

## Appendix B: Contracts Procedure Rules

### INDEX

	RULE NUMBER (S)	
		Formatted: Justified
		Formatted: Justified
ACCEPTANCE of Tenders	<a href="#">142</a>	Formatted: Justified
AD HOC LIST - Selective Tendering	<a href="#">98</a>	Formatted: Justified
ADVERTISING	8 - <del>120</del>	Formatted: Justified
BRITISH STANDARD SPECIFICATION	<a href="#">164</a>	Formatted: Justified
BULK BUYING	<a href="#">175</a>	Formatted: Justified
CANCELLATION of Contract on grounds of impropriety	<a href="#">164</a>	Formatted: Justified
COMPLIANCE with Standing Orders and European Union (EU) Directives	2 - 4	Formatted: Justified
CONSTRUCTIONLINE	<a href="#">117</a>	Formatted: Justified
<a href="#">CONTRACT Awards - Reporting</a>	<a href="#">21</a>	
CONTRACT Conditions	<a href="#">164</a>	Formatted: Justified
<a href="#">CONTRACT modifications</a>	<a href="#">18</a>	
CONTRACTORS Listed	<a href="#">98</a> and <a href="#">109</a>	Formatted: Justified
CONTRACTS not exceeding £10,000	5	Formatted: Justified
CONTRACTS not exceeding £50,000 but exceeding £10,000	6	Formatted: Justified
CONTRACTS exceeding £50,000	7	Formatted: Justified
CUSTODY of Tenders	<a href="#">134</a>	Formatted: Justified
DAMAGES - Liquidated	<a href="#">164</a>	Formatted: Justified
<a href="#">DIVISION of contracts into lots</a>	<a href="#">19</a>	
INVITATION of Tenders	7	Formatted: Justified
LIQUIDATED Damages	<a href="#">164</a>	Formatted: Justified
LISTED Contractors	<a href="#">98</a> and <a href="#">109</a>	Formatted: Justified
<a href="#">LOTS – Division of Contracts into</a>	<a href="#">19</a>	

	<b>RULE NUMBER (S)</b>
<a href="#">MODIFICATIONS to contracts</a>	<a href="#">18</a>
NOMINATED Sub-Contractors and Suppliers	<a href="#">153</a>
<a href="#">NOTICES – Public</a>	<a href="#">8</a>
OPENING and Acceptance of Tenders	<a href="#">142</a>
OPEN Tendering	<a href="#">120</a>
<a href="#">PUBLIC NOTICES</a>	<a href="#">8</a>
<a href="#">REPORTING of Contract Awards</a>	<a href="#">21</a>
RETENTION and recording of Contracts	<a href="#">2046</a>
SELECTIVE Tendering - Ad Hoc List and Standing List	<a href="#">98</a> and <a href="#">109</a>
STANDING List - Selective Tendering	<a href="#">109</a>
SUB-CONTRACTOR - Nominated	<a href="#">153</a>
SUBMISSION of Tenders	<a href="#">131</a>
SUPPLIER – Nominated	<a href="#">153</a>
TENDERS - Custody, Opening and Acceptance	<a href="#">131</a> and <a href="#">142</a>
WAIVER of Standing Orders	4
WRITTEN Contracts	<a href="#">164</a>

**CONTRACTS PROCEDURE RULES**

**Definitions**

1. In these Rules:

- (i) “authorised body” - shall mean the Council, Cabinet, committee, sub-committee, Portfolio Holder and any officer, with relevant authority (e.g. authority to take the decision or undertake the relevant action).
- (ii) “contractor” - shall mean any organisation or individual with whom the Council enters into a contract whether that contract is for the provision of materials, goods or work of any kind including professional services

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- (iii) “quotations” - shall mean written, e-mail, facsimile or telephoned bids received from potential contractors in response to a written specification or other description of the works required
- (iv) “spending Service” - shall mean that Service of the Council which has responsibility for the budget which will pay for the contract in question or will be credited with any income emanating from the contract in question.
- (v) “Senior Officer” – shall mean a Managing Director or Head of Service.
- (vi) “contract” – when the Council purchases any goods, services and/or building works that procurement is a contract irrespective of the value: (Note [2249](#)).
- (vii) “framework agreement” – shall mean an agreement with a panel of suppliers which sets out the terms and conditions under which individual purchases (call-offs) can be made throughout the term of the agreement.
- (viii) “Works” – shall mean the specific construction and construction-related activities listed in Schedule 2 of the Public Contracts Regulations 2015.

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**General**

- 2. Every contract made by the Council shall comply with the EU Treaty, with any relevant Directives of the EU and with UK law and, except as hereinafter provided, these Rules. (Note 1 and 2)
- 3. It shall be a condition of any contract between the Council and any person (not being an officer of the Council) who is required to supervise a contract on their behalf that, in relation to such contract, he/she shall comply with the requirements of these Rules as if he/she were a Senior Officer of the Council.
- 4. (i) Any of the following provisions of these Rules may be waived by Council, Cabinet, committee, sub-committee or a Managing Director where that body or person is satisfied that to do so is justified in special circumstances and that those special circumstances are identified in the relevant minute or record of decision dealing with that contract. (Note [152](#)).
- (ii) Any exercise of the power in (i) by a Managing Director shall be reported -in the relevant Members’ Update.

