

**Report to:** Overview and Scrutiny Committee  
**Date:** 6 April 2009  
**Subject:** Tendering  
**Report of:** Select Committee No 3  
**Contact officer:** Beverley Smith (01942 828523)

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**Purpose / summary:** To report the findings of Select Committee 3 investigations into tendering within Wigan Council and propose a set of recommendations for improvement / enhancement.

**Alternative options considered and reason for selecting the one recommended:**

**Recommendation / decision:** That Overview & Scrutiny Committee support the recommendations

**Key Decision:** This report does not involve a key decision. The decision made as a result of this report will be published within **48 hours**

**Risks / Implications:**

Financial:	none
Staffing:	none
Policy:	none
Equal Opportunities - Has a Diversity Impact Assessment been conducted?	Not applicable at this time but impact would need to be considered as part of any implementation plan.
Wards affected:	All

**Property Implications – Does the proposal involve a reduction, addition or change to the Council’s asset base or its occupation?**

No

**If yes, have the property implications been agreed with the Corporate Property Officer?**

**Does this proposal have significant implications for the Council and the local**

**population?**

A diversity impact assessment is not necessary at this stage, however, equality and diversity implications have been considered when producing this report.

**Does this proposal involve a new policy or procedure or significant changes to an existing policy or procedure?**

A diversity impact assessment is not necessary at this stage, however, equality and diversity implications have been considered when producing this report.

Has the Service Director - Borough Solicitor confirmed that the recommendations within this report are lawful and comply with the Council's Constitution? **N/A**

Has the Service Director - Corporate Services confirmed that any expenditure referred to within this report is consistent with the Council's budget? **N/A**

Are any of the recommendations within this report contrary to the Policy Framework of the Council? **N/A**

\* delete which applicable

**For Cabinet reports only :**

Categorisation of the report:	<b>X</b>
Discussion leading to a decision	
Monitoring	
Sharing for corporate understanding	

	<b>X</b>
Discussion	
Decision	
Information	

**Tracking/Process:**

	Consultation	Ward Members	Partners
Panel	Overview & Scrutiny	Cabinet	Council
	26 February 2009		

Proper Officer Sue Johnson

Date 27 March 2009

## **1.0 Background:**

- 1.1 Effective tendering is an integral part of ensuring that Council services are provided at the lowest possible cost whilst giving the highest possible levels of service.
- 1.2 The Overview and Scrutiny Committee considered that a review of how tendering operates within the Council was necessary. Select Committee No. 3 was charged with this review.
- 1.3 The review was carried out to identify the effectiveness of the Council's tendering processes and procedures in respect of relevance, probity and efficiency.
- 1.4 This Select Committee first convened on 16<sup>th</sup> September 2008.

## **2.0 Proposals**

- 2.1 Members sought to gain a broad understanding of tendering processes and procedures.
- 2.2 To get a better understanding, there was a need to have a clear overview of tendering; what it is, who is involved and guidance on the rules that are applicable.
- 2.3 There was a need for a clear understanding of how tendering operates in the Council along with a study of tendering processes in other public bodies and private sector organisations.
- 2.4 During the process the Select Committee met with, or spoke to, key staff within the Council who have responsibilities for tendering; along with staff from other Councils, the National Health Service and various private sector organisations.
- 2.5 The Select Committee also examined the Councils and other organisations Contract Procedure Rules and various tender documents.

## **3.0 Alternative options considered and reason for the recommended option:**

N/A

## **4.0 Conclusions:**

- 4.1 The Select Committee concluded that tendering within the Council is carried out in a fair and proper manner; that tender exercises are carried out in line with the Council policy as set down in the Contract Procedure Rules and that due consideration is given to value for money.
- 4.1 Recommendations were drawn up by the Select Committee to enhance the tendering processes and procedures across the Council, some of which have already been implemented.

OVERVIEW AND SCRUTINY  
SELECT COMMITTEE NO 3  
REPORT ON TENDERING

CLLR M.WHITESIDE  
CHAIR  
23<sup>rd</sup> March 2009

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## **1. EXECUTIVE SUMMARY**

Wigan Council recognises that effective tendering is an integral part of ensuring that Council services are provided at the lowest possible cost whilst giving the highest possible levels of service.

The Overview and Scrutiny Committee considered that a review of how tendering operates within the Council was necessary. Select Committee No. 3 was charged with this review.

The review was carried out to identify the effectiveness of the Council's tendering processes and procedures in respect of relevance, probity and efficiency.

Select Committee No. 3 chose to interview key personnel, carry out a comparison exercise and study relevant literature when compiling this report.

Personnel were identified as senior managers within the departments that had a major role in influencing or carrying out tendering processes. In addition the Select Committee also felt it was pertinent to interview or correspond with key personnel from other public bodies and the private sector.

The personnel interviewed were; the Corporate Procurement Manager, the Corporate Procurement Officer, the Head of Audit and Risk Management, the Principal Contracts Auditor, The Head of Legal Services, the Street Lighting Manager, the Service Manager from Adult Services (Contracts) and the Head of Procurement at Wrightington, Wigan and Leigh NHS Foundation Trust. In addition, telephone interviews were held with several departmental procurement officers, other local authority Procurement Heads and Procurement Managers from private sector organisations.

The Select Committee identified numerous key findings which are detailed on page 19.

Several recommendations were drawn up by the Select Committee for improving the tendering processes, some of which have already been implemented by the Council. These recommendations can be found on page 21 of this review.

## 2. AIMS AND OBJECTIVES

The aims and objectives of the review were as follows: -

- A. Explore and understand current tendering practices and procedures and compare them with other public bodies and private organisations with a view to identifying the following:
  - I. Are current practices and procedures relevant or are changes needed to embrace current best practice?
  - II. Do current practices and procedures cover the essential principles of probity, in respect of : -
    - Fairness and impartiality;
    - Use of a competitive process;
    - Consistency and transparency;
    - Security and confidentiality;
    - Identification and resolution of conflicts of interest, and
    - Compliance with legislative obligations and Government policy (as they apply to tendering).
- B. Are there sufficient effective resources and skills in place to conduct tender exercises efficiently and effectively and verify that the time spent on tendering is relevant in respect of resources used?
- C. Do current tender exercises result in securing goods, services and works that best meet the needs of users and the local community as set out in the Community Plan and the Corporate Plan?

### **3. BACKGROUND AND METHODOLOGY**

In order to gain a better understanding the Select Committee needed a clear overview of tendering; what it is, who is involved and guidance on the rules that are applicable.

In addition there was a need for a clear understanding of how tendering operates in the Council along with a study of tendering processes in other public bodies and private sector organisations.

There follows an overview of the Select Committee's studies.

#### **3.1 BACKGROUND TO TENDERING**

Tendering is the process of acquiring bids from suppliers or contractors for the acquisition of goods, works or services. In the Council this usually carried out by a formal process that includes the following steps: -

Identification of need

- I. Assessment of budget required
- II. Identification of suitable tenderers (including, when necessary, advertising or pre-qualification)
- III. Sending out the tender documents (invitation & instructions to tenderers, the specification, terms and conditions of the contract and any other relevant documents)
- IV. Receiving and opening the tenders
- V. Assessment of the tenders
- VI. Short-listing for further clarification / negotiation
- VII. Deciding on winning bid (including reporting to relevant levels of authority)
- VIII. Contract award (which includes tender debrief to unsuccessful tenderers)
- IX. Contract management / performance monitoring

When carrying out the above process the Council must abide by the rules set out by central government and the European Union which detail how tendering should be carried out in the public sector.

