

Council – 19 July 2010

Amendments to Contract Rules

1. Summary of report

The report sets out the proposed amendments to the Constitution in relation to the Financial and Contract Rules following a review. The proposed changes do not alter the substance of the rules, the review having been conducted with a view to simplifying the rules.

2. Recommendations

- 2.1 That the current contract rules forming part of the Financial and Contract Rules paragraphs 1.6 and 10 to 17 be removed from the Constitution.
- 2.2 That the Council adopts the contract rules set out in the report and appendices attached in replacement of the paragraphs referred to 2.1 above.
- 2.3 The Council delegate authority to the Monitoring Officer to determine the commencement date for the changes approved in 2.1 and 2.2 above.
- 2.4 The Council delegate authority to the Monitoring Officer to make and determine the application of the proposed changes in relation to procurement exercises commenced prior to the implementation of the changes.

3. Report detail

3.1 The contract rules – an introduction

The contract rules sets out the processes that officers are required to follow in order to comply with the legal requirements that are imposed for the purchase of goods, works and services.

A significant influence upon the contents of the rules is the complex and detailed legislative requirements that are imposed by European Law. These rules and regulations are highly complex and restrictive in the way that they control how Council's can procure its needs, for example, they:-

- Require the advertisement of procurement requirements across the entire European Union
- Set out detailed processes regarding minimum timescales and minimum number of tenders that can be invited
- Regulate the nature and extent which local authorities can enter into negotiations and also select providers

- Require that local authorities act in a non-discriminative manner and run competitive processes so as to not benefit or advantage local or national suppliers over and above those suppliers within the European Union

3.2 The reason for the change to new rules

In addition to the complex nature of the legislative requirements, there has been an increase in need for the Council to be adaptive to the rapidly evolving legal requirements and different procurement techniques. Further, public procurement is increasingly becoming more sophisticated in its nature in both identifying value for money and delivering services in an effective and efficient manner.

In principle, the rules have not changed. What has changed is the way in which they are written. There has been no change in the levels of authority or increase in authority that officers are given. The review of the existing rules has been focused upon the writing of the rules in plain English.

A significant driver for these changes has been for Council officers and potential tenderers to understand the complex processes that they have to follow. The re-writing of the rules in the manner that is set out in simple terms and tabular format is designed to provide not only officers with a simple process to understand but also assist suppliers to understand the requirements that are imposed upon the council in relation to procurement and tendering.

3.3 A thriving local economy

A key issue has been the legal limitations that are proposed upon Councils that restrict the promotion of a local supply chain. It is unlawful for Councils to select local providers without a European wide competitive process or to impose upon the Council's suppliers as part of a tendering process a requirement to only use local providers in their local supply chain.

Notwithstanding this, the Council has a commitment to a locally sustainable thriving economy and whilst the Council is not permitted to discriminate to the benefit of local suppliers, the Council will continue to review its processes and in particular, seek to engage in a proactive manner the local supply economy whilst complying with the law.

4. Resource considerations

A simpler set of rules will assist officers in running more efficient and effective procurement processes.

5. Citizen impact

By encouraging engagement of the local supply sector, the Council will be helping to deliver a sustainable thriving local economy.

6. Community safety

None

7. Environmental impact

None

8. Performance and risk management issues

A simpler set of rules will assist officers in running more efficient and effective procurement processes, whilst ensuring compliance with the legal obligations imposed upon the Council.

9. Equality implications

The essence of the procurement rules is to ensure compliance with the legal requirements imposed upon Councils when conducting their procurement exercises, this includes behaving in an open, fair, transparent and non-discriminatory manner.

Background papers

Nil.

Signed:

Chief Executive

Date: 8 July 2010



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Walsall Council

Contract Rules 2010

[This document is currently a confidential draft, which has not received Council's approval and does not form part of the Council's existing Constitution.]

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NOTE In this document any words shown in bold are explained in Rule 25 of these Contract Rules on Page 18.

1 Background and Purpose

- 1.1 These Contract Rules (“the **Rules**”) are made under Section 135 Local Government Act 1972.
- 1.2 The **Rules** form part of the **Council’s Constitution** and replace Rules 10 to 16 of the Council’s Financial and Contract Rules approved by Council on 24th April 2006. Only **Council** shall approve amend or vary these **Rules**.
- 1.3 The purpose of the **Rules** is to:
 - 1.3.1 uphold the principles that all purchasing and disposal procedures must achieve **Best Value**;
 - 1.3.2 be consistent with the highest standards of integrity;
 - 1.3.3 ensure fairness in allocating contracts;
 - 1.3.4 comply with all legal requirements;
 - 1.3.5 support the **Council’s** corporate aims and policies including the “**Think Walsall Charter**” and has a commitment to support a sustainable local economy; and
 - 1.3.6 comply with the **Council’s Procurement Strategy** and the **Procurement Code**.

2 Application

- 2.1 The **Rules** shall apply to:
 - 2.1.1 Contracts (including **Frameworks Agreements**) for purchasing, commissioning, leasing or hire of goods, works or services for the **Council**;
 - 2.1.2 Sub-contracts where the **Council** specifies, names or nominates a sub-contractor to a **contractor** in a **tender** specification;
 - 2.1.3 Unless the **Council** expressly agrees otherwise, **contracts** on behalf of any **Partnership** for which the **Council’s** is the accountable body;
 - 2.1.4 Schools, except where the requirements of the Schools Standards and Frameworks Act 1998 or other statutory provisions require otherwise.
- 2.2 Where the **Council** is required to follow rules laid down by Central Government or other organisation that provides grant funding (“the **Grantor**”) to the **Council, Officers** shall follow the **Grantor’s** contract procedure rules where they are more stringent than the **Council’s**.
- 2.3 The **Rules** do not apply to:
 - 2.3.1 Contracts of employment for the **Council’s Officers**, except in the making of contracts with recruitment and staffing agencies; or
 - 2.3.2 Subject to Rule 22, Contracts relating to the purchase or sale of interests in land; or
 - 2.3.3 Contracts for treasury management and loans; or
 - 2.3.4 Choosing a partner organisation where the **Cabinet** has agreed that a public/private partnership shall be undertaken, in which case the

procedure laid down in the relevant statutory provisions will be followed;
or

2.3.5 The investment of assets belonging to charities and trusts for which an **Officer** acts as treasurer: or

2.3.6 **Grants** made by the **Council**.

