



## **Contract Procedure Rules**

## Contract Procedure Rules (version 11.1 October 2024)

Introduction .....	3
Contracts .....	4
Relevant Contracts .....	4
Officer Responsibilities .....	5
Officer Requirements .....	5
Executive Director / Executive/Associate Director Responsibilities .....	6
Exemptions .....	6
E-Procurement .....	7
Records .....	8
Approved or Standing Lists of Suppliers .....	8
Framework Agreements and Collaborative Procurements .....	9
Competition Requirements .....	9
Minimum requirements: .....	10
Assets for Disposal .....	10
Providing Services to External Purchasers .....	11
Procurement Strategy, Pre-Procurement Engagement or Soft Market Testing and Research .....	11
Insurance .....	11
Specifications, Standards and Evaluation Criteria .....	11
Social Value .....	12
Public Sector Equality Duty (PSED) .....	13
Invitations to Tender (ITT's) / Requests for Quotations (RFQ's) .....	13
Nominated Sub-contractors and Suppliers .....	14
Submission, Receipt and Opening of Tenders or Quotations .....	14
Clarifications and Negotiations .....	15
Evaluation, Selection, Award and Feedback .....	15
Avoiding Challenges .....	16
Contracts .....	17
Indexation and price variation Clauses .....	18
Forming of Contracts .....	18
Extension and Variation of contracts .....	19
Contract Formalities .....	19
Sealing .....	19
Contract Surety .....	20
Remedies for non-performance .....	20
Prevention of Corruption .....	20
Declaration of Interests .....	21
Contract Management .....	21
Risk Assessment and Contingency Planning .....	21
Contract Monitoring, Evaluation and Review .....	22
Late Payment Regulations and Prompt payment of sub-contractors .....	22
VAT .....	23
SMEs .....	23
Concession Contracts .....	23
Procurement Procedures .....	23
Version Control Information: .....	25

## Introduction

These Contract Procedure Rules, issued in accordance with S.135 Local Government Act 1972, are intended to promote good practice and public accountability.

Officers responsible for purchasing or disposal must comply with these Contract Procedure Rules (the Rules). Compliance is the best defence against any allegation that a procurement has been made incorrectly or fraudulently. These are minimum requirements and more detailed procedures may be appropriate for particular contracts. In summary you must:

- Comply with the Rules for all procurements and disposals except where explicitly exempted.
- Comply with the principles of Transparency, Proportionality, Equal Treatment and Non-Discrimination.
- Act with the highest standards of probity and integrity
- Take all necessary legal, financial and professional advice.
- Declare any personal financial interest or other conflict of interest.
- Conduct a Best Value review and appraise the procurement need.
- Comply with the Council's corporate aims, objectives and policies.
- Assess the route of procurement - check if there is an existing Corporate Contract or Framework Agreement to use
- Ensure tender documents give a full, clear and accurate description of the work.
- Clearly specify the exclusion, evaluation, selection and award criteria and their weighting.
- Keep commercial information confidential.
- Notify unsuccessful bidders of why the decision was taken, the name of the successful bidder and the relative advantages of its bid, or of any decision not to award the contract.
- Complete a formal Contract or issue an Official Purchase Order before the supply, service or works begins.
- Add the Contract details to the Council's Contract Register
- Assess the Contract Management skills available and identify any training needs and support required.
- Identify a contract manager with responsibility for ensuring the contract delivers as intended.
- Maintain proper Contract Management records.
- Undertake a post-contract review to monitor performance, how well it met the procurement need and if the procurement achieved Value for Money.

The Rules are part of the Council's Constitution. They apply directly to every employee of the Council involved in any part of a procurement process. They apply equally to any partnership the Council may enter into and to contracts in respect of which the Council may nominate sub-contractors or suppliers.

The Rules must be followed by the Council, the Executive/Committees (including Portfolio Holders/Lead Members) and by Agents, Consultants, including architects and engineers, and Public Private Partners, acting for or on behalf of the Council. These Rules apply to contracts involving the receipt of income as well as expenditure and to Concessions.

In accordance with the Constitution, the Chief Finance Officer may amend these Rules after consultation with the Monitoring Officer, and the Head of Legal Shared Services.

If you are in doubt about whether these Rules apply to a contract or proposed contract, about their meaning or how to apply them, consult:-

- (a) Your Manager.
- (b) Legal
- (b) The Corporate Procurement Manager.
- (c) The Monitoring Officer
- (d) Chief Finance Officer
- (e) Internal Audit Service.

Procurement refers to the whole process relating to the purchase, acquisition or commissioning of Works, Supplies and Services from inception to completion.

### **Contracts**

Contracts are legally binding agreements and in English law they do not need to be in writing. In simple terms a contract is formed when an offer, to do or to supply something for another party, is accepted by the party to whom the offer was made. Contracts may be formed in writing, by word of mouth, or by performance. Care must be taken when communicating, verbally or in writing, with bidders. You must only enter into contracts on behalf of the Council where there is current budget provision and when you have authorisation from an Officer who is authorised to sign having regard to the value of the extended contract and the authorisation limit of the Officer signing.

### **Relevant Contracts**

All Relevant Contracts must comply with these Rules, these include arrangements made by or on behalf of the Council for the:

- Supply of goods, materials or Services and the carrying out of Works
- Disposal of goods, materials, plant, vehicles or equipment
- Hire, Rental or Lease of goods, plant, vehicles or equipment
- Granting of Concession Contracts
- Delivery of Consultancy, Advisory and other Services, including but not limited to those related to the recruitment of staff, land and property transactions, legal, financial, construction and other consultancy services.