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**Contracts £10,000 or less**

- 5. Where the estimated value or amount of a proposed contract will not exceed £10,000 the appropriate Senior Officer shall ensure that when the contract is entered into its value should offer good value and reflect competitiveness (in appropriate circumstances this could involve obtaining three quotations). The provision of these Rules shall have no application in respect of such contracts

insofar as they relate to the invitation, submission, custody, acceptance or opening of tenders. (Notes 2, [118](#), [163](#), [2017](#) and [241](#))

### Contracts over £10,000 but under £50,000

6. Where the estimated value or amount of a proposed contract will exceed £10,000 but will not exceed £50,000 the appropriate Senior Officer shall obtain not less than three written quotations and accordingly, these Rules shall have no application in relation to such contracts insofar as they relate to the invitation, submission, custody, acceptance or opening of tenders. (Notes 2, 3, [118](#), [163](#) and [241](#))

### Contracts over £50,000

7. Where the estimated value or amount of a proposed contract exceeds £50,000, and in any other case where an authorised body determine or where required by legislation tenders shall be invited in accordance with either Rule ~~8~~, [9](#), [10](#), [11](#) or [12](#) and shall be the subject of a contract signed by both contracting parties. (Notes 2, 3, [118](#) & [163](#))

### Public Notices

- ~~78A~~ (i) Where the estimated value or amount of a proposed contract lies between £50,000 and the relevant EU tendering threshold (Note 1) a public notice shall appear in Contracts Finder (Note 43A), and tender or pre-qualification documents shall be made available for downloading from the Council's website (Note 43A).
- (ii) Where the estimated value or amount of a proposed contract exceeds the relevant EU tendering threshold (Note 1) a public notice shall appear firstly in the Official Journal of the European Union (OJEU) and then in Contracts Finder within 24 hours after publication in the OJEU (Note 43A).
- (iii) Public notices shall comply with the content and format requirements set out in the Public Contracts Regulations 2015 (Note 43A).
- (iv) Public notices shall specify a time limit within which tenders or completed pre-qualification questionnaires are to be submitted to the Council. For contracts below the EU tendering threshold the time limit should be not less than 14 days. For contracts above the EU tendering threshold the minimum time limits specified in the Public Contracts Regulations 2015 shall be adhered to (Note 64).

### Selective tendering - ad hoc list

- ~~98~~. (i) This Rule shall apply where an authorised body has decided that invitations to tender for a contract are to be made to some or all of those persons or

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bodies who have ~~replied~~ completed a pre-qualification questionnaire in response to a public notice. ~~(See Rule 17).~~

- (ii) ~~Selective tendering is not permitted where the estimated value or amount of the proposed contract is less than £172,514 (Note 53B). For the purposes of this Rule, public notice shall be given:~~

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- ~~(iii) For Works contracts where the estimated value or amount of the proposed contract lies between £172,514 and the EU tendering threshold (Note 1), invitations to tender shall be sent to:~~

~~(a) in at least one local newspaper unless the public notice appears in accordance with 8(ii)(b) in which case the appearance of the public notice in the local press is optional; and~~

- ~~(b) where appropriate in at least one trade/professional publication or portal commonly in use by such persons or bodies who undertake such contracts or in the Official Journal of the European Union. (Note 4)~~

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- ~~(c) at the discretion of the authorised body, to all or a selected number of persons or bodies named in the list maintained under Rule 9.~~

~~(iii) The public notice shall:~~

~~(a) specify details of the contract into which the Council wishes to enter;~~

~~(b) invite persons or bodies interested, to apply for permission to tender; and~~

~~(c) specify a time limit, being not less than 14 days, within which such applications are to be submitted to the Council. (Note 4)~~

(a) not less than 4 of the persons or bodies who applied for permission to tender, selected by the Senior Officer of the spending Service or (Note 64)

(b) where fewer than 4 persons or bodies have applied or are considered suitable, those persons or bodies which the Senior Officer of the spending Service considers suitable. (Note 64)

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- (iv) ~~Where the estimated value or amount of the proposed contract exceeds the EU tendering threshold (Note 1) invitations to tender shall be sent to the number of persons or bodies set out in the Public Contracts Regulations 2015. (Note 64 (iii)). After the expiry of the period specified in the public notice invitations to tender for the contract shall be sent to:~~

~~(v) The pre-qualification questionnaire evaluation process leading to selection of persons or bodies to which invitations to tender are sent shall be fair and transparent and shall comply with statutory guidance (Note 64).~~

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**Selective tendering - standing list**

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109. (i) This Rule shall apply where an authorised body has decided that invitations to tender for contracts for certain categories of work are to be limited to those persons or bodies whose names shall be included in a list compiled and maintained for that purpose. (Note 185).

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(ii) The list shall: (Note 75)

- (a) be compiled and maintained by the authorised body;
- (b) contain the names of all persons or bodies who wish to be included and who are approved by the authorised body; and
- (c) indicate in respect of a person or body whose name is so included, the categories of contract and, where applicable, the values or amounts in respect of those categories for which approval has been given; and

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~~(d) invitations to tender shall be sent to all persons or bodies in the categories or values of contract for which they have been approved.~~

~~(iii) Where the estimated value or amount of the proposed contracts utilising the standing list exceeds the EU tendering threshold (Note 1), the list shall be compiled and maintained in accordance with the Public Contracts Regulations 2015 (specifically Regulation 33 “Framework Agreements”). At least 4 weeks before a list is compiled, notices inviting applications for inclusion in it shall be published: (Note 4)~~

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~~(a) in at least one local newspaper unless the public notice appears in accordance with 9(iii)(b) in which case the appearance of the public notice in the local press is optional; and~~

~~(b) where appropriate in at least one trade/professional publication or portal commonly used by such persons or bodies as undertake such contracts.~~

~~(iv) A public notice inviting applications for inclusion in the standing list shall be issued in accordance with Rule 87A, and the standing list shall be established in accordance with the procedures and restrictions set out in Rule 98.~~

~~(iv) The lists shall be kept under constant review and shall be compiled again at intervals of not more than 5 years. (Note 6)~~

~~(v) Where the standing list is compiled in accordance with Rule 109 (iii) it shall have a maximum duration of 4 years; in all other cases it shall have a maximum duration of 5 years (Note 86).~~

~~(v) Invitations to tender for a contract shall be sent to:~~

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~~(a) not less than 4 of the persons or bodies selected by the Senior Officer of the spending Service from among those approved for a contract of the relevant category and amount or value; (Note 4) or~~

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

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**Selective tendering – Constructionline**

