 Members and employees of the Council shall comply with the requirements of Section 117 of the Local Government Act 1972, the Bribery Act 2012, and the Officers and Members code of conduct set out in the Constitution in respect of the declaration of interests in contracts with the Council.
- 5.3 Such interests must be declared to the Monitoring Officer for inclusion in the appropriate registers

6. INVITATION OF TENDERS

- 6.1 Subject to any overriding legislation requirements, any contract exceeding £75, 000, and in any other case where the appropriate body determines, tenders shall be invited in accordance with either Rules 7, 8 or 9.
- 6.2 All procurements over the tender threshold of £75, 000 value must have a basic procurement statement outlining how the tender will be conducted. This must be agreed with the Corporate Procurement Manager.
- 6.3 A record of tenders over £75, 000 shall be maintained by the Assistant Chief Executive Legal and Regulatory Services.
- 6.4 In the case of procurements that fall to be dealt with under the EU Procurement Directives and the Regulations that implement them in England and Wales, the advice of the Corporate Procurement Manager must be sought at the outset and at all subsequent stages of the procurement process, and a formal project managed process adopted. Such directives and regulations will take precedent over these rules.
- 6.5 The value of a contract means the estimated total monetary value over its full duration, including any extension options. Where the duration of a contract is indeterminate, the value of the contract shall be taken to be the estimated value of the contract over a period of four years. No procurement may be artificially split to avoid compliance with these Contract Procedure Rules and EU procurement Directives as implemented in England and Wales.
- 6.6 The invitation to tender documentation, including specification, evaluation criteria/weightings, must be approved by the Corporate Procurement Manager.
- 6.7 A record shall be kept by the appropriate Chief Officer in a form approved by the Chief Finance Officer of the details of every such contract exceeding £5000 in value or amount and, in each case in which at least three alternative written offers or quotations were not obtained, the appropriate Chief Officer shall also record the reasons why it was considered impracticable to do so.

7. THRESHOLDS AND ADVERTISING REQUIREMENTS

- 7.1 Thresholds for procurement do not apply to existing framework agreements endorsed for use by the Council.
- 7.2 Thresholds for all goods & services (except works contracts) are:
- 7.2.1 Up to £5,000 it is necessary only to demonstrate that value for money is being achieved.
 - 7.2.2 From £5,000 to £25,000 Minimum of 3 quotes to be requested from businesses preferably registered on the National Procurement Website.
 - 7.2.3 From £25,000 to £75, 000 all requirements to be openly advertised on the National Procurement Website and the Council's website (min). Where a restricted procedure is adopted a minimum of three quotations must be invited
 - 7.2.4 From £75, 000 to the Public Contracts Regulations 2006 contract thresholds, requirements must be tendered, and advertised on the national procurement website and the Council's website (min). Where a restricted procedure is adopted a minimum of five tenders must be invited.
 - 7.2.5 Above the Public Contracts Regulations 2006 contract threshold requirements must be tendered and advertised in the Official Journal of the EU, together with such other advertising as directed by the Corporate Procurement Manager.
- 7.3 Thresholds for Works contracts are:
- 7.3.1 All works projects provide a risk to the Council and only approved contractors must be used.
 - 7.3.2 Up to £5,000 it is necessary only to demonstrate that value for money is being achieved, using companies on the Council's Approved List of Contractors.
 - 7.3.3 From £5,000 to £25, 000 quotations are to be requested from a minimum of three prospective Tenderers on the Council's Approved List of Contractors.
 - 7.3.4 From £25,000 to £75,000 quotations are to be requested from a minimum of five prospective Tenderers on the Council's Approved List of Contractors.
 - 7.3.5 From £75,000 to £150,000 tenders are to be requested from a minimum of five prospective Tenderer on the Council's Approved List of Contractors.