Relevant Contracts do not include:

- Contracts of Employment which make an individual a direct employee of the Authority. For the avoidance of doubt the Rules do apply to contracts with external agencies or companies for the employment of staff.
- Acquisition and disposal of Land. For the avoidance of doubt the Rules do apply to advice and other services taken in relation to the disposal of land

## **Officer Responsibilities**

Officers responsible for purchasing or disposal must:

- Comply with these Rules, the Financial Procedural Rules, the Code of Conduct for employees, other Council policies and all UK legal requirements.
- Ensure that any Agents, Consultants and Partners acting for or on behalf of the Council comply with these Rules.
- Check if a suitable Corporate Contract exists before seeking to procure another contract; where a suitable Corporate Contract exists, this must be used unless there is a sound business case not to do so. In the event that a separate contract is procured, the reasons must be documented and approved by the relevant Corporate Management Board member..
- Consult the participating Councils in the shared service partnership on any opportunity to aggregate demand for more efficient procurement where a new procurement requirement is identified
- Consider Collaborative Procurement opportunities with other Authorities, particularly other Councils in Hertfordshire.
- Assess if a Contract may have the consequence that any employee of the Council or of a current service provider might be affected by any transfer of the work or undertaking. Officers must ensure that the implications of the Transfer of Undertaking (Protection of Employment) Regulations (TUPE) are assessed. The advice of the Head of the Legal Shared Service must be sought in any case involving the TUPE Regulations before proceeding with the procurement.
- Assess if the Construction (Design and Management) Regulations 2015 (CDM), which places legal duties on those involved in construction work, apply.
- Consult with and receive the approval of Associate Director of ICT and Shared Services for all ICT Hardware and Software procurements, including licences, printers, telephony and ICT accessories.
- Consult with and receive the approval of Executive Head of HR for all procurements involving the recruitment, appointment or employment of agency, self-employed or contract staff.
- Consult with and receive the approval of the Head of the Legal Shared Service for any proposal to commission legal support. External support will be sourced by the Head of the Legal Shared Service if there is insufficient internal capacity or capability available. The Head of the Legal Shared Service, or nominated officer, is the single point for accessing legal support or placing contracts for such work.
- Consider wider benefits in the procurement – opportunities for social and local economic development (Social Value).

## **Officer Requirements**

- Assess the most appropriate procurement route to achieve Best Value. Including in-house provision, using an existing contract, external procurement, partnering, collaborative procurement with other local authorities, public body or purchasing consortium or use of an appropriate existing Framework Agreement let by others which the Council is able to procure from.
- Prepare a pre-tender estimate of the value of the supplies, services or works.
- Set out a clearly defined Specification for the supply, services or works with reference where necessary to appropriate standards etc.

- Clearly set out the Terms and Conditions, or Conditions of Contract that are to apply to the proposed contract. These include any Special Conditions of Contract where a standard form of contract is used. Examples of standard forms of contract are the Council's standard goods and services terms, the JCT or NEC Suite of contracts.
- Consider how SME's and / or the 3<sup>rd</sup> Sector could engage with the procurement.
- Define clear Evaluation (selection and award) Criteria and their weightings for each stage of the procurement process.
- Ensure there is appropriate approval or delegated authority for the expenditure and the procurement accords with the approved policy framework and scheme of delegation set out in the Constitution.
- Carry out appropriate credit checks and observe any requirements for a surety.
- Observe any Standstill period as appropriate for procurements above the UK Procurement Regulation Thresholds.
- Publish an Award Notice if required to do so.
- The Corporate Procurement Manager is informed of all contracts that are awarded and that copies of all procurement and contract information are made available.

### **Executive Director / Director / Executive Head /Associate Director Responsibilities**

They must ensure that:

- their staff comply with their Officer responsibilities
- the Contract Register is up to date and that copies of all contract documents are kept safe and accessible. Electronic copies are acceptable for contracts. It is advisable that an additional hard copy of all major contracts is retained by the Contract Manager. All major contracts are stored on the Council's Legal Document management system and in paper form in the strong room at Watford Borough Council.
- all Exemptions are recorded.
- contract records are retained in accordance with the Council's Document Retention policy.
- That the Corporate Procurement Manager has been informed of all contracts that are awarded and that copies of all procurement and contract information are made available.

### **Exemptions**

An exemption to these Rules may only be requested where the value of the contract would not exceed UK Procurement Regulation threshold and remains in compliance with in case of extension or variation of contracts procured before 24<sup>th</sup> February 2025 or the Procurement Act 2023 in all other cases.

- Acquisition or disposal of Land:

These Rules do not apply to the acquisition or disposal of Land except where a lease or licence is granted as a part of a principal contract for other Works, Supplies or Services.

- Unforeseeable emergency:

Where exemption from these Rules is unavoidable due to an unforeseeable or emergency event involving immediate risk to persons or property or likely to give rise to major or serious disruption to the Council's services, the Chief Executive and Executive Director/Director/Executive Head Associate Director may jointly approve an exemption. They must inform the relevant Portfolio Holder and where the value of the exemption exceeds £100,000 make a report to the next Cabinet meeting on the action taken. Urgency caused by undue delay is not a valid reason for an exemption.

- Exceptional Circumstances:

An exceptional circumstances exemption may be jointly approved by the Chief Executive with an Executive Director/Director/Executive Head/Associate Director in limited and exceptional circumstances. This applies at the Chief Executive's discretion and only below the UK Procurement Regulation thresholds examples of which may include but not be limited to:

- Events which may involve significant risk to a key contract, for example where a key supplier goes into Administration or Receivership
- Situations which may cause significant disruption to a Council service
- Extensions of or additions to existing contracts where demonstrable benefits and clear savings can be shown and the original contract was not one that was procured under the UK Procurement Regulations
- In the event of risk to life
- Single tender action or use of a substitute contractor from the original tender responses to complete a contract or part of a contract. An Exemption is not required where a procurement has been made from a framework agreement permitting an award without competition where the awarding officer can demonstrate value and valid reasons for not conducting a competition through that framework.
- Short term provisions to enable more effective and efficient procurement to be undertaken
- Other circumstances where clear synergies with existing services can be evidenced or where supported by substantial market research

They must inform the relevant Portfolio Holder and where the value of the exemption exceeds £100,000 make a report to the next Cabinet meeting on the action taken.

- Limited market:

A partial exemption may apply where a supply or service is only obtainable from a single or a very limited number of contractors. In such a case, evidence of the limited market must be provided, such as by public advertisement or detailed market research.

