

CONTRACT PROCEDURE RULES

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BRIEF GUIDE TO CONTRACT PROCEDURE RULES

These Contract Procedure Rules (issued in accordance with section 135 of the Local Government Act 1972) are intended to promote good procurement practice and public accountability and deter corruption, ensuring value for money on all Council spend. The rules are the best defence against allegations that a procurement process has been conducted unlawfully.

Legal challenges against public procurement are increasing with **potentially serious consequences** for the Council and its officers if procurement activity is not undertaken to the highest standards of probity and professionalism.

These Rules are complimented by the **Sustainable Procurement Strategy and Commissioning Strategy and the Procurement Toolkit** maintained by the **Procurement Strategy** Team. The guidance can be found on the Council's SharePoint.

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail transmissions as well as hard copy. In addition, the term "contract", refers to both paper/hard copy documents and process and their replication by electronic media.

In accordance with the Constitution, the Monitoring Officer in consultation with the Chief Finance Officer, is authorised to make technical amendments from time to time to these Contract Procedure Rules.

Important Tips

- Follow the rules if you procure goods, services or building work. This is very much in your own interest as well as that of the Council.
- Ensure that all known future procurements projects are placed on the Council's **Procurement Schedule**, the approval by Cabinet and Council of the Schedule is the start of the decision making process. Ensure the decision making column is correct and agree this with the Specialist for Legal and Procurement. Key Decisions should be entered on the Forward Plan and listed in detail prior to Cabinet agreement to the Procurement Schedule.
- ~~The authorisation and approval process is set out in the Schedule 2 to these Contract Procedure Rules. In advance as part of the annual review or as they arise~~
- Take all necessary legal, financial, HR and professional advice. Do this early in the procurement process to avoid abortive effort and to allow time for consideration of all relevant issues. This to include consideration of the type of contract and if it is to be under seal (all contracts over £60,000 should be under seal unless the Monitoring Officer agrees it is not expedient to do so).
- Declare any personal conflict of interest, financial or otherwise, in a contract. Corruption is a criminal offence.
- Check you have correct and appropriate ~~approvals authorization~~ before you proceed.
- Check whether there is an existing contract or an appropriate framework agreement that you can make use of before undergoing a competitive process.
- Consider your procurement objectives and available procurement routes such as collaboration, use of framework agreements or exemptions/waivers at the outset.
- Consider risk, including non-financial factors, at the outset e.g. data protection, safeguarding.
- If your procurement affects any of the Council's land and building you must contact the **Operational Lead for Delivery and Commercial Services** .
- Use the Council's chosen e-tendering portal, The Chest.
- Use the Procurement Toolkit that can be found on SharePoint.
- Ensure you have agreed your contract documents including:
 - selection and award criteria,
 - weightings, and
 - draft terms and conditions, including the need for a performance bond before you publish any advert, Selection Questionnaire (SQ) or tender.
- Pre-market engagement is now allowed and encouraged under the Public Contracts Regulations 2015. The nature of the pre-market engagement should be agreed with the Procurement Team. Once the procurement has commenced contact should be via The Chest only.
- Tenders take time with minimum timescales specified for some aspects of the process. Ensure you consult with the Procurement Specialist to draw up an appropriate procurement timetable. For

tenders above the procurement thresholds threshold minimum timescales are mandatory by law.

- Take into account mobilisation periods, elections, public holidays and other events which may impact the decision making or implementation process.
- ~~Take into account any approval process (including Forward Plan) if required by the Procurement Schedule or if your procurement is not on the Procurement Schedule.~~
- Ensure your service and any potential changes being considered as part of this procurement are assessed for their ultimate social value, impact on equality and impact on sustainability before proceeding.
- Keep bids confidential during the bidding process.
- Keep records of dealings with suppliers and contractors.
- Complete a written contract where appropriate, and Council **purchase** order before the supply of goods, services or works begin.
- Nominate an appropriately qualified contract manager with responsibility for ensuring the contract delivers as intended.
- Share lessons learned about what went well or not so well during the procurement, feedback to the Procurement.
- Assess each contract 6-12 months after award to see how well it met the procurement needs and Value for Money requirements.
- Remember that all information regarding your procurement process could be subject to a Freedom of Information Request or Environmental Information Regulations request. Requests for information concerning tender processes and suppliers/contractors are relatively common and publication of tenders is part of the movement towards greater transparency. However, before releasing any information consult the Data Protection Officer and the Procurement Officers.
- Under the Government's transparency requirements all contracts over **£510,000** must be included on the electronic contracts register once the contract is awarded or extended. This should also include waivers and exemptions.