- 7.3.6 Over £150,000 requirements must be tendered and advertised on the National Procurement Website.
- 7.3.7 Above the Public Contracts Regulations 2006 contract thresholds, requirements must be tendered and advertised in the Official Journal of the EU, together with such other advertising as directed by the Corporate Procurement Manager.
- 7.4 Where appropriate, additional advertisements should be placed in one or more of the following :
- The Council's website.
 - A local newspaper.
 - Trade Journal.
- 7.5 Where additional advertisements have been placed as outlined in 7.4 the advertisement shall:
- Specify details of the contract into which the Council wishes to enter.
 - Invite persons or bodies interested to apply for permission to tender.
 - Specify a time limit of not less than 14 days within which such applications or tenders are to be received by the Council.
 - Indicate the criteria and weighting to be used to select Tenderer and award the contract, unless this is specified in the ITT.

8. SELECTIVE TENDERING FROM STANDING APPROVED LIST

- 8.1 The selection of contractors shall be made from the list of approved contractors for the procurement of all Works and Services, up to £150,000 in value.
- 8.2 The Chief Finance Officer shall compile and maintain a list containing the names of persons or bodies who wish to be included and who have been approved after successfully completing a vendor appraisal.
- The approved list will show the categories for which approval has been given and a recommended contract value. The recommended contract value is based on a financial risk assessment and is the maximum limit of work that must be placed with a contractor without additional safeguards, approved by the Chief Finance Officer.
- 8.3 The list shall be reviewed continually, by the Chief Finance Officer, each contractor being reviewed on the occasion of their insurance renewal and in the event of any negative end of project feedback received from the Directorates.
- 8.4 Requests for contractors to be added to the approved lists may be made by the Chief Officer or received from a Contractor. The Chief Finance Officer will undertake a vendor appraisal advising both the Chief Officer and the Contractor of the outcome. Only successful Contractors will be added to the approved list.

- 8.5 Except in the circumstances described in Rule 8.7 invitations to tender for a contract shall be sent by the appropriate Chief Officer to at least five (except where legislation permits a lesser number) of the persons or bodies approved for a contract of the relevant category and amount or value.
- 8.6 The basis of selection for those companies on the approved list shall be by way of rotation and/or the suitability of contractors to undertake the project. Reasons for such choice must be recorded,
- 8.7 Tenders may be sent to less than five of the persons or bodies approved for a contract of the relevant category and amount or value if in the opinion of the Chief Finance Officer this is necessary because of the specialised nature of the works or services

9. PROCUREMENT BY CONSULTANTS

- 9.1 Where the Council uses consultants to act on its behalf in relation to any procurement, then the Chief Officer shall ensure that the consultants carry out any procurement in accordance with these Contract Procedure Rules.
- 9.2 All decisions must be made in accordance with the Councils Scheme of Delegation.
- 9.3 No consultant shall make any decision on whether to award a contract or who a contract should be awarded to. The Chief Officer shall ensure that the consultant's performance in relation to procurement is in accordance with these contract procedure rules and legislation of England and Wales and European Procurement Rules.
- 9.4 Where the Council uses consultants to act on its behalf in relation to any procurement the consultant must declare any potential conflict of interest that may arise to the relevant Chief Officer prior to the commencement of the procurement process or at such time that the contractor becomes aware of such a potential conflict of interest..
- 9.5 Where the Chief Officer considers that such a conflict of interest is significant the consultant shall not be allowed to participate in the procurement process.

10. NEGOTIATED TENDERING AND COMPETITIVE DIALOGUE

- 10.1 The negotiated procedure, as defined in the Public Contracts Regulations 2006, can only be used in exceptional circumstances as directed by the Chief Finance Officer and with prior approval of the appropriate Cabinet Member and Monitoring Officer.
- 10.2 The competitive dialogue procedure, as defined in the Public Contracts Regulations 2006, can only be used for particularly complex projects as directed by the Chief Finance Officer and with prior approval of the appropriate Cabinet Member and Monitoring Officer.

11. NOMINATED PRODUCTS SUB-CONTRACTORS AND SUPPLIERS

- 11.1 The principle of non-discriminatory and equal treatment is undermined by nomination of products, suppliers or sub-contractors. Equivalentents are nearly always able to be specified. Contracts for nominated products, suppliers, or sub-contractors will be advertised with the wording "or equivalent" where possible.
- 11.2 Where the Council chooses to name or nominate a product supplier or sub contractor; the appointment must comply fully with these Contract Procedure Rules. Where the Council has determined that a particular type of product or provision of service will be stipulated as an essential requirement of a contract then this must be approved by the Chief Officer following consultation with the Corporate Procurement Manager.

