

# Contract Procedure Rules

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# Part 1 – Introduction, Scope & Responsibilities

## 1. Introduction

- 1.1. These rules apply to all Officers of the Council. They are part of the Council's Constitution and therefore officers have a duty to ensure they have fully understood them prior to commencing any procurement or contracting activity.
- 1.2. Officers must also ensure that any persons and/ or organisations acting on behalf of the Council fully comply with these rules.
- 1.3. The aim of these rules is to assist officers in achieving good procurement and the benefits that it brings. These rules are the Council's rules for buying, renting, leasing of goods, services and works for the Council. They do not apply to internal purchases or internal service provisions.
- 1.4. If there is any change to the law which affects these rules then that change must be observed until these rules can be revised. If these rules conflict in any way with the law then the law takes precedence. It is the officer's responsibility to seek appropriate advice from Legal Services or seek specialist Procurement advice in relation to any procurement activity.
- 1.5. Before embarking on any procurement activity it is the officer's ultimate responsibility to seek appropriate Procurement support and guidance. If the officer is in any doubt about whether the rules apply, he/she must always consult with Legal Services or seek specialist Procurement advice immediately.
- 1.6. The Rules apply to the sale of assets (with the exception of the sale of land / or interests in land – such as covenants or easements) and goods by the Council where the appropriate Service Lead estimates that the assets, goods or services to be sold exceed £1,000.
- 1.7. Any value stated within these rules is exclusive of VAT.

## 2. Basic Principles

- 2.1. All procurement activity and contract/supplier management must:
  - Achieve Value for Money for public money spent
  - Be consistent with the highest standards of integrity
  - Ensure fairness and transparency in awarding public contracts
  - Ensure that the Council comply with all legal requirements
  - Ensure that Non-Commercial Considerations do not influence any contracting decision.
  - Support the Council's corporate and departmental aims and policies of being a customer driven efficient Council with a "can do" attitude and pro-business approach and commercially focused to ensure financial self-sufficiency for the taxpayer.

## 3. Exceptions to the Rules

- 3.1. These rules apply to every procurement / Contract made by or on behalf of the Council. No exemption form / officer action is required for:
  - 3.1.1. grants which the Council may receive or make except where the grant is the form of payment for a contract for services where the Council specifies the output or outcomes to be delivered;

- 3.1.2. acquisition or disposal of any interest in land (these fall outside the scope of the EU Procurement Regulations and the UK Contract Regulations, but officers are still expected to gain best value in these transactions);
- 3.1.3. goods, works or services procured in a genuine Emergency (e.g. natural disasters such as flooding or fires, immediate changes to legislation) because of a need to respond to events that were beyond the genuine control of the Council. Any Emergency procurement must be reported to the Section 151 Officer or Service Lead as soon as practical. Any such Contract entered into by the Council must not be for a term of more than six months. Please note that not allowing enough time to go to Tender is not an Emergency;
- 3.1.4. goods, services or works purchased through a Public Sector Buying Organisation (PSBO) catalogue as long as the officer is satisfied that the catalogue offers Value for Money;
- 3.1.5. goods, services or works purchased through a Public Sector Buying Organisation (PSBO) Framework agreement as long as the officer is satisfied that the framework offers Value for Money;
- 3.1.6. contracts for employment;
- 3.1.7. for existing supplies, services or goods works which are available only where there is no genuine satisfactory alternative available, such as, public utility infrastructure providers, e.g. Gas mains, sewage and water supply;
- 3.1.8. any Contracts entered into through collaboration with other Local Authorities or other public bodies, where a competitive process has been followed that complies with the rules of the lead organisation (but does not necessarily comply with these rules). Evidence should be obtained and held for audit purposes;
- 3.1.9. the lending or borrowing of money (these are managed and controlled through the Council's Treasury Management Strategy).

#### **4. Requesting An Exemption**

- 4.1. Exemptions from these rules must be obtained in advance of the officer commencing procurement and in accordance with the following procedure, and will only be granted in exceptional circumstances. Lack of forward planning will not constitute a reason for an exemption.
- 4.2. The officer seeking the exemption is responsible for estimating the Total Value of the proposed Contract. Please see Part 2 rule 2 of this document.
- 4.3. Where the Total Value is up to £75,000

Exemptions for proposed Contracts with a Total Value not exceeding £75,000 must be recorded using the Exemption Request Form located on the intranet. The officer must secure approval from the relevant Director or the Chief Executive. Approval must be obtained by the officer prior to any procurement activity commencing. The Exemption Request Form will be returned to the Service Lead for retention with the Contract records, with a copy retained by the Monitoring Officer for inspection.

#### 4.4. Where the Total Value is £75,000 up to the current EU Threshold

Exemptions sought that are equal to or over £75,000 and not exceeding the EU Threshold for goods and services must be recorded using the Exemption Request on the intranet. The officer must secure approval from the relevant Director or the Chief Executive and the Section 151 Officer and then send the approved form to the Monitoring Officer. Approval must be obtained by all parties prior to any procurement activity commencing. The Exemption Request Form will be returned to the relevant Service Lead for retention with the Contract records, with a copy retained by the Monitoring Officer for inspection.

#### 4.5. Exemptions Equal to and Over the EU Threshold

Exemptions sought that are equal to or above the EU Threshold for works, goods or services can be requested in specific circumstances where the officer can demonstrate clear evidence that there would be no benefit from competition due to the nature of the provider market, and has sought specialist procurement advice. An exemption would only be considered if the obligations under the EU regulations are satisfied. Exemptions sought under any other circumstances at this level are not permitted. The officer must record the exemption using the Exemption Request Form located on the intranet. The officer must secure approval of authorisation from the relevant Director or the Chief Executive and the Section 151 Officer. The Exemption Request Form will be returned to the relevant Service Lead for retention with the Contract records, with a copy retained by the Monitoring Officer for inspection.