3 Compliance

3.1 All procurements shall be conducted in accordance with the following:

3.1.1 All relevant statutory provisions including the Public Contracts Regulations 2006 (as amended) (“the **Regulations**”);

3.1.2 The relevant **EU Rules**;

3.1.3 The **Council’s Constitution**; and

3.1.4 The **Council’s Procurement Strategy** and **Procurement Code**.

3.2 Failure to comply with the **Rules** may leave the **Council** or individual **Officers** or **Members**, open to risk of legal challenge. Breaches will be regarded as a serious matter which may be considered gross misconduct and could lead to disciplinary action and/or dismissal. Any **Officer** becoming aware of any compliance failure should inform the **Monitoring Officer** who will if necessary investigate the matter and report to **Cabinet**. Alternatively matters can be raised through the **Council’s** whistleblowing policy.

3.3 **Officers** and **Members** must not invite or accept any gift or reward in respect of the award or performance of any contract. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal in the case of **Officers** and a reference to the Standards Committee in the case of **Members**. Where appropriate a matter may be referred to the Police.

3.4 **Officers** must declare any interests which could bring them into conflict with the **Council’s** interests.

3.5 **Members** must disclose all relevant interests on their register of interest forms, and any meeting they attend.

4 Preparing to contract

4.1 Authority for all **contracts** must be granted before they are entered into. Authority can be in the form of:

4.1.1. A **Cabinet** resolution; or

4.1.2. A decision made properly within the powers of **Cabinet** or **Chief Officer** under the **Scheme of Delegations**; or

4.1.3. A decision by **Cabinet** delegating authority to an **Authorised Officer**.

4.2 Subject to Rule 9, the following conditions must be met:

- 4.2.1. The **contract** must comply with the **Rules** and the **Financial Regulations**; and
 - 4.2.2. There must be enough budget to cover the financial commitment being made including ongoing revenue costs, **Authorised Officers** will need to seek approval for the power to offset any shortfall in budget.
- 4.3. Executive Directors have overall responsibility for the operation of the Councils functions. All requirements for goods, services or works that fall within those areas must first have been consulted on with the relevant Executive Director prior to the commencement of any procurement or commissioning exercise.

5 Use of Existing Contracts

- 5.1 Existing **Council contracts**, consortium arrangements or **Framework Agreements** shall be used wherever available unless a **Chief Officer** has agreed otherwise in writing in which case these rules shall apply. Before any procurement is commenced, **Authorised Officers** shall establish whether:
- 5.1.1 The **Council** has existing contracts or beneficial arrangements for the future purchase of goods, works and services; or
 - 5.1.2 Items are to be found in any available **Council's** i-Procurement online purchasing system; or
 - 5.1.3 The **Council** is able to purchase through a public authority purchasing consortium; or
 - 5.1.4 Buying Solutions' or other Central Purchasing Bodies' **Framework Agreements** are available.
- 5.2 The **Council's Head of Procurement** shall follow the requirement of the **Rules** in order to:
- 5.2.1 Procure goods, works and services which may be required throughout the **Council's** service areas, ensuring such **contracts** are made known to all **Chief Officers**; and
 - 5.2.2 Join the **Council** into consortia with other public authorities to enable the procurement of goods, materials, works or services by more than one public authority.

6 Special Contracts

Schools

- 6.1 Where the **Rules** apply to the **Council's** schools, the School's governing body shall:
- 6.1.1 Act as the **Head of Service** for all procurement, commissioning, leasing, purchasing or sale of any goods, works or services over which the **School** has authority under the delegation of Schools management or other legislation;
 - 6.1.2 Delegate to the School's head teacher or other senior members of the School's staff such authority as it sees fit to take actions on its behalf; and
 - 6.1.3 Seek authority of the **Council's Executive or Assistant Directors** or **Cabinet** wherever the **Rules** require.

Social Care Contracts

- 6.2 The **Chief Officers** responsible for providing Social Care for Children and Adult Services shall:
- 6.2.1 Consult with the **Assistant Director for Legal and Constitutional Services** to create a set of rules governing the procurement of services relating to Social Care, which fall within Part B of the **Regulations**;
 - 6.2.2 Ensure such rules reflect the structure of the market for Social Care services; and
 - 6.2.3 Balance the need to achieve **Best Value** with that to make **contracts** rapidly to meet individual service users' needs.
- 6.3 Except where a set of rules have been created officers shall procure services only in accordance with the **Rules** and the **Procurement Code**.

Consultants

- 6.4 **Chief Officers** who wish to appoint consultants shall ensure:
- 6.4.1 The **Council** has a genuine need for consultants;
 - 6.4.2 The nature and extent of the work is clearly defined;
 - 6.4.3 Suitably qualified and experienced Consultants provide quotations or tenders;
 - 6.4.4 A written contract is made with the Consultant who is appointed in a form approved by the **Assistant Director of Law and Constitutional Services**;
 - 6.4.5 Consultants provide insurance cover to a level approved by the **Corporate Risk and Project Manager**; and
 - 6.4.6 The Consultant shall formally accept the appointment before the work is commenced.

Appointments of Legal Advisors and Experts

- 6.5 Where a **Chief Officer** seeks to appoint external legal advisors and experts, following consultation with the **Assistant Director of Legal and Constitutional Services**, the following rules shall apply:
- 6.5.1 **Tenders** shall not be required for the engagement of counsel; medical experts, the clergy or experts at court proceedings; and
 - 6.5.2 **Tenders** shall not be required for the instruction of legal advisers, who shall be appointed in consultation with the **Assistant Director of Legal and Constitutional Services**.