They must inform the relevant Portfolio Holder and where the value of the exemption exceeds £100,000 and make a report to the next Cabinet meeting on the action taken.

- Prior approval:

Other than as specified above no exemption from these Rules shall be made unless prior approval has been granted at Cabinet. Cabinet cannot authorise an exemption where the value of the contract or of the extended contract would exceed the UK procurement threshold or would result in non-compliance with the Procurement Act 2023 or where extension of a contract procured before 24th February 2025 is considered, with Public Contracts Regulations 2015.

Record of Exemptions – Executive Director/Director/Executive Head/Associate Director must ensure that full details of approved waivers and exemptions are recorded in a central register held by the Corporate Procurement Manager on behalf of the Chief Executive.

## **E-Procurement**

Electronic procurement systems simplify the tender process, reduce the bureaucratic burden for suppliers, make it easier to tender, improve smaller organisations' ability to bid and allow shorter tender periods.

All procurements above a value of £25,000 must be procured via the Council's e-procurement portal, unless where an external framework agreement has been used that has its own e-procurement process or following a specific agreement with the Corporate Procurement Manager.

The e-procurement portal is designed to simplify the procurement process, to make the process more secure and auditable and to improve accessibility to procurement opportunities for potential suppliers.

Opportunities should be openly and widely publicised. The portal enables links to the UK Government's Central Digital Platform and the appropriate external advertising platform

Advice on using the portal should be taken from the Corporate Procurement Manager.

## **Records**

Contract records must be retained in accordance with the Council's Document Retention Policy and where relevant should include:

- Details of any exemptions granted
- Pre-procurement market testing / research
- The procurement route used
- Tender Adverts / Notices
- Any Expression of Interest responses and records of shortlisting
- The evaluation criteria used and the evaluation record based on those criteria
- Records explaining why a particular contractor was selected by way of an award without competition of a call-off contract.
- Credit checks and records of economic and financial standing
- Invitations to Tender and tender documentation
- Tenders received and tender records and registers
- Pre and post tender clarifications and, where relevant, records of dialogue and /or negotiation.
- The award criteria and the evaluation record based on those criteria
- Records of communications with the successful contractor
- Details of feedback given to successful and unsuccessful bidders
- Standstill letters
- Contract documents
- Regulation 84 reports
- Contract Management records
- End of Contract Reviews
- Published notices will be recorded in the public Domain and are obtained from the Council's E-procurement portal.
- Written Records are to be kept. Written records include email correspondence.

## **Approved or Standing Lists of Suppliers**

The Council does not maintain Standing or Approved Lists of Contractors or Suppliers. Supplier information will be captured centrally on the Government's Central Digital Platform for Council access.



Where recurrent transactions of a similar type are likely a suitable framework agreement, or term contract, may be used. The framework agreement must include terms for calling off supplies, services or works from the framework supplier(s). A Framework Agreement may be with a single supplier or have multiple suppliers on the list. A Dynamic Purchasing System may be used in compliance with UK Procurement Regulations.

### **Framework Agreements and Collaborative Procurements**

A Framework Agreement is a contractual arrangement with one or more providers that set out terms and conditions under which specific or call-off purchases or contracts can be made at any time throughout the term of the framework agreement.

Call-off contracts formed under a Framework Agreement must be awarded in accordance with the procedure prescribed in the Framework Agreement. Where there is more than one provider under the framework it is usually necessary to hold a mini competition. The Council's Rules apply to a mini competition in the same manner as all other procurements. An award without competition can be made on Framework Agreements, if permitted by the terms of that framework agreement, but the Council encourages competition through any framework used. An award without competition must be supported by a statement as to why competition has not been sought through the framework, how it demonstrates value for money to the Council, and agreed by the Executive Director, Director, Executive Head/Associate Director.

Framework Agreements to which the Council has access may be let by another body e.g. the Government Crown Commercial Service (CCS), another Local Authority (LA) or a consortium of LA's e.g. Eastern Shires Purchasing Organisation (ESPO) or suitable Public Buying Organisation (PBO).

Officers proposing to use a Framework Agreement must check that:

- The Framework Agreement has been let in full accordance with these Rules and the appropriate Procurement Regulations.
- The Council has the right to use the Framework Agreement.
- The procedures for call-offs or mini-competitions under the agreement accord with the Council's Contract Procedure Rules.
- That both the Framework exercise, and their intended call-off procedure, is compliant with PCR 2015 and the Procurement Act 2023.

Officers proposing to use a Collaborative arrangement with other parties e.g. other Local Authorities to jointly procure works, supplies or services, must check that:

- The collaborative procurement contract has been let in full accordance with these Rules and appropriate UK Procurement Legislation
- The Council is a member of the collaboration or consortium and has the right to use the contract.
- The procedures for using the contract accord with these Rules.

Collaborative and Partnership arrangements are subject to the same procurement legislation and must follow the Council's Rules. If in doubt, Officers must seek the advice of the Corporate Procurement Manager.

### **Competition Requirements**

The requirements relate to the Estimated Total Value of the procurement:

The Value of a Contract is the total value over the whole potential duration of the contract including any possible extension to the term of the contract. Where the duration is uncertain a minimum of four years shall be assumed. The value of a framework agreement is the value of all the potential call offs that may be made by all contracting bodies permitted to use the framework. The value of a concession is the total potential gross income or other assessment of value to the contracting parties. If in doubt, Officers must seek the advice of the Chief Finance Officer.

**Minimum requirements:**

<b>Thresholds excl. VAT</b>	<b>Minimum requirements</b>
Less than £10,000	A minimum of one written quotation is provided. The Council would expect that Officers will seek more than one quote, where appropriate, to demonstrate value for money to the Council through a combination of cost and quality.
Greater than £10,000 up to £24,999	Three written quotations are sought from suitable organisations. The requirement does not need to be advertised.
Greater than £25,000 – UK Procurement Threshold	Public advertisement of the requirement and invite Tenders from at least three and usually no more than six bidders. If an appropriate framework agreement is used, there is no need to advertise and a mini competition should be held in the majority of cases. Any award without competition must be supported by a statement as to why competition has not been sought through the framework and how it demonstrates value for money to the Council.
Above UK Procurement Threshold	Advertise and follow UK Procurement Legislation procedures and invite Tenders from at least five and usually no more than seven bidders. Alternatively, competition is sought through an appropriate framework agreement.