#### 4.6. Repeat Exemptions

In instances where a repeat exemption is requested, then the Total Value of the requested exemption will be added to previous exemptions and the appropriate rule/ regulation relating to the Total Value will apply. See Part 2 rule 2 of this document re calculating Total Value.

#### 4.7. Exemptions for Works

In the case of exemptions for procurement of works, exemptions will not be granted above the EU Threshold for Supplies/Services except as applied in rule 4.6 of this section.

### **5. Non-Compliance with the Rules**

- 5.1. Where an officer becomes aware of any non-compliance with these rules and which cannot be remedied, they must immediately notify their Service Lead and the Monitoring Officer and no further action taken on the procurement in question until advised to do so.

### **6. Recommended Reading**

- 6.1. It is strongly recommended that all officers read the following documents in conjunction with these rules and which are available on the intranet and offer further guidance:

- Procurement Best Practice Guide;
- Financial Procedure Rules;
- Procurement intranet pages.

### **7. Officer Responsibilities**

- 7.1. The officer responsible for the procurement must comply with these rules and any public procurement legislation; failure to do so could result in disciplinary action.

- 7.2. Officers must take account of all necessary legal, financial, procurement and any technical advice.
- 7.3. The officer must have regard to current guidance (see rule 6 of this section) and the principles of the Council's Procurement Strategy.
- 7.4. The officer is responsible for the procurement and must ensure:
- Continuing compliance with the Council's requirements;
  - Value for Money;
  - Compliance with these rules, any legal, statutory requirements and any Council policies.
- 7.5. The officer must ensure security and confidentiality of documentation supplied at all stages of the procurement activity, including Tender Evaluation Reports, working papers and minutes of meetings. The officer must ensure that he or she records in writing all minutes of meetings and decisions/actions taken.
- 7.6. Where the Total Value of the procurement is less than £25,000 the officer must take steps to secure Value for Money by clearly defining the business requirement and seeking offers at the lowest cost commensurate with meeting that business requirement.

## **8. Director/Service Lead Responsibilities**

- 8.1. Directors and Service Leads must comply with these rules and must ensure that their officers comply with these rules.
- 8.2. The Directors/Service Leads must keep a written record of all approved exemption requests for his/her department and obtain specialist Procurement advice to avoid seeking exemptions in future. This record must be produced when required by the Monitoring Officer or audit.
- 8.3. Directors/Service Leads must keep a register of contracts completed by signature (rather than by the Council's seal) and arrange their safekeeping on Council premises as per the Council's retention policy available on the intranet pages.

## **9. Prevention of Corruption and Conflict of Interest**

- 9.1. All officers have a duty in law to avoid any form of behaviour or conflict of interest that might distort or restrict competition, or make a Contract award subject to the risk of being challenged. All officers involved in procurement must declare any conflicts of interests relating to the procurement activity where they, or their significant other, have a vested interest that could conflict with the best interests of the Council.
- 9.2. All officers must always comply with the Council's code of Conduct and Anti-Fraud and Corruption Strategy, and must not offer, promise or give any gift or reward in respect of the award or performance of any Contract.
- 9.3. All officers must always comply with the Council's Code of Conduct and Anti-Fraud and Corruption Strategy with regards to receiving of gifts in respect of the award or performance of any Contract.
- 9.4. Officers are advised that any inappropriate behaviour that is deemed contrary to the Bribery Act 2010 could result in dismissal and the matter may be reported to the police.

---End of Part 1 ---



# Part 2 - Procurement Behaviour & Thresholds

## 1. Procurement Thresholds and Value for Money

- 1.1. Value for Money is defined with reference to price, quality, availability, functionality and the optimum combination of whole life costs. Opportunities to save money by providing the optimum service for less than budgeted price should also be pursued.
- 1.2. If the lowest Quotation / Tender obtained exceeds the threshold applicable to the procedure selected, the officer must consult with Legal Services/specialist Procurement advice for approval to proceed or restart the procurement.

## 2. Total Value

- 2.1. Officers shall not sub-divide works, services or goods that could reasonably be treated as a single Contract so as to avoid these rules, thresholds or any legal requirements.
- 2.2. The total estimated value of orders for a given type of goods, services or works should, wherever practicable, be amalgamated for the purpose of determining procurement procedures and thresholds. This will also apply to Framework Agreements.
- 2.3. If a Contract is for a period greater than one year, then the estimated value of orders to be placed over the full period should be used to determine the appropriate procedure, inclusive of any allowance for inflation. This must also include any extension term offered in the Contract.
- 2.4. Where leasing arrangements, purchasing support or maintenance agreements are used, the total amount payable over the life of the lease or maintenance period shall determine the appropriate procedure. This should include lease costs and any other costs such as consumables/servicing and maintenance. No leasing arrangements are to be agreed without the support of the Section 151 Officer.
- 2.5. Where Contracts entail both revenue and capital costs, the value of the Contract shall be calculated by the aggregation of the total estimated capital cost and the estimated revenue costs calculated as identified above.
- 2.6. Where a Contract includes the service provider offering goods, services or works as part of their offering, the monetary value of the goods, service and works must be considered in addition to any remaining monetary value of Contract and let in accordance with these rules thresholds. Officers should seek specialist Procurement advice in these cases.
- 2.7. All costs stated in these rules are exclusive of VAT.