12 ELECTRONIC BIDS

12.1 TENDERING FOR CONTRACTS ABOVE £75, 000 IN VALUE OR AMOUNT

Requests for Invitations to tender may be transmitted by electronic means. Tenders may be submitted by electronic means provided that:

- (a) Evidence that the transmission was successfully completed is obtained and recorded;
 - (b) Each tender submitted electronically is supplemented by an identical signed hard copy original submitted in the manner prescribed in the advertisement or the ITT documents before the tender return date;
- and
- (c) Electronic tenders are kept in a secure folder under the control of the Monitoring Officer which is not opened until the deadline has passed for receipt of tenders.

Where a Tenderer doesn't have the capability to tender electronically, they shall be allowed to tender in paper format.

Any variation to the above must be approved in writing by the Corporate Procurement Manager and the Monitoring Officer

12.2 QUOTATIONS BELOW £75, 000 IN VALUE OR AMOUNT

There is no electronic bid facility available at this time

13. SUBMISSION AND CUSTODY OF TENDERS

- 13.1 Where tenders are invited in accordance with these Contracts Procedure Rules or otherwise as determined by the appropriate body, the requirements for submission of tenders shall be set out in the invitation and every invitation shall state that no tender will be considered unless it is enclosed in a sealed, plain envelope bearing the word "Tender" followed by the subject to which it

relates and addressed to the Monitoring Officer or in the case of contracts of a value not exceeding £75,000 to the relevant Chief Officer but bearing no other name or mark indicating the sender.

- 13.2 An Officer receiving the tender shall initial and indicate on the envelope the time and date of receipt and such details are to be recorded in the Tender Register.

Tenders shall be kept in the custody of the Monitoring Officer until the time and date specified for their opening.

- 13.3 No tender received after the time and date specified in the invitation shall be accepted or considered unless there is clear documentary evidence of it having been posted by first class post at least the day before the tenders were due to be returned (by postmark or otherwise) and provided its receipt is brought to the attention of the appropriate Chief Officer before any tender has been formally accepted.

14. OPENING OF TENDERS

- 14.1 Tenders for contracts or call off/framework arrangements having an aggregated estimated value or amount exceeding £500,000 shall be opened at the same time in the presence of:-

- (a) Two Members comprising any of the following:
- (i) the Mayor;
 - (ii) the Deputy Mayor;
 - (iii) the Cabinet Member for the function in respect of which contract is to be concluded
 - (iv) the Chairman or Vice-Chairman of the Committee with responsibility for the function in respect of which the contract is to be concluded.

If two of these Members shall be unavailable, one or two Members as the case may be may be nominated by any of the unavailable Member(s) to act in their place being any Cabinet Member(s) or the Chairman and/or Vice-Chairman of any committee, sub-committee, panel or other body the majority of members of which are appointed by the Council;

- (b) Two officers, one designated by the Monitoring Officer and the other by the appropriate Chief Officer.
- 14.2 Tenders for contracts having an estimated value or amount not exceeding £500,000 shall be opened at the same time in the presence of two officers, one designated by the Monitoring Officer and the other by the appropriate Chief Officer.
- 14.3 A record shall be kept of all tenders received in a form approved by the Monitoring Officer, including any reasons for disqualification.

15. AMENDMENT OF TENDERS

- 15.1 If an error is identified before the closing date for the return of tenders, all Tenderer shall be appraised of the error and invited to adjust their tenders.
- 15.2 If an error in the contract documentation provided by the Council is identified after the closing date for the return of tenders, all Tenderer shall be given details of the error and afforded the opportunity of withdrawing the offer or submitting an amended tender.
- 15.3 Except as provided in Rule 15 a tender may not be amended by the Tenderer after it has been received unless examination of it reveals errors or discrepancies which would affect the tender figure in an otherwise successful tender, in which case:
- 15.3.1 If the error is not arithmetical the Tenderer shall be given details of the error(s) and shall be given the opportunity of confirming without amendment or withdrawing the tender, or
- 15.3.2 If however an arithmetical error is found the appropriate Chief Officer shall correct the error(s) provided that, apart from these genuine arithmetic error(s), no other adjustment revision or qualification is permitted.