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119A (i) ~~Where construction contracts are to be tendered, and the estimated total value of the contract lies between £172,514 and the EU tendering threshold for Works Contracts (£4,322,012) (Note 1), and subject to Rule 119A (ii), tenderers can be selected from those pre-qualified organisations listed on Constructionline rather than advertising the tender opportunity in accordance with Rule 98 and where tenderers are so selected the requirements of Rule 98 shall be deemed to be fully satisfied.~~

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~~(ii) The authorised body shall always consider whether a construction contract of this value might be of interest to persons or bodies in other EU member states, and if it is, place a public notice in the Official Journal of the European Union (OJEU) rather than selecting tenderers from Constructionline. If it is the considered opinion of the authorised body that the contract will only be of interest to organisations within the UK, Constructionline may be used providing a formal record is made of the rationale for this decision. (Note 64 (v)).~~

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**Open tendering**

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120. (i) This Rule shall apply where an authorised body has decided that tenders for a contract are to be obtained by open competition. (Note 3)

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(ii) ~~A public notice inviting tenders or applications for tenders shall be issued in accordance with Rule 87A. At least 14 days prior to the closing date for the submission of tenders a public notice shall appear (Note 4)~~

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~~(a) in at least one local newspaper, unless the public notice appears in accordance with 10(ii)(b) in which case the appearance of the public notice in the local press is optional; and~~

~~(b) where appropriate in at least one trade/professional publication or portal commonly used by such persons or bodies as undertake such contracts or in the Official Journal of the European Union.~~

~~The notice shall express the nature and purpose of the contract, state where further details (if any) may be obtained, invite tenders for its execution and state the last date and time when tenders will be received.~~

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**Submission of tenders**

134. (i) Where in pursuance of these Rules an invitation to tender is made, every invitation shall state that no tender will be received unless it is enclosed in a sealed envelope to be supplied by the Council, for this purpose, which shall bear the word "Tender" - followed by the subject to which it relates but no name or other mark indicating the sender. (Note 97(ii))

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(ii) The tenders shall be addressed to the Managing Director (People and Places) at 52 Derby Street, Ormskirk, Lancashire and shall be kept under lock and key in the custody of the Borough Solicitor or such other officer of the Council as may be duly authorised by him in that behalf until the time and date specified for their opening.

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(iii) No tender received after the time and date specified in the invitation shall be accepted or considered under any circumstances unless the Borough Solicitor is satisfied that there is clear evidence of it having been posted by first class post at least the day before tenders were due to be returned or clear evidence of it having been delivered to the Council's office at 52 Derby Street, Ormskirk by the time specified in the tender documents. (Note 97(i) and (ii).)

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**Opening and acceptance of tenders**

142. (i) Tenders received under either Rule ~~8, 9, 9A~~ 10, 11 or ~~120~~ shall be opened at one time and in the presence of:

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(a) two Members of the Council. Each tender will be initialled by the Member present.

(b) a representative of the Borough Solicitor together with the appropriate officer(s) of the spending Service(s).

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(ii) All tenders received shall be dated and time stamped on receipt and recorded consecutively in a register maintained for this purpose by the Borough Solicitor.

(iii) 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 except

- (a) as agreed by an authorised body (other than an officer), having considered a report by the appropriate Senior Officer; or
- (b) where a Senior Officer decides that best value for the Council would be achieved by considering factors in addition to cost in the tender evaluation process and the Senior Officer in consultation with the relevant Portfolio Holder, has established the criteria and methodology to be used in the tender evaluation process. In such a case the criteria must include price which shall account for at least 60% of the total score. The remaining criteria shall be relevant to the tender exercise and shall be weighted appropriately but together must not exceed 40% of the total score (Note [252](#)).
- (c) where, in the opinion of the Senior Officer of the spending Service, the consideration of sustainability issues, associated with the product/service being procured, means that best value would be obtained by accepting a tender other than the lowest (or highest if payment is to be received by the Council). In such circumstances, the tender which is accepted must not exceed the lowest (or highest) by more than 15% to a maximum amount of £10,000. Where a tender other than the lowest (or highest) is accepted then a written record must be kept of the rationale for the acceptance and this must be initialled by the appropriate Senior Officer. Where a Senior Officer wishes to accept a tender (for sustainability reasons) which exceeds the lowest (or highest) by more than 15% or by more than £10,000, a separate exception to Contracts Procedure Rules shall be obtained on a case by case basis. (Note [107A](#)).

(iv) Where the estimated value or amount of a proposed contract exceeds the relevant EU tendering threshold (Note 1), the contract must be awarded to the tenderer which has offered the Most Economically Advantageous Tender (MEAT) in order to comply with the Public Contracts Regulations 2015. MEAT does not allow price to be the sole contract award criterion. Tender evaluation criteria and the scoring methodology shall be set out clearly in the invitation to tender documents.

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**Nominated sub-contractors and suppliers**

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153. Where a sub-contractor or supplier is to be nominated to a main contractor, the following provisions shall have effect:

- (i) Where the estimated amount of the sub-contract or the estimated value of the goods to be supplied by the nominated supplier does not exceed £50,000 then, unless the Senior Officer of the spending Service is of the opinion in respect of any particular nomination that it is not reasonably practicable to obtain written competitive quotations, such quotations shall be invited.

- (ii) Where the estimated amount of the sub-contract or the estimated value of the goods to be supplied by the nominated supplier exceeds £ 50,000 then, unless the authorised body determine in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders, such tenders shall be invited in accordance with either Rules ~~8, 9, 10, 11~~ or ~~120~~ as the case may be.
- (iii) The provisions of Rules ~~131~~ and ~~142~~ shall apply to tenders received under this Rule.
- (iv) Some standard forms of contract are prescriptive about how suppliers and/or sub-contractors must be nominated. Where such a standard form of contract is being used and where the requirements of that standard form as regards nomination are incompatible with this Rule then the requirements of the standard form shall take precedence.