## 3. Steps Prior To Purchase

- 3.1. The size, scope, term and specification of the goods, services or works required must be decided in advance of the procurement process commencing.
- 3.2. The officer must define the duration of the Contract that will provide the most economically advantageous outcome for the Council. This decision must be made in advance of the procurement process and done in accordance with rule 2.3 of this section.

3.3. The officer must consider the options for the delivery of the required goods, services or works. The options include but are not limited to:

- Not buying the goods or services or not having the works done at all;
- Providing the goods, services or works ourselves;
- Utilising a PSBO catalogue (e.g. ESPO) or framework agreement (e.g. ESPO Dealing Direct, Crown Commercial Services);
- Get a third party to provide the ongoing goods, services or works on behalf of the Council;
- Providing the goods, services or works in partnership with a third party;
- By commissioning jointly with another Council;
- By utilising a PSBO (e.g. ESPO, Crown Commercial Services) to procure on behalf of the Council.

3.4. Before beginning a purchase, the officer responsible for it must:

- appraise the need for the expenditure and its priority;
- define the objectives of the purchase;
- assess the risks associated with the purchase and how to manage them;
- consider what procurement method is most likely to achieve the objectives.

3.5. The officer's approach to the appraisal must be proportionate to the complexity and value of the purchase and take into account any guidance in the Procurement Best Practice Guidance available on the intranet pages.

3.6. The officer must consider (where relevant) any specific requirements for what they are purchasing such as Disclosure and Barring Service (DBS) checks or statutory requirements.

3.7. The officer must ensure that he/she consults with Legal Services/specialist Procurement support before any Prior Information Notices (PINs) or Voluntary Ex-Ante Transparency (VEAT) notices, required for the EU Procedure are placed in the Official Journal of the European Union.

3.8. The officer must be satisfied that there is sufficient budgetary provision for the anticipated Contract expenditure and any sources of funding are agreed before conducting the procurement.

3.9. Where the procurement meets the criteria defined for submission to an established Council review group the officer must comply with those requirements.

#### **4. Market Research and Consultation with Third Parties**

4.1. The officer responsible for the purchase:

4.1.1. May consult potential providers prior to the issue of the Invitation to Tender in general terms about the nature, level and standard of the supply, Contract packaging and other relevant matters provided this consultation does not prejudice any potential candidate.

4.1.2. Must not accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential candidates or distort competition.

#### **5. TUPE – Transfer of Undertakings (Protection of Employment)**

5.1. When any employee either of the Council or of a service provider is likely to be affected by changes to staffing or work conditions, redundancy, relocation or transfer of employment or any other



aspects relating to the Transfer of Undertaking of Protected Employment Regulations 2006. Such TUPE issues should be included in evaluation and Tender reports. Due regard must be taken of all regulations concerning TUPE and Workforce Matters including appropriate consultation with staff and trade unions, furthermore due care must be taken to ensure the validity and accuracy of all TUPE information. Pension entitlements must also be considered and as far as possible, protected within this process. Advice regarding TUPE must be sought from Legal Services/Human Resources.

## **6. Collaboration**

- 6.1. Officers should actively seek out opportunities to collaborate with other public bodies where this is of benefit to the Council, taking into account any adverse affect on Local economy and voluntary sector.
- 6.2. Where a collaborative procurement occurs, it is the procurement rules of the authority leading the procurement which will apply unless the lead authority specifically agrees otherwise.
- 6.3. Where the authorities opt for the use of a collaborative Framework Agreement, the anticipated expenditure of the authorities concerned will dictate which procurement rules to apply.

## **7. Insurance**

- 7.1. The standard levels of cover required by the Council can be found on the Council's intranet or by contacting the Council's Finance Team. Where the Council's standard level of cover is not considered to be suitable by the officer, advice on levels should be discussed and agreed in writing with the Finance Team. Professional indemnity must be evaluated on a case by case basis as it may not always be necessary.

## **8. Sustainable Procurement**

- 8.1. Sustainable procurement offers the Council the opportunity to encourage working collaboratively with suppliers to adopt practices that minimise environmental and social impacts. Officers must consider minimising the impact on the environment whilst also acquiring goods, works and services at a competitive rate. Officers are required to consider ways of procuring more resource and energy efficient alternatives and pay particular regard to the Council's environmental policies.

## **9. Supporting Local Enterprises, Voluntary and Community Organisations**

- 9.1. Officers should use the Council's purchasing power to support local small and medium enterprises (S.M.Es) and/or voluntary and community organisations and seek benefits and added value for the local geographical area wherever possible and where this provides equal or better Value for Money for the Council than alternatives.
- 9.2. Officers must ensure that processes do not overburden or restrict either S.M.Es or voluntary and community organisations from having the same opportunity to respond to procurements as those in the commercial sector.
- 9.3. Officers must where possible incorporate questions in their Tenders that evaluate responses relating to any of the following:
  - Local economical benefits,
  - social value benefits,
  - regeneration within the community,

- local employment,
- local apprenticeships,
- or any other benefits that support the Local economy and prosperity for the District where this is appropriate to the procurement.

9.4. Under the Localism Act 2011 and the Community Right to Challenge, an individual or group can propose a solution to provide a service that the Council currently provide. Advice should be obtained from Legal Services on the process to follow should a challenge be received.