16. POST-TENDER NEGOTIATION AND CLARIFICATION

- 16.1 Where procurement is conducted pursuant to the Public Contracts Regulation 2006 through either the open, restricted or competitive dialogue procedures, no post-tender negotiations are permitted. The responsible officer may seek clarification from Tenderer where appropriate in consultation with the Head of Procurement. Negotiations on price are never permissible except where the negotiated procedure is used. The negotiated procedure should only be used in those exceptional cases where it is lawful to do so under Procurement Law.
- 16.2 Where procurements do not exceed the Public Contracts Regulation 2006 thresholds the appropriate Chief Officer may authorise negotiations in exceptional circumstances, following the opening of tenders and before acceptance, subject to compliance with any legislative requirements, and only when:
- (a) Amendments have been made to any relevant specification since the invitation of tenders, which could not have been foreseen at the invitation stage, or
 - (b) The volume of goods, works or services required by the Council has substantially increased or decreased since the invitation of tenders, or
 - (c) Only one tender has been received, or
 - (d) Tender prices exceed financial targets predetermined by the Council, the Cabinet or the appropriate Committee,

In all instances, the possibility of such negotiations must have been indicated in the invitation to tender.

- 16.3 Negotiations shall be conducted in a manner which ensures that treats all Tenderer equally and in a non-discriminatory and transparent manner at all times during the procurement process, and a full record of the negotiations shall be made by the appropriate Chief Officer which shall include the names of the officers involved, minutes of all meetings and copies of all relevant correspondence and other documents.

17. EVALUATION OF TENDERS

- 17.1 The Chief Officer shall examine tenders in accordance with predetermined evaluation criteria and identify tenders that represent best value for money.
- 17.2 In respect of all tenders where the tender criteria is the most economically advantageous tender the evaluation criteria shall as a minimum be listed in the Invitation To Tender documentation in order of importance. Any particular scoring or weighting attributable to any criteria and sub-criteria must be clearly stated. In addition, the criteria must be strictly observed and remain unchanged at all times throughout the contract award procedure.

18. ACCEPTANCE AND AWARD OF TENDERS

- 18.1 A contract shall only be awarded subject to the tender evaluation criteria specified in the invitation to tender document.
- 18.2 Except as provided in Rules 4.1, and 4.2, a tender other than the lowest tender if payment is to be made by the Council or the highest tender if payment is to be received by the Council shall not be accepted unless the appropriate body shall have authorised its acceptance after having considered a written report from the appropriate Chief Officer.
- 18.3 Tenders for contracts having an estimated value exceeding £5,000,000 may be invited and accepted only by the appropriate body unless the power to do so has been specifically allocated or delegated to the appropriate Cabinet Member or appropriate Chief Officer.
- 18.4 No tender relating to a contract to which Sections 2 to 9 of the Local Government (Contracts) Act 1997 apply, shall be accepted without the approval of the Monitoring Officer.
- 18.5 Before a tender is accepted other than for the sale of goods the appropriate Chief Officer must obtain the Chief Finance Officer's confirmation that the Tenderer's financial standing is satisfactory, unless the Tenderer has already been approved using the Council's prequalification process.

- 18.6 The award of any contract shall be in accordance with Public Contract Regulations 2006 and the requirements of any other legislation including any EU public procurement directive.
- 18.7 If the award of any contract is subject to the Public Contracts Regulations 2006 or any EU public procurement directive, then there shall be a standstill period of at least ten days between the communication of the decision of the intention to award the contract being notified to those parties who were selected to tender, or who applied to be selected to tender, and the entering into of that contract.
- 18.8 'Standstill' letters issued as part of a tender process under EU Regulations must not be issued prior to confirmation of award in accordance with the council's constitution.
- 18.9 Where a contract has been tendered and advertised on the National Procurement Website, the council shall publish a Contract Award Notice on the National Procurement Website for inclusion in the official journal of the EU as soon as possible after the decision to award the contract has been taken, and in any event no later than 48 days after the date of award of the contract.