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES**1. BASIC PRINCIPLES**

1.1 The following basic principles shall apply to all procurement and disposal procedures and contracts:-

- All procurement activity will comply with all applicable Procurement Directives, UK Legislation, the Council Constitution and all other relevant policies and procedures;
- The Council will undertake procurement activity using the most efficient and effective methods and will select the most appropriate delivery mechanisms to ensure Value for Money;
- All procurement activity will include due consideration of social, economic and environmental factors and will be assessed on Whole Life Costing;
- Robust contract management will support improved service delivery through continuous improvement in the quality of goods, works and services; and
- Procurement will be fair, open and transparent and undertaken to the highest standards of probity, integrity, honesty and professionalism.

1.2 These rules apply equally to tenders and requests for quotations.

1.3 The designated contract manager is responsible for ensuring contracts have an appropriate funded budget.

1.4 These Contract Procedure Rules shall be reviewed and updated annually. These Rules and Amendments to them shall be agreed and approved by the full Council.

2 DIRECTORS' AND OPERATIONAL AND LEAD SPECIALISTS' RESPONSIBILITIES

2.1 Directors, Operational and Specialist Leads shall:-

2.1.1 Review and update the Council's Procurement Schedule (including exemptions, exceptions and waivers) at least annually.

2.1.2 Ensure the central registers of:

2.1.2.1 ~~ecc~~contracts with a value of £5,000 or more ~~completed by signature, rather than by the Council's seal~~ and arrange their safekeeping on Council premises;

2.1.2.2 exemptions recorded under Rule 3; and

2.1.2.3 ~~2.1.2.1 and 2.1.2.2 above~~ are updated for all procurements.

2.1.3 Compile and keep under continuous review a written schedule of all standing delegations made by them under these Contract Procedures.

2.2 The relevant scheme of delegations is as follows:-

2.2.1 ~~Under Up to £25,000 10,000~~ then this is an Administrative Decision by Lead Specialist.

2.2.2 ~~Above Over £25,000 10,000 up to £60,000 59,999~~ then the relevant Director by Administrative Decision

2.2.3 ~~Above Over £60,000 up to £100,000 99,999~~ then the relevant Director by Delegated Executive Decision (NB requirement to place item on the Forward Plan if over the Key Decision threshold)

2.2.4 ~~Above From £100,000 up to Public Contracts Regulations thresholds ("Procurement Thresholds") £250,000~~ then the relevant Director and Portfolio Holder by Delegated Executive Decision (NB requirement to place item on the Forward Plan if over the Key Decision threshold)

2.2.6 ~~Over £250,000 Procurement thresholds~~, Cabinet once approved by Cabinet the decision to be implemented by Administrative Decision. (NB requirement to place item on the Forward Plan if over the Key Decision threshold)

Please note if the matter affects more than 2 wards then this also falls within the definition of a Key Decision and a Forward Plan entry is also required.

SECTION 2: COMMON REQUIREMENTS**3 STEPS PRIOR TO PROCUREMENT**

3.1 As part of the budget process for the following financial year, the Council will prepare a Procurement Schedule. This will be considered by the Overview and Scrutiny Committee, Cabinet and approved by Council as part of the Budget and Policy Framework and will be included in the Forward Plan. **If your procurement falls within the definition of a Key Decision you must add these as Forward Plan entries as part of the approval process. This should take place prior to the Procurement Schedule being approved by Cabinet and Council.**

3.2 **The Procurement Schedule** will include:-

- (a) the title of the contract;
- (b) the service and officer responsible;
- (c) a brief summary of the goods or services covered;
- (d) proposed start and end dates;
- (e) a review date and extension period (if applicable);
- (f) estimated value by band (~~Under £25,000, above £25,000 to £60,000, above £60,000 to £100,000, above £100,000 to £250,000 and above over £250,000~~); ~~£10k, £10k – £60k, 100k, Over £60-100k to £250,000 Procurement threshold OJEU, Over £250,000 Procurement threshold OJEU~~);
- (g) the process to be followed, if known (e.g. request for quotation, invitation to tender, use of existing framework, full ~~OJEU-PCR 2015~~); and
- (h) the proposed decision route (officer Administrative Decisions, **Delegated Executive Decision of the Director or Director and Portfolio Holder** or ~~ED~~, Cabinet.

3.3 Each Operational and Specialist Lead is responsible for ensuring the Procurement Schedule is updated. It should include waivers and exemptions.

