



**South
Derbyshire**
District Council

South Derbyshire District Council

Contract Procedure Rules and Procedures Manual

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Finance and Corporate Services

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CONTRACT PROCEDURE RULES – for the Supply of Goods, Services and Works

1. DEFINITIONS

1.1 Definitions

For the purposes of the Rules:

- 1.1.1 Authorised Officers** means the Chief Executive, Section 151 Officer and the Central Procurement Team (CPT). **contract** means an agreement which:
- i. may be oral, written, partly oral and partly written or implied from conduct between the Council and another person;
 - ii. gives rise to obligations which are enforceable or recognised by law (i.e. legally binding); and
 - iii. commits the Council to paying or doing something;
- 1.1.2** and, where the context requires, a reference to a contract means a contract to which the Rules apply and a “**Call-off Contract**” means an order made/call-off contract entered into under a Framework Agreement;
- 1.1.3 Designated Opening Officers** means officers designated to carry out the functions allocated to them in the Rules for the Receipt and Opening of Tenders (Section 16) including any third parties (such as consultants) approved by the Director of Finance and Corporate Services;
- 1.1.4 Director** means the Director of Finance and Corporate Services;
- 1.1.5 EU Tender** means a tender procedure, which needs to be carried out under European Union public procurement legislation;
- 1.1.6 Framework Agreement** means a contract with a supplier or suppliers which establishes the terms and conditions (in particular as to price) under which Call-off Contracts can be made during the length of the Framework Agreement. This includes government pre-negotiated contracts;
- 1.1.7 person** means any individual, partnership, local authority or incorporated or unincorporated body;
- 1.1.8 Section 151 Officer** means the Director of Finance and Corporate Services with charge over Finance and Property Services appointed under s151 Local Government Act 1972 and officers to whom the s151 Officer has delegated his or her functions in accordance with the relevant Scheme of Delegation; and
- 1.1.9 Scheme of Delegation** has the meaning given to it under Rule 8 of the Contract Procedure Rules.

2. COMPLIANCE WITH THE RULES AND RELEVANT LEGISLATION

- 2.1** The Rules apply to all contracts for the provision of goods, services and works to the Council unless otherwise specified in the Rules. This means;
- i. **Purchase Orders** - All third party expenditure should be covered by an official purchase order to enforce the ‘**No Purchase Order, No Pay**’ policy throughout the Council.
 - ii. **Payment Policy** – It is Council policy to settle all outstanding supplier liabilities by BACS, with the use of cheques phased out.

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

2.2 All contracts must comply with:

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

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

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

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

2.5 The Rules must be complied with by all officers of the Council and all other persons who are authorised to carry out procurement and contracting on behalf of the Council (such as the Council’s agents for property services) (“**Agents**”). It must be a term of all contracts between the Council and its Agents that the Agents comply with the Rules. Further, Agents may undertake to conduct the Procurement Procedures detailed herein and associated negotiation on behalf of the Council, however, such Agents are not authorised to enter into a binding Contract on behalf of the Council.

3. CONTRACTS TO WHICH THE RULES DO NOT APPLY

3.1 The Rules do not apply to:

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

4. EXEMPTIONS FROM THE RULES

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

4.1.1 The Director of Finance and Corporate Services may seek an exemption from any of the Rules from:

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

4.1.2 In order to request an exemption the Director of Finance and Corporate Services must prepare a report setting out:

- i. the reasons why the exemption is being requested and which Rule(s) an exemption is being requested from;
- ii. the process which is intended to be followed instead;
- iii. a legal appraisal and financial appraisal from the Director of Finance and Corporate Services & s151 Officer.

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

4.1.4 Staff seeking an exemption should, in the first instance, contact the Director of Finance and Corporate Services.

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

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

5.1.1 Call-off Contracts

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

For the avoidance of doubt, Call-Off Contracts must be entered into in accordance with the terms of the Framework Agreement (e.g. selection by mini-competition) and mini-competitions under Framework Agreements must be run in accordance with CPR 2.2 and 2.3.

