

CONTRACT PROCEDURE RULES**1. Introduction**

1.1 The following are the Council's rules for the letting of contracts for the supply of goods or materials or for the carrying out of works or services. They do not affect the validity of anything done under any earlier version of these rules. There is an informal Procurement Toolkit that gives further guidance for officers.

1.2 In these Rules, references to:

- (a) the "Chief Officer" includes the Head of Paid Service, an Executive Director, the Corporate Director,- Legal and Democratic and any officer duly authorised by any of them to act under these Rules to the extent as provided for in the Officer Scheme of Delegations – Part 3 of the Constitution and/or elsewhere in the Constitution;
- (b) "Procurement Regulation" means the Public Contracts Regulations 2015 and any EU Directives incorporated in English law or any EU Regulations having direct effect; and
- (c) the "Section 151 Officer" and the "Monitoring Officer" include any other Officer duly authorised by either of them to act under these Rules.

2. General**2.1 Requirement for compliance**

- (a) Unless Contract Procedure Rule 2.2 applies every contract made by or on behalf of the Council, (including those where there is no cost to the Council, but which result in income being generated for the supplier or contractor) must comply with these Contract Procedure Rules.
- (b) Every contract should also comply with the Financial Regulations, all relevant statutory provisions and any direction of the Council.

2.2 Exceptions

These Rules shall not apply to:

- (a) contracts of employment;
- (b) contracts for individual temporary agency staff;
- (c) treasury management;
- (d) the use of counsel or any other external legal service where advice, assistance and/or representation is required, and:

- a. the requirement for appointment is considered to be urgent by the Corporate Director – Legal and Democratic, the Officer responsible for Legal Services or any other Officer authorised by either of them; or
 - b. where the appointment is not urgent, the contract value is estimated at the time of the initial instruction to be less than £49,999;
- (e) contracts for works, or the purchase of goods or services under an existing framework agreement if Contract Procedure Rule 3 is followed;
 - (f) contracts for the sale, letting or purchase of land or buildings;
 - (g) contracts where the works, or the purchase of goods or services are on behalf of a partnership of public sector bodies including the Council and the award of the contract is under the lead body's own rules;
 - (h) arrangements with Ofsted for the inspection of a school;
 - (i) contracts for the execution of mandatory works by statutory undertakers;
 - (j) contracts for special educational needs or social care if, in the opinion of the relevant Chief Officer, it is considered to be urgent, necessary in the circumstances and the total contract value will not exceed any relevant Procurement Regulation threshold;
 - (k) contracts for residential care which the Council has a duty to provide under sections 21 and 29(4) of the National Assistance Act 1948; section 117 of the Mental Health Act 1983; or section 17 of the Children Act 1989 if, the relevant Chief Officer considers it to be urgent, necessary in the circumstances and the total contract value will not exceed any relevant Procurement Regulation threshold;
 - (l) trading arrangements under which the Council provides, goods, services or works to a third party; and
 - (m) a contract that any Chief Officer considers is necessary for the purposes of an emergency.

2.3 Variation or exemption of Contract Procedure Rules

- (a) No variation of or exemption from these Rules is allowed unless :
 - (i) the Council or the Executive resolves;
 - (ii) the law requires otherwise; or

- (iii) the officer seeking the variation or exemption has completed the relevant exception record and it has been approved in advance of a contract being awarded.
- (b) No variation or exemption may be made which will result in a breach of any relevant Procurement Regulation or threshold.
- (c) A variation or exemption may be granted by the relevant Officers identified in Appendix 2 of the Scheme of Delegation – Part 3 of the Constitution, on any one or more of the following grounds:
 - (i) the nature of the market has been investigated and is considered to be such that a departure is justified because the Contract can only be performed by one supplier or best value as likely to be achieved by approaching one supplier; or
 - (ii) the contract is required in circumstances of urgency that could not reasonably have been foreseen; or
 - (iii) the Council has a contract with an organisation already engaged by the Council for similar and related works, goods or services and it is considered that there would be significant benefit to extend the existing contract to cover any additional requirement without exposing the Council to unacceptable risk; or
 - (iv) where any Procurement Regulation or other legislation prevents a procurement process being followed; or
 - (v) contracts for supplies, materials, services or works which are available only as proprietary or patented articles, services or works from one contractor or supplier and for which an Chief Officer decides that there is no reasonable alternative available including contracts for repairs, or the supply of, parts to such articles or works; or
 - (vi) there are other circumstances that the relevant Officers consider to justify an exemption; and

in all cases, in the opinion of the relevant Officer, it is appropriate.