Local Authorities along with all other public sector bodies are charged with ensuring that tendering exercises are carried out within the legal framework set out by national Government and European Law (see 3.2 below) as well as ensuring that the best possible value is gained when spending public money.

Also applicable to all public spending, irrespective of value, is the European Treaty which does not provide specific rules for procurement but does provide 3 fundamental principles: -

- non-discrimination on grounds of nationality;
- freedom of establishment (allowing individuals and legal entities from one Member State to establish a presence in other Member States);
- freedom to provide services (allowing individuals and legal entities from one Member State to provide services in other Member States).

The main principle is the one of non-discrimination, which is often used to disallow any local supply agreements.

The Select Committee recognises that tendering is a complex process with rigid rules and that it can be a very expensive process for all parties. They further recommend that needs are assessed fully and that a strong; incontestable specification should be drawn up before any tendering exercise is carried out to ensure that the requirement is met in full.

## **3.2 CURRENT TENDERING POLICIES AND PROCEDURES**

### **3.2.1 Rules - Contract Procedure Rules**

The rules regarding tendering within the Council are set out in the Contract Procedure Rules, which form part of the Council's Constitution.

The Contract Procedure Rules detail the tendering regime that must be followed when procuring goods, services or works on behalf of the Council. The process to be followed is dependent on the monetary value of the goods, services or works required. They are controlled by Legal Services, monitored by the Audit Department and are deployed by all departments, who under devolved responsibility undertake procurement activity. The Procurement and Performance Team (Procurement Team); which is headed by the Corporate Procurement Manager, has an over-arching responsibility for ensuring that the rules are relevant and up to date with current best practice. In addition they must ensure that the rules align with European Procurement Directives and central Government procurement initiatives.

A process flowchart is detailed at Appendix 1, which sets out the tendering requirements based on contract value.

In essence all procurement activity which results in a contract (or agreement), or series of contracts with a value of £5000 or more

must go through a competitive process unless an exception to Contract Procedure Rules is granted (this process is detailed at Appendix 2). Tendering is carried out subject to the following values: -

£5000 to £150,000

i) 3 written Quotes

Over £150,000

ii) Open tendering – following tender notification in local press / trade publication, or

iii) Selective tendering – restricted to supplier / contractors who have been approved to appear on a standing list, Appendix 3 details how the standing lists operate within the certain departments of the Council (as drawn up between Environmental Services, Business support Services and the Procurement Team).

In addition the rules set out how many tenders to invite, where tenders must be returned and who is responsible for tender opening.

Of the departments consulted, all have indicated that they are happy to work within the rules set out and that they do not have any major issues in complying with them.

The Select Committee believes that the current rules are sufficient but further recommends that the Procurement Team along with Legal Services review the tendering thresholds on a regular basis to ensure that they align with best practice advice from the Audit Commission, the Treasury, the OGC or the North West Improvement and Efficiency Partnership (NWIEP).

The Select Committee is happy with the protocols that have been put in place regarding the operational use of the select lists and recommend that these are adopted by all departments and partner organisation using the lists. In addition these protocols should be used as the blueprint for any other department compiling select lists.

The European Procurement Directives, which govern how all public sector procurement exercises are carried out within the European Union, take precedence over any rules set out either by local authorities or central government.

### 3.2.2 The European Procurement Rules

The European Union (EU) Procurement Directives and the Regulations that implement them in the UK, set out the law on public procurement. Their purpose is to open up the public procurement market and to ensure the free movement of goods and to give member states access to some service contracts (exceptions apply) and major civil engineering or complex works contracts within the EU.

The rules apply to most purchases by public bodies, which are above set monetary thresholds. They cover all EU Member States and, because of international agreements, their benefits extend to a number of other countries worldwide.

Where the Regulations apply, the Council must advertise contracts in the Official Journal of the European Union (OJEU) and tendering processes must follow one of the four prescriptive tendering procedures, which are detailed below. The rules are enforced through Member States' courts, and the European Court of Justice (ECJ).

There are 4 EU Tendering Procedures, as follows: -

- the **open procedure**: through which all those interested, may respond to the advertisement in the OJEU by tendering for the contract;
- the **restricted procedure**: through which a short list is made of those who respond to the advertisement in the OJEU and only the short-listed organisations are invited to submit a tender for the contract. This allows purchasers to avoid having to deal with an overwhelmingly large number of tenders;
- the **competitive dialogue procedure**: following an advertisement in the OJEU and a selection process, the authority then enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender; and
- the **negotiated procedure**, through which a purchaser may select one or more potential bidders with whom to negotiate the terms of the contract. The negotiated procedure may or may not require an advertisement in the OJEU (legal advice should always be sought before using this process). An example is when, for technical or artistic reasons or because of the protection of exclusive rights, the contract can only be carried out by a particular supplier or contractor.

The Council has a free choice of whether to use the open or restricted procedure when contracts are covered by the rules. The open procedure tends to be applied to simple, low risk procurement activity; whereas the restricted procedure is used to allow the receipt of tenders from pre-selected organisations who have proven that they have the capability to carry out the contract. The Competitive Dialogue Procedure is only used on complex procurements where the open or restricted procedure could not apply. In Wigan it was used for the procurement of the Joint Service Centre. The Negotiated Procedure is only available for use in a very limited number of circumstances. Appendix 4 shows the process flowcharts of the procedures and illustrates how they fit in with the Councils Contract Procedure Rules.

It is important to choose the correct procedure for the tender, as tendering can be a costly and time-consuming process for all concerned.

In addition to rules on advertising, thresholds, and time-tables; the regulations also give specific guidance on non-discrimination in respect of specifications, evaluation criteria and post tender negotiation, as well as outlining a stand-still period of 10 days at the contract award stage. This standstill period is to allow unsuccessful tenderers to challenge the tender process, firstly with the authority, then, if the grievance is not settled, through the courts.

Having considered the complexity of the European rules, the Select Committee recommends that the Procurement Team (along with Legal Services where necessary) should be consulted before any department carries out a tender exercise that may be required to operate within the OJEU process.

### 3.2.3 Other rules and regulations

In addition to the above, some grant funded or government led initiatives may have further stipulations regarding tendering. The rules governing these initiatives are often more restrictive than the Council's, but should never require an organisation to circumvent the EU rules. They may require 5 written quotes for a certain value (even for individual contracts under £5000) or may request stakeholder involvement.

When departments are negotiating for grant / Government / EU initiative monies, the Select Committee recommends that the tendering requirements should be discussed with the Procurement Team and a procurement strategy should be developed for the scheme to ensure compliance.