5.1.2 Emergency

- i. In cases of emergency, the Chief Executive or Director of Finance and Corporate Services may verbally authorise and record in writing an exemption from the Rules for goods, services or works PROVIDED THAT:
 - a. the emergency was brought about by events which were not reasonably foreseeable by, or attributable in any way to, the Council (e.g. flood); and
 - b. If the goods, services or works are not received immediately, there is a significant risk of:
 - 1. danger to life; or

2. damage to property; or
3. a major impact on the Council or its service users.

- ii. In these cases only goods, services or works necessary or appropriate to safeguard the Council's position or protect life and property can be procured before formal approval is obtained.
- iii. The Chief Executive or Director of Finance and Corporate Services must at the earliest be informed of the action taken in dealing with the emergency. The Director of Finance and Corporate Services must also submit a report to the relevant Policy Committee that details the circumstances of and justifications for granting exemptions made in accordance with this Rule.

5.1.3 No competitive market

- i. Proprietary or patented goods or services are proposed to be purchased which, in the opinion of the Authorised Officer, are only obtainable from one person, and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented goods is available; or
- ii. The Authorised Officer can demonstrate that no genuine competition can be obtained in respect of the purchase of particular goods, services or works; or
- iii. The Authorised Officer is satisfied that the works or services are of such a specialist nature that they can only be carried out by one person (e.g. statutory undertakers); or
- iv. Goods are proposed to be purchased by or on behalf of the Council at a public auction; or
- v. Goods are proposed to be purchased which are of a specialist nature (such as antiquities for museums), PROVIDED THAT in all these cases (except for works which are primarily the responsibility of a utility or statutory undertaker as defined in s329 Highways Act 1980).
 - a. the Authorised Officer prepares a written statement explaining why the relevant circumstances apply and including why it is in the best interests of the Council for the contract not to be tendered and setting out the course of action proposed to be followed; and
 - b. the Authorised Officer receives written agreement from the s151 Officer and the Director of Finance and Corporate Services to pursue the course of action set out in the statement.
 - c. Authorised Officers, in conjunction with Legal Services, ensure that contract terms are appropriate taking into account all relevant factors (such as benefit and risk to the Council).

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

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

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

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

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

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

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

7. REGISTER OF EXEMPTIONS

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

8. SCHEMES OF DELEGATION

8.1 The Director of Finance and Corporate Services must ensure that he has a Schemes of Delegation identifying:

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

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

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

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

9. TENDER PROCESS and RECORD KEEPING

9.1 The Central Procurement Team must keep and maintain records in respect of each contract (from the time the project begins until the point at which the contract ends) in order to demonstrate the achievement of Best Value, openness, probity and compliance with the Rules including EU law where OJEU specific Tenders are placed.

9.2 Council staff must inform the Central Procurement Team of all contracts (including Call-Off Contracts) to be tendered (at least eight weeks before the tender process starts and preferably, prior to the start of the Financial Year.) For Contracts with a value > £25,000 it is the Council staff obligation to provide the Central Procurement Team with sufficient notice of intention to contract. If the Central Procurement Team is notified with sufficient time then the contract opportunity will be placed on the Council Website to meet Community Consultation obligations

9.3 All tenders must be led by the Central Procurement Team or an officer authorised by the Director of Finance and Corporate Services.

9.4 Any member of the Council staff in breach of these Contract Procedure Rules shall be subject to disciplinary process.

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

10.1 The value of a contract (that is, the expenditure per contract) means the actual or estimated amount payable by the Council to the supplier for the goods, services or works (excluding VAT) over the length of the contract (e.g. a three-year contract with an option to extend for 2 years under which £20,000 is payable per annum has a value of £100,000).