## **10. Income Generating Purchases**

10.1. Where an officer is proposing to enter into a Contract where either;

- the Council will be the service provider,
- or the Contract may generate income for the Council possibly to off-set the monies otherwise payable by the Council to the supplier (e.g. a sponsorship agreement), in addition to the other requirements in these rules,

10.2. The officer shall only enter into a Contract if the Service Lead is satisfied that:

- the services to be provided and any benefits to the Council have been clearly specified;
- the Council has power to provide the service, if applicable;
- the proposed Contract is in the best interests of the Council.

## **11. Consultants**

11.1. The relevant Service Lead must consider whether internal resource can provide the requirement in the first instance.

11.2. The relevant Service Lead must consider whether temporary agency staff provision can provide the requirement in the second instance.

11.3. The relevant Service Lead, in conjunction with the Finance team, must identify and consider the employment status of any Consultant appointed and ensure where necessary the Consultant is treated as an employee of the Council.

11.4. A Consultant appointed to advise on the procurement or design of the project, or to advise on an evaluation or similar exercise must not be permitted to bid for any subsequent stage of the work or project.

11.5. It shall be a condition of the engagement of any consultant, agent or professional adviser who is to be responsible to the Council for the management or supervision of a contract on its behalf, that in relation to that contract he/she shall -

- comply with these Rules as though he/she was an employee of the Council;
- at any time during the carrying out of the contract shall, on request, produce all the records maintained in relation to the contract; and
- on completion of the contract transmit all records that he/she has produced or received that relate to the contract to the appropriate Service Lead.

## **12. Purchasing From Framework Agreements**

- 12.1. The officer may purchase goods, services or works from a Framework Agreement if the Council is named either specifically or in acceptable geographic terms on the Framework Agreement and the scope for the officer's purchase is specified in the framework.
- 12.2. The officer must not call-off from a Framework Agreement if there is no clear and specific call-off criteria in the agreement.
- 12.3. The officer must seek specialist Procurement advice if the proposed value of the purchase is £75,000 or more.
- 12.4. Where the terms of the Framework Agreement provide for direct purchase without competition and the terms of such call-off are sufficiently precise (i.e. one supplier), officers may purchase under the Agreement without re-opening competition.
- 12.5. Where the terms laid down in the Framework Agreement are not sufficiently precise to make a direct award or the terms of the Framework Agreement so specify, the officer must hold a mini competition in accordance with the provisions of the Framework Agreement and the following;
  - Inviting all of the organisations within the Framework Agreement who are capable of executing the subject of the Contract to submit a written response to Quotation or Tender;
  - Fixing a time limit, which is sufficiently long so as to allow Tenders for each specific Contract to be submitted, taking into account factors such as the complexity of the subject of the Contract;
  - Tenders shall be submitted in writing, and their content shall remain confidential until the stipulated time limit for reply has expired;
  - The Contracting Authority shall award each Contract to the Bidder who has submitted the best Tender on the basis of the award Criteria set out in the Tender documents for the Framework Agreement.

## **13. Setting up a Framework Agreement**

- 13.1. The term of any Framework Agreements must not exceed four years (EU requirement) except in exceptional circumstances, in particular, circumstances relating to the subject of the Framework Agreement. In the event that a Framework Agreement is required for more than four years, Officers must seek approval from the Service Lead and Monitoring Officer having obtained specialist Procurement advice.
- 13.2. The default for creating a call-off mechanism when creating a Framework Agreement should be a mini-competition. Where a mini-competition mechanism is not used this must be approved by the Service Lead and Monitoring Officer having obtained specialist Procurement advice.
- 13.3. The officer must consider the impact of potentially closing the market in this sector to new suppliers during the period of the Framework Agreement and ensure that the benefits and length of the Framework Agreement are justified.

## **14. Purchases up to £5,000 in Total Value**

- 14.1. Whilst obtaining Value for Money remains the primary objective, multiple Quotations are not essential where the Total Value of the proposed Procurement is less than £5,000.
- 14.2. Wherever possible, quotations must be from Local providers.

14.3. A purchase order must be raised unless the purchase is conducted using a Government Procurement Card (GPC). The terms of the purchase order should suffice unless the officer believes the complexity of the purchase requires more bespoke terms from Legal Services. The purchase order must specify clearly what the Officer wants.

## **15. Low Value Contracts from £5,000 up to £25,000 in Total Value**

15.1. Officers must not seek to procure any goods, services or works if the requirement can be satisfied by calling off using a PSBO catalogue or an accessible framework agreement.

15.2. A minimum of three written Quotations must be obtained for requirements between £5,000 and up to £25,000 and a purchase order must be processed before goods or services or works are purchased. Wherever possible, one quote must normally be from a Local provider. The written Quotations must contain:

- The goods, services or works to be supplied;
- Where and when they are to be supplied;
- The Total Value of the transaction and;
- The terms and conditions to apply to the procurement including price and payment terms

15.3. Written Quotations must be by way of letter or email. Quotations submitted through an E-Tendering solution are acceptable.

15.4. If the Officer cannot obtain three Quotations, the Officer must satisfy themselves that they have obtained Value for Money for the Council and must seek approval from the Monitoring Officer to proceed and the justification to proceed must be recorded, including the relevant exemption clause number, and be available for inspection.

15.5. A purchase order must be raised. The terms of the purchase order should suffice unless the officer believes the complexity of the purchase requires more bespoke terms from Legal Services. Where it is proposed that a form of Contract be used which does not adopt the Council's standard terms, the use of such must be approved by Legal Services. The purchase order must state:

- What is to be supplied (description and quality);
- Payment provisions (amount and timing);
- When the Council will have the right to terminate the Contract.