### **3.3 THE ROLE OF THE CORPORATE PROCUREMENT TEAM**

Procurement (and therefore tendering) has been at the forefront of the Government's strive to ensure that public money is being spent wisely. Numerous initiatives have been the focus of Government over the past several years to put procurement on the agenda of all Local Authorities, such as:

- I. Gershon Report – which focuses on making the best use out of the resources available;
- II. National Procurement Strategy for Local Government which sets out specific measures to improve all areas of Local Authority procurement;
- III. Rethinking Construction/Constructing Excellence, which concentrates its objectives on achieving radical improvements in the design, quality, customer satisfaction and sustainability of UK construction;
- IV. The Comprehensive Spending Reviews, under which HM Treasury set firm and fixed three-year departmental expenditure limits and through public service agreements, define the key improvements that the public can expect from these resources;
- V. The Glover Report which centres on opening public sector tendering to Small & Medium Enterprises (SMEs) with specific focus on electronic tendering;
- VI. The National Improvement and Efficiency Strategy which focuses on the joint agreement of improvement and development priorities between local and central government and the streamlining and devolving of resources to meet those priorities.
- VII. National Sustainability Action Plan which outlines the key action points to use procurement to support wider social, economic and environmental objectives.

These are just a few of the requirements and all of them focus on improving procurement methods to result in better management of the public purse. The Council embraces all of these within its procurement strategy. This strategy is written, managed and implemented by the Corporate Procurement Manager.

The Corporate Procurement Manager heads a team of procurement officers and management accountants - the Procurement and

Performance Team - which is in the Chief Executive's Services. The team is responsible for: -

- I. Development and implementation of the council's procurement strategy, policies and procedures;
- II. Involvement in council-wide strategic contracts, including major contracting out of services, strategic partnerships, collaborative agreements and corporate framework agreements;
- III. Provision of advice and guidance to staff involved in procurement;
- IV. Co-ordination of the procurement network;
- V. Monitoring of procurement performance and activity including savings and benefit tracking;
- VI. Special projects;
- VII. Value for Money initiatives.

The Select Committee met with the Corporate Procurement Manager who informed the group about his team and what was being achieved. He confirmed that the Council spends approximately £210 million per annum on goods, works and services and that about 23% of this was spent in the Wigan Borough. He pointed out that good procurement is not just about getting the price down; it is about balancing whole life costs and fitness for purpose, while meeting European Union rules and treating all suppliers fairly. He further talked about local supply issues and the training (regarding readiness to compete for tenders) he had been involved in with the third sector.

The Procurement Manager confirmed that Wigan operates on a devolved basis in respect of tendering, (apart from corporate contracts which his team tender and manage). His team is responsible for providing standard documentation, advice and guidance to departments to ensure the tender process is carried out in line with requirements and that current government initiatives are implemented. He further confirmed that, at present, although the Council had implemented an e-procurement ordering system and purchase card system they had not invested in an electronic tendering (e-tendering) tool.

The team has access to collaboration deals and cross government initiatives (such as reverse auctions and e-auctions) and departments are advised to contact them before procurement

processes are started to ensure that the Council is making the most of the deals available.

The team is also involved with the development of a North West Procurement Hub, which will be based in Trafford. All of the Association of Greater Manchester Authorities (AGMA) are involved in this. Its purpose is to strategically manage collaborative procurement within AGMA, to consolidate spend on a commodity basis. These commodities will then be tendered, or deals secured via the Office for Government Commerce (OGC) or other consortia arrangements, to secure the best deal possible for all involved.

The Select Committee was impressed with the knowledge held by the Procurement and Performance team but also recognised that it was a small team. Some concern was highlighted over the fact that departments may not have the procurement expertise required and a recommendation is given that the Council looks closely at the training of non-procurement staff, especially around tendering.

The Select Committee recognises the purpose of the North West hub but recommends that reporting mechanisms are put in place to measure its effectiveness and the impact on the local economy and third sector providers.

The Select Committee also recommends that a feasibility study on e-tendering is undertaken.

### **3.4 THE ROLE OF INTERNAL AUDIT**

The Select Committee met with the Head of Audit and Risk Management and the Principal Contracts Auditor who gave an overview of the audit function and talked about how the essential requirements of probity in tendering are managed by the Council.

They confirmed that the Internal Audit function within the Council operates independent reviews to ensure that within the tendering function: -

- I. Contracts are procured and administered in accordance with the Council's Constitution;
- II. There is transparency and probity in contract management.

Audit does not prepare, open or record tenders, nor does it make decisions in respect of tenderer selection or issue contract documents.

Audit does not examine all tenders, but carries out reviews of departmental tendering and contract processes on a regular basis.

Audit are fully aware of needing to protect against insider trading and steps such as genuine contract pre-estimates by surveyors and rotation of tenderers (engaging with new supply outlets) are used, as well as the deterrent, to suppliers, of being struck off.

The Select Committee are satisfied that the Audit function ensures that tendering is carried out fully in compliance with the Contract Procedure Rules therefore ensuring fairness and impartiality; use of a competitive process; consistency and transparency; security and confidentiality; identification and resolution of conflicts of interest and compliance with legislative obligations and Government policy.

### **3.5 THE ROLE OF LEGAL SERVICES**

The Select Committee met with the Head of Legal Services who outlined Legal Services' involvement in the tender process. Their main role in tendering is to advise on commercial terms; they also prepare and agree special conditions of contracts on large procurements.

Legal Services are also required to deal with contract problems, on the rare occasions that they do go wrong. In addition they are charged with the writing of the Council Contract Procedure Rules.

The Head of Legal Services stressed that having an unambiguous specification is key to avoiding contract problems and that good contract management highlights issues and stops them from becoming problems. He also pointed out that tender evaluation needs to be more consistent across all departments.

The Select Committee was assured that the legal issues in respect of tendering were being well managed. They recommend that the Procurement Team with help from Legal Services produce a guidance document on what evaluation models should be used when tendering along with a process map of how contracts should be evaluated.

### **3.6 TENDERING IN PRACTICE IN THE COUNCIL**

In order to gain an understanding of tendering, the Select Committee interviewed representatives from two of the largest departments of the Council, Environmental Services and Adult Services.

#### **3.6.1 Environmental Services**

The Select Committee interviewed the Street Lighting Manager from Environmental Services who explained that his service area was responsible for buying all goods and services associated with the

maintenance and delivery of street lighting, illuminated traffic signs and bollards.

The manager confirmed that they operate to the Council Contract Procedure Rules including any European requirements and although the latter is complex and elongated they do not have any problems with them.

Within the section's remit is the testing, erection, maintenance and dismantling of the Christmas lights for all Townships. The Street Lighting Manager explained that a European tender process was undertaken (jointly with the Procurement Team) to procure this Service, in April 2008. He outlined the process as follows: -

- an advert was placed in the Official Journal of the European Union (OJEU) requesting expressions of interest;
- Sixteen requests were received and eleven of those completed the pre-qualification documentation;
- Six companies met the minimum standards required and tender documents were sent to all six (this included the Councils Highways D.L.O.);
- Only one tender was received - This from the Highways D.L.O.;
- Negotiations ensued to secure the best possible price;
- The Procurement Team approached all the other companies to request reasons why they had not completed the tender. One stated that they assumed supply of decorations would be included and all the others stated that they had other work commitments. All stated that the documents sent had not been a factor in them not tendering but some did state that the process needed to have started earlier;
- The work was passed to the Highways D.L.O. under a service level agreement.