- 10.2** Goods, services and works contracts must not be split into smaller contracts in order to avoid any of the Rules.
- 10.3** Framework Agreements must not be entered into for more than four (4) years (including options to extend) unless otherwise advised by the Director of Finance and Corporate Services.
- 10.4** For contracts of an indefinite length the value must be established on the basis that the contract will last for a period of 48 months. See also Rule 21.1.
- 10.5** **Aggregated Spend (Contract Aggregation)** – For contracts already in place for a service delivery, and where additional spend is identified which is not covered by the existing contract i.e.: it exceeds the estimated value of the contract, then advice must be sought from the Director of Finance and Corporate Services or the Central Procurement Team.

11. FINANCE AND AUTHORISATION

- 11.1** Before entering into any process, which will or may result in the incurring any expenditure for the supply of goods, services or works be it capital or revenue, the Central Procurement Team must ensure that:
- i. where it is a key decision, the requirements of Article 13 Section 13.2 of the Constitution have been complied with:
 - ii. adequate financial provision is included in the Council's approved revenue budget or capital programme (as appropriate) and that such expenditure continues to be available in accordance with the Financial Procedure Rules; and
 - iii. the provisions of the Financial Procedure Rules have been complied with (including, without limitation, FPR Section D, D2.15 to D2.22); and
 - iv. Written authorisation has been obtained from the Section 151 Officer.
- 11.2** The Director of Finance and Corporate Services must be notified before officers enter into any process which:
- i. will or may result in any transfers of staff under the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") and any of the staff are or were previously Council employees; or
 - ii. will or may result in any transfers of staff under TUPE who are members of the Council's Pension Scheme.
- 11.3** The Director of Finance and Corporate Services must be notified before officers enter into any process, which will or may result ;
- i. in a contract that confers exclusive possession of the Council's premises or
 - ii. in the acquisition by the Council of a property interest.
- 11.4** Where there is a corporate contract (i.e. contract for the benefit of the Council as a whole) for the supply of goods, services or works, no other contract may be used for the supply of those goods, services or works unless this has been authorised in advance in writing by the Director of Finance and Corporate Services.

12. PRE-QUALIFICATION REQUIREMENTS

- 12.1** The Central Procurement Team will undertake any required PQQ exercise

13. BEST VALUE – COMPETITIVE QUOTES AND TENDERS

- 13.1** For contracts worth less than £25,000, Unit Managers must take practicable steps to secure value for money through a combination of cost and quality by clearly defining the business requirement and seeking offers at the lowest cost commensurate with meeting that business requirement.
- 13.2** For contracts worth £25,000 or more, the Central Procurement Team must take practicable steps to secure value for money through a combination of cost, quality and competition. The Central Procurement Team must also comply with the requirements of Rule 17 relating to the drawing up of evaluation criteria.
- 13.3** For all contracts of £25,000 or above competitive quotations or tenders must be sought as follows:

Table 3 Goods, Services and Works

Estimated cumulative expenditure per contract	Competition
Up to £1,000 (Quotations)	Budget holders must ensure Value for Money by obtaining 3 quotations (if possible).
Between £1,000 and £25,000 (Quotations)	Unit Managers must ensure genuine competition by inviting sufficient numbers of persons (good practice indicates a minimum of 3 selected impartially) to submit written quotations for the goods, services or works required by the Council. Some degree of advertising may be required, preferably on the Source Derbyshire Portal.
£25,000 or above but less than the relevant EU directive threshold. (Tenders)	Council Staff must refer the Procurement Exercise to the Central Procurement Team.
Equal to or exceeding the financial thresholds stated in the relevant EU Directive	Council Staff must refer the Procurement Exercise to the Central Procurement Team for action.

- 13.4 Suppliers** – All proposed new suppliers must be approved by the Central Procurement Team prior to any contract or works.
- 13.5 Local Suppliers** – The Council has a stated objective to wherever possible, try and support local business. To help achieve this objective, all tenders should advertised in the Source Derbyshire portal and involve local suppliers wherever possible. For the purposes of these CPRs a local supplier is deemed to be a supplier who pays local business rates to South Derbyshire District Council OR is based within a 25 mile radius of DE11 0AH.

14. TENDER PROCESS TO USE

- 14.1** Before progressing with a tender exercise, the decision on which process to use needs to be taken by the Central Procurement Team, after liaising

with the Director of Finance and Corporate Services

Further guidance on each of these processes, including timescales can be found at Appendices 1 to 3.