2.4 Authority to procure

Any procurement carried out on behalf of the Council may only be undertaken with authority to carry out such task whether by way of a delegation in the Scheme of Delegation – Part 3 of the Constitution or otherwise.

2.5 Calculating the financial value of a Contract

When calculating the value of a contract for the purposes of these Rules (other for concession contracts):

- (a) values are total lifetime contract values not annual values;
- (b) values exclude recoverable VAT;
- (c) values are to be aggregated – for example, if there is a recurring need on an annual basis for supplies;
- (d) if there are variables which result in the estimate being a range of figures rather than a single figure, then the highest figure in the range will be the value of the contract;
- (e) the valuation shall include the value of possible contract extensions and possible additional options including sub-contractors' costs; and
- (f) where a contract is of indeterminate length the value of the contract shall be assessed on the basis of the monthly estimated cost x 48.

2.6 Contract Extensions

- (a) Any contract below Procurement Regulation thresholds may be extended in accordance with its contract terms.
- (b) All contracts above Procurement Regulation threshold can only be extended in line with the original OJEU notice and the relevant statutory requirements prevailing at the time.

3. Framework agreements

3.1 To be used where appropriate

Public sector-led frameworks agreements and contracts let by other public sector bodies for the purchase of goods and services may offer Best Value to the Council. Subject to Rule 3.2, Framework Agreements may be used where the Council's requirements can be met, it is practicable to do so and there is no existing corporate contract for the same or similar goods, works, and services which would be breached if a framework agreement was used.

3.2 Pre-conditions

Before entering into an existing framework agreement, the relevant Chief Officer should be satisfied that:

- (a) the Council is within the description of the contracting bodies who can use the framework agreement; and

- (b) the framework agreement has been advertised and meets the relevant statutory requirements prevailing at the time.

3.3 Subsequent purchases

Unless the terms of the framework agreement say differently and/or the framework agreement does not contain clear call-off contract criteria, once the framework agreement is operating, all subsequent purchases under the call-off contract shall, either:

- (a) not require further competition or,
- (b) if there are 2 or more suppliers of those goods or services, the competition shall be by inviting quotations from all of those suppliers on the price payable for the goods or services.

4. No framework agreement – contracts with a value less than £50,000

- 4.1 Where the relevant Chief Officer estimates at the beginning of the procurement the contract value to be less than £50,000 the relevant Chief Officer should seek to obtain best value which for the purpose of this Contract Procedure Rule means using an existing corporate contract or seeking one or more quotes.
- 4.2 If the expenditure has been approved in estimates and any necessary financial or other approvals have been obtained, the relevant Chief Officer may proceed with the contract.

Note to officers: further informal guidance on procuring goods, services or works below £50,000 together with template forms can be found in the informal Procurement Toolkit.

5. No framework agreement – contracts with a value between £50,000 and £99,999

- 5.1 Where the relevant Chief Officer estimates at the beginning of the procurement that the contract value is between £50,000 and £99,999 three written quotations shall be sought wherever possible. This may be done through the Council's electronic Tendering System ("eTS"), by letter, e-mail or some other mechanism by which the price can be evidenced before a purchase decision is taken.
- 5.2 When requesting quotations above £50,000 the relevant Chief Officer must also specify:
 - (a) the goods, works or service required;
 - (b) the award criteria; and

- (c) any relevant terms or conditions or special requirements
- 6. **No framework agreement – contracts with a value of £100,000 or more but below Procurement Regulation thresholds – requirement for tenders**
- 6.1 **Financial thresholds**

Tenders shall be invited where the contract value is estimated at the beginning of the procurement to be £100,000 or more but below relevant Procurement Regulation thresholds.
- 6.2 **Requirement to advertise**