**Contract conditions**

- ~~164.~~ (i) Every contract which exceeds £10,000 in value or amount shall: (*Note 2*)
  - (a) be in writing and signed by an officer of the Council duly authorised in that behalf EXCEPT THAT where the Contract exceeds £50,000 it shall be made in writing and must either be signed by at least two officers of the Council or made under the common seal of the Council attested by at least one officer.
  - (b) specify the goods or services to be supplied or the work to be executed; the price to be paid together with the statement as to the amount of any discount(s) or other deduction(s); the period(s) within which the contract is to be performed and such other conditions and terms as may be agreed between the parties, and
  - (c) in appropriate cases, to be determined by the Senior Officer of the spending Service, where a contract exceeds £50,000 in amount or value, provide for the payment of liquidated damages by the contractor where he fails to complete the contract within the time specified in the contract or any amendment thereto made in accordance with the terms of the contract. (*Note ~~129~~*)
- (ii) The Senior Officer of the spending Service may also require a contractor to give sufficient security for the due performance of any contract. (*Note ~~130~~*)
- (iii) When specifying the standard of goods/services/works to be provided under a contract the following shall be observed (*Note ~~141~~*).
  - (a) where a mandatory technical standard is required under UK Law and where that requirement is compatible with EU obligations then that standard shall be specified

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- (b) where there is no mandatory technical standard the following should be used in order of preference:-
  - British standards implementing European standards,
  - European technical approvals (e.g. for new construction materials),
  - Common technical specifications,
  - International standards, or
  - Other technical reference systems established by the European standardisation bodies.
- (c) where neither (a) or (b) apply then the following can be used but must be accompanied by the words “or equivalent”:-
  - British standards,
  - British technical approvals (e.g. Agreement certificates), or
  - British technical specifications relating to the design, calculation and execution of the work or works and the use of the products.
- (iv) The Senior Officer shall be aware of the Bribery Act 2010 which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official, and the corporate offence of failing to prevent bribery; and the Council’s Anti Fraud and Corruption Strategy (*Note 230*).

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The following clause shall be inserted in every written Council contract:

“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:

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- (a) offer, give or agree to give to anyone any inducement or reward in relation to the improper performance of any function or activity in respect of this or any other Council contract (even if the Contractor does not know what has been done), or
- (b) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972, or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees. Any clause limiting the Contractor’s liability shall not apply to this clause”.

(v) All contracts shall include a prompt payment clause as required by Regulation 113 of the Public Contracts Regulations 2015 (Note 296).

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(vi) All contracts whose value or amount exceeds the relevant EU tendering threshold (Note 1) shall include a contract termination clause as required by Regulation 73 of the Public Contracts Regulations 2015 (Note 296).

(vii) In all appropriate circumstances the Senior Officer of the spending Service shall ensure that a contractor has appropriate insurances at levels relevant to the contract in question. In this respect regard should be paid to the guidance issued by the Borough Treasurer. (*Note 174*)

**Bulk Buying Etc.**

~~175~~ (i) Where the Council wishes to procure via an existing contract or framework agreement which has been entered into by another public body or by a bulk buying consortium and that contract or framework agreement facilitates participation by public bodies (which include the Council) then the requirement of Contract Procedure Rules Nos. 5 to 14 inclusive, 6, 7, 8, 9, 10, 11 and 12 shall have no application providing the following requirements are all satisfied *(Note 196)*.

(a) the contract or framework agreement has been the subject of a tender exercise which has involved the placing of a Contract Notices in the Official Journal of the European Union which required organisations to notify their interests in tendering for the contract or framework agreement.

(b) the terms of that existing contract or framework agreement allow the Council to make a procurement(s) via that contract or framework agreement.

(c) the procurement(s) are made in strict accordance with the terms of that existing contract or framework agreement.

(d) the award of the contract is reported in accordance with Rule 218.

Where a procurement(s) is to be made in accordance with the foregoing the Service Officer of the spending Service shall compile, sign and retain a file note which shall detail the nature of the procurement(s) to be made including values, the title of the existing contract or framework agreement which will facilitate the procurement(s), the name of the organisation which established that existing contract or framework agreement and that the requirements of this Contracts Procedure Rule have been complied with. A copy of the existing contract or framework agreement shall also be retained with the file note.

A copy of that file note (only) shall be provided to the Council's Internal Audit Section for their retention.

~~145~~ (ii) The requirements set out at Rule ~~175~~(i) shall also apply where the Council wishes to procure as part of a consortium and another consortium member will act as lead for the procurement process.

**Contract Modifications**

185A Contracts and framework agreements whose value or amount exceeds the EU tendering threshold (Note 1) may only be increased in value or amount within the limits and for the reasons set out in Regulation 72 of the Public Contracts Regulations 2015. (Note 263).

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**Division of Contracts into Lots**

~~195B~~ Where the estimated value or amount of a proposed contract exceeds the relevant EU tendering threshold (Note 1) the authorised body shall always give consideration to dividing the contract into smaller lots. Where it is determined that such subdivision would be impractical or disadvantageous, the authorised body shall give its main reasons for its decision in the tender documents or in the report referred to in Rule 218 (vi) (Note 285).

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**Retention and Recording of Contracts**

~~2046~~ (i) In respect of all contracts which exceed £50,000 in value

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(a) The signed contract documents shall be provided to Legal Services so they can be retained in the Council's central contract document filing system (Note 218).

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(b) Summary details of the contract shall be provided to the Purchasing Manager for inclusion in the Council's Contract Register (Note 218).

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(ii) Where the value of a contract exceeds £10,000 but does not exceed £50,000 it is the responsibility of the spending Service to retain a copy of the signed contract documents. Those documents shall be retained in accordance with the Council's Retention and Disposal Policy.