All tender opportunities should be advertised to comply with the principle of transparency.

Where it can be demonstrated that there are fewer suitably qualified bidders than the minimum set out in the table, to meet the competition requirement, all suitably qualified Candidates must be invited. The Executive Director/ Director/Executive Head/Associate Director and the Corporate Procurement Manager must be consulted in such cases.

If more than one contractor is to be appointed, for example to a framework agreement or if a contract is split into Lots, the number of bidders invited to tender may be increased to more than six.

Contracts must not be disaggregated nor methods of calculating the Estimated Total Value used in order to undermine the intention and application of these Rules or the Regulations.

The nature of the requirement and the procurement strategy will determine the procurement procedure to be used.

**Assets for Disposal**

Assets (excluding land) for disposal must be sent to public auction except where better Value for Money is likely to be obtained by inviting Quotations or Tenders. The method of disposal of surplus

or obsolete stock, plant, vehicles and equipment or assets, other than land, must be formally agreed with the Chief Finance Officer.

### **Providing Services to External Purchasers**

The Chief Finance Officer and the Corporate Procurement Manager must be consulted where proposed contracts include supplies to or work for or on behalf of other organisations.

### **Procurement Strategy, Pre-Procurement Engagement or Soft Market Testing and Research**

A Procurement Strategy is to be written for each procurement in excess of £100k. The purpose of the Procurement Strategy is to illustrate how the procurement will achieve the objectives of the requirement. The strategy will;

- ensure there is rigorous appraisal of procurement options;
- detail the Pre-tender estimate;
- identify risk and mitigations ensuring that these are defined in the Procurement and sit with the party best placed to manage those risks;
- define the most appropriate route to market;
- outline the market engagement and soft market testing;
- define how the Council will achieve value for money through the procurement;
- define the appropriate contractual terms and conditions including detailing special clauses

Pre-procurement engagement is a range of activities to engage with the market before starting a procurement process and may include a technical dialogue to inform a specification. Engaging with the market before starting the formal procurement process is best practice and helps to maximise value for money from the resulting procurement.

Officers should consider pre-procurement consultations with potential suppliers prior to the start of any part of the formal procurement process including a Tender Advert or Notice. Care must be taken not to prejudice the equal treatment of potential suppliers or to distort potential competition. Advice on pre-procurement strategies should be sought from the Corporate Procurement Manager.

### **Insurance**

Insurance requirements must be clearly specified in the contract. The Council's Insurance Officer will advise on the minimum limits of indemnity required for each contract. Prior to entering into a contract, Officers must require the contractor to produce current insurance certificates in respect of Employers' Liability and Public Liability risks and for Professional Indemnity where appropriate for such limits and for such periods as are specified by the Council's Insurance Officer. The Contractor must be required to produce up to date Insurance Certificates at each subsequent renewal date during the term of the contract.

### **Specifications, Standards and Evaluation Criteria**

Specifications must set out the minimum required standards of technical and professional ability and reliability. Specifications must refer to relevant UK, EU or international standards which apply to the subject matter of the contract. The Head of the Legal Shared Service must be consulted if it is proposed to use other than UK or EU standards. The Council is committed to ensuring that sustainable and social value options are fully considered when setting contract specifications, making award decisions and delivering requirements.

Tenders should be assessed on the basis of the Most Advantageous Tender (MAT), and allow Quality and Price considerations in the procurement. In minor or exceptional cases, bids may be invited on a lowest price (where payment is to be made by the Council) or highest price (if payment is to be received by the Council). The Officer must define and publish appropriate Price and Quality Evaluation Criteria and their respective weightings.

Quality Evaluation (selection or award) criteria may include experience, technical merit, programme and delivery proposals, environmental matters, sustainability criteria, social value, added value, whole life costs, innovative, aesthetic and functional characteristics, health and safety, after-sales service and response, technical assistance, CV's of key staff, accreditations, approach to collaborative working or partnering with a Local Authority and any other relevant matters. The weighting of the evaluation criteria will be a representation of the importance of that criteria in the procurement as set out in the Procurement Strategy. Therefore, these should be representative of the key decisive purchasing factors as set out in the Procurement Strategy.

Evaluation Criteria must not include non-commercial considerations or geographic limits which might discriminate against suppliers. It is acceptable to require submissions to be in English and priced in Pounds.

Accreditations should be considered where appropriate and relevant but must not be a substitute for other checks and due diligence. When referring to accreditations, the words, "or equivalent" should be used in the ITT. These should not be required or assessed in a manner that may inadvertently disadvantage potential providers, for example, SMEs, public service mutuals or third sector organisations.

### **Financial Assessment and Vendor Capabilities**

Financial assessment of potential providers should be undertaken in a manner that is proportionate, flexible and not overly-risk averse while ensuring taxpayer value and safety is protected and relevant Procurement Law complied with. All potential providers, whatever their size or constitution, should be treated fairly and with equal diligence during the financial appraisal process. For example: no SMEs, public service mutuals or third sector organisations should be inadvertently disadvantaged by the financial assessment process.

Due diligence must be carried out to ensure that the vendor has the necessary skills, resources and abilities to undertake the work. The due diligence must be proportionate to the nature and scale of the work proposed. This includes checking the credentials of sub-contractors where appropriate.

### **Social Value**

Social value is the consideration of how procurement might offer social, economic or environmental benefits to the community. The requirement is to consider the economic, environmental and social benefits of the approach to the procurement before the process starts and to consider whether there is a need to consult on these issues.

The potential interest of Small and Medium Size Enterprises (SME's) and the 3<sup>rd</sup> Sector should be considered when assessing the procurement approach and the design of the Supplies or Services required. This may also include ways to cascade good practice down the supply chain.