Where a tender process involves subsequent dialogue with tenderers and in particular those involving competitive dialogue or a negotiated procedure, this must be led by the CPT supported by the Client Department.

15. INVITATIONS TO TENDER

15.1 The Central Procurement Team shall ensure that all invitations to tender:

- i. clearly specify the goods, services or works that are required (subject to appropriate adjustment where the competitive procedure with negotiation, competitive dialogue or innovation partnership procedure is being used);
- ii. In the case of the Negotiated Restricted Process (i.e.: under standing orders and outside OJEU), make it clear to all tenderers that there is final stage where the top scored tenders will be invited for final interviews. At and following final interviews bidders will have the opportunity to answer the Council's questions for clarification and to submit revised prices. This stage must be led by CPT supported by an officer of the Client Department.
- iii. for all Tenders, list the criteria on which tenders will be evaluated (see Rules 17) showing the weighting of the various criteria. The scoring methodology will also be detailed.
- iv. include a requirement for tenderers to declare that the tender content, price and all other figures or particulars concerning the tender have not been disclosed by the tenderer to any other party;
- v. include a requirement for tenderers to complete fully and sign all tender documents including certificates confirming that no canvassing or collusion has taken place; and
- vi. state that the contract will be on the Council's standard terms and conditions of contract which are to be enclosed with the invitation to tender and also available on the Council's website.

15.2 Wherever possible, contracts must require goods, services and works to be in accordance with a specified European Standard or equivalent, or British Standard implementing a European Standard. Only if no European Standard exists should a British or other equivalent standard be stated.

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

16.1 Authorised Officers must comply with the Council's Procedures for Receipt and Opening of Tenders as set out below.

16.2 All tenders shall be received electronically via a secure e-tendering portal owned or operated on behalf of the Council.

16.3 All tenders received, including mini-tenders under Framework Agreements, must remain locked in a secure vault within the e-tendering portal until the specified closing date and time for receipt of tenders has passed.

16.4 The secure vault shall be unlocked and all tenders released electronically, by the CPT. Electronic copies of all tender documents submitted shall remain in the portal in a secure tamperproof area.

16.5 An electronic audit log shall be kept within the e-tendering portal showing all actions conducted by all parties.

17. EVALUATION CRITERIA AND EVALUATION OF TENDERS

- 17.1 In determining the relevant evaluation criteria on which tenders are to be assessed, Authorised Officers and relevant Council Staff must consider all factors relevant to their requirement, including environmental and social considerations, so far as this is lawful.
- 17.2 The evaluation process will clearly demonstrate that the Council is seeking to identify the Best Value tender (see Rule 13).
- 17.3 The CPT will ensure that all tenders and mini competitions are evaluated by a panel including the Council's Client Department, technical and financial officers (if appropriate) and appointed external consultants, in accordance with the evaluation criteria specified in the invitation to tender.
- 17.4 The arithmetic in compliant tenders, including mini-tenders under Framework Agreements, must be checked. If arithmetical or clerical errors are found they should be notified to the tenderer, which should be requested to confirm the correct figures/wording or withdraw its tender.
- 17.5 Authorised Officers must compare submitted tender prices with any project appraisal or pre-tender estimates. All differentials must be considered. For tender prices of £25,000 or more where the differential is more than 20% above or below the project appraisal or pre-tender estimate, the reason must be determined and this must be reported to the Director of Finance and Corporate Services.
- 17.6 In cases as set out in Rule 17.5 for goods and services, a tender must not be accepted unless this has been authorised by the Director of Finance and Corporate Services. For capital expenditure, authorisation of acceptance of variations must be in accordance with FPR Section B, B2.38 of the Finance Procedure Rules.
- 17.7 Final evaluated scores will be checked by a member of the Central Procurement Team and counter checked by a member of the Finance Team and/or the Client Department to ensure accuracy.