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~~17. Where construction contracts are to be tendered, tenderers can be selected from those pre-qualified organisations listed on "Constructionline" rather than advertise the tender opportunity in accordance with Rule 8 and where tenderers are so selected the requirements of Rule 8 shall be deemed to be fully satisfied.~~

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**Reporting of Contract Awards**

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~~218.~~ (i) In respect of all contracts and framework agreements whose value or amount exceeds the EU tendering threshold (Note 1), a contract award notice shall be sent firstly to the Official Journal of the European Union (OJEU) no later than 30 days after the award of the contract or framework agreement, then to Contracts Finder no later than 90 days after the award of the contract or framework agreement (Note 274).

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~~(ii) A contract award notice shall be sent to Contracts Finder for contracts awarded using a framework agreement where the value or amount of the contract exceeds the EU tendering threshold Note 1) within 90 days of the award of the contract (Note 274).~~

~~(iii) In respect of all contracts and frameworks agreements (including contracts awarded using a framework agreement) whose value or amount lies between £50,000 and the EU tendering threshold, a contract award notice shall be sent to Contracts Finder within 90 days of award of the contract or framework agreement (Note 274).~~

(iv) A notice of modification shall be sent to the OJEU when an existing contract or framework agreement whose value exceeds the EU tendering threshold (Note 1) is modified in accordance with Rule 185A, but only in the circumstances set out in Regulation 72 of the Public Contracts Regulations 2015 (Note 274).

(v) Contract award and modification notices shall comply with the content and format requirements set out in the Public Contracts Regulations 2015 (Note 274).

(vi) Within 30 days of awarding a contract or framework agreement that has been established using an EU procurement procedure set out in Part 2 of the Public Contracts Regulations 2015, a formal report shall be compiled in accordance with Regulation 84 of the Public Contracts Regulations 2015 (Note 274). The report shall be retained by the authorised body for the duration of the contract or framework agreement.

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**NOTES – (All these “Notes” are prefixed “N” to make them easily distinguishable from the Contract Procedure Rule numbers).**

N1. Rule 2 requires compliance with the EU Treaty (the Treaty of Rome) and with any relevant EU Directives. One of the main principles of European procurement legislation is that nothing should be done which prevents a company in one member state tendering for public contracts in another member state.

European procurement legislation divides public contracts into three categories each with a threshold value below which the full EU procurement rules do not apply.

- (i) Works Contracts (broadly building and civil engineering work) threshold for 2014 and 2015 £4,322,012 (this threshold value will be reviewed 1<sup>st</sup> January 2016).
- (ii) Supply Contracts (for any type of goods and materials) threshold as for 2014 and 2015 £172,514 (this threshold value will be reviewed 1<sup>st</sup> January 2016).
- (iii) Services Contracts (applies to all contracts which are neither “works” or “supplies”) threshold for 2014 and 2015 £172,514 (this threshold value will be reviewed 1<sup>st</sup> January 2016).

These thresholds are the total value of the contract over its full duration, including any extension periods and options set out in the procurement documents, and excluding VAT other taxes or duties (not annual value) of all similar contracts which will be entered into in any one financial year. The E.U. procurement legislation is very strict about aggregating similar contracts in this way to check if a threshold value has been exceeded. ~~EU procurement legislation is also~~ very strict requiring that no one must do anything, the purpose

of which is to avoid having to tender a contract in compliance with EU requirements.

If a threshold value is going to be exceeded then contact either the Borough Solicitor (Extn. 5001) or the ~~Executive~~ Procurement ~~Executive and Projects Manager~~ (Extn. 5022) for further advice.

Even where the threshold values given above are not exceeded (or where the service being tendered falls under Schedule 3 of the Public Contracts Regulations 2015~~Section B~~) there may still be a need to advertise the tender opportunity throughout Europe. For advice on this matter Officers are referred to Procurement ~~Practice~~Procedure Note No.3 which is available on the Council's Intranet in the "Document" Section under "Miscellaneous documents" see those documents listed under the sub-heading "Procurement".

The Public Contracts Regulations 2015 identify a number of goods, services or activities which are either completely exempt from the rules set out in the Regulations, or which are subject to a more relaxed "light touch" procurement regime. These are listed in a Procurement Practice Note on the Council's intranet.

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N2. The Local Government Act 1988 Section 17 (5) lists matters which it deems "non-commercial" and which no local authority should make reference to in any contract documents and which no local authority should take any account of when deciding whether or not to accept a tender. These non-commercial matters apply to all local authority contracts and the list is reproduced in a Procurement Practice Note for ease of reference. However, Statutory Instrument 2001 No. 909 gives local authorities some latitude in being able to address workforce related issues where this is necessary to achieve best value or to comply with TUPE. ~~—~~Circular 03/2003 contains advice in respect of work force matters and contracts. Officers who wish/need to address such workforce related issues in contract documents/tenderer selection/contract award, should contact either the Borough Solicitor (Extn. 5001) or the Procurement ~~Executive~~Projects Manager (Extn. 5022) for advice.

N3. (i) There are three main ways in which tender prices can be obtained: (This Note 3 also has some application to written quotations as required by Rule 6, see below).

(a) selective tendering (covered by Rules 8, 9, 10 and 119A)

(b) open competition (covered by Rule 120)

(c) negotiation.

Use of negotiation in cases where the estimated value or amount of a proposed contract falls within the threshold prescribed in Rules 6 and 7 would require formal steps to be taken under Rule 4. Generally, negotiation is acceptable where it is based on some preliminary form of price

competition such as in two stage tendering, or continuation contracts where the earlier contract, for broadly similar work, was won in competition within a year or two of the later contracts. Under E.U. Procurement legislation there are only very restricted cases where negotiations can be used. Prior to use of this procedure contact either the ~~Borough Solicitor~~Legal Services Manager Extn. 5001 or the Procurement Executive ~~Procurement and Projects Manager~~ Extn. 5022.