3.4 Tenders and Requests for Quotation shall wherever practicable be widely and appropriately advertised to ensure equality of opportunity for potential suppliers to compete if they so choose.

3.5 Officers must ensure that appropriate **approval authorisation** has been given to proceed with the procurement and that the processes within the financial regulations are followed.

Items not on the Procurement Schedule and Exemptions or Waivers.

3.6 In the event of an exemption or waiver then the following must be obtained ~~the proposed procurement not being on the Procurement Schedule or in the case of an Exemption or Waiver then the following must be obtained:-~~

- 3.6.1 ~~Under £25,000 40,000~~ then this is an Administrative Ddecision of Lead Specialist
- 3.6.2 ~~Above~~~~Between~~ ~~£25,000 40,004~~ to ~~£60,000~~ and ~~£59,999~~ then this is an ~~AD~~ administrative Ddecision by relevant Ddirector
- 3.6.3 ~~Above~~ ~~Between~~ ~~£60,000 to~~ and ~~£100,000 99100,999000~~ by Delegated Executive Decision of the relevant Director.
- 3.6.4 ~~Above~~~~Between~~ £100,000 to and ~~—~~£250,000 by Delegated Executive Decision by the ~~relevant~~ relevant Director and Portfolio Hholder
- 3.6.5 ~~Above~~~~Over~~ £250,000, Cabinet approval ~~procurement thresholds then Cabinet approval with implementation by Administrative Decision~~

3.7 All procurements authorized by this route must be reported to Cabinet at the earliest opportunity

3.8 NB – Waivers and exemptions which are Key Decisions must be placed as individual items on the Forward Plan

3.9 In the event that the contract is not on the procurement schedule the Director, Monitoring Officer and Section 151 Officer must be consulted to ensure that the limits in 3.6 and decision making routes can be applied as this is predicated on budget provision being in place.

3.10 Officers must ensure that provision for resources for the management of the contract and for support from internal specialists, for its entirety, have been identified and where necessary included in a business case.

3.11 Officers must assess the procurement process in a manner commensurate with its complexity and value. Officers must:-

3.11.1 Ensure that any procurement commenced must comply with the commissioning strategy that is approved and any procurements must ensure and demonstrate that the strategy in Schedule 2 attached hereto has been complied with and the requirements and evaluation methodology aligns to this strategy

3.11.2 appraise the need for the expenditure and its priority;

3.11.3 define the objectives of the procurement process;

3.11.4 conduct an options appraisal to consider how the contract should be packaged and what procurement method is most likely to achieve the objectives and demonstrate value for money, including internal or external sourcing, partnering and collaborative procurement arrangements;

3.11.5 assess the risks associated with the procurement process and how to manage them;

3.11.6 consult the **Operational Lead for Delivery and Commercial Services** for all procurement relating to the Council's land and buildings;

3.11.7 consult end users, internally and externally, about their expectations, the proposed procurement method, and expected contract standards and performance;

3.11.8 consider what terms and conditions (T&Cs) should be used, including use of:-

3.11.9 Council standard T&Cs for straight forward procurements;

3.11.10 the most recent edition of professional/industry standard T&Cs where appropriate (e.g. JCT Minor Works Contract);

3.11.11 appropriate levels of insurance in consultation with Finance Specialists;

3.11.12 specialist T&Cs drafted by Legal Services for more complex, high spend or high risk procurements; and

3.11.13 the T&Cs relating to any framework (if applicable);

3.11.14 ensure conflicts of interest are identified, including where staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the procurement process. Any potential conflicts should be identified to the Monitoring Officer; and

3.11.15 set out these matters in writing if the Contract value of the Procurement exceeds £25,000.

3.12 The Chief Finance Officer will set, from time to time, default levels of insurances appropriate for different types of procurement/contracts. These default levels can only be reduced with the approval of the Chief Finance Officer.

4 TRANSFER OF UNDERTAKINGS PROTECTION OF EMPLOYEES

issue a statement on the application of the Acquired 4.1 In all cases where a request for Quotation or Invitation to Tender for services may result in a transfer of employees to or from the Council the Council will:-

- Rights Directive(s) and the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
- consult staff who may be affected.

5 NON-COMMERCIAL CONSIDERATIONS, EQUALITIES & COMMUNITY BENEFIT

5.1 Under procurement law, public bodies are only able to take social and environmental matters into account in the decision to award a contract to the extent that those matters are directly relevant to the subject matter of the contract. However, in compliance with public procurement law, public bodies are now required to consider how social, economic and environmental improvements can be achieved through procurement.