7 Advertising and Approved Lists

- 7.1 There is a general presumption in favour of competition. **Authorised Officers** shall ensure that where proposed **contracts** irrespective of their **total contract value** might be of interest to potential **tenderers** located in other states of the European Union, a sufficiently accessible advertisement is published. Generally the greater

the interest of the contract to potential **tenderers** from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- 7.1.1. The **Council's** website;
- 7.1.2. Portal websites specifically created for contract advertisements;
- 7.1.3. National official journals; and
- 7.1.4. The Official Journal of the European Union (OJEU)/ Tenders Electronic Daily (TED) (even if there is no requirement within the **Regulations**).

7.2 **Approved Lists** should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot be aggregated and priced in a single tendering exercise. **Approved Lists** cannot be used where the **Regulations** apply.

8 Contract Value and Procedure

8.1 The **total contract value** shall be the genuine pre-estimate of the value of the entire contract excluding **Value Added Tax**. This includes all payments to be made or potentially to be made under the entirety of the **contract** and for the whole of the predicted contract period (including proposed extensions and options). Wherever possible estimates shall be based on previous purchases, catalogue prices or suppliers' estimates.

8.2 There shall be no artificial splitting of a **contract** to avoid the application of the provisions of the **Regulations** and/or the **Rules**.

8.3 The tables below sets out the which procurement process should be used dependent upon the **total contract value** as calculated in accordance with this Rule together with reference to the Rule in the **Rules** which sets out the detail of the procedure to be used:

GOODS AND SERVICES

Total Contract Value £	Type of Contract	Procurement Process to be Used	Acceptance of Tender	Rule no.
Between £2,500 and up to £10,000	Not subject to the Rules but still subject to Best Value	Recommended at least 2 competitive quotations if available	Head of Service/Service Manager	N/A
Above £10,000 and up to £50,000	MINOR for goods and services	At least 2 written quotations	Head of Service/Service Manager	10,15
Above £50,001 and up to	SIGNIFICANT for goods and services	At least 3 written tenders	Head of Service	11,16,17,

EU Threshold				18
Above EU Threshold and up to £500,000	MAJOR for goods and services	Public Contracts Regulations 2006 apply At least 3 written tenders	Executive Director/Assistant Director	12,14,16,17,18
£500,001 and above	STRATEGIC for goods and services	Public Contracts Regulations 2006 apply At least 4 written tenders	Cabinet or Delegated Approval	13,14,16,17,18,19

WORKS

Total Contract Value £	Type of Contract	Procurement Process to be Used	Acceptance of Tender	Rule no.
Between £2,500 and up to £10,000	Not subject to the Rules	Recommended at least 2 competitive quotations if available	Head of Service/Service Manager	N/A
Above £10,000 and up to £50,000	MINOR For works	At least 2 written quotations	Head of Service/Service Manager	10,15
Above £50,001 and up to £156,442 (EU Threshold for goods and services)	SIGNIFICANT For works	At least 3 written tenders	Head of Service	11,16,17,18
Above £156,442 (EU Threshold for goods and services) and up to £500,000	MAJOR For works	At least 3 written tenders	Executive Director/Assistant Director	12,16,17,18
Above £500,001 and up to EU Threshold	STRATEGIC For works	At least 4 written tenders	Cabinet or Delegated Approval	13,16,17,

(for works)				18,19
EU threshold (for works) and above	STRATEGIC For works	Public Contracts Regulations 2006 apply At least 4 written tenders	Cabinet or Delegated Approval	14,16,17, 18,19

- 8.4 Where the **contract** is a mix of goods, services and works advice must be sought from the **Head of Procurement** and or the **Head of Law** as to whether the **Regulations** apply.
- 8.5 Where electronic tendering is available it shall be used. Full details of the electronic tendering system and how it works can be found in the **Procurement Code**.

9 Waiver/Exemption of the Contract Rules

- 9.1 If a **Chief Officer** believes that goods, works or services are needed urgently by the **Council**, he or she may in writing waive or suspend the requirement to follow the **Rules** and other instructions to the extent necessary to remedy the urgent situation. Such waiver or suspension shall only apply where:
- 9.1.1 A situation of genuine urgency is perceived to exist; or
 - 9.1.2 Action is required to safeguard the **Council's** assets or interests; or
 - 9.1.3 Grants or other funding will be lost unless urgent action is taken.
- 9.2 The **Chief Officer** responsible for waiving or suspending any part of these rules or procedures shall provide a written report to the **Corporate Management Team** as soon as practicable detailing the **Rules** or procedures they have set aside and the reasons requiring these actions.
- 9.3 A **Chief Officer** shall not be required to seek **quotations** or **tenders** where (subject to compliance with Rule 4:
- 9.3.1. Goods must be purchased from a supplier holding exclusive rights of manufacture or supply and where no generic equivalent exists;
 - 9.3.2. Goods to be purchased are required by the **Council** as a partial replacement for or in addition to existing goods already purchased by the **Council** and when to obtain the goods from a supplier other than the supplier which supplied the existing goods would oblige the Council to acquire goods having different technical characteristics which would result in:
 - 9.3.2.1 Incompatibility between the existing goods and the goods to be purchased; or
 - 9.3.2.2 Disproportionate technical difficulties in the operation and maintenance of the existing goods.

- 9.3.3. Items whose price is controlled by trade organisations or Central Government regulations;
 - 9.3.4. Repairs or parts for existing plant or machinery provided by the original supplier;
 - 9.3.5. Hiring of performance artists or other suppliers of fine art exhibits; and
 - 9.3.6. Items to be obtained at a public auction, fair or market.
- 9.4 Before an **Authorised Officer** procures using any of the exemptions set out in Rule 9.3 above, they must where the **contract** is likely to exceed the **EU Threshold** seek advice from the **Head of Procurement** and/or **Head of Law** as to the application of the **Regulations. Authorised Officers** must:
- 9.4.1 Provide, wherever applicable, a written estimate of the anticipated cost to the **Chief Officer** responsible where the anticipated cost exceeds £25,000; and
 - 9.4.2 Ensure **contracts** with the suppliers or providers follow the **Rules** where applicable;
 - 9.4.3 Before items are purchased from a public auction, the **Chief Officer** shall first be informed in writing of:
 - 9.4.3.1 The quality, condition and provenance of each article, whose purchase is sought;
 - 9.4.3.2 The reason for seeking to purchase at a public auction, market or fair; and
 - 9.4.3.3 The anticipated value of the item if purchased by other means.
- 9.5 **Authorised Officers** attending an auction shall receive written instructions from the **Chief Officer** responsible for the service specifying:
- 9.5.1 The item or items for which they are to bid; and
 - 9.5.2 Requirements to inspect the item prior to the commencement of bidding; and
 - 9.5.3 The highest value which may be bid for the item or items.