- (ii) The Public Contracts Regulations 2015 stipulate that an open competition process must be carried out where the estimated value or amount of a proposed contract lies between £50,000 and £172,514. However, above £172,514 it is advisable to use open competition only. Open competition should only be used in exceptional circumstances and it is recommended that. Again, if this procedure is to be used contact either the Borough Solicitor (Extn. 5001) or the Procurement Executive ~~Procurement and Project Manager~~ (Extn. 5022) should be contacted for advice.

N43A. The Official Journal of the European Union (OJEU) facilitates the on-line publication of tendering opportunities and contract award information throughout the EU. Contracts Finder is a UK government website which performs the same function as the OJEU for UK contracts which are below the EU tendering threshold, as well as duplicating information that has already been sent to the OJEU. The content and format requirements differ between OJEU and Contracts Finder, and are strictly defined in the Public Contracts Regulations 2015. Publication of notices is arranged by the Purchasing Manager (Ext. 5426) or the Procurement Executive (Extn. 5022).

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N53B. Regulation 111 of the Public Contracts Regulations 2015 prohibits the use of a pre-qualification stage in any procurement below £172,514 in value. This measure is intended to remove barriers which make it difficult for smaller firms to access public sector contracts. Moreover, for higher-value procurements in which a pre-qualification stage is permitted, use of a standardised pre-qualification questionnaire (or PAS 91 for Works contracts) is mandated. The authorised body must be able to justify the reasons for any deviations from the wordings in the standardised documents and from 1<sup>st</sup> September 2015 deviations are to be approved by the Procurement Executive and reported to Crown Commercial Service within 30 days of the pre-qualification questionnaire being made available to potential suppliers via Contracts Finder. For advice in respect of this matter contact the Procurement Executive (Extn. 5022).

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- N64. (i) In considering whether or not to depart from the periods indicated in Rules ~~87A(iv)~~8(iii)(c) and 10(ii), it is considered that 14 days shall be regarded as the minimum period for contracts below the EU tendering thresholds. The principle to be followed is that a reasonable and sufficient period shall be allowed. Such reasonable and sufficient timescales can only be identified by officers who are familiar with the market in question and on a case by case basis. ~~The period of 4 weeks in Rule 9(iii) shall also be the minimum period.~~

- (ii) Where the threshold values given in Rule 2 Note 1 are exceeded the EU procurement legislation sets out the periods which must be allowed for organisations to apply for inclusion on the tender list and ~~the for~~ tender periods and specifies ~~where that~~ tender exercises need to be advertised in the Official Journal of the European Union. EU tendering timescales are summarised in a Procurement Practice Note on the Council's intranet.
- (iii) Rules ~~98 (i)iv) and 9(v)~~ requires that a minimum of 4 tenders be sought. ~~Furthermore where tenders are being sought for projects to which the National Joint Consultative Committee for Building's "Code of Procedure for Single Stage Selective Tendering" or "Code of Procedure for Two Stage Selective Tendering" apply then the number of tenderers shall, as appropriate, be in accordance with the respective "procedure". The Public Contracts Regulations 2015 EU Procurement legislation contains some requirements regarding stipulate~~ minimum numbers, ~~of tenderers in specified circumstances (see The Public Contract Regulations (e.g. Regulations 28-31).2006, e.g. Regulation 16 (9) (b), Regulation 17 (11) (b), Regulation 18 (12) (b) Regulation 19 (7) (b).~~
- (iv) Even where the respective EU threshold value (see N1) is not exceeded general EU procurement law requires that where a tendering opportunity may be of interest to an organisation in another Member State of the EU, that tendering opportunity must be advertised throughout the EU. In such a case an appropriate publication/portal must be identified and an appropriate advert/notice inserted (NB the Official Journal of the European Union is free to use, is accessible throughout the EU and can be used to "advertise" below threshold and Schedule ~~B-3~~ services if a Council so desires).
- ~~(v) Wherever Constructionline is used under Rule 119A for contracts between £172,514 and the EU tendering threshold for Works Contracts (£4,322,012) advice should be sought from either the Borough Solicitor (Extn. 5001) or the Procurement Executive (Extn. 5022) regarding the potential for interest from other EU Member States.~~
- ~~(vi) Use of a standardised pre-qualification questionnaire (or PAS 91 for Works contracts) is mandatory, and the process for evaluating questionnaire responses is subject to statutory guidance. Advice on this matter should be sought from the Procurement Executive (Extn. 5022).~~
- N75. In Rule 109 the list will detail the principles and procedure under which organisations contained on the list will be chosen for inclusion for individual tender lists.
- N86. Generally, lists of contractors maintained under Rule 109 shall be kept under continuous review with provision for both deletions and additions when the list is re-tendered at appropriate times. It is important that standing lists shall not become rigid and self-perpetuating and that the entry of new and rising firms be encouraged. In reviewing standing lists those firms who have shown interest in local authority contracts and whose performance has been satisfactory shall,

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subject to checks on their current viability, be retained. Those who have failed to show an interest or whose performance has been inadequate or whose financial position has become unsatisfactory shall be dropped. Note that although firms may be removed from the list at any time, new ones can only be added when the list is re-tendered.