Contracts should ensure that the principles of these Rules including the need for market testing and the provision of Value for Money is cascaded down the supply chain. The Council expects good practice to be in place to ensure a fair selection of sub-contractors, appropriate terms and conditions and prompt payment of monies due.

### **Public Sector Equality Duty (PSED)**

Officers must ensure compliance with the Council's legal obligations under the Equality Act 2010 and its associated Public Sector Equality Duty with due regard to the three aims of the duty:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- Foster good relations between people who share a protected characteristic and people who do not share it.

Officers must ensure that public goods and services are accessible to, and meet the diverse needs of all users to ensure that no one group is disadvantaged in accessing public goods and services. Procurements must meet the Fundamental principles of equal treatment, non-discrimination, transparency and proportionality.

### **Invitations to Tender (ITT's) / Requests for Quotations (RFQ's)**

An assessment of suitability can be used where appropriate. Where used, the aims are to select a list of suitably competent and qualified bidders and to reduce the number of bidders to an appropriate and manageable number using pre-published evaluation criteria.

. Where the capability of an individual(s) is essential to the delivery of the contract, for example, the provision of consultancy, CV's should be requested and assessed. The selection process should not impose arbitrary minimum requirements which may have the unintended effect of barring new or small businesses from bidding.

Officers should undertake a financial check as part of the evaluation process but, in the spirit of encouraging supplier growth, should not rule out a supplier unless there is clear evidence that the supplier's financial position places public money or services at unacceptable risk. The Chief Finance Officer must be consulted in all cases of doubt.

The Notice or Advert and the Invitation to Tender shall state that late submission, of an Expressions of Interest or of a Tender will not be accepted. Submissions must be received by the due time and date. Any appeals for consideration of a late submission, due for example to a default by the Council, may only be considered by The Monitoring Officer and / or the Corporate Procurement Manager.

Where late submissions are received, including by e-mail, other than via the procurement portal they shall be opened only by The Monitoring Officer, or representative, or the Corporate Procurement Manager. No details of the late submission shall be disclosed.

An Invitation to Tender (ITT) should set out full details of the Council's requirements. An ITT may allow the submission of Variant bids to allow for supplier innovation.

All Invitations to Tender shall include the following:

- (a) A Specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
- (b) The Terms and Conditions of Contract that shall apply.
- (c) A Certificate of Non- Collusion for tenderers to declare that they have not colluded with any other party nor disclosed details of their submission to any other party (except where such a disclosure is in confidence and necessary for the purposes of preparing their submission).
- (d) A Form of Tender in the prescribed format for bidders to sign and confirm their bid price.
- (e) An Equality and Diversity questionnaire.
- (f) Notification that bidders must disclose any actual or potential conflict of interest.
- (g) Notification that bidders are responsible for all their costs of preparing a submission and that no costs will be reimbursed by the Council.
- (h) A clear tender process with stages clearly defined including any down selection process or assessment process. Each stage needs to be defined and followed. Each stage is to include details of the Evaluation Criteria with their relevant weightings and the methodology for scoring those criteria.
- (i) That submissions must be made via the Council's e-procurement portal unless otherwise agreed.
- (j) Where submissions are made other than via the procurement portal, notification that no Tender will be considered unless it is in a sealed envelope or container which bears the word 'Tender' followed by the subject to which it relates, with no other name or mark indicating the sender.
- (k) The method by which any arithmetical errors discovered in the submitted Tenders are to be dealt with.
- (l) A statement that the council is not bound to accept the lowest or any Quotation or Tender.
- (m) Advice that the council is subject to the obligations of the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Government's Transparency Code 2014 and that the final decision on publication or disclosure of any information shall remain with the Council.
- (n) Advice that Credit checks and records of economic and financial standing may be sought.

All bidders invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. This also applies to any supplementary information or clarification given during the tender period.

### **Nominated Sub-contractors and Suppliers**

These Rules apply to nominated sub-contractors and suppliers. Officers should avoid the use of nominated sub-contractors and suppliers as far as practicable. If a nominated sub-contractor or supplier is to be considered, Officers must take advice from the Head of the Legal Shared Service.

The invitations to tender (ITT) for contracts involving Nomination must include a clause to require the parties to enter into contract on terms relevant to the indemnities and obligations of each party as required by the Head of the Legal Shared Service.

### **Submission, Receipt and Opening of Tenders or Quotations**

Tender periods must be sufficient for bidders to prepare and submit proper bids consistent with the complexity of the contract requirements.

All Tenders must be returned via the procurement portal or, where that doesn't apply, to the Corporate Procurement Manager. The procurement portal provides an audit trail and a reference of opening and on time receipt.

In the event that a tender is submitted not using the portal, tenders for contracts for £100,000 or more must be opened at one time by, or in the presence of, the Corporate Procurement Manager or nominated officer.

The Officer nominated to receive the tenders shall be responsible for the safekeeping of Tenders until the appointed time of opening. Each Tender must be suitably recorded to verify the date and precise time it was received, adequately safeguarded against amendment of its contents. The procurement portal is compliant with this requirement.

The Officer nominated to receive the tenders must ensure that all Tenders are opened at the same time as soon as practicable after the period for their submission has ended. They must ensure that the bids received are recorded on the Tender Record Form.

### **Clarifications and Negotiations**

Providing clarification during a tender period is permitted. It must not be in the form of any negotiation and must be made in writing to all bidders. Where any verbal discussion is entered into any clarification given must be confirmed in writing and copied to all bidders. Bidders will be informed that answers to questions will be made available to all bidders.

Post tender clarifications to the bidder from the Council are permitted. These are to be sent with the request and response recorded via the portal.

Post tender negotiations and dialogue, between submission of bids and contract award, is permitted if the process has been detailed in the tender instructions (e.g. BAFO Stage). In such cases the rules relating to the negotiations must be clearly set out in the tender documents and those negotiation rules must adhere to:

- (i) The requirements of relevant UK legislation, these Rules and good practice guidance.
- (ii) The documentation sent out to prospective bidders stating that negotiation may take place and the basis upon which such negotiation would be held

Officers appointed to carry out any post-tender negotiations must ensure that they keep full and accurate records and minutes of all negotiation meetings and discussions and that any actions and outcomes are confirmed and agreed in writing by both parties.