10 Minor Contracts

- 10.1 “**Minor Contracts**” are contracts for goods works and services which exceed £10,000 but do not exceed £50,000.
- 10.2 **Minor Contracts** shall be authorised by the **Authorised Officers** or by any officer who holds authority to use the **Council’s** I-Procurement or ORACLE software up to the value of the proposed purchase.
- 10.3 **Officers** shall seek to obtain written quotations from at least **two suppliers** for all **Minor Contracts** whose value is anticipated to be between £10,001 and £50,000. In the event that there are not **two suppliers** interested in submitting a **quotation** following compliance with the requirements of Rule 7, then **quotations** shall be obtained from those **suppliers** who are willing to submit a **quotation**.
- 10.4 **Quotation** shall be sought using the procedure set out in Rule 15 below.

- 10.5 **Quotations** shall be returned to the **Authorised Officer** who shall open them. **Quotations** shall be kept safely and in confidence until they are assessed and accepted or rejected.
- 10.6 The **Authorised Officer** may accept one or more of the **quotations** received.
- 10.7 Where **quotations** have been received the **Authorised Officer** shall appoint one or more **suppliers** by providing them with the **Council's** official purchase order. Where appropriate, the **Authorised Officer** shall sign the official purchase order or authorise the order electronically through the **Council's** ORACLE or other electronic purchasing order processing system.
- 10.8 Wherever a **quotation** has been accepted a letter of appointment shall be sent to each **supplier** whose **quotation** has been accepted. This should be done as soon as possible after the **Council's** formal acceptance of the **quotation**.
- 10.9 The **contract** for **Minor Contracts** up to a value of £50,000 shall be evidenced by an official order generated from the **Council's** ORACLE accounts payable software and bearing a unique reference number.

11 Significant Contracts

- 11.1 "**Significant Contracts**" are contracts for goods, works or services which exceed £50,000 but do not exceed the current **EU threshold** (for goods and services).
- 11.2 An **Authorised Officer** shall take responsibility for the procurement of **Significant Contracts**. This **Officer** shall report regularly to a **Chief Officer**.
- 11.3 Formal sealed **tenders** shall be invited from at least **three suppliers** for **Significant Contracts**. In the event that there are not **three suppliers** interested in submitting a **tender** following compliance with the requirements to advertise in Rule 7, then a **tender** shall be obtained from those **suppliers** who are willing and able to submit a **tender**.
- 11.4 **Tenders** shall be sought, evaluated and awarded in accordance with Rules 16 and 17 below.
- 11.5 Sealed **tenders** shall be returned to the **Council** as required by the **Invitation to Tender**. They shall be held securely in the custody of the **Authorised Officer** and remain unopened until the time set for their opening.
- 11.6 **Tenders** for **Significant Contracts** shall be opened by the relevant **Head of Services** or by two **Officers** delegated in writing by that **Head of Service** to open such **tenders**. In cases where an electronic tendering system is used, the system used should have sufficient controls to prevent premature opening of the documents and post opening amendments. A suitable audit trail should be made available and only those **Officers** authorised to open the **tenders** should be able to access the mailbox created to receive the **tenders**.
- 11.7 The **Authorised Officer** may accept one or more of the **tenders** received. Where the value exceeds £100,000, letters of acceptance shall be signed by a **Chief Officer** responsible for the service.
- 11.8 **Significant Contracts** shall be evidenced by a written contract in a form approved by the **Assistant Director for Law and Constitutional Services**, which shall be signed by **Head of Service** responsible for the service on the **Council's** behalf and by an authorised signatory of the **contractor**.

12 Major Contracts

- 12.1 “**Major Contracts**” are contracts for goods, works or services which exceed the **EU Threshold** (for goods and services) but do not exceed £500,000.
- 12.2 The procurement of **Major Contracts** for goods and services shall follow the **Regulations**.
- 12.3 An **Authorised Officer** shall take responsibility for the procurement of **Major Contracts** in respect of works. This **Officer** shall report regularly to a **Chief Officer**.
- 12.4 Formal sealed **tenders** shall be invited from at least **three suppliers**. In the event that there are not **three suppliers** interested in submitting a **tender** following compliance with the requirements to advertise in Rule 7, then a **tender** shall be obtained from those suppliers who are willing and able to submit a **tender**.
- 12.5 **Tenders** shall be sought, evaluated and awarded in accordance with Rules 16 and 17 below.
- 12.6 Sealed **tenders** shall be returned to the Tenders – Postal/Courier and Filing Services Civic Centre. They shall be held securely and remain unopened until the time set for their opening.
- 12.7 **Tenders** for **Major Contracts** shall be opened by the relevant **Executive or Assistant Director** or by two **Officers** delegated in writing by that **Executive or Assistant Director** to open such **tenders**. In cases where an electronic tendering system is used, the system used should have sufficient controls to prevent premature opening of the documents and post opening amendments. A suitable audit trail should be made available and only those **Officers** authorised to open the **tenders** should be able to access the mailbox created to receive the **tenders**.
- 12.8 The **Chief Officer** responsible for the service area may accept one or more of the **tenders** received.
- 12.9 **Suppliers** appointed are to confirm acceptance of their appointment in writing. No work, other than the **supplier’s** off-site preparations should be commenced, nor any delivery of goods, materials or services accepted, until the **supplier** appointed has:
- 12.9.1 Formally accepted their appointment,
 - 12.9.2 Provided evidence of insurances to the satisfaction of the **Council’s Corporate Risk and Project Manager**; and
 - 12.9.3 Provided any agreed surety or bond to the **Council**.
- 12.10 **Significant Contracts** shall be evidenced by a written contract, in a form approved by the **Assistant Director for Law and Constitutional Services**, which shall be signed by **Executive Director** responsible for the service on the **Council’s** behalf and by an authorised signatory of the **Contractor**.
- 12.11 The **Authorised Officer** should create a regular monitoring report for the **Assistant or Executive Director** or Project Board responsible for the **contract**. This report should include up-to-date information on the **contract’s** performance and expenditure to date and the predicted out-turn. The report should highlight any areas of difficulty and propose remedial action.