The manager further confirmed that the Christmas Lighting Steering Group is currently in the process of engaging with a number of companies with a view to understanding how they could become involved in any future procurement process and delivery of the Christmas Lights installation and provision of the decorations. He further stated that given that a tendering process has been implemented for the last 2 years with no significant cost savings being achieved, there is no reason to believe that following the same type of tendering process is going to lead to a different outcome. The current procurement arrangements are being reviewed and re-assessed by the Christmas Lighting Steering Group this will allow the Council to understand the future opportunities for getting best value in the delivery of the service.

The Select Committee agreed that the process followed for the Christmas lights tender was robust and could not be challenged and further observed that carrying out a full tender process does not always give the desired result and that market development is sometimes required.

The Select Committee recommends that the Council gives consideration to the issue of market development and that this needs to be reflected in procurement policy and strategy documents.

### 3.6.2 Adult Services

The Select Committee met with the Service Manager for Contracts within Adult Services, who explained that his team was responsible for all areas of contracting within the Adult Services Department. This covers over eighty contracts, which includes the full spectrum of social services provision.

The Contracts Section tender all contracts fully in compliance with the Councils contract procedure rules. In addition, they follow the procedures set out in the EU procurement rules (even though most Adult Services contracts are classed as part "B" services and therefore exempt from advertising and time-scale rules) as they want to attract a wide and diverse range of providers. They get help from both the Procurement Team and Legal Services throughout the process, particularly with the evaluation process and with compiling contract conditions.

At the tender stage considerable emphasis is put on the evaluation model, which is always agreed prior to tendering and includes as a minimum:

- Price;
- Track record;
- Operational issues;
- Quality standards (i.e. what do they measure; why and what do they do with the information);
- Staff training / recruitment / development / retention;
- How they provide the service;
- Equality & diversity;
- Value added.

Recently the section has been working on developing framework agreements; both quality issues and cost are high on the agenda. They have been talking to service providers about contract length, costs and quality issues to improve budgeting, service specifications

and performance management. This in turn will give the flexibility required by the transformation to customer choice.

The section also engages with third sector providers and works hard to develop local networks and are taking action to get the larger service providers to engage with smaller organisations.

The Select Committee acknowledged the excellent work done by the contracts section and recommends that the tendering framework and in particular, the evaluation model is looked at for development and use by all departments of the Council.

### **3.7 TENDERING PRACTICES WITHIN LOCAL GOVERNMENT**

The Select Committee conducted telephone interviews and a desktop comparison exercise on tendering practices within local authorities. The main finding was that all local authorities work within the framework of contract procedure rules or contract standing orders. Although these may differ slightly in priorities, thresholds and procedures, they all follow the essential principles of probity and operate in the same manner.

When the other AGMA Local Authorities were compared with Wigan some differences to Wigan's practices were: -

- Many contract procedure rules included the flexibility to tender using electronic means including portals for advertising, e-tendering facilities and e-commerce processes;
- Very few have a comprehensive contracts register in the way that Wigan has and even fewer display this on their Internet sites;
- Several do not run select lists but operate framework agreements for the traditional areas that usually run them.

The Select Committee also looked at the thresholds that local authorities apply to tendering with regard to quotes and tenders. The East Midlands Regional Centre of Excellence (EMRCE) has already carried out an examination of these by looking at 46 Councils throughout the UK; the recommendations of the EMRCE are detailed at Appendix 5.

The Select Committee recommends that e-procurement is considered for use in the Council and that Council's tender thresholds are monitored by both procurement and legal sections to ensure that they are relevant and workable.

### **3.8 AN EXAMINATION OF TENDERING PRACTICES – NATIONAL HEALTH SERVICE (NHS)**

The Select Committee received a presentation from The Head of Procurement at Wrightington, Wigan and Leigh NHS Foundation Trust. The following was observed:

- The Trust spend on goods, work and services is £50m and that all expenditure except for drugs and works (which will be in the procurement remit by 2010) is covered by the procurement department;
- The procurement department delivers a procurement service to internal and PCT customers. This service consists of advice, guidance, transaction processing, e-procurement (e-tendering / e-auctions), commercial support, tendering and contract management, materials management and promotion of collaborative working;
- Their tendering thresholds allow single source up to £20k; three quotes up to £50k; full tender up to £90k and the EU thresholds are invoked at £90k (this is the sum for central government and the NHS);
- They procure from a mix of consortia, collaborative agreements, local agreements, open tendering and OJEU tendering;
- They have developed a comprehensive e-tendering tool that their suppliers are completely on board with. They have found that this cuts down on time taken to complete the tender process, reduces cost, increases accuracy, increases savings when used as an e-auctioning tool, reduces non-compliance, provides a better audit trail, encourages best practice and increases supplier engagement;
- They encourage cross government working and are currently working with Wigan's catering department on collaborative food procurement and stated that they are willing, where necessary, to work closely with Wigan on a consultancy basis.

The Select Committee recognised that WWL NHS Foundation Trust procurement department operates in a more centralised way and that they have considerable expertise in e-tendering and transactional purchasing. It is recommended that the Procurement Team gives due consideration to their offer of providing tendering services.

### **3.9 TENDERING IN THE PRIVATE SECTOR**

The Select Committee carried out a desktop exercise looking at tendering practices within various private sector organisations. The findings were as follows: -

- I. Tendering in the private sector; although still looking for the same degree of probity and efficiency; operates in a different way to that of local authorities;
- II. Considerable effort is put into market development and this is not impeded by stringent rules on how this can be conducted;
- III. The private sector does not have to follow any EU procurement rules and therefore negotiation, including post tender negotiation, is considered to be a major part of the tendering process. This focuses on negotiating on price and other commercial terms, after the specification is fully agreed, with one or more supplier(s) / contractor(s);
- IV. Single tender, with an open book approach, is commonplace, especially on large capital projects, where traditional tendering methods are considered to be time consuming, inefficient and expensive;

It must be noted here that the private sector are not dealing with public money and therefore to some extent purchasers (subject to owner / share holder requirements) have carte blanche on how they carry out tendering activities.

The Select Committee recognise that the private sector is able to work in a completely different way to the public sector. However they recommend that the tendering methods used by the private sector are looked at to see if their ways of developing markets and negotiating can be adapted to fit in with the Council and EU rules.