If post-tender negotiation results in a fundamental change to the specification or to the terms of a contract the contract must not be awarded. A fundamental change from the work tendered must be re-tendered. The advice of The Head of the Legal Shared Service, Monitoring Officer and the Corporate Procurement Manager must be sought before concluding any post-tender negotiations.

### **Evaluation, Selection, Award and Feedback**

The confidentiality of Quotations, Tenders and the identity of bidders must be observed at all times. Information about one bidder or their response must not be given to another bidder except as provided in these Rules.

Evaluation and Moderation panels must comprise a minimum of two Officers. The procedures to be used by the panels, including the Interview panel if an interview stage is included in the process, must be set out in advance of the receipt of submissions.

If an Interview stage and / or a Best and Final Offer (BAFO) stage is included in the process the procedures for them must be clearly set out for bidders in the bid documents. The published arrangements cannot be revised post tender submission.

Contracts must be evaluated and awarded by the panels in accordance with the published Evaluation (selection and award) Criteria. Neither criteria nor weightings can be revised post tender submission.

Officers shall compare submitted Tender prices with any pre-tender estimates and examine and explain any discrepancies. The arithmetic in compliant Tenders must be checked. If simple arithmetical errors are found they should be corrected and the bidder notified. The bidder must be given the opportunity to stand by or withdraw the corrected bid.

The Officer responsible for the evaluation panel and moderation must prepare a Recommendation report setting out the reasons for the selection, having regard to the evaluation criteria, and the reasons for rejecting the unsuccessful tenders. Where a Procurement Strategy has been written, the recommendation report needs to confirm that the requirements of the strategy (and business case) have been met through the procurement.

The Officer is required to notify all bidders at the same time of the intention to award the contract to the successful bidder.

Where applicable under UK Procurement Legislation (above threshold) a Standstill period of at least eight working days must be observed. The Regulations require a formal letter containing prescribed information to give unsuccessful bidders time to challenge the decision before an award. If the decision is challenged the award of contract must not be made and the advice of The Head of the Legal Shared Service and the Corporate Procurement Manager must be sought.

Feedback must be offered to all bidders. Where the total value is in excess of £25,000, this needs to be provided to potential bidders including those not short listed to tender. The advice of The Head of the Legal Shared Service and / or the Corporate Procurement Manager should be sought although the feedback must include:

- The Evaluation Criteria and how they were scored for their submission
- The characteristics and relative advantages of those short listed pre-tender. Details that could identify those short listed must not be disclosed.
- The name of the successful bidder(s)
- The reasons for the award decision and the characteristics and relative advantages of the successful bidder(s).
- When the standstill period is due to end.

### **Avoiding Challenges**

Challenges are increasing for public sector procurements with the most likely challenges being from unsuccessful bidders challenging the evaluation process. This risk of challenge should be reduced by:



- publishing the process and timings for issuing the ITT and supporting documentation, dealing with clarifications, receiving bids and placing contracts, and adhering to the process.
- providing all the relevant Procurement Documents when a Contract notice is published that is above UK Threshold. This includes a full and final specification, the terms and conditions and the evaluation model.
- making sure that evaluation criteria, sub-criteria and weightings are clearly linked to the work required and published in the ITT.
- using a clear and objective marking scheme that removes any ambiguity from the marking process.
- maintaining an audit trail during the process, to help explain why a bid was unsuccessful and to defend any challenges raised. Evaluators are required to detail why they have scored the bid accordingly.

The key principles are that criteria must be reasonable, proportionate, transparent and relevant to the goods, works or services being procured. Objective criteria should be clear, verifiable and targeted with measurable outputs. Subjective criteria should clearly define the basis on which any value judgements would be based. All criteria must be fair and not involve any discrimination, including a level playing field for non-local bidders, to ensure compliance with the Public Contract Regulations.

## **Contracts**

All Contracts must be in writing and held in accordance with these Rules and, irrespective of value, must clearly specify:

- what is to be done or provided (i.e. the works, materials, services, supplies, matters or things to be done or provided)
- the provisions for payment (i.e. the price to be paid and when and details of any indexation)
- the time, or times, within which the contract is to be performed
- the provisions for the council to terminate the contract.

The Council's Official Purchase Order form, the Council's Standard Terms and Conditions or a Standard Form of Contract issued by a relevant professional body must be used as appropriate. The form of contract must be approved by the Head of the Legal Shared Service..

In addition, every Contract must also state clearly as a minimum:

- That the contractor may not assign or sub-contract without prior written consent
- Insurance requirements
- Health and Safety requirements
- Data Protection requirements
- Equality and Diversity requirements
- Freedom of Information Act and Environmental Information Regulations requirements
- TUPE requirements
- That those acting for or on behalf of the Council must comply with the council's Contract Procedure Rules
- A right of access to all relevant documentation and records of the contractor for monitoring and audit purposes.
- VAT and other tax requirements.

- The Requirements for a Bond and / or Parent Company Guarantee.
- Prevention of Corruption requirements.
- Any Indexation or Price variation details or if no variation of Rates or Prices applies.
- Adherence to the Council's Modern Slavery Policy
- Contracts which include a concession from the Council should include indexation in accordance with RPI or CPI.

The formal advice of the Head of the Legal Shared Service must be sought for contracts where:

- The Total Value exceeds the UK procurement legislation thresholds
- The Risk is outside acceptable parameters
- They involve leasing arrangements
- It is proposed to use a supplier's own Terms and Conditions of Contract
- They are complex in any other way.

For Contracts awarded over the value of £5million advertised after the 24<sup>th</sup> February 2025, there is a requirement to publish agreed Key Performance Indicators (KPI's) annually via a Contract Performance Notice through the Council's E-Portal.

Any amendment, where not originally stated in the original requirement, for any contract awarded above threshold after 24<sup>th</sup> February 2025 requires the Officer to publish a Contract Change Notice in accordance with the legislation.

On termination of any above threshold contract advertised after 24<sup>th</sup> February 2025, the Council is required to publish a contract termination Notice through the e-portal.