13 Strategic Contracts

- 13.1 “**Strategic Contracts**” are contracts for goods, works or services which exceed £500,000.
- 13.2 The procurement of **Strategic Contracts** for goods and services shall follow the **Regulations**.
- 13.3 An **Authorised Officer** shall take responsibility for the procurement of **Strategic Contracts** in respect of works up to the **EU Threshold** (for works). This **Officer** shall report regularly to a **Chief Officer**.
- 13.4 Formal sealed **tenders** shall be invited from at least **four suppliers**. In the event that there are not **four suppliers** interested in submitting a **tender** following compliance with the requirements to advertise in Rule 7, then a **tender** shall be obtained from those **suppliers** who are willing to submit a **tender**.
- 13.5 **Tenders** shall be obtained, evaluated and awarded in accordance with Rules 16 and 17 below.
- 13.6 Sealed **tenders** shall be returned to the Tenders – Postal/Courier and Filing, Civic Centre. They shall be held securely and remain unopened until the time set for their opening.
- 13.7 **Tenders** for **Strategic Contracts** shall be opened by the **Cabinet Member** to whose portfolio the project or purchase pertains or in the event of their unavailability another **Cabinet Member** in the presence of the **Monitoring Officer** or any **Officer** nominated in writing by him or her for this purpose. In cases where an electronic tendering system is used, the system used should have sufficient controls to prevent premature opening of the documents and post opening amendments. A suitable audit trail should be made available and only those **Officers** authorised to open the **tenders** should be able to access the mailbox created to receive the **tenders**.
- 13.8 One or more **tenders** shall be accepted following a resolution of the **Cabinet**. **Cabinet** may resolve to delegate acceptance of **tenders** for individual **contracts** to a **Chief Officer**.
- 13.9 The **Executive or Assistant Director** responsible shall sign all letters of appointment.
- 13.10 **Suppliers** appointed are to confirm acceptance of their appointment in writing. No work, other than the **supplier’s** off-site preparations should be commenced, nor any delivery of goods, materials or services accepted, until the **supplier** appointed has:
- 13.10.1 Formally accepted their appointment;
 - 13.10.2 Provided evidence of insurances to the satisfaction of the **Council’s Corporate Risk and Project Manager**; and
 - 13.10.3 Provided any agreed bond or surety to the **Council**.
- 13.11 **Strategic Contracts** shall be evidenced by a written contract in a form approved by the **Assistant Director for Law and Constitutional Services**. All **Strategic Contracts** exceeding £500,000 shall be made under the **Council’s** seal.
- 13.12 The **Authorised Officer** should create a regular monitoring report for the **Assistant or Executive Director** and any Project Board responsible for the **contract**. This report should include up-to-date information on the **contract’s** performance and expenditure to date and the predicted out-turn. The report should highlight any areas of difficulty and propose remedial action.

14 Contracts subject to the Regulations

- 14.1 Where the **total contract value** of any **Major** or **Strategic Contract** exceeds **EU Threshold** the **Regulations** must be complied with.
- 14.2 The **Regulations** are lengthy and detailed and only the principal requirements are set out in the **Rules**. Advice must be sought from the **Head of Procurement** and or the **Head of Law** before starting any procurement which is likely to be subject to the **Regulations**.
- 14.3 The **Regulations** specify how the contract shall be advertised, the types of the procedure to be used, timescales, evaluating the **tender** and how the contract shall be awarded (including mandatory debriefing and a standstill period). Failure to adhere correctly to the **Regulations** may result in legal proceedings being taken against the **Council**.
- 14.4 The **Rules** shall apply to contracts subject to the **Regulations** in so far as they do not conflict with the **Regulations**.
- 14.5 For the avoidance of doubt, it is not possible to waive all or any part of the **Regulations**.

15 Quotations

- 15.1 **Authorised Officers** shall seek to obtain written **quotations** from at least **two suppliers** for all **Minor Contracts** whose value is anticipated to be between £10,001 and £50,000. **Authorised Officers** shall:
- 15.1.1 Seek to obtain **quotations** only from suppliers known to be able to provide the goods works and services required;
 - 15.1.2 Seek all **quotations** at a similar time, providing a written specification;
 - 15.1.3 Allow a reasonable time for **suppliers** to provide **quotations**;
 - 15.1.4 Receive **quotations** by letter, facsimile or email; and
 - 15.1.5 Evaluate all **quotations** received.
- 15.2 Subject to the **Regulations** **Authorised Officers** shall retain **quotations** in accordance with document disposal guidelines, ensuring they remain available for inspection by the **Chief Internal Auditor** or any representative of the **Council's** external auditor.