- N97.** (i) In cases of late receipt of a tender then where that tender has arrived via the postal system only official postmarks shall be accepted as evidence of the day of the posting of a tender. Where such postmarks are illegible the tender shall be rejected. The envelopes of admitted late tenders shall be endorsed by the officer responsible and the envelope retained. Late tenders which are not admitted shall be returned to the sender as soon as possible.
- (ii) Where tenders are delivered to the Council's offices at 52 Derby Street, Ormskirk, Lancashire by hand then the person handing the tender in shall be given a receipt indicating the date and time at which the tender was delivered and showing clearly the title of the contract in respect of which the tender is made.
- N107A.** That the Senior Officer shall in considering the sustainability issues associated with any products/services have regard to the Council's "Environmental Purchasing Guide for Staff". Where that document fails to resolve matters, consideration shall be given to the advice of the Environmental Strategy Officer.
- N118.** Where the Council is acting as an agent for another body (e.g. highway work for Lancashire County Council or Department of Transport, sewerage work for the Water Company, etc.) then that body may have special requirements which must be taken into account (e.g. that a particular tendering method has to be used for contracts over a certain size).
- N129.** In Rule 164(i)(c) provision is made for the Council to require, in appropriate cases, the payment of liquidated damages for failure to complete a contract, exceeding £50,000 in value, within the stipulated (or extended) time. The following points shall be borne in mind in connection with this Rule.
- (i) Where liquidated damages are provided for in a contract, the amount included for them shall be a genuine pre-estimate of the loss to the Council/client body which delayed completion is likely to cause. Amounts which are likely to be construed as a penalty shall not be inserted.
- (ii) When considering whether it is necessary to provide for liquidated damages in a contract, the Senior Officer of the spending Service shall satisfy himself/herself that such damages are applicable to the type of work/supplies/services and the form of contract and that they are enforceable and administratively economic to recover, (e.g. in the case of standing-offer type contracts [term contracts] where there may be difficulties in genuinely pre-estimating the loss to the client they may not be

appropriate). Where the Council is acting as agent for any other organisation then liquidated damages should be administered in accordance with their requirements.

N130. Rule 164(ii) provides that the Council may take security for the due performance of a contract. The most common form of security is the performance bond, the cost of which is inevitably met by the Council via the tender. Where proper selective tendering procedures are used, including the investigation of the financial standing of firms, the need for bonds may be reduced. Each contract will, therefore, be considered on its merits and the need for a bond will be dispensed with wherever this seems reasonable. The question of bonding is at the discretion of the relevant Senior Officer and is to be exercised in the light of all relevant circumstances. Guidance on the use of performance bonds has been issued by the local authority associations.

N141. Rule 164 (iii) requires that certain “standards” are specified in contracts; this is to comply with the general requirements of E.U. Procurement legislation (as set out in the Public Contracts Regulations 201506 ~~(as amended)~~). If there are no mandatory technical standards compatible with E.U. obligations then it is best to use a British Standard which implements a European standard and these can be recognised as they are prefixed by the letters “BS EN”. As this is a rather technical point of procurement law, should an Officer have any queries these should be raised with the Borough Solicitor (Extn 5001) or the Procurement Executive ~~Procurement and Projects Manager~~ (Extn. 5022).

N152\_(i) Rule 4 relates to the waiver of Contract Procedure Rules under special circumstances. Such special circumstances would include

- only one company makes the product which the Council wishes to purchase and no other product is a reasonable substitute
- a recent tender exercise has shown that one supplier/contractor provides significantly better value than anyone else for the product/work in question
- urgency, resulting from circumstances beyond the Council’s control, means that there is insufficient time to obtain tenders in accordance with the procedures set out in Contracts Procedure Rules.

(ii) Furthermore where an Officer intends to ask Council, Cabinet, a Committee or Sub-Committee to provide a waiver of Contracts Procedure Rule (s) then he/she must ensure that the body in question have the necessary authority.

(iii) When a Managing Director grants an exception to Contracts Procedure Rules in accordance with Rule 4, that exception shall be recorded as a “record of decision taken under delegated authority” which is available from the Member Services Section. That record of decision shall then be included in the next relevant Members Update.

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N163. (i) These Rules consider contracts in three cost bands (up to £10,000; £10,000 to £50,000; over £50,000). These are not annual values, they are the value of the contract for its whole duration including any optional extension periods and options to acquire additional goods, services or building works.

(ii) No attempt must be made to split a single contract into several lower value contracts to avoid the application of any aspect of these Rules. ~~In this respect the figure which should be considered against the threshold is the total cost of engaging the particular contractor (operating in his/her particular profession/trade/field) to fulfil the procurement requirement which is the essential purpose of the contract. Advice on this matter can be obtained from the Executive Procurement and Projects Manager (Ext. 5022) or the Borough Solicitor (Ext. 5001).~~

~~(iv)~~ (iii) Care must be taken where a low value contract is expanded to include additional work because if that additional work moves the contract value into another cost band a waiver of these Rules may be necessary if the requirements of these Rules are not to be breached. Advice on this matter can be obtained from the Borough Solicitor (Ext. 5001) or the Procurement Executive ~~Procurement and Projects Manager~~ (Ext 5022).

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N174. Rule 164 (vii) requires contractors to have appropriate insurances. Advice on this topic is contained in a document entitled "Insurance Procedure: Checking Contractors/Consultants Insurances" which is available from the Insurance Section.

N185. Rule 109 relates to "standing lists". The Public Contracts Regulations 200615 ~~(as amended)~~ which is the main English domestic legislation to give effect to EU procurement legislation, provides for a category of contracts, called "framework agreements". In specific circumstances, certain framework agreements, can be deemed to operate as standing lists. (True standing lists would generally only apply to tender exercises where the values are below the threshold values given in Note I). For advice in respect of this matter contact either the Borough Solicitor (Extn. 5001) or the Procurement Executive ~~Procurement and Projects Manager~~ (Extn. 5022).

N196. In respect of Rule 175 the following advice is offered:-

(i) where an officer wishes to make a procurement under the terms of an existing contract or framework agreement but where the requirements of Rule 175 are not satisfied it may still be possible to go ahead providing that existing contract was tendered and awarded in a fair, open and transparent manner and in full accordance with all legislation which applies to the Council. In such a case a specific exception to Contracts Procedure Rules must be obtained in accordance with Rule 4.

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- (ii) Some "Services" fall under Schedule 3 ~~Part B~~ of the Public Contracts Regulations 2006~~15 (as amended)~~ which means that a Contract Notice, as described in Rule 17~~5~~ (i), would not be required by procurement legislation, therefore, the requirements of Rule 17~~5~~ (i) would not be satisfied. In such cases a specific exception to Contracts Procedure Rules must be obtained in accordance with Rule 4.
- (iii) As compliance with Rule 17~~5~~ is a ~~fairly~~ technical matter Officers are encouraged to contact either the Procurement Executive ~~Procurement and Projects Manager~~ (Extn 5022) or the Borough Solicitor (Extn 5001) whenever they are considering using Rule 17~~5~~.