18. AWARD OF CONTRACTS

- 18.1 Contracts may only be awarded by the Council if there has been full compliance with the Rules and the Financial Procedure Rules.
- 18.2 Tenders may be evaluated and recommended for acceptance by the following officers:

Table 4

Cumulative value of contract	Acceptance by
Tender not exceeding £25,000	Unit Manager
Above £25,000	The relevant Director or the Director of Finance and Corporate Services

- 18.3 No tender can be accepted or contract awarded unless this is on the basis of the evaluation criteria sent out with the invitation to tender.
- 18.4 Successful and unsuccessful tenderers (and, for EU Tenders, and those persons who expressed an interest in the contract) must be notified of the award of the contract for which they have submitted a tender. This notification letter must be in a form approved by the Central Procurement Team.
- 18.5 Where there has been an EU Tender, and in such other circumstances as the Director of Finance and Corporate Services may advise, the award of the contract must be subject to the legally-required standstill period to enable unsuccessful bidders to challenge the award prior to completion of the

contract (see Rule 20.1). Where there is a court challenge prior to completion of the contract then the contract must not be completed without the authorisation of the Director of Finance and Corporate Services.

- 18.6 Where a key decision was required to authorise the entering into of the procurement process under Rule 11, the contract must not be awarded unless that decision has been complied with (for example, a new decision may be required prior to award or if any of the risk factors have changed).
- 18.7 Where a key decision was not required to authorise the entering into of the procurement process under Rule 11 but due to the price of the winning bid it has become a key decision, the requirements of Article 13 Section 13.2 of the Constitution must be complied with before the contract is awarded.

19. SIGNING AND SEALING OF CONTRACTS

19.1 Contracts, which are not call-off Contracts

- 19.1.1 Where there has been an EU Tender, and in such other circumstances as the Director of Finance and Corporate Services may advise, the contract must not be entered into with the successful tenderer unless and until the mandatory standstill period has elapsed without a challenge from an unsuccessful tenderer (see also 18.5).
- 19.1.2 One Head of Service with delegated powers must sign contracts up to £25,000 in value (see Rule 8).
- 19.1.3 Save as set out in Rule 20.1.1, two authorised officers of the Council must sign all contracts which are worth £25,000 or more in value. For the purposes of contract signing authorised officers are Chief Executive, Director of Finance and Corporate Services, Director of Housing and Environmental Services or Director of Community and Planning. For the avoidance of doubt no elected or co-opted Member of the Council may sign any contract for or on behalf of the Council
- 19.1.4 Any contract requiring the additional limitation of 12 years rather than the 6 years for court proceedings in the event of default must be sealed as a deed by the Director of Finance and Corporate Services. This is particularly relevant to construction contracts in the case of latent defects.

19.2 Call-off Contracts

- 19.2.1 *Council Framework Agreement with no new terms*: Where a Call-off Contract is entered into under a Framework Agreement which has been set up by the Council and no new terms are being introduced (e.g. under a mini-competition), the Call-Off Contract does not have to be signed or sealed (unless required in accordance with the terms of the Framework Agreement) BUT the Call-off Contract must be authorised as set out in Rule 11 and under the Financial Scheme of Delegation and approved by the Central Procurement Team.
- 19.2.2 *Council Framework Agreement with new terms*: Where a Call-Off Contract is entered into under a Framework Agreement which has been set up by the Council and new terms have been introduced (e.g. following a mini-competition), the Call-Off Contract must be signed or sealed as set out in 19.1.1 to 19.1.3 (inclusive) unless otherwise agreed by the Director of Finance and Corporate Services.
- 19.2.3 *Third Party Framework Agreements*: Where a Call-off Contract is entered into under a Framework Agreement which has been set up by a third party, the Call-Off Contract must be signed or sealed as set out in 18.1.2 to 18.1.3 (inclusive) unless otherwise agreed by the Director of Finance and Corporate Services.

20. COMMENCEMENT OF CONTRACTS

20.1 No supply of goods, services or works must commence until all contract documentation is duly completed (see Rule 19), except:

20.1.1 In cases of emergency falling under Rule 5.3, in which case the contract must be completed at the earliest opportunity.