16 Tenders

- 16.1 **Tenders** shall be sought from **suppliers** who have responded to any advert placed by the **Council** in accordance with Rule 7 of the **Rules** and may be capable of being awarded the **tender**.
- 16.2 All **suppliers** invited to tender for **Significant, Major or Strategic contracts** shall be provided at no cost to themselves with identical **Invitation to Tenders** which shall specify:
- 16.2.1. The date and time by which **tenders** are to be received, and the address to which they are to be delivered;
 - 16.2.2. All documents to be completed, which shall include health and safety and equality and diversity questionnaires;

- 16.2.3. Instructions for the **tender's** return; and
 - 16.2.4. Whether **tenders** may be returned electronically in the event an electronic system is available and approved for use.
- 16.3 Information supplied shall include but not be limited to:
- 16.3.1. Full specification of all goods works or services to be provided;
 - 16.3.2. Intended duration of the proposed **contract**;
 - 16.3.3. Evaluation criteria to be used in assessing **tenders**; and
 - 16.3.4. The method by which any errors in **tenders** will be treated.
- 16.4 Those seeking a **tender** shall provide to each **tenderer**:
- 16.4.1. A copy of every document to be completed and instructions needed for its completion;
 - 16.4.2. The summary form of **tender** to be completed and signed by the **tenderer**; and
 - 16.4.3. A label for the envelope in which the **tender** is to be returned on which should be written the name of the proposed **contract** and the Directorate to which the **contract** relates or details of how to return the **tender** electronically.
 - 16.4.4. A copy of the contractual terms and conditions to which the **tenderer** will be bound if they are awarded the **tender**.
- 16.5 Where **tender** documentation is likely to be bulky, **tenderers** should be advised that the envelope is to be affixed to the package containing the **tender**.
- 16.6 Each **tender** shall be informed that:
- 16.6.1 the **Council** does not bind itself to **contract** with the **supplier** offering the cheapest **tender** or with any **supplier**;
 - 16.6.2 that the **Council** will not be liable for any costs or expenses whatsoever incurred by the **tenderers** in respect of the preparation and submission of their **tender** and that the **Council** shall be at liberty to cancel the **tender** process at any time and shall not be liable for any costs or expenses whatsoever incurred by the **tenderer** as a result of such cancellation;
 - 16.6.3 that it will not consider any **tender** which is not accompanied by all **tender** documents;
 - 16.6.4 that it may not consider any **tender** received after the latest date and time;
 - 16.6.5 that it may not consider any **tender** bearing any mark or label identifying the tenderer, whether made by the sender, an agent or carrier;
 - 16.6.6 that it will not consider any **tender** offering a variant offer, except where it accompanies a compliant offer unless stated otherwise; or
 - 16.6.7 that it will not consider any **tender** requiring a form of contract other than that approved by the **Council's Assistant Director of Law and Constitutional Services**.

- 16.7 Subject to the **Regulations Authorised Officers** shall retain tenders in accordance with document disposal guidelines, ensuring they remain available for inspection by the **Chief Internal Auditor** or any representative of the **Council's** external auditor.

17 Evaluation and Award of Tenders

- 17.1 **Tenders** shall be assessed:

- 17.1.1 As soon as possible after they have been opened;
- 17.1.2 In line with evaluation criteria set out in the **Invitation To Tender**; and
- 17.1.3 By **Authorised Officers** or duly appointed consultants.

- 17.2 Assessment shall be restricted to:

- 17.2.1 Information contained within the **tenders**;
- 17.2.2 Further information requested from **tenderers** following initial assessment of **tenders** and any clarification required; and
- 17.2.3 Material provided at an interview or presentation (if available).

- 17.3 The **Authorised Officer** responsible for assessment of the **tenders** shall:

- 17.3.1 Examine all compliant offers and variant or alternative offers where applicable;
- 17.3.2 Deal with errors in **tenders** using the method set out in the **tender** specification;
- 17.3.3 Seek clarification and additional detail from each **tenderer**;
- 17.3.4 Undertake financial evaluation of each **tenderer**; and
- 17.3.5 Where appropriate invite **tenderers** to attend interviews and make presentations.

- 17.4 The Authorised Officer may also:

- 17.4.1 Seek additional information from **tenderers** in writing where that is relevant or needed to remove ambiguities from **tenders**. Where this is provided by telephone, **Officers** should keep a log of the questions asked and answers given;
- 17.4.2 Create a small panel of appropriate **Officers** to interview some or all **tenderers**; and
- 17.4.3 Interview **tenderers** following proper planning. **Tenderers** to be called should receive adequate details of what is required and sufficient time to prepare answers and presentations. Questions, answers and marks awarded should be written and retained.

- 17.5 The **Authorised Officer** shall produce an evaluation report to the **Chief Officer** who is to accept one or more **tenders**. In respect of **Strategic Contracts** this report shall be made available to the **Cabinet**, or any Project Board prior to their accepting one or more **tenders**.

- 17.6 The evaluation report shall offer clear, costed recommendations, to the **Chief Officer** responsible for accepting the **tender**.

18 Form of Contract

- 18.1 The **Council** shall make **contracts** with **suppliers** appointed in accordance with the **Rules** and with the requirements of the **Financial Regulations** and the **Procurement Code**.
- 18.2 Every **contract** made by the **Council**, whether by way of official purchase order, or by formal written agreement, shall require:
- 18.2.1 Goods, works or services to comply with British Standard or equivalent European Union standard wherever these exist;
 - 18.2.2 Evidence that suppliers maintain sufficient insurance as may be required by the **Corporate Risk and Project Manager** throughout the duration of the **contract**;
 - 18.2.3 Compliance with Contract Design and Management (CDM) regulations wherever these apply;
 - 18.2.4 An appropriate health and safety policy;
 - 18.2.5 An acceptable equality policy in respect of race, gender, disability, age, sexual orientation and religion/belief;
 - 18.2.6 A signed statement agreeing that the **Council** may revoke the **contract** in the case of corrupt activity or behaviour by the **contractor**; and
 - 18.2.7 Where applicable a clause setting out when any bond or surety shall be returned and retention monies released.
- 18.3 All official purchase orders and written contracts shall:
- 18.3.1 Describe the goods, works or services to be provided;
 - 18.3.2 State the price to be paid and when it shall be paid, along with any discounts or other deductions; and
 - 18.3.3 Indicate the time or times, within which the **contract** is to be performed, including any terms and conditions under which the **contract** may be extended;
 - 18.3.4 Include any terms and conditions set out by the **Council** or agreed with the supplier;
 - 18.3.5 Include provisions to deal with any disputes which may arise;
 - 18.3.6 Where appropriate a clause whereby liquidated damages will be paid to the **Council** by the **contractor** wherever the provision of goods works or services is not completed within the time set out in the contract;
 - 18.3.7 Fulfil the requirements of the **Council's Financial Regulations**; and
 - 18.3.8 Comply with the requirements of the **Council's ORACLE** accounts payable system.
- 18.4 In all cases the official purchase order or written contract document shall be in a form approved by the **Assistant Director of Law and Constitutional Services** except where:
- 18.4.1 A **contract** is to be made with a statutory undertaking or utility company;
 - 18.4.2 Government purchasing agreement terms and conditions are to be used;

- 18.4.3 Terms and conditions are agreed by a purchasing consortium which includes the **Council**;
- 18.4.4 A Central Government office requires their terms and conditions are followed, or
- 18.4.5 The **Assistant Director of Law and Constitutional Services** agrees use of the **contractor's** terms and conditions.