~~N2017~~. Rule No.5 requires that where contracts are under £10,000 the relevant Senior Officer shall ensure that the accepted price offers good value and reflects competitiveness. The Rule goes on to say that in appropriate circumstances this could include obtaining three quotations. In such circumstances it would be acceptable to obtain quotations via e-mail. This requirement to offer good value and reflect competitiveness could also be satisfied where quotations/tenders have been obtained in the last 12 months for similar work when it would then be in order to award a new contract to the tenderer who was successful in the previous tender exercise providing the new work is the same or similar to the work contained in the previous accepted tender and the new work can be priced by reference to the rates in the previous accepted tender. Where it is proposed to award a contract below £10,000 in value and where value for money and competitiveness will be demonstrated (as required by Rule 5) other than by obtaining three quotes or by reference to a previous quotation/tender exercise (as detailed in this ~~N2017~~) then the advice of the Audit Manager (Extn 2603), the Borough Solicitor (Extn 5001), or the Procurement Executive ~~Procurement and Projects Manager~~ (Ext.5022) should be sought. In all cases reasonable evidence must be retained (as an audit trail) to demonstrate that the requirements of Rule ~~No.5~~ have been complied with.

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~~N218~~. Rule ~~2016~~ requires that in respect of contracts over £50,000 in value:-

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- (i) The signed copy of the contract documents shall be provided to Legal Services for filing. The Officer to be contacted in this respect is the Managing Clerk (Extn. 5422). Furthermore the contract documents to be provided to Legal Services~~d~~ are the original signed contract documents. The spending Service~~s~~ shall retain appropriate copy~~(ies)~~ of the signed contract documents to facilitate the proper client management of the contract.
- (ii) Summary details are to be provided to the Purchasing Manager (Extn. 5426) for inclusion in the Council's Contracts Register. Those summary details in respect of each contract shall comprise; the identity of the spending division, the name of the contractor/supplier/consultant, the title of the contract, the total value of the contract over its life excluding any potential extension(s) to the contract period, the start date of the contract, the end date of the contract and any other details which would allow a better understanding of the contract.

- (iii) Should a contract be extended then the Purchasing Manager (Extn. 5426) shall be advised accordingly and shall be provided with appropriate revised summary details in respect of the extended contract.

N2249. Rule 1 contains a definition of the term “contract”. In respect of that definition the following advice is offered. Many small value purchases are made through Council-wide bulk contracts which have been put in place centrally. Such contracts have already been entered into in full accordance with Contracts Procedure Rules and require no further quotation or tender exercise. It is the responsibility of the spending Service to ensure that the Council-wide bulk contract being used allows the purchase of the goods/services/building works being purchased. Queries regarding this matter should be directed to the Purchasing Manager (Extn. 5426) or the Procurement Executive ~~Procurement and Projects Manager~~ (Extn. 5022).

N230. Senior Officers may choose to supplement the requirements set out at GPR Rule 164 (iv) by specifying particular requirements, e.g. adherence to the Council’s Anti Fraud and Corruption Policy (as amended from time to time), having regard to risks arising from any particular area of contractual activity. If so they are invited to discuss this with the Borough Solicitor (Extn. 5001) or the Procurement Executive ~~Procurement and Projects Manager~~ (Extn. 5022).

N244. Where quotations are to be sought, care must be taken not to always obtain quotations from the same organisations thereby discouraging the development of price rings. It is important that the entry of new and rising organisations be encouraged. Itherefore where appropriate, when seeking quotations include within the organisations who are invited to quote, an organisation which is “new” to the Council (i.e. an organisation who the Council do not regularly do business with and/or invite to submit quotations). However, the relevant Senior Officer must be happy with the financial stability and technical ability of any organisation before a contract is awarded to that organisation.

N252. Where a tender evaluation methodology is to include criteria other than price (Rule 142(iii)(b) and Rule 14(iv)) care must be taken to ensure that the evaluation methodology is relevant, objective and transparent. The production of a robust tender evaluation methodology is a rather technical matter and advice must be sought from either the Procurement Executive ~~Procurement and Projects Manager~~ (Ext. 5022) or the Purchasing Manager (Ext. 5426).

N263. There will be circumstances where it is clearly more convenient or economic to add a new requirement to a suitable existing contract than to pursue a quotation or tendering process. However, the Public Contracts Regulations 2015 place strict limits on the nature and extent of such additions where the original value of the existing contract or the additional requirement exceeds the EU tendering threshold. These limits are summarised in a Procurement Practice Note which can be viewed on the Council’s intranet. The advice of the Procurement Executive (Extn. 5022) should always be sought when considering such changes to existing contracts.

N274. The reporting requirements relating to contract awards set out in the Public Contracts Regulations 2015 are relatively complex. Publication of contract award notices in Contracts Finder and the OJEU is arranged by the Purchasing Manager (Extn. 5426) or the Procurement Executive (Extn. 5022). A detailed digest of the various requirements are contained in a Procurement Practice Note which can be viewed on the Council's intranet.

N285. Regulation 46 of the Public Contracts Regulations 2015 promotes the division of contracts which exceed the EU tendering threshold into smaller lots, with the objective of encouraging wider participation from SMEs in bidding for public sector opportunities. As well as requiring that the reasons for not dividing a contract into lots are documented and transparent, Regulation 46 also requires that tender documents are explicit about how many lots may be awarded to any one supplier and how this will be decided. Detailed guidance on lotting can be found in a Procurement Practice Note on the Council's intranet, and advice may be sought from the Procurement Executive (Extn. 5022).

N296. Model contract clauses which meet the requirements of Regulations 73 and 113 of the Public Contracts Regulations 2015 are set out in a Procurement Practice Note which is available on the Council's intranet.

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