20.1.2 Where otherwise approved by the Director of Finance and Corporate Services.

21. TERMS AND CONDITIONS OF CONTRACTS

21.1 Terms and conditions for all contracts for goods, services and works with a value of £25,000 or more (and preferably all other contracts, particularly consultancy contracts) must be in accordance with the Council's standard terms and conditions prepared or approved by the Director of Finance and Corporate Services, unless otherwise agreed by the Director of Finance and Corporate Services.

21.2 All contracts with a value of £25,000 or more must include a clause empowering the Council to terminate the contract for corruption and to recover from the supplier the amount of any loss resulting from such termination in a form approved by the Director of Finance and Corporate Services.

22. VARIATIONS, EXTENSIONS AND RENEWALS OF CONTRACTS

22.1 Where an Authorised Officer wishes to exercise an option in a contract to extend that contract, this must be referred to the Central Procurement Team and Legal Services for advice.

22.2 Where an Authorised Officer wishes to re-negotiate the price payable under a contract, vary the contract materially or extend/renew a contract where there is no option to extend it in the contract, this must be referred to Legal Services and the Central Procurement Team before negotiations are entered into as there may be a new contract in these circumstances to which the Rules must be applied.

23. NON COMPLIANCE WITH THE RULES

23.1 Any non-compliance with any of the Rules must be notified to the Director of Finance and Corporate Services (as s151 Officer)

23.3 If non-compliance has given rise to, or is likely to give rise to illegality or maladministration, the Director of Finance and Corporate Services (as s151 Officer) will notify the Monitoring Officer and Solicitor or in the event of a conflict of interest, the Chief Executive.

23.4 If the Rules are not complied with, this will not invalidate any contract entered into by or on behalf of the Council, except where European or English law provides to the contrary.

24. SEEKING ADVICE

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

on procurement@south-derbys.gov.uk

or, the Head of Procurement

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

Appendix 1 - Ethics in Purchasing – Codes of Conduct

1.1 Introduction

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

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

1.2 Principles

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

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

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

1.3 Guidance

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

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

1.4 Decisions and Advice

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

Appendix 2– The Green Purchasing Guide

1.1 Guidance on Green Purchasing

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

Introduction

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

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

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

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

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

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

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

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

It is the policy of South Derbyshire District Council to:

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

- Chlorine bleach
- Aerosol containers
- Solvent-based products
- Hazardous and deleterious materials such as pesticides, weed killers and preservatives, where it is not possible to avoid these, appropriate suppliers will be instructed to ensure that the required COSHH data accompanies all deliveries of hazardous products.

- ✓ **Reduce** the purchase of new products by re-using, repairing or refurbishing existing products.
- ✓ **Specify** products that are made from recycled material.
- ✓ **Specify** products that can be recycled.
- ✓ **Specify** products that cause minimal damage to the environment in their manufacture, distribution, use and disposal.
- ✓ In order to reduce the negative impact of vehicles, purchase the latest Euro specification lean burn engine vehicles.

✓ **Paper:**

1. Where paper is to be used for printing, letterheads or photocopying, purchase 100% recycled paper that comprises 100% post consumer waste.
2. Other paper and paper products should be at least 75% post consumer waste recycled content, with envelopes being at least 70% recycled (brown manila) or 30% recycled (white manila).
3. Virgin paper (even if FSC approved or equivalent) should only be used for specialist printing or specialist applications where it can be proved that an alternative use is not possible with available technology or reasonable modifications. Any use of virgin paper should be authorised in writing by the Head of Service. Any virgin paper purchased should be FSC certified or equivalent.
4. Paper disposables (toilet paper, towels, etc) should be 100% post consumer waste recycled.
5. Any unwanted paper should be re-used or recycled.

- ✓ Where possible, buy second-hand or refurbished furniture and equipment.
- ✓ Where possible, purchase local products and services. Care must be taken to ensure there is no breach of UK Procurement Law.