### **Indexation and price variation Clauses**

The advice of the Chief Finance Officer must be sought on any indexation clauses and the indices to be used, e.g. CPI. Where an indexation clause is used consideration should be given to an efficiency factor, e.g. less 1% p.a., to encourage Best Value and continuous improvement during the term of the contract.

Price variation clauses should allow for any potential variation in the scope or scale of goods, works or services to be provided during the term of the contract. This may be in consequence of other factors e.g. a variation in the number of service users where another service has been outsourced.

### **Forming of Contracts**

Formal contracts must be formed for contracts with a value greater than £25,000. Below this threshold an Official Purchase Order may be placed but it must include full details of the supply, service or works to be delivered and the Terms and Conditions that apply to the Order.

Contracts must be in a form approved by the Head of the Legal Shared Service. An industry standard may be used subject to the additional clauses being added to meet the requirements of these Rules and to protect the Council's interests.

Every contract must specify the work, goods, supplies and services to be provided, the price and charging basis including any indexation, and the time in which the contract is to be performed.

## **Extension and Variation of contracts**

For contracts awarded below UK Procurement legislation threshold, a Contract may be cumulatively extended by up to 10% of the initial contract value for supplies and services and 15% for works. In the event that the variation value may exceed the UK Procurement Threshold, advice must be sought from the Procurement Manager.

For Contracts awarded above threshold, please seek guidance from Procurement and/or Legal Shared Services. Any variation or extension above threshold will be assessed in accordance with the relevant UK Procurement Legislation.

Contracts should include suitable clear, precise and unequivocal clauses to enable contracts to be extended or amended or make provision for known amendments or risks that may occur over the delivery of the Contract.

The Executive Director/Director/ Executive Head/Associate Director for contract extensions up to £25,000, and jointly with the either the Chief Executive or relevant Executive Director/Director/Executive Head for greater values, may approve a contract extension. They must inform the relevant Portfolio Holder and where the value of the extension exceeds £100,000 make a report to the next Cabinet meeting on the action taken.

## **Contract Formalities**

Contracts not under Seal, including Purchase Orders, shall be completed as follows, subject to the relevant Scheme of Delegation:

Up to £50,000 - Signature by any one of the following: Chief Executive, Chief Finance Officer, Executive Director, Director, Executive Head, Associate Director or authorised representative. The Head of Property shall have the authority to sign any contracts related to property.

Above £50,000 (Excluding Sealing) Signature by any two of the following: Chief Executive, Chief Finance Officer, Executive Director, Director, Executive Head, Associate Director or authorised representative. For property related contracts, the Head of Property may be one of the signatures.

All contracts should be concluded formally in writing before the Supply, Service or Work begins, except in exceptional circumstances, and then only with the written consent of the Head of the Legal Shared Service or Chief Executive. An award letter or an intention to award letter is insufficient.

The Officer responsible for securing signature of the contract must ensure that the person(s) signing for the other contracting party has / have authority to bind it and that the appropriate decision has been made by the council to enter into the contract.

All contracts for the purchase of motor vehicles or mechanical plant irrespective of value must be in writing and must be signed at least two of the following Chief Executive, Chief Finance Officer, Executive Director, Director, Executive Head or Associate Director.

## **Sealing**

A contract must be sealed where:

- The council may wish to enforce the contract more than six years after its end

- The contract is valued at more than £150,000

Where contracts are completed by each side adding their formal seal (including use of an electronic seal), such contracts shall be signed by the Monitoring Officer or their authorised nominee.

Every non electronic Council sealing will be consecutively numbered, recorded and signed. The Council's seal must not be affixed without the proof that the appropriate authority to enter the contract has been obtained under the scheme of delegation with that authority either included within the minutes of a formal meeting of councillor's or recorded as a delegated decision within the Modern.gov system.

### **Contract Surety**

The Officer must consult the Chief Finance Officer about the need for a Parent Company Guarantee (PCG), preferably from the Ultimate Parent Company, where a bidder is a subsidiary of a parent company and:

- The Total Value exceeds £150,000, or
- The award is based on the evaluation of the parent company, or
- There is some concern about the stability of the bidder.

The Officer must consult the Chief Finance Officer about the need for a Bond where:

- The Total Value exceeds £1,000,000, or
- It is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the bidder.

Where a Bond is required, it shall normally be for a sum equal to 10% of the total contract sum. The decision of the Chief Finance Officer on the need for a PCG and / or the need for and the size of a Bond is final.

### **Remedies for non-performance**

Contracts must include provisions for remedies in the event of non-performance including liquidated damages, other financial deductions and termination of the contract.

Every Contract which exceeds £50,000 in value and is for the execution of Works, shall provide for liquidated damages to be paid by the Contractor in respect of any delay in performing such work. This shall not apply where the Chief Finance Officer determines that such remedy is not appropriate or necessary for a particular contract.

### **Prevention of Corruption**

Everyone involved in a procurement process as employees or for or on behalf of the Council must comply with the Employee Code of Conduct on the prevention of corruption. They must not invite or accept any gift, inducement or reward in respect of the evaluation, award or performance of any contract.

Any offer of a gift, inducement or reward must be declared whether or not it was accepted. High standards of conduct and probity are required. Corrupt behaviour is a criminal offence and may lead to dismissal.

Cartels are a potential concern and are a breach of competition law. They can influence the price paid for goods and services by the Council. Any suspicions about such activities must be reported to the Monitoring Officer and Chief Finance Officer.

The following clause must be put in every written Council contract:

“The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or
- (b) commit an offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972, or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.

Any clause limiting the Contractor’s liability shall not apply to this clause.”

### **Declaration of Interests**

If it comes to the knowledge of a Councillor, an Employee of the authority or anyone acting as an Agent for or on behalf of the Authority that a contract in which he or she has a personal interest has been awarded or is proposed to be entered into by the council, he or she shall immediately give written notice to the Monitoring Officer.

The Monitoring Officer shall maintain a record of all declarations of interests notified by Councillors and Officers.