All contracts where the contract value is estimated at the beginning of the procurement to be £100,000 or more, but below relevant Procurement Regulation thresholds must be advertised through Contracts Finder. A Chief Officer may advertise contract opportunities below this threshold on Contracts Finder if s/he is satisfied that it is unlikely there will be sufficient local competition or considers this to be a preferred approach for any other reason.
- 6.3 **Methods to be used**

Tenders shall be sought by way of an Invitation to Tender using the eTS.
- 7. **Form of invitation to tender and submission of tenders**
- 7.1 **Form**

The Invitation to Tender shall be prepared by the relevant Chief Officer and shall:

 - (a) describe the scope of the goods, works and/or services to be procured including any relevant outputs necessary for monitoring performance;
 - (b) give reasons to justify any decision not to accept sub-division of the contract into lots;
 - (c) require tenderers to answer questions about their suitability, capability, legal status and financial standing;
 - (d) invite tenderers to identify information they consider to be confidential, commercially sensitive and/or exempt from disclosure in response to a relevant statutory request made to the Council;
 - (e) include the criteria and the weightings that will be the basis for the evaluation of tenders;
 - (f) state the form of contract and/or terms of the contract including any required by these Contract Procedure Rules and state that the Council will not accept any alteration or amendment of those terms and conditions of contract;

- (g) state that the Council does not accept any qualification or addition to the invitation to tender other than when requested;
- (h) set out an adequate timetable for the submission and consideration of tenders; and
- (i) require all tenders to be submitted on a form of tender prepared by the relevant Chief Officer which shall include where appropriate:
 - a. a certificate against collusion;
 - b. a statement that tenders should be kept open for a specified period after the date of tender opening;
 - c. a statement that the Council will not be bound to accept any tender; and
 - d. a statement that any tender or contract may be inspected by any regulator.

7.2 Receipt

- (a) The relevant Chief Officer will arrange for the opening of tenders and release for evaluation as soon as possible after the date and time specified in the Invitation to Tender. Any tender received after the date and time specified for receipt will be recorded as being received late and will not be considered.
- (b) Tenders submitted by fax or e-mail will not be accepted.

7.3 Custody of tenders received

Tenders shall remain unopened in the eTS until the time set for their opening.

8. Opening and registration of tenders

- 8.1 All tenders received by the date and time set for receipt of tenders and which meet the requirements of Contract Procedure Rule 7.1 (i) will be opened at the same time by the relevant Chief Officer or their nominee after the time set for their receipt.

- 8.2 The names of the tenderers and the amounts will be recorded in the eTS.

9. Evaluation of tenders

- 9.1 Before evaluating tenders, the relevant Chief Officer must check that the tenders comply with any instructions to tenderers, pricing, schedule and any other explicit requirements (e.g. submission of method statements) and unless provided for in the invitation to tender that the tender is not a qualified tender.

- 9.2 The criteria and weightings described in the Invitation to Tender must be used in scoring any tenders.

Note to officers: further informal guidance on the preparation of specifications; invitations to tender; tender evaluation together with template forms can be found in the informal Procurement Toolkit.

10. Alterations to tenders

10.1 Errors identified before closing date

If an error is identified in the specification or other tender documentation before the closing date for the return of tenders, all tenderers are to be told about the error promptly and allowed to adjust their tenders.

10.2 Errors identified after closing date

If an error is identified in the specification or other tender documentation after the closing date for the return of tenders, all tenderers are to be told about the error and given the chance to either withdraw or amend their tender.

10.3 Errors or discrepancies in successful tenders

Where examination of tenders shows errors or discrepancies which would affect the tender figure in an otherwise successful tender the tenderer shall be told of the errors and discrepancies and given the chance of confirming or withdrawing his offer, or in the case of arithmetical errors, of correcting them. If the tenderer withdraws, the next tender in competitive order is to be examined and dealt with in the same way.

11. Post-tender negotiation

- 11.1 Unless the Section 151 Officer or Monitoring Officer have agreed otherwise, any post-tender negotiations shall be conducted jointly by at least two senior members of staff. Full and proper records shall be kept of any post-tender negotiations.

- 11.2 Post-tender negotiations for contracts below any relevant Procurement Regulation thresholds shall not be conducted where to do so might distort competition particularly with regard to price. In the event that post-tender negotiations are necessary following the submission of a tender, then such negotiations must only be undertaken with the tenderer who has previously submitted the most economically advantageous tender as assessed against the tender evaluation method.