## **16. Purchases from £25,000 up to £75,000 in Total Value.**

16.1. The officer must not seek to procure any goods, services or works if the requirement can be satisfied by calling off using an accessible framework agreement.

16.2. A minimum of three comparable written Quotations must be sought and wherever possible, at least one quote must be normally from a Local provider. This must be done using the Formal Request for Quotation documentation (available on the intranet) unless otherwise agreed by Legal Services/specialist Procurement advice and must specify:

- The goods, services or works to be supplied;
- Where and when they are to be supplied;
- The Total Value of the Contract;
- The terms and conditions to apply to the procurement including price and payment terms.

- 16.3. A contract advertisement must be placed on the Contracts Finder website. The officer should seek specialist Procurement advice to facilitate this.
- 16.4. The criteria for selecting the most economically advantageous Quotation must be robust and established before the written Quotations are invited.
- 16.5. Written Quotations must be by way of letter or email and must be addressed personally. Printouts of catalogues are not written Quotations. Quotations submitted through an E-Tendering solution are acceptable.
- 16.6. If it is not possible to obtain three Quotations, the officer must complete an Exemption Request Form and obtain approval to the requested exemption before any procurement activity commences.
- 16.7. A purchase order must be raised but the officer must ensure the Council's standard terms and conditions located on the Council's internet site are used as the Contract terms unless the officer believes the complexity of the purchase requires bespoke terms from Legal Services. Where it is proposed that a form of Contract be used which does not adopt the Council's standard terms the use of such must be approved by Legal Services.
- 16.8. An award notice must be placed on the Contracts Finder website where a contract advertisement has been placed previously (see 16.3).

## **17. Purchases from £75,000 in Total Value up to the Current EU Threshold**

- 17.1. The Officer must not seek to procure any goods, services or works if the requirement can be satisfied by calling off using an accessible Framework Agreement.
- 17.2. Officers must seek specialist Procurement advice before commencing the procurement.
- 17.3. Officers must follow a formal Tender process. The Council's Procurement Best Practice Guidance available on the intranet can offer guidance on the Tender process.
- 17.4. An advert must be placed on Contracts Finder. The Criteria for selecting the most advantageous Tender must be established before the written Tenders are invited.
- 17.5. Officers must ensure the Council's standard terms and conditions located on the Council's internet are used as the Contract terms unless the officer believes the complexity of the purchase requires bespoke terms from Legal Services. Where it is proposed that a form of Contract be used which does not adopt the Council's standard terms the use of such must be approved by Legal Services.
- 17.6. An award notice must be placed on the Contracts Finder website where a contract advertisement has been placed previously (see 17.4).

## **18. Contracts over EU Threshold in Total Value**

- 18.1. The officer must not seek to procure any goods, services or works if the requirement can be satisfied by calling off using an accessible Framework Agreement.
- 18.2. All goods, services and works with a procurement Total Value in excess of the EU Threshold levels covered by the EU Procurement Directives are enforced by the Public Contracts Regulations 2015, which lay down a strict process for advertising, timetabling and supplier selection. The latest thresholds and regulations can be found at the following site: <http://www.ojec.com/Thresholds.aspx>. These regulations take precedence over all Council and UK national regulations and carry

potentially heavy penalties for non-compliance. Officers must comply with the detail and principles of the Directives at all times.

- 18.3. All procurements above the EU Threshold must be approved by the relevant Committee prior to the procurement exercise being started.
- 18.4. Procurement must be consulted on the developments of all EU notices and are responsible for EU notice publication. The Criteria for selecting the most economically advantageous Tender must be established and published at the time that the notice is placed.
- 18.5. Officers must seek specialist procurement advice before commencing the procurement.
- 18.6. Specialist procurement advice must be sought regarding decisions relating to whether a procurement of services should be treated as a "light-touch" procedure.
- 18.7. In addition the procurement must be advertised on Contracts Finder immediately AFTER despatch of advert to OJEU and must contain no more information than the OJEU version.
- 18.8. Committee approval is required confirming the successful bidder prior to commencing contract award.
- 18.9. Officers must ensure that in the award of any Contract covered by the EU Procedures they follow the formal award process described in the EU notice.
- 18.10. An award notice must be placed on the Contracts Finder website where a contract advertisement has been placed previously (see 18.7).

---End of Part 2 ---

# Part 3 - Tendering & Contract Management

## 1. Fair and Equal Competition

- 1.1. The officer must manage any Tender or Quotation process in such a way that all Bidders are treated equally and ensure that any clarification meetings (at pre and post Tender stage, if necessary) are conducted fairly and transparently.
- 1.2. Officers must take care in compiling lists of Bidders and in preparing Tender documentation, as well as in the conducting of post-Tender clarification and/or negotiation meetings. Decisions must be recorded in writing.
- 1.3. Officers need to be aware of the key pieces of legislation in relation to equality and diversity, which include, but are not limited to, the Equalities Act 2010 and seek advice within the relevant bodies within the Council.