## 4 KEY FINDINGS

The Select Committee made the following observations when carrying out their review of tendering:

- Tendering is a complex legal process with rigid rules and that it can be a very expensive process for all parties;
- Tendering within the Council is carried out in a fair and proper manner. Tender exercises are carried out in line with the Council's rules as set down in the Contract Procedure Rules;
- The Corporate Procurement Team has an integral role to play in ensuring that tendering, carried out by departments, is aligned with current best practice and is developed so that all contracts are let on the most favourable terms and at the lowest possible cost;
- Should contracts go wrong it is usually down to oversights or post contract changes in the specification;
- Identifying need before a tender exercise is started and writing up this requirement in a specification that reflects that need correctly (not over or under specified and not open to interpretation) is the key to ensuring that what has been tendered is delivered, all needs are met and value for money is achieved;
- Contract management and performance monitoring, although strong in some areas, needs to be developed and unified across all departments;
- Cross departmental co-operation is required to ensure that needs are co-ordinated so that the best possible agreements can be obtained, whether this be via corporate tenders, collaborative tenders or use of existing frameworks;
- The Council is actively and successfully collaborating with other authorities, public bodies and consortia in many areas, to ensure that goods, works or services are procured in the best way to meet the needs of the Borough;
- The Council has a very high regard for probity in tendering and contract management. This is monitored closely by the Audit Section and shows a high consciousness of the use of public funds;

- The Council has a strong Procurement Strategy that sets out the key priorities for procurement and aligns them with the Council's Community and Corporate Plans. One such key priority relates to tendering and the need for them to be transparent, open and accountable;
- The Council spends approximately £210 million on goods, works and services per year and that 23% of this is spent with local suppliers;
- All departments involved with tendering give consideration to the local economy and engaging with the third sector when this is possible. Many are considering how to cascade this to major suppliers and contractors;
- The Council does not currently use an electronic tendering system;
- Tendering does not always give the desired result and market development is sometimes required;
- Most other local authorities operate tendering in a similar manner to the Council, with Contract Procedure Rules which closely match the Councils;
- As well as collaboration on tendering, other public bodies (such as the Wrightington, Wigan & Leigh NHS Foundation Trust) are willing to share practices and help the Council on issues such as e-tendering and tender evaluation;
- The standing lists operate in such a manner that, as long as there is sufficient work, allows all suppliers a chance of tendering.

## 5. RECOMMENDATIONS

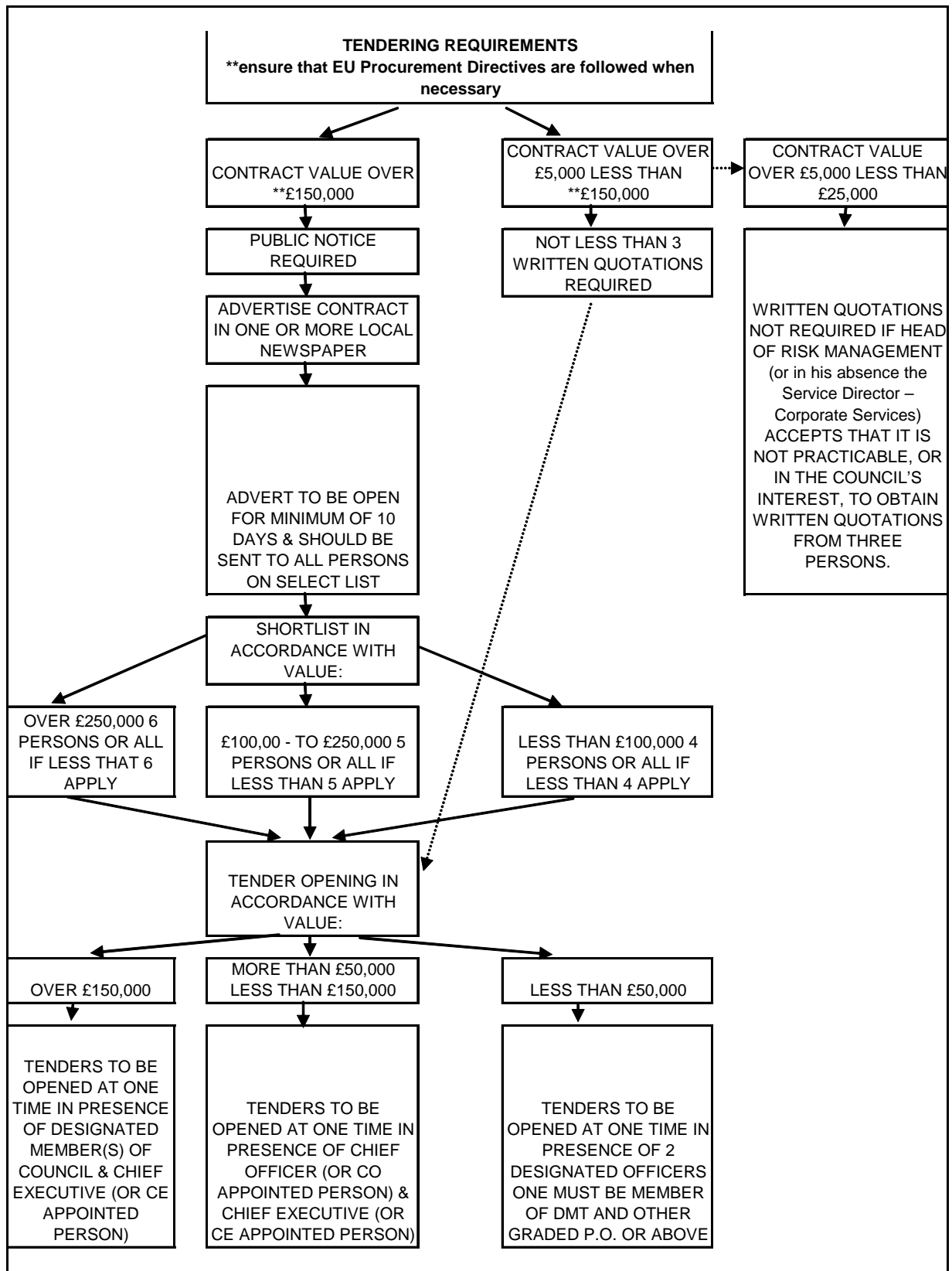
Throughout this report the Select Committee has made a number of recommendations with regard to tendering. A summary of these is presented here. The Select Committee recommends that: -

- Needs are assessed fully before the tendering process is started and that a strong, incontestable specification should be drawn up before any tendering exercise is carried out to ensure that the requirement is met in full;
- The Procurement Team along with Legal Services review the tendering thresholds on a regular basis to ensure that they align with best practice advice from the Audit Commission, The Treasury, The Office for Government Commerce or the North West Improvement and Efficiency Partnership;
- The protocols put in place for the operational use of Select Lists is adopted by all departments and partner organisation using the lists. In addition these protocols should be used as the blueprint for any other departments compiling select lists;
- The Procurement Team (along with Legal Department where necessary) should be consulted before any department carries out a tender exercise that may be required to operate within the OJEU process;
- When departments are negotiating for grant / Government / EU initiative monies, the tendering requirements should be discussed with the Procurement Team and a procurement strategy should be developed for the scheme to ensure compliance;
- The Council looks closely at the training of non-procurement staff, especially around tendering;
- Reporting mechanisms are put in place to measure the effectiveness and the impact, of the North West Hub, on the local economy and third sector providers;
- A feasibility study on e-tendering is undertaken;
- The Procurement Team (with help from Legal Services) produces a guidance document on the potential evaluation criteria that could be used when tendering, along with a process map of how contracts should be evaluated;

- The Council gives consideration to the issue of market development and that this needs to be reflected in procurement policy and strategy documents;
- The tendering framework and in particular, the evaluation model used by Adult Services Contracts Section is looked at for development and use by all departments of the Council;
- The Council builds on the good work done by departments to engage with the local economy and the third sector and that ways (within the current legal framework) of cascading this to the Councils major suppliers and contractors are adopted;
- E-procurement (in particular e-tendering and e-auctions) is considered for use in the Council and that Council's tender thresholds are monitored by both procurement and legal sections to ensure that they are relevant and workable;
- The Procurement Team gives due consideration to the offer of the provision of services (in particular the e-tendering services) from WWL NHS Foundation Trust;
- That the methods used in the private sector are looked at to see if their ways of developing markets and negotiating can be adapted to fit in with the Council and EU rules.