The Monitoring Officer will ensure that every councillor receives a copy of the Council’s Code of Conduct for Councillors.

### **Contract Management**

All contracts must have a named contract manager, nominated by the relevant Director/Executive Director/Associate Director/Executive Head, for the entire duration of the contract.

They must keep under review the skills and experience required and available for the good management of the contract.

### **Risk Assessment and Contingency Planning**

Where the risk and financial value of the Contract is deemed appropriate, including all those above the UK Procurement Thresholds, contract managers must:

- prepare a Business Case
- undertake appropriate Risk Assessments

- maintain a Risk Register during the contract period
- ensure that mitigation and contingency measures are in place
- manage the contract in accordance with best practice
- have regard to end of contract reviews of other similar contracts

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

All contracts with a value above the UK Procurement Thresholds, or which are High Risk, should have a formal monthly or quarterly review with the contractor.

Throughout a contract period the Contract Manager must monitor:

- Contractor's performance
- Compliance with the Specification
- Compliance with the Programme
- Contract costs and Value for Money requirements
- Health and Safety compliance
- Risk Management.
- The Project Plan
- Client's resourcing of the contract

At the end of a contract period the Contract Manager must ensure:

- That all required Works, Supplies and Services have been completed
- The Final Account has been completed
- An End of Contract Review on the standard template has been completed
- Raise a Contract Termination notice (if above threshold)

### **Late Payment Regulations and Prompt payment of sub-contractors**

The Late Payment of Commercial Debts Regulations 2013 requires public authorities to pay within 30 calendar days following receipt of a valid and undisputed invoice. Simple interest is calculated equal to the sum of the Bank of England reference rate plus at least eight percentage points. The creditor is also entitled to a fixed charge of £40, £70 or £100 depending on the size of the debt (under £1,000, under £10,000, and higher), plus additional reasonable costs incurred.

As a public authority the Council, if a debt is not paid within the deadline, is obliged to automatically pay the outstanding amount that includes, daily interest for every day the payment is late based on 8 percentage points above the Bank of England's reference rate plus the fixed amount, depending on the size of the unpaid debt. The onus is on the Officer to pay a supplier on time and the supplier is not obliged to remind you that payment is outstanding.

Officers must include a clause in their contracts that requires contractors to pay their sub-contractors and suppliers within 30 days of receipt of a valid and undisputed invoice. This is to comply with the PCR2015 and to cascade good practice in public procurement supply chains. There must also be a requirement for a sub-contractor to include in any sub-contract which it in turn awards requirements to the same effect.

The Council is required to publish Payment compliance on any payment made to a supplier in excess of £30k within 1 month in accordance with the Procurement Act 2023.

## **VAT**

To avoid potential VAT loss and to enable the recovery of VAT officers must ensure that VAT invoices are sent and addressed directly to the Council. Officers must avoid situations where a 3rd party receives the taxable supply that the Council subsequently pays where the supporting evidence from a 3rd party shows their payee details. A failure to recover VAT is an unnecessary and additional budget pressure and is a cost to the project / spending department.

## **SMEs**

The Procurement regulations have provisions to make procurements more accessible for smaller businesses and third sector providers. These include:

- An encouragement to use Lots for larger contracts
- An obligation to publish opportunities on the Government's Find a Tender website for certain procurements. These include where an opportunity is advertised, so not when exercising a call-off from a framework for example, and where the contract value is over £25,000.

The Regulations require an Award notice to be published on Find a Tender when:

- A UK Procurement Regulation Award notice is published
- an above UK Procurement Regulation threshold call-off under a framework is awarded
- a public contract over £25,000 is awarded

## **Concession Contracts**

A Concession is a written contract for works or services where the consideration consists in the right to exploit the works or services or in that right together with payment and there is transfer of an operating risk to the concessionaire and a risk of exposure to the vagaries of the market.

The Regulations apply to Works and Services above the UK Procurement concessions threshold. The value of a concession is the estimated total turnover, net of VAT, generated by the concessionaire over the duration of the contract. The amount paid by the Council is not relevant. The method for estimating the value should be set out in the concession documents when the concession is advertised.

The Procurement Act 2023 is required to be adhered to for all council Concession contracts.

## **Procurement Procedures**

The Procurement Act 2023 procurement procedures apply where the value of a contract exceeds the relevant threshold. These thresholds are reviewed from time to time by UK Government. Up to date figures and advice on which threshold applies can be confirmed by the Corporate Procurement Manager.

For Contracts that were awarded prior to the Procurement Act 2023, the relevant UK legislation applies to that contract at the time of the award (therefore the Procurement Act 2023 legislation does not apply to contracts awarded prior to 24<sup>th</sup> February 2025).

The Regulations define the classification of “Supply”, “Service” and “Works” contracts. Where a contract covers more than one classification it is usually classified according to its predominant purpose. They also apply to a concession contract.

The Regulations define how the value of a contract is assessed for the purposes of these Thresholds. The various procurement procedures include some defined timescales which are mandatory. These include minimum times for the receipt of requests to tender and for receipt of tenders.

The Contract Notice must be submitted in the prescribed form and be published on the Central Digital Platform. The Corporate Procurement Manager can advise on the application of the Regulations.



## Version Control Information:

Document Status	Constitution	Mandatory
Document Owner	Group Head of Democracy & Governance	Carol Chen
Document Manager	Corporate Procurement Manager	Derek Hatcher
Review	Annual review due:	July 2022
<b>Version Control</b>	<b>Details</b>	<b>Date</b>
v 1.0 – 4.0	Drafts for consultation	
v 5.0	Approved at Full Council	24 July 2013
v 6.0	Amendment page 4 re HR	Sept 2013
v 7.2	Amendments: CDM, Record of Exemptions, End of Contract actions, VAT, Version Control information added	December 2013
V 8.0	Updates from PCR2015	June 2016
V 9.0	Minor updates and typos	February 2019
V9.1	Updating titles of officers	April 2019
V10.1	Update as UK leaves Brexit. Review of Thresholds and Guidance	October 2021
V10.2	Update as senior restructure	October 2022
V11.1	Update on Procurement Act 2023	October 2024