## 2. Tender Preparation

- 2.1. Unless confined by market conditions or legal requirements, a minimum of three bidders must be invited to Tender. The Officer must invite a minimum of five bidders if the Total Value is over the EU Threshold (excluding negotiated and competitive dialogue procedures which require three Bidders to be invited). At least three tenders must also be received.
- 2.2. In the event that less than three tenders are received then an exemption must be sought.
- 2.3. Candidates invited to Tender must be given an adequate period in which to prepare and submit a Tender response consistent with the urgency of the procurement requirement, the level of complexity of the requirement and according to the industry norm. Normally at least three weeks should be allowed for submission of Tenders. For Tenders above the EU Threshold, officers must adhere to the EU Tender minimum timescales. The Officer must ensure that the specification and evaluation Criteria take into account the Council's priorities.
- 2.4. The officer must ensure that the specification clearly describes the intended outcomes/ outputs and that it is complete, adequate and fair to allow Tenders to be sought.
- 2.5. The officer must assess the quality of Tenders by pre-determined non discriminatory evaluation Criteria and weightings, including whole life cycle cost where appropriate.
- 2.6. The officer must assess the risks associated with the Contract.
- 2.7. The officer must maintain a Tender file to record all decisions and other matters associated with the Tender.
- 2.8. The Contract terms and conditions must be included with the Invitation to Tender documents. Where it is proposed that a form of Contract be used which does not adopt the Council's standard terms, then the use of such must be approved by Legal Services.
- 2.9. The Tender documentation must explain how information provided in the Bidder's response/s will be treated with regard to any statutory requirements (e.g. Freedom of Information Act requests). If in doubt please seek advice from Legal Services.

- 2.10. Invitations to Tender must include a statement that the Council does not bind itself to accept the lowest price Tender or any other Tender.
- 2.11. Bidders must be required to hold their Tenders open for acceptance for a minimum of 90 days from the date of opening.
- 2.12. The Evaluation Criteria and any sub-criteria must be disclosed in the Invitation to Tender documentation and any prequalification documentation.

### **3. Selection and Award Criteria**

- 3.1. Officers must treat selection and award Criteria separately. Selection Criteria are based on a Bidder's ability to perform the Contract and are only used at the selection stage (e.g. previously PQQ now SQ stage) in a Restricted Tender Procedure or as an initial selection stage of the evaluation in an Open Tender Procedure. Award Criteria are used at the Invitation to Tender stage and are described in the Tender documentation.

### **4. Use of Presentations and Site Visits in a Tender Process**

- 4.1. Careful consideration should be given to the use of presentations and/or site visits within the Tender process. There should be a clear understanding of the reason for the use of the presentation or visit and how it will contribute to the evaluation process. The default position should be not to use presentations or conduct site visits. If however, it is required this must be declared as part of the evaluation Criteria in the Tender document. All Bidders must be invited to present or be included in site visits. Any questions should be sent to Bidders in advance. The documentation must clearly state what weighting any presentations or site visits carry as part of the award Criteria.

### **5. Conducting an Electronic Tendering (E-Tendering) Process**

- 5.1. The officer must where possible run his/her Tender process as an electronic Tender process (as per thresholds Part 2 rules 17 and 18). Where an electronic process is not used, this must be agreed with the Procurement resource.
- 5.2. Other E-procurement tools such as (but not limited to) e-auctions and electronic Quotations and/or Dynamic Purchasing Systems must also be considered for Tenders. Tenders by fax must be rejected.

### **6. Receiving Late Tenders or Errors in Tenders**

- 6.1. Where a Tender has been received which is deemed to be late (has passed the Tender response deadline) the officer shall, prior to opening any of the Tenders, report this to his/her Service Lead, giving details surrounding the circumstances of the late Tender. The Service Lead with the prior approval of the Monitoring Officer may accept the Irregular Tender if they determine that the Bidder has gained no unfair advantage from it being late.
- 6.2. The Service Lead, with the prior approval of the Monitoring Officer, may permit a Bidder to correct an error or omission that, in the opinion of the Service Lead, is an obvious one and if they determine that the Bidder has gained no unfair advantage from correcting the error. Any such corrections will be recorded on the Tender file. The Service Lead shall record in writing the reasons why each Irregular Tender has been accepted or rejected and sign and date the record.



## **7. Tender and Quotation Evaluation**

- 7.1. Tenders and quotations must be assessed in accordance with the pre-determined evaluation Criteria.
- 7.2. The results of the Tender evaluation must be recorded and retained on the Tender file.
- 7.3. The evaluation process must clearly demonstrate that the Council is seeking to identify the Value for Money Tender or quotation. Further guidance on evaluation can be found in the Council's Procurement Best Practice Guidance available on the intranet.

## **8. Seeking Clarification**

- 8.1. Providing clarification of an Invitation to Tender to potential or actual Candidates or seeking clarification of a Tender whether in writing or by way of a meeting is permitted only after seeking specialist procurement advice.
- 8.2. Clarifications are not opportunities to conduct major negotiations.
- 8.3. For all Tenders, Officers shall take into account the requirements of EU public procurement legislation and their regulations for any negotiations, clarifications or refinements to any Tender and related documentation.
- 8.4. Officers may, in consultation with the specialist procurement adviser, and with the approval of Legal Services, make clarifications and/or refinements to the Invitation to Tender and related documentation where a Tender process provides for this, provided that all such clarifications and/or refinements are recorded in writing by an Officer of the Council. There must be no significant variation of the Invitation to Tender or related documentation.
- 8.5. Full written records of all clarification decisions must be made and retained by the relevant officer.