## **APPENDICES**

## APPENDIX 1 PROCESS FLOW OF THE CONTRACT PROCEDURE RULES



## APPENDIX 2 EXCEPTION TO CONTRACT PROCEDURE RULES PROCESS

All requests for exemptions are received electronically via email on the proforma detailed below.

The Service Director – Corporate Services makes a judgement based on the information on the form. (exemptions under £25,000 go to the Head of Risk Management). Officers are advised via e-mail whether or not the request has been approved. Completed forms are kept on file and all granted exemptions are reported to the Audit, Governance and Improvement Review Committee on a quarterly basis.

### Request for Exception from Standing Orders With Respect to Contracts - Proforma

<p><b>1. General</b></p> <p>1. Every contract shall comply with these Standing Orders, and no exception from any of the following provisions of these Standing Orders shall be made otherwise than by direction of the Executive or the Head of Paid Service or, provided the contract is not a Business Support Services Contract, the Service Director - Corporate Services. Every proposal for making any such exception shall be the subject of a report to the Executive or to the Head of Paid Service or the Service Director - Corporate Services</p> <p>2. All exceptions shall be reported quarterly to the Audit, Governance and Improvement Review Committee or appropriate Panel and the report shall specify the emergency or reason by which the exception shall have been justified.</p> <p><b>13. Quotations.</b>          ".....If the contract or series of contracts exceeds £5,000 but does not exceed £25,000 then written quotations need not be obtained if the Head of Risk Management or in his absence the Service Director – Corporate Services accepts that it is not practicable, or in the Council's interest, to obtain written quotations from three persons."</p>
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<b>Officer Making the Request:</b>	
<b>Name</b>	<b>Position</b>
<b>Extension</b>	<b>Date of request</b>
<b>Nature of Contract:</b> (include contractor details, items/services to be provided, estimated value, expected duration)	
<b>How was this particular contractor selected?</b>	
<b>Reasons why obtaining 3 written quotations is not practicable, or in the Council's interest:</b>	
Agreed : Head of Risk Management/ Service Director – Corporate Services	Date:
Date reported to Audit, Governance and Improvement Review Committee:	

## **APPENDIX 3 STANDING LISTS – PROTOCOLS**

### **Protocol for Compiling and Using the Standing Lists of Contractors for Contracts Less than the European Limit**

#### **1.0 Compiling the Standing List of Contractors**

1. Firms on the existing list(s) will be informed that the lists are being reviewed and will be asked to reapply if they wish to remain on the list by providing information detailed in 5 below. Replies must be received within 4 weeks of being advised.

2. Advertisements will be placed in two local papers and in the Contrax Weekly. Furthermore the advert will be placed on [www.Supply2.gov.uk](http://www.Supply2.gov.uk) web site. The advertisement will ask that firms interested in being included on any of the standing lists supply the information detailed in 5 below within 4 weeks of the advert being placed. It is important that firms applying to be included on a standing list clearly state which standing list(s) they are applying to be included on. Should the list also have various categories or financial values, firms will need to state which of these parts of the list they are applying for. Failure to do so may invalidate the application.

3. The lists will stand for four years before review but it will be possible for further contractors to apply to be added to the standing list after 12 months of the review and within the four years. In adding any new contractors to the standing list(s), account will also be taken of firms who applied for inclusion originally but were not successful.

5. Firms applying to be included on the standing list(s) will be asked to supply the following basic information: -

- a. the category of work applied for,
- b. the value bands for each category applied for,
- c. whether or not you are currently registered with Constructionline and the registration number. Please note that not being a member of Constructionline will not prevent your application from being considered, at this time,
- d. whether or not you are currently a member of CHAS and the registration number. Please note that not being a member of CHAS will not prevent your application from being considered, at this time,
- e. the e-mail address of a contact person within your organisation.
- f. confirmation that Public Liability insurance of a minimum of £5,000,000 and employees liability of a minimum of £10,000,000 are carried. N.B. these minimums may increase dependant upon the type of contract,
- g. a brief description, for each category applied for, of similar recent work,
- h. the names and addresses, together with their e-mail address, of previous employers from whom relevant technical references for each category of work applied for can be obtained. Referees should preferably be other public sector organisations or representatives of professional organisations, and
- i. a copy of your registration of waste carriers certificate and waste management licence.

## **2.0 Evaluation**

The evaluation will be carried out in two stages as follows;

### **2.1 Stage 1**

Applications will be checked to ensure that all the requested information in 1.0 above has been supplied. Failure to supply this information within the timeframe will mean your application cannot progress.

A minimum of two technical referees are required for each category and subcategory of the list(s) applied for. These will be taken up using a standard proforma.

Non-receipt of references will result in non-acceptance of the application 4 weeks will be allowed for technical references to be returned.

Inclusion in the next stage of the process to be considered for the standing list will be dependent on the results of the references after they have been examined and assessed.

During Stage 1 evaluation any applicants not on Constructionline and or CHAS, at this time, will be required to submit information that is comparable to that requested for registration with Constructionline and CHAS. These form(s) should be returned to the Council within 4 weeks. You will also need to give an undertaking that you are prepared to become members of Constructionline and / or CHAS within 12 months.

For applicants to be considered in the future registration with Constructionline and CHAS will be mandatory by the 1 April 2010. Any firms accepted onto the standing list will be expected to become members of Constructionline and CHAS within 12 months. Failure to do so will mean exclusion from the tendering process since these bodies will be used to ensure continuing competence and financial viability.

A stage 1 preliminary list will be drawn up based on the results of the above assessments. This list will then proceed to Stage 2.

### **2.2 Stage 2**

The information held by Constructionline and CHAS or the comparative information you have supplied will be examined and assessed.

Additional information to that identified above will then be required if you satisfactorily meet the Constructionline and CHAS assessments. This will be in the form of questionnaires for Health and Safety, Equality and Diversity and Environmental matters. Details of your current Public Liability and Employers Liability Insurance will be requested signed and dated by your broker or insurance company.

Should we feel it necessary we also reserve the right to clarify and expand on any of the initial information you have supplied.

The preliminary list from Stage 1 will then be amended to take account of information gathered to produce the final standing list(s). These will have a number of companies in each category sufficient for the anticipated frequency of use of that list.

## **3.0. Main Evaluation criteria;**

- The financial stability of the company/organisation in order to ensure their ability to carry out contracts likely to be awarded to them by the Council,
- performance, organisation of the works, relationship with clients, quality and nature of previous works as determined by references,
- quality and competencies demonstrated in Health and Safety issues including that for actual previous works and examples of actual completed method statements and risk assessments,
- achievements in complying with Equality and Diversity, · evidence of compliance with, and achievement in, environmental issues including waste disposal and recycling and promoting the use of recycled and energy efficient materials,
- demonstration of sufficient competent labour resources to satisfactorily carry out any work likely to be given in the category applied for. Numbers of contractors' staff registered with, or members of, recognised qualifying bodies that measure competence should also be stated and,
- membership of Statutory Bodies, Regulatory Bodies and Trade Associations relevant to the type of work likely to be issued through the standing list.