19 Execution of Contracts under seal

- 19.1 **Authorised Officers** requiring a written **contract** to be made under the **Council's** seal shall provide the following:
 - 19.1.1 Written confirmation of compliance with the **Rules** and the exercise of authority by a **Chief Officer**;
 - 19.1.2 For **Strategic Contracts** a copy of the **Cabinet** decision accepting the tender and awarding the **contract** or delegated authority to an Officer to accept the **tender** and award the **contract**;
 - 19.1.3 Any other documents required by the **Assistant Director of Law and Constitutional Services**, to enable a **contract** to be sealed.
- 19.2 The seal is applied by the **Assistant Director for Legal and Constitutional Services** or his or her nominated officer. The application of the seal is an administrative function and not a legal review of the **contract** or the tendering exercise.
- 19.3 Where a **contract** has no consideration (no discernable money is being spent by the parties) the **Council's** seal shall be used.

20 Register of Contracts

- 20.1 **Executive Directors** shall keep a register of all contracts subject to the **Rules** entered into by that Directorate ("**the Register of Contracts**"). **Authorised Officers** shall ensure **contracts** for which they are responsible are entered into this **Register of Contracts**: this includes any amendments or variations. The form required to enter the contract in the **Register of Contracts** can be found in the **Procurement Code**. The **Register of Contracts** shall be available for inspection by the **Chief Internal Auditor** at all reasonable times.
- 20.2 A copy of the form entering the contract in the **Register of Contacts** sent to the **Chief Internal Auditor the Assistant Director for Law and Constitutional Services** and **the Head of Procurement**.
- 20.3 A copy of every signed **contract and every subsequent amendments/ variations thereto** entered into by the **Council** will be retained by the service area to which it relates. Failure to do this will be regarded as a serious matter which may be considered gross misconduct and could lead to disciplinary action and/or dismissal.
- 20.4 The original **contract** and any subsequent amendments/ variations thereto shall be forwarded to the **Head of Law**, and then kept securely in the **Council's Central Records**.

21 Contract Management

- 21.1 An **Authorised Officer** shall:
- 21.1.1 Take responsibility for communications between the **Council** and the **contractor**;
 - 21.1.2 Ensure the **contractor** complies with the **contract's** terms, provides appropriate insurances, and complies with health and safety and other legislation;
 - 21.1.3 Represent the **Council** at meetings with the **contractor** and stakeholders;
 - 21.1.4 Report on the **contract** progress to **Chief Officers**, any Project Board or **Cabinet** as appropriate and its completion; and
 - 21.1.5 Examine the **contractor's** final account.
- 21.2 The **Authorised Officer** shall meet with the **contractor**, the **Council's** client service area and other interested parties both before the start of the **contract**, at regular intervals throughout its duration and following its completion. Minutes of these meetings should provide an accurate record of the **contract's** progress.
- 21.3 The **Authorised Officer**, or a duly appointed consultant acting on the **Council's** behalf, may instruct the **contractor** to vary the goods, works or services provided as follows:
- 21.3.1 The variation is instructed in accordance with the terms of the **contract**;
 - 21.3.2 Variation orders are created in writing, and are provided to the **contractor**, with a copy retained by the **Authorised Officer**;
 - 21.3.3 All variation orders are created at the time the variation is instructed, and
 - 21.3.4 Variation orders indicate the price, wherever possible in accordance with prices offered in the **contractor's tender**; and
 - 21.3.5 All contingency items and provisional sums are removed once the works commence.
- 21.4 **Chief Officers** must approve all variations whose value exceeds £50,000. Where variations require additional funding or a change to the **Council's** capital programme, the **Chief Finance Officer** shall be consulted prior to the variation being approved.

22 Trading externally

- 22.1 **Executive and Assistant Directors** shall sell goods works or services only after consultation with the Assistant Director of Legal and Constitutional Services.
- 22.2 Paragraph 22.1 is subject to:
- 22.2.1 The provision of such trading activities and the manner in which it is provided is lawful;
 - 22.2.2 A written contract is entered into for the provision of the goods works or services;
 - 22.2.3 Where it is a legal requirement for Council to approve the fees or charges such approval is sought; and

- 22.2.4 Where the anticipated income to be raised exceeds £500,000 in any financial year the appropriate Executive Director will first seek approval of Cabinet.