## **9. Intention to Award a Contract**

- 9.1. For Contracts that are subject to the EU Procurement Regulations, Officers must allow Bidders a mandatory minimum standstill period of 10 calendar days for electronic Tenders (otherwise 15 days for non-electronic Tenders) from notification to all Bidders before entering into a contractually binding agreement with the successful Bidder. Officers should not undertake any action in relation to the contract during this time, other than respond to relevant queries from Bidders.
- 9.2. The results of the Tender evaluation process must be recorded in writing.
- 9.3. Following the standstill period an OJEU award notice must be placed.
- 9.4. For Tenders above the EU Thresholds all Bidders must be notified in writing of the award.
- 9.5. Any complaints from unsuccessful Bidders must be sought in writing and Officers must submit these to the specialist Procurement adviser for review. Guidance on debriefing candidates or Bidders can be found in the Council's Procurement Best Practice Guidance available on the intranet. The Monitoring Officer must be notified immediately of any challenge to a procurement process, in order that appropriate action may be taken.
- 9.6. If requested by a candidate, the Officer may also give the debriefing information to Candidates who were deselected in a pre-Tender short listing process.

## 10. Award & Placing of Contract

- 10.1. Legal Services shall finalise/ review all contracts above £25,000. All contracts above £75,000 must be signed/ and sealed (as appropriate) by the Legal Services Manager, the Chief Executive or Section 151 Officer. Once signed by the Contractor, all original documents, including specifications, drawings, tender documents and correspondence relating to a contract shall be retained by the Legal Services Manager. Authorised Officers should then complete the Contract Register Form and forward this to Legal Services for publishing on the Council's website.
- 10.2. Where the Total Value of the Contact exceeds £25,000 a record of the contract award must be made on Contracts Finder.

## 11. Contracts Register

- 11.1. Officers should complete the Contract Register Form and forward this to Legal Services for publishing on the Council's website for all new and existing Contracts with a value equal to or exceeding £5,000 and ensure that the register is updated if these details change, this to ensure compliance with the requirements of the Local Government Transparency Code.

## 12. Contract Documentation

- 12.1. The advice of the Legal Services must be sought for the following Contracts:
- Those involving leasing arrangements;
  - Where it is proposed to use the supplier's own terms;
  - Where the Total Value exceeds EU Procurement thresholds;
  - Those which are complex in any other way.
- 12.2. Officers must ensure that they obtain a written Contract for all goods, services or works.
- 12.3. A letter or an email exchange can constitute a Contract and therefore Officers should be careful to avoid accidental or premature contractual agreements occurring.
- 12.4. A verbal commitment can equally constitute a Contract and therefore the Officer must use caution as to what he/she commits to.
- 12.5. Advice on which form of Contract would be most suitable for the procurement can be sought from Legal Services.
- 12.6. Contracts **must not** be split into smaller value agreements to avoid having to meet the Tendering and contractual requirements imposed for larger Contracts by these rules/ regulations or the law.
- 12.7. The Council may wish to enter into "nil value Contracts", for example where the supplier receives payment from a third party, or where the supplier receives non-monetary benefits. Nevertheless, any such Contract must be let in accordance with these rules and Officers should seek the advice of Legal Services in these cases.

## 13. Bonds, Parent Company Guarantees and other Sureties

- 13.1. In the case of any contract for the execution of works or for the supply of goods, services or materials above £75,000, the Officer shall, after consulting with the Section 151 Officer (or in their absence the Legal Services Manager), consider whether the Council should require security for its due performance and shall either certify that no such security is necessary or shall set out in the

specification of tender the nature and amount of the security to be given. In the latter event, the Council shall require and take a Performance bond or other sufficient security (such as a Parent Company Guarantee) for the due performance of the contract. Where contract payment is in arrears and a reasonable retention of at least 10% of the contract price is applied, Performance bonds will not usually be required.

13.2. The Council must never give a Bond or other sureties.

## **14. Managing Contracts**

14.1. All Contracts must have a named officer responsible for the entirety of the Contract and these must be recorded on the Council's Central Contracts Register.

## **15. Contract Monitoring, Evaluation and Review**

15.1. During the life of the Contract the officer must monitor in respect of

- Performance
- Compliance with specification and Contract
- Cost
- Any Value for Money requirements
- User satisfaction and risk management
- Opportunities for continuous improvement In accordance with any guidance in the Council's Procurement Best Practice Guidance available on the intranet.

## **16. Variations**

16.1. A variation to a Contract may involve (i) a change to the specification, (ii) a one-off item of work or particular service, or (iii) material change in terms affecting the Contract. If an Officer wishes to vary a Contract, Legal Services must be consulted.

16.2. The Officer must always consider whether the Total Value is such that the Contract should be re-Tendered. The Officer should seek advice from Legal Services.

16.3. A variation to a Contract does not need to be Tendered where:

- a Contract has been entered into for goods, services and or works on a particular project; and
- additional or unforeseen goods, services and or works occur on the same project; or
- an extension of such goods, services and or works is required for the completion of that Contract, and the existing supplier has provided the price in writing for the additional or unforeseen goods, services and or works provided in all cases that: the officer, the Procurement resource and the relevant Director certify that it is in the interests of the Council to agree the variation and that such a variation is compliant with EU Procedures. Advice upon agreeing a variation should always be sought from Legal Services.

16.4. The Variation to the Contract must state the period of notice for implementing variations.

16.5. The Resources & Finance Committee must approve variations of contract price over 10% of the original tender price.

16.6. All variations should be kept with the original Contract and once agreed, all variations on Contracts with a Total Value of £25,000 or more must be noted on the Contracts Register.

16.7. The Financial Procedure Rules and related regulations must be followed when agreeing Contract variations.

## **17. Extensions**

17.1. In certain situations, the duration of the Contract may be extended. Extensions can only be made where:

- there is budgetary provision; and
- Value for Money can be clearly demonstrated; and
- there is a provision stipulated in the original Contract for a extension; or
- An exemption request is made where no specific provision exists in the Contract.