#### **4.0 Using the Standing list of Contractors**

1. The Council Constitution requires the following numbers of firms to be invited to tender when:

Tender value is: not exceeding £100,000 4 firms including DLO

In excess of £100,000 but below £250,000 5 firms including DLO

In excess of £250,000 6 firms including DLO

2. Contractors will be selected from the lists to tender for schemes on the basis of obtaining best value for the Council. The selection will be as follows:

- The previous lowest two tenderers
- and an appropriate number of firms on a random rotational basis from the list
- the rotational basis will be such that, in principle, each firm will have an equal number of opportunities to tender over the life of the list.

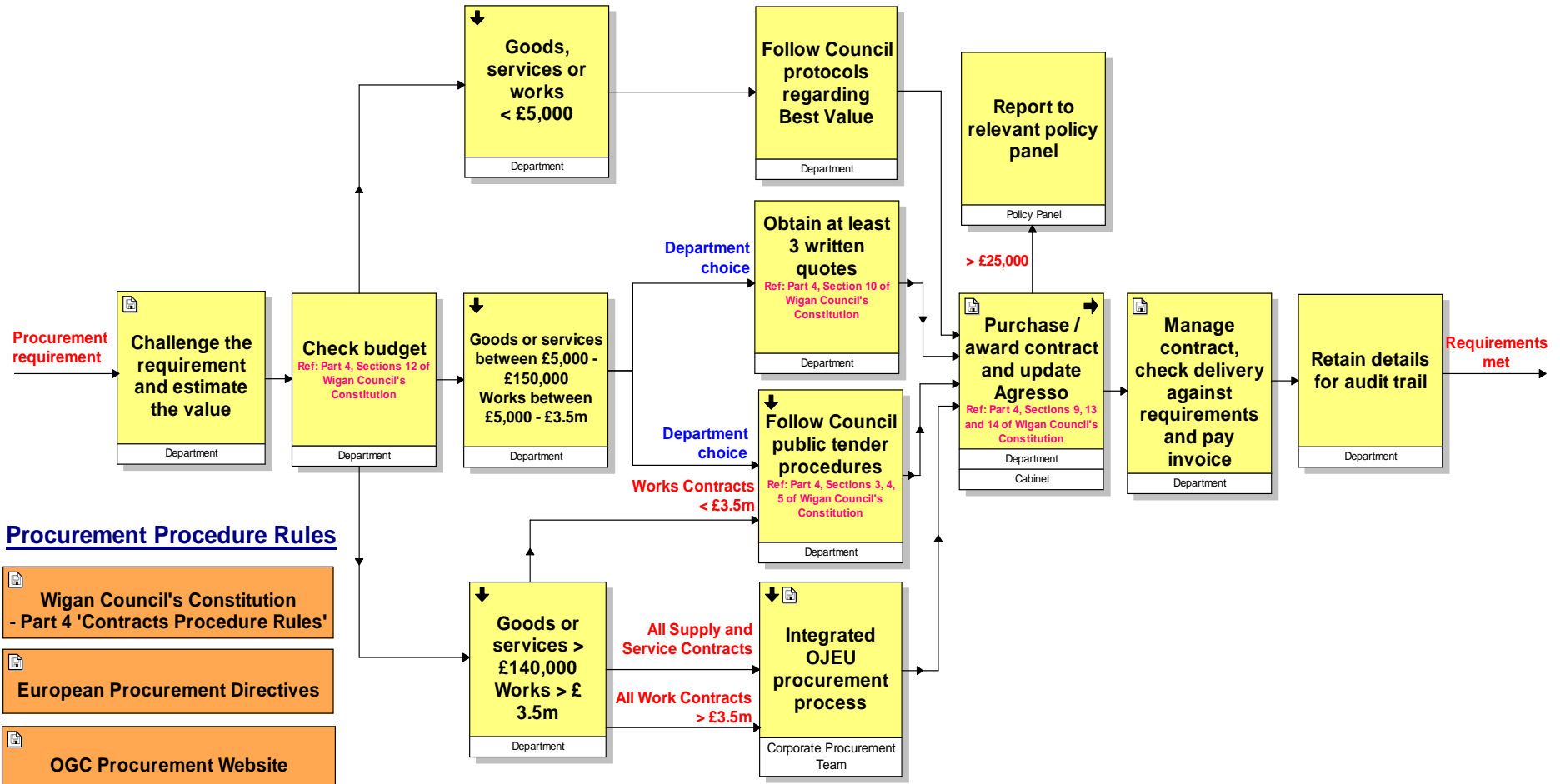
3. These selected firms will be contacted to ascertain whether they wish to tender for the scheme on a competitive basis. Any firm not wishing to tender at this time will continue in the rotational basis for future rounds. A competitive tender will be expected for the next time of asking otherwise they will not be invited to tender again for one full cycle of the list.

4. Any firm that fails to return a tender, without a valid reason, or submits a clearly uncompetitive tender will not be invited to tender again for one full cycle of the list.

5. Please also note that inclusion on the Standing list does not imply or guarantee that contractors will be given any opportunity to compete or to be awarded any work.

# APPENDIX 4 INTEGRATED EU & CONTRACT PROCEDURE RULES TENDERING PROCESS FLOW

## Procurement at Wigan Council



Note: £140,000 has been used as a round figure proxy for the OJEU threshold £139,893.  
 £3.5M has been used as a routine figure proxy for the OJEU threshold of £3,497,313

## APPENDIX 5 EAST MIDLANDS – RECOMMENDATIONS FOR FINANCIAL THRESHOLDS

Contract Value		Process	Award Procedure based on	Contract Opportunity Publication	Documentation
From	To				
£0	£1,000	Oral quotation	One verbal quotation		Employee to record details
£1,000	£5,000	Oral quotation	Minimum of two verbal quotations		Employee to record details
£5,000	£25,000	Written quotation	Minimum of three written quotations		Must be based on a written specification provided to the supplier by the Council Quotation may be delivered by e-mail
£ 25,000	£75,000	RFQ (Request for quotation)	Three written quotations based on a RFQ document with simplified T&Cs	Source East Midlands	Must be based on a written specification provided to the supplier by the Council Quotation may be delivered by e-mail
£ 75,000	EU Threshold	Formal tender	Full tender process	Source East Midlands  Specialist publication if appropriate	PQQ and ITT documentation as relevant with sealed bids which may be submitted via an electronic tendering process
EU Threshold	above	Formal tender	Full tender process	OJEU,  Source East Midlands  Specialist publication if appropriate	

The Contract Value shall be calculated as follows:

The estimated or proposed contract value is the value or consideration for the contract as a whole (not an annual value) and any contract with an option to extend the contract period will be valued to include also any provision for such extended period (e.g. a three year contract with an option to extend for a further two years will be valued as the consideration for a five year contract).

## APPENDIX 6 - THE GLOSSARY OF TERMS / ABBREVIATIONS

### Tendering and Procurement

**2004/18/EC** – the updated EU Procurement Directive. This is a consolidated Directive which sets out the Europe-wide rules for public procurement in the three areas of works, supplies and services. The Directive came into force on 31st January 2006. (see EU Directive).