- 11.3 Where post-tender negotiations result in a fundamental change to the specification or contract terms the contract shall not be awarded but shall be re-tendered.

- 11.4 If post-tender negotiations take place the relevant Chief Officer shall prepare a report to Council for approval before any tender is accepted.

12. Acceptance of tenders - Most favourable tender

12.1 A tender may not be accepted without Member approval in accordance with the Executive arrangements unless it:

- (a) is within the approved budget;
- (b) meets all of the tender submission requirements in Contract Procedure Rule 7.1(i);
- (c) complies with the detailed specification;
- (d) is the most economically advantageous tender having regard to any award criteria and the weightings applied to them; and
- (e) it is not a tender qualified by reservations or statements made by the tenderer limiting any liability that the tenderer would be subject to if that tenderer is awarded the contract.

12.2 A tender which meets the criteria in Contract Procedure Rule 12.1 shall not be accepted if the Contract Value is more than £500,000 without appropriate Member approval.

13. No framework agreement - contracts with a value above Procurement Regulation thresholds - requirement for tenders

13.1 Subject to the agreement of the Section 151 Officer any of the procedures permitted by the relevant statutory requirements prevailing at the time and which are appropriate may be used to obtain tenders.

13.2 The procedure adopted shall comply with the relevant statutory requirements prevailing at the time and these Contract Procedure Rules where relevant.

13.3 Where the Open or Restricted List procedures are used post-tender negotiations are not permitted.

13.4 No tender that is for a contract above any relevant Procurement Regulation threshold shall be accepted unless the Monitoring Officer is satisfied that the notices of the intention to award the contract have been given to unsuccessful tenderers (and if necessary, to contractors not invited to tender) and the period for them to challenge the award has ended.

14. Promotion of equalities

To comply with the Council's duty under the Equality Act 2010 to promote equality of treatment, tenderers for contracts above any relevant Procurement Regulation thresholds shall be required to explain what measures they would take to actively promote equality of opportunity.

15. Public Services (Social Value) Act 2012

To comply with the Council's duties, in preparing tenders for any contract above any relevant Procurement Regulation thresholds the Chief Officer must consider how to incorporate relevant social value considerations into the procurement process.

16. Local Government (Contracts) Act 1997

No tender relating to a contract to which the Local Government (Contracts) Act 1997 Sections 2-9 apply shall be accepted without consideration by the Monitoring Officer.

Note to Officers: further informal guidance on relevant requirements relating to the preparation of tenders for contracts above Procurement Regulation thresholds together with template forms can be found in the Procurement Toolkit.

17. Letter of intent

A letter of intent providing the basis for a future agreement should only be used by a Chief Officer following the taking of advice from the Legal Services Unit.

18. Contracts to be in writing

18.1 Form

Subject to Contract Procedure Rule * every contract having a value of less than £50,000 shall be in writing, shall be by Purchase Order incorporating the Council's standard terms and conditions unless a formal agreement is entered into and a purchase order must be raised.

18.2 Content

Every contract having a value of £50,000 or above shall, in addition to any other relevant matters, specify:

- (a) the goods, materials, works, services or other things to be furnished supplied had or done;
- (b) the price to be paid with a statement of discount or other deductions;
- (c) a condition that the contractor shall subscribe to the standards of ethical conduct expected by the public from those working in the public sector;

- (d) unless it is for the one of purchase of goods and/or materials, the date when the contract will terminate and the terms on which the contract may be terminated early; and
- (d) where applicable the time or times within which the contract is to be performed.

18.3 Signing of contracts

- (a) Other than contracts in the form of an official order every contract less than £100,000 in value not required or intended to be sealed shall be signed on behalf of the Council by the relevant Chief Officer (or other officer authorised by them in accordance with the Officer Scheme of Delegation - Part 3 of the Constitution or as otherwise provided for in the Constitution).
- (b) Every contract required or intended to be made under seal shall be sealed on behalf of the Council as set out in Article 14.05.