17.2. The Authorised Officer, in consultation with the Chief Executive or relevant Director, may extend a contract subject to the extension being within the scope of the original scheme.

17.3. If the Contract was subject to EU Procedures, then for an extension to the Contract to be permitted, the original advertisement and the Contract must permit the extension. It is not possible to extend the Contract if an extension provision was not in place from the outset of the Tendering process.

17.4. All Contract extensions where the Total Value of the Contract as extended will be £25,000 or more must be included in the Council's Contract Register.

## **18. Assignments and Novations**

18.1. If an officer becomes aware that an existing supplier has or may be subject to a company reorganisation, where they may be taken over or merged with another company or simply assigned to another or even otherwise disposed of, then he/she should seek the advice of Legal Services.

18.2. Any proposed assignment, novation or disposal must be referred to Legal Services for advice. Any assignment or novation of a Contract must be recorded on the Council's Contract Register.

## **19. Receivership/Liquidation**

19.1. In the event of the officer becoming aware that a supplier is entering into a change of control, insolvency, bankruptcy, receivership or liquidation the officer must inform Legal Services immediately. The supplier shall only be permitted to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior written consent of the Council. The Council reserves the right to decline a supplier that is deemed to be not suitable. If a suitable alternative is not identified the Contract must be re-Tendered.

## **20. Claims & Disputes**

20.1. The officer must consult Legal Services immediately in regard to the making of or receipt of any Contract claims (e.g. for breach of Contract or disputes) and refer also to the Financial Procedure Rules.

## **21. Termination of Contract**

21.1. The date on which the Contract will terminate, and the terms on which the Contract may be terminated early (e.g. for breach of Contract) must be clearly described within the Contract. Only the body/individual who approved the Contract award can agree to implement any provision for early termination.

## **22. Freedom of Information and Data Protection**

- 22.1. The Council has specific obligations under the above acts regarding disclosure of information and the officer has an obligation to record and maintain accurate records relating to Contracts and comply with requests under these Acts. Any queries regarding Freedom of Information or Data Protection should be referred to Legal Services.
- 22.2. During Tender or quotation processes, Bidders must be informed that they should state if any of the information supplied by them is confidential or commercially sensitive or should not be disclosed in response to a request for information made to the Council. Bidders should state why they consider the information to be confidential or commercially sensitive. This will not guarantee that the information will not be disclosed but will be examined in the light of the exemptions provided in the Act.

## **23. Retention of Records**

- 23.1. The Officer must keep and maintain records in respect of each Contract (from the time the project begins until the point at which the Contract is awarded or a decision is made not to award a Contract) in order to demonstrate the achievement of Value for Money, openness, probity and compliance with the Rules.
- 23.2. The Officer must ensure that originals and copies of all Contract documentation adhere to the Council's document retention policy available on the Council's intranet pages. The officer must ensure that he/she has no conflict of interest and must report in writing where he/she suspects a conflict of interest in compliance with the Council's HR policy.
- 23.3. For more information on specific retention dates please refer to the Council's document retention policy on the intranet.

## **24. Amendments to these Rules**

- 24.1. The Monitoring Officer, in consultation with the Chief Financial Officer, shall have the power to make incidental amendments from time to time to these rules.

--- End of Part 3 ---

## Appendix 1 - Summary of Contract Thresholds

Value of Contract	Purchase Decision	Advertising	Procurement Process	Approval / Signature of Contract
<b>Goods, services and works up to £5,000</b>	Officer	Not required	Obtain Best Value. Multiple Quotations not necessary.	Contract approved by Purchase Order.  Written Contract only required where complex requirements signed by Officer with appropriate authority or Purchase Order issued.
<b>Goods, services and works from £5,000 up to £25,000.</b>	Officer	Not required	Obtain at least 3 Written Quotations (1 Local quote).	Contract approved by Purchase Order.  Written Contract only required where complex requirements signed by Officer with appropriate authority or Purchase Order issued.
<b>Goods, services and works from £25,000 up to £75,000.</b>	Officer	Must use Contracts Finder for advert notice and award notice.	Obtain at least 3 Written Quotations (1 Local quote) using formal RFQ process.	Purchase Order raised not issued.  Written contract signed by Director or Officer with appropriate authority to enter into a Contract.  Standard terms or bespoke terms approved by Legal Services.
<b>Goods, services and works from £75,000 up to EU Threshold.</b>	Officer and Legal Services.	Must use Contracts Finder for advert notice and award notice.	Obtain at least 3 Tenders using formal Tender process.	Purchase Order raised not issued.  Written contract signed by Director or Officer with appropriate authority to enter into a contract.  Standard terms or bespoke terms approved by Legal Services.
<b>Goods, services and works from EU Threshold and over</b>	Officer, Legal Services and relevant Committee	Must use Contracts Finder for advert notice and award notice.  All EU Notices must be issued by the Procurement resource.	All EU Notices to be published by the Procurement resource.  Obtain at least 3 Tenders using formal tender process.	Purchase Order raised not issued.  Written Contract signed by Director or Officer with appropriate authority to enter into a Contract.  Standard terms or bespoke terms approved by Legal Services.
<b>Goods, services and works using a Framework Agreement</b>	Officer (and Legal Services if over 75,000)	N/A	Follow call-off procedure within Framework Agreement.	Purchase Order raised not issued.  Written contract created from Framework Agreement.  Signoff as per above thresholds.