**Award Stage** – the second stage of the tendering process. This may be incorporated into the first stage to make a single tendering procedure. Sometimes a shortlist is formed during the selection stage during which tenderers are selected for entry either to a short list or a select list. In these cases the award stage forms a separate phase of the tendering process.

**Commissioning** – the process by which local authorities decide how to spend their money to get the best possible services for local people. Involves anticipating future needs and expectations rather reacting to present demand.

**Competition Law** – is underpinned by Article 81 of the Treaty establishing the European Community / The Treaty of Lisbon 2007/Article 85 of the Treaty of Maastricht. The following are prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

**Competitive Dialogue** – a tendering procedure which can be used for complex contracts where the final specification is yet to be decided. The process uses the selection stage to identify a number of tenderers, each of whom will be invited to contribute their ideas towards the final specification. This is the "Dialogue" phase. When the specification has been decided then the Procurement Officers must declare the dialogue complete. Those tenderers identified during the selection stage are then invited to compete for the contract in the "Competitive" phase.

**e - Auction** – an online exercise in which suppliers compete against each other to lower the tender price. Sometimes known as a "reverse auction". Can be used by the purchaser to establish the market price.

**e- Marketplace** – an internet based facility that enables trade between one or more purchasing organisations and a variety of suppliers.

**e-Tendering** – sending requests for information and prices to suppliers and receiving the tender responses from suppliers using Internet technology.

**EU Commission** – the politically independent institution that represents and upholds the interests of the European Union as a whole. It proposes legislation, policies and programmes of action and it is responsible for implementing the decisions of Parliament and the Council amongst other things for the implementation of European Treaties.

**EU Directive** – a European Union legal instruction or secondary European legislation which is binding on all Member States but which must be implemented through national legislation within a prescribed

time-scale. The European single market is covered by a number of Directives, which must be implemented by each of the 27 Member State into their own legislative framework, and give detailed instructions on tendering procedures.

**European Court of Justice** – the European Court of Justice (ECJ) is based in Luxembourg. It is an institution of the European Union (EU) and should not be confused with the European Court of Human Rights. The ECJ plays a crucial part in the process of the integration of the EU Member States. Its role is to interpret the EU Treaties. These Treaties are a type of international law, but are also part of the internal common law of the Member States.

**Framework Agreement** - An arrangement between buyer and supplier where both parties agree the terms of future dealings between them, without committing to or guaranteeing any specific purchase or contract.

**Goods** - Physical products provided by a supplier, e.g. stationery, chairs, construction materials, IT equipment.

**Invitation to Tender (ITT)** – sometimes referred to as a call to tender. This is sent to tenderers who have completed the PQQ and successfully passed the selection stage. The ITT starts the second or award stage which sets out tender requirement, content, deadline, etc. and requires the completion of a pricing document and agreement to a specification / terms etc .

**Key Performance Indicators (KPIs)** – are tools which help purchasers to measure the performance of suppliers against their contractual obligations. KPIs are normally detailed in the service specification document.

**Lowest Price** – One of two systems which the EU allows for tender selection. This allows for selection on the basis of price and financial appraisal only.

**Most Economically Advantageous Tender (MEAT)** – One of two systems which are allowed for tender selection. This enables tender evaluation on the basis of the quality of the tender the offer as well as the price. The quality is scored against a set of criteria identified for each tender.

**Negotiated Procedure** – a process which allows the selection of one or more potential bidders with whom to negotiate the terms of the contract. The negotiated procedure may or may not require an advertisement the OJEU. Use of this process is only allowed in special circumstances.

**OJEU** – Official Journal of the European Union. The OJEU is published Monday to Saturday every week, except on days which are public holidays in Belgium. It carries calls to tender above the CPD threshold from all 27 EU Member states, the EEA countries and from the USA and Australia under the WTO agreement. Average contents of a single issue of the OJEU are in the region of 3-4,000 calls for tender. OJEU can be purchased in paper format or viewed online at Tenders Electronic Daily which can be found at <http://ted.europa.eu/>

**Open Procedure** – a tendering process in which the selection stage is followed almost immediately by the award stage in order to identify a single contractor to deliver the supplies or services specified. Sometimes both the selection stage and award stage are combined into a single phase .

**"Part B" Services** – those services included in an Appendix, or "Part B" to the Directive 2004/18/EC and the Public Contracts Regulations 2006. In procuring these services, which include health education and social care, purchasers are not required to comply with all of the regulatory requirements.

**Pre-qualification Questionnaire (PQQ)** –A document which forms the basis of the first or selection phase of the tendering process. The PQQ forms the gateway to the tendering process. Failure to submit a successful PQQ and therefore succeed at the selection stage means that the tenderer is excluded from the process and cannot proceed to the award stage.

**Procurement** – the purchase of goods works or services at the best possible total price, in the right quantity and quality, at the right time generally via a contract.

**Procurement Card** – a payment card issued by an authority to staff that may be used to purchase goods and/or services up to an agreed value from certain suppliers. Although similar in operation, it is not a credit card that can be used anywhere and there is no credit facility. For suppliers typically payment in full will be made direct to their bank accounts usually within three working days.

**Public Contracts Regulations 2006** – the UK legislation which was brought into force by Statutory Instrument (SI Number 5) dated 09.01.2006. The Regulations set out the rules which govern all aspects of public purchasing in England and Wales.

**Remedies Directives** – a set of Directives, setting out the rules under which the decisions of public purchasers may be challenged, in some cases this may take place even before the contract has been signed. The most recent Directive, 2007/66/EC of 11 December 2007 amends Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts. This sets out legal remedies which can be introduced at a stage before a public contract is actually concluded. The EU Commission believes that previous rules in this area have not been sufficiently effective in all Member States and therefore required strengthening. In addition it was believed that, illegal direct awards of public contracts, which are the most serious violations of Community law in the area of public procurement, needed to be combated more fiercely. The new Directive provides businesses, wherever in the EU they would like to tender for public contracts, with more effective national review procedures when awarding authorities have violated the EU Directives on public procurement.

**Restricted Procedure** – a tendering process which uses the selection stage to set up a select list or framework of providers. The list may then be used for a defined period of up to eight years to invite tenders or request quotes as specific services as required.

**Selection Stage** – the first phase of the tendering process, the selection stage involves the completion and an assessment of the PQQ. This is based on an appraisal of business/financial acumen and most importantly, risk. Sometimes called "shortlisting" with those who pass going onto the Award Stage. The selection stage is usually managed, and PQQs scored, by Procurement and legal officers.

**Service Level Agreement** – that part of a contract which specifies the services to be delivered and usually contains the performance expected. They are sometimes used between Departments within public authorities as a stand alone document as it is not possible to have a legal contract between depart.

**Services** - Intangible products, e.g. accounting, consulting, design, IT, staff recruitment.

**Specification** – a detailed description of the supplies works or services to be purchased. If an organisation is unable to deliver what is required exactly as set out in the specification it is not worth submitting a tender.

**Sustainable development** - defined as 'meeting the needs of the current generation without compromising the life-quality of later generations'.

**Tender** – a written offer to contract to provide goods or services precisely as specified in the tender documents at a stated price or rate. Successful tenders result in the award of a contract to deliver the goods or services specified.

**Works** – The execution of civil construction / building projects.