19. Safeguards for due performance

19.1 Failure to Deliver

- (a) Every contract for the supply of goods, services, works and/or materials to which these rules apply should, unless the relevant Chief Officer considers it inappropriate, include a clause protecting the Council against the Contractor's failure to deliver. The clause should include the right for the Council to:
 - (i) purchase other goods, services, works or materials to put right the effects of the Contractor's failure; and
 - (ii) recover from the Contractor any excess cost of purchasing other goods, services, works or materials.
- (b) In every contract for the supply of goods, services, works and/or materials, a clause will, unless the relevant Chief Officer considers it inappropriate, be included to the effect that the goods, services, works and/or materials will only be deemed to have been delivered to the Council if they have been delivered to the location specified by the Council and signed for.

19.2 Liquidated Damages for contracts exceeding £100,000

The Contract must, unless the relevant Chief Officer considers it inappropriate, require the payment of liquidated damages by the contractor in the event of delay by the contractor. The amount of the liquidated damages to be specified will be the Council's genuine pre-estimate of the losses to be paid by the contractor in the case the terms of the contract are not duly performed.

19.3 Performance Bonds for contracts exceeding £500,000

Where a contract exceeds £500,000 the contractor will be required to give a performance bond or other form of security acceptable to the relevant Chief Officer and the Section 151 Officer, unless both consider it is unnecessary.

20. Assignment or sub-letting

A clause will, where appropriate, be inserted in every contract for the execution of work, for supplies, and/or services to which these rules apply prohibiting the assigning or sub-letting of the contract without the previous consent of the relevant Chief Officer.

21. Specifications and standards

All contracts to which these rules apply where a specification issued by the British Standards Institution or a European Standard is current at the date of the tender and is relevant shall require as a minimum that goods and materials used in their execution shall be in accordance with the specification.

22. Prevention of bribery clause

Every contract to which these rules apply will, where practicable, include a clause allowing the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor or any person employed by him or acting on his behalf has committed any offence under the Bribery Act 2010 or under the Local Government Act 1972 Section 117.

23. Nominated sub-contractors

Where a sub-contractor or supplier is to be nominated by the Council to a main contractor, the relevant Chief Officer will, wherever practical, comply with these Rules as though the sub-contract were a contract with the Council.

24. Publication of contract awards

24.1 Details of every contract award over £5,000 including those covered by an exemption shall be published on the Council's Contracts Register.

24.2 In addition, unless there is a relevant exception, where the contract is over any relevant Procurement Regulation threshold, the award shall be published and any report required by a third party shall be prepared in accordance with the relevant statutory requirements prevailing at the time.

25. Retention of tenders and contracts

Unsuccessful tenders, accepted tenders and contracts and tender evaluation results shall be kept in accordance with the Council's information asset register.

26. Review of financial limits

The financial limits set out in these Contract Procedure Rules shall be reviewed periodically by the Council.

27. Procurement Toolkit

The Section 151 Officer will prepare and keep up-to-date a Procurement Toolkit containing informal guidance and templates for officers engaged in procuring services, goods and works.

Note for officers: The following table summarises the type of procurement process; the minimum number of quotes or tender that should be sought or invited where practicable; and any contractual requirements. The table is not part of these Contract Procedure Rules.

Total Value over the life of the contract ex V.A.T.	Minimum requirements and relevant rules	Acceptance [Subject to Contract] by:	Minimum Order/Contract requirement
A. Less than £50,000	Call-Off from an existing Framework Agreement let by the Council or other Third party or 1 or more quotes	Chief Officer	Official Order
B. £50,000 to £99,999	Call-Off from an existing Framework Agreement let by the Council or other Third party or 3 written quotes (where practicable) using eTS		Official Order unless a formal agreement is entered into.
C. £100,000 to Procurement Regulation threshold	Call-Off from an existing Framework Agreement let by the Council or other Third party Or tenders sought using eTS		
D. Procurement	As for £100,000 but following EU	As for £100,000, but prior approval under	As for £100,000, but formal agreement

Total Value over the life of the contract ex V.A.T.	Minimum requirements and relevant rules	Acceptance [Subject to Contract] by:	Minimum Order/Contract requirement
Regulation threshold or above	procurement procedures. Additional tender requirements apply	Executive arrangements/Full Council (as the case may be) required if contract value £500,000 or above	under seal if contract value `above £500,000