23 Disposal of Land and property

- 23.1 The **Executive Director for Regeneration** shall be responsible for acquisitions and disposals of land, whether by way of purchase sale or lease.
- 23.2 Before land is offered for sale or lease, an **Authorised Officer** shall arrange land sales and leases so that the **Council** obtains best consideration. An **Authorised Officer** shall obtain a qualified valuer's estimate of the likely sale price shall be obtained.
- 23.3 Prior to the making of a compulsory purchase order in order to acquire any land or property, a written report shall be presented to the **Cabinet**.
- 23.4 Where there is no provision for the cost of acquisition or redevelopment of the land in the **Council's** approved Capital Programme, a Capital Finance Report shall be considered by the **Cabinet** and by the **Council** if appropriate.
- 23.5 The written approval of the **Cabinet** shall be obtained prior to any advertisement being placed or contract executed where:
- 23.6.1 In the reasonable opinion of the Head of Property Services the value of land to be acquired or disposed of by way of sale is estimated to exceed £500,000; or
 - 23.6.2 In the reasonable opinion of the Head of Property Services leases of land or property are proposed whose value is anticipated to exceed £50,000 during any complete year.
- 23.6 Where **Cabinet** authority is not required, the **Executive Director for Regeneration** shall approve in writing:
- 23.7.1 Any purchase or sale whose price is not anticipated to exceed £500,000 in value; and
 - 23.7.2 Proposed leases whose value is not anticipated to exceed £50,000 during any complete year.
- 23.7 The Head of Property Services shall agree:
- 23.8.1 Any purchase or sale whose price is not anticipated to exceed £100,000 in value; and
 - 23.8.2 Proposed leases whose value is not anticipated to exceed £10,000 during any complete year.
- 23.8 Prior to disposal of land or property, the **Executive Director for Regeneration** in consultation with the Strategic Property Board, shall determine whether:
- 23.9.1 The land or property shall be disposed of to one particular person;
 - 23.9.2 Formal sealed tenders are to be obtained and the land transferred to the person providing the highest offer strictly in accordance with the terms of their **tender**;
 - 23.9.3 Sealed offers leading to negotiations for the sale to the person making the highest bid under mutually agreeable terms; or
 - 23.9.4 The land shall be sold by public auction.

24 Trading within the Council

- 24.1 The **Council** has a number of internal service providers who may be able to supply the goods works and services that are required. All purchasing must achieve **Best Value** and the use of the internal service provider must be part of that consideration.

25 Definitions and Interpretation

- 25.1 In the Rules the following terms shall have the following meanings:

“Approved List”	A list of suppliers of goods works and services, drawn up or approved for use by Chief Officers, of persons ready and capable of supplying goods works and services in accordance with the procedure set out in the Procurement Code
“Authorised Officer”	An Officer of the Council who has the authority to deal with the contract in question given to the relevant Chief Officer in writing <u>and</u> who has received the required procurement training
“Best Value”	The duty, which Part 1 of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by Council
“Cabinet”	The Council Executive
“Cabinet Member”	An elected member of the Cabinet
“Central Purchasing Body”	A contracting authority which acquires goods or services intended for one or more contracting authority in accordance with the Regulations
“Chief Finance Officer”	As defined in the Constitution
“Chief Internal Auditor”	As defined in the Constitution
“Chief Officer”	The Council’s Executive and Assistant Directors and Heads of Service
“contract”	Any contract for the execution of works or the supply of goods and services and “contracts” shall be interpreted accordingly
“contractor”	A person who is contracted by the Council to supply goods works or services

“Corporate Procurement Strategy”	The Council’s current published strategy for procurement as created amended and approved from time to time by the Council’s Corporate Management Team
“Corporate Risk and Project Manager”	The relevant paid service manager
“Council”	Walsall Metropolitan Borough Council
“Council Constitution”	The constitution of the Council which sets out how the Council will operate, how decisions are made and the procedures which will be followed
“E U Rules”	The European Union Directives which have been embodied in the Regulations
“E U Threshold”	The contract value at which the EU Rules and the Regulations apply and which are set every two years on 1 st January. The values as at 1 st January 2010 are: <ul style="list-style-type: none"> • Goods and services - £156,442 • Works - £3,927,260
“Financial Regulations”	The procedures to be followed when planning undertaking or reviewing any matter relating to the management of the Council’s finances which form part of the Council’s Constitution
“Framework Agreement”	An Agreement between one or more authorities and one or more economic operators the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and where appropriate the quantity envisaged and “Framework Agreements” shall be interpreted accordingly
“Grant”	A gift or donation under which Council giving it has no right to receive anything in return but may attach terms and conditions specifying how the grant is to be spent.
“Grantor”	The organisation giving a Grant to the Council.
“Head of Law”	The relevant paid head of service for non-contentious matters
“Head of Procurement”	The relevant paid head of service
“Invitation to Tender”	The invitation to tender documents in the form

	required by the Rules
“Officer”	An Officer of the Council
“opening” when used in connection with tenders	Both manually and electronically
“Partnership”	An agreement between the Council and any public or private organisation to deliver a specific project or services
“Procurement Code”	The Council’s detailed guide for Authorised Officers on the procurement procedures as created amended and approved from time to time by the Council’s Corporate Management Team
“Project Board”	A board of Council Officers formed to oversee the tendering of both Strategic Contracts
“Quotation”	A quotation of price (and any other relevant) without a formal issue of an Invitation to Tender
“Regulations”	The Public Contract Regulations 2006 (as amended)
“Rules”	The Council’s Contract Procedure Rules 2010
“Scheme of Delegations”	As defined in the Constitution
“supplier”	A person who supplies goods works and services
“tender”	A formal proposal issued in response to an Invitation to Tender
“tenderer”	Any person who submits a formal tender in response to an Invitation to Tender
“Think Walsall”	The Council’s commitment to maximise the benefits to citizens business and third sector organisations through its procurement activities. When undertaking a tender process the inclusion of questions and contractual clauses reflecting these aims must be considered. Further details are details are included within the Procurement Code
“total contract value”	The whole value or estimated value(in money or equivalent value for a single purchase or disposal calculated as follows:

	<ul style="list-style-type: none"> • Where the contract is for a fixed period by taking the total price to be paid or which might be paid during the whole of the period; or • Where the contract is for one year and may continue until terminate by notice the total price to be paid or which might be paid over the first three years
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25.2 Any terms which are capitalised but not defined above shall have the meaning given to it in the **Council's Constitution**.

25.3 The **Assistant Director for Legal and Constitutional Services** shall compile and maintain the **Rules** and shall advise on their implementation and interpretation. In the case of ambiguity regarding their interpretation the **Assistant Director for Legal and Constitutional Services** shall determine the correct application and interpretation of the Rules.

25.4 Delegated Authority is given to **Assistant Director for Legal and Constitutional Services** and the **Chief Finance Officer** in consultation with the relevant **Cabinet Member** to update the **Rules** as appropriate to meet future and operational requirements to ensure the aims and principles of the **Rules** are given full effect.