19. LETTERS OF INTENT

Letters of Intent shall only be used with the agreement of the Assistant Chief Executive Legal and Regulatory Services and only in very exceptional circumstances. Where the terms and conditions of the contract are not fully agreed no contractor shall be allowed on site to begin preliminary works until a full risk assessment has been carried out by the appropriate Chief Officer as to possible implications to the Council by the Contractor being allowed to start on site before the contract terms and conditions have been finalised.

20 FORM OF CONTRACTS

- 20.1 Every contract exceeding £50,000 in amount or value shall be in writing in a form approved by the Monitoring Officer.
- 20.2 Every written contract shall include a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if either:-
- (a) The contractor, any persons employed by the contractor or any body purporting to act on the contractor's behalf, whether the contractor is aware of their acts or not, shall have offered or given or agreed to give any officer or member of the Council any gift or consideration of any kind as an inducement or bribe to influence its decision in the tendering procedure, or in relation to any contract with the Council shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972; or
 - (b) The contractor:-

- (i) shall have communicated to any person other than the Council the amount or approximate amount of the proposed tender (other than in confidence in order to obtain quotations necessary for the preparation of the tender for insurance or to obtain any performance bond required by the Council); or
- (ii) shall have entered into any agreement or arrangement with any person as to the amount of any proposed tender or that that person shall refrain from tendering.

20.3 All contracts where a specification issued by the British Standards Institution or an European Standard is current at the date of the tender and is relevant shall require as a minimum that the goods and materials used in their execution shall be in accordance with that specification.

20.4 Contractors are expected to understand and implement, where possible, the commitments of the Council's Strategic Equalities Plan and its Welsh Language Scheme when operating on behalf of the Council. Both of these documents are available on the Council's web pages or on request from The Council's Corporate Procurement Unit.

21. EXECUTION OF CONTRACTS

21.1 Every contract which exceeds £100,000 in amount or value shall be executed under seal.

21.2 Contracts in writing exceeding £50,000 but not exceeding £100,000 in amount or value may either be:

- a) executed under seal; or,
- (b) signed by the appropriate Chief Officer, or another officer authorised in writing to sign on behalf of the appropriate Chief Officer, or by the Monitoring Officer or another officer authorised in writing by the Monitoring Officer.

21.3 Contracts in writing or official orders not exceeding £75,000 in amount or value may be signed either by the appropriate Chief Officer or by an officer in writing authorised to approve on behalf of the appropriate Chief Officer.

21.4. Every contract (other than framework contracts) exceeding £1,000,000 shall require a Performance Bond and for contracts below this limit the appropriate Chief Officer shall determine the necessity for a Performance Bond based on an assessment of risk for that contract. A Surety shall be approved by the Chief Finance Officer.

22. ASSIGNMENT AND NOVATION

Any contract subject to potential assignment and novation must be referred to the Assistant Chief Executive Legal and Regulatory Services at the earliest possible instance

23. TERMINATION OF CONTRACTS

For any contract exceeding £100,000 in value, early termination shall be approved by the appropriate Chief Officer in consultation with the Assistant Chief Executive Legal and Regulatory Services and the Chief Finance Officer. Contracts of a lesser value may be terminated early by agreement prior to the expiry date or in accordance with the termination provisions set out in the contract.

24. FINANCIAL LIMITS

With the exception of the financial limit specified in Rule 21.1, which may be varied only by the Council, the financial limits specified in these Contract Procedure Rules or any of them may be varied at any time by the Chief Finance Officer in consultation with the Monitoring Officer, but any alterations shall be reported to the next meeting of the Council.

25. RECORD AND DOCUMENT RETENTION AND CONTROL

All tender documents and envelopes once assessed shall be retained in secure storage. All contracts under seal i.e. Deeds (inc. Tenders) to be retained for a minimum of 12 years; contracts under hand for a minimum of 6 years; unsuccessful tender documents which have been accepted for tender purposes will be retained for a minimum period of 2 years. Any tender which is rejected or disqualified at the time of opening will be returned to the Tenderer

26. REVIEW AND AMENDMENT OF CONTRACT PROCEDURE RULES

The Corporate Procurement Manager shall continually review these Contract Procedure Rules and shall undertake a formal review every three years.