5.2 Inclusion of such criteria in specifications should be undertaken in accordance with the **Sustainable Procurement & Commissioning Strategy and** the Procurement Toolkit.

6 RECORDS

6.1 All contractual documents associated with Requests for Quotations and Tenders from successful and unsuccessful suppliers must be retained in accordance with the clauses below:-

- 6.1.1 The method for obtaining bids
- 6.1.2 copies of public notices
- 6.1.3 any Contracting decision including exemptions and the reasons for it
- 6.1.4 the shortlisting criteria and scoring
- 6.1.5 the Award criteria and scoring
- 6.1.6 the reason if the lowest price is not accepted
- 6.1.7 Tenders/Quotations returned
- 6.1.8 Any post tender interviews and clarifications including written notes of any interviews
- 6.1.9 arrangement for contract management and monitoring
- 6.1.10 communications with all Candidates and with the successful contractor
- 6.1.11 Requisition for Supplies/goods
- 6.1.12 Copy orders
- 6.1.13 Delivery Notes
- 6.1.14 Invoices, credit notes etc
- 6.1.15 Price Advices
- 6.1.16 Contract Variations
- 6.1.17 Write off Approvals

6.2 A complete set of the original contract and tender documents must also be retained, including contract terms and conditions, specification, pricing schedule, evaluation models, correspondence and award decision and letter as either electronic or hard copies. All of the above will be safely stored on the Council's e-tendering portal, The Chest when used to undertake a procurement exercise. **Where there is no requirement under these Rules for a formal written contract, then a copy of the original Purchase Order and invoice including specification pricing information and correspondence will be kept by the Officer/relevant service. Where a contract has a value of over £5,000 a copy of the PO/invoice will be shared with Legal Specialists for the purposes of updating the Council's Contracts Register.**

6.3 Records required by this rule, must be retained in accordance with the Council's document retention policy but in any event must be retained for the following:

- 6.3.1 For contracts below £60,000 in total estimated value – 3 years or the lifetime of the contract
- 6.3.2 For contracts £60,000 and above – six years after the expiry of the contract

6.4 The Monitoring Officer shall have overall responsibility to ensure a register (the Contract Register) is maintained for all contractual arrangements **over £5,000**. The Register will be continually reviewed and updated in line with all relevant procurement activity, by the Monitoring Officer ~~and/or the Procurement & Contracts Lead.~~

7 TENDER PROCEDURE

7.1 For the purposes of this rule, all estimates of contract values shall be in accordance with the procurement toolkit **provided that for Disabled Facilities Grants the procedures set out in Rule 24 ("Disabled Facilities Grants") shall apply.** If for any reason this is not available the estimates are to be in writing and prepared by the relevant Director or a competent member of his/her staff. Written quotations or tenders are not required for goods, services or works having an estimated value of less than £10,000 although best value should be obtained; this can be demonstrated through seeking three written quotes.

7.2 For contracts having an estimated value of £10,000 but not exceeding ~~£60,000~~ £100,000 quotations are obtained from competent contractors through The Chest. A minimum of three quotes should be obtained. Where less than three quotes are submitted the authorisation of Chief Finance Officer should be obtained before a quotation is accepted. The Chief Finance Office must be satisfied that the quotation represents value for money.

TENDERS (BELOW PROCUREMENT THRESHOLD VALUES)

7.3 No contract having an estimated value of £60000 ~~100,000~~ or more but below Procurement Threshold values applicable at the time shall be made unless the procedures below are undertaken:

7.3.1 At least fourteen (14) days public notice should be given on The Chest and Contracts Finder using the Council's standard documentation or a variation of such, and stating:-

- the nature and purpose of the contract;
- inviting tenders for its execution;
- details of the award criterion; and
- the last date for when tenders will be accepted.

Framework agreement

~~7.3.2 In accordance with Rule 4~~

Pre-Qualification (Selection Questionnaire)

7.3.3 Where application has been invited by Public Notice in accordance with the Rules above, the invitation may require a pre-tender assessment (Selection Questionnaire, previously known as a Pre- Qualification Questionnaire) to be undertaken and for the invitation to submit a tender to be limited to those persons who satisfactorily meet the requirements of that assessment.

7.3.4 Where this applies the public notice must clearly and unambiguously state this fact.

7.3.5 The relevant Director shall select not less than 5 contractors from the list who have satisfactorily met the pre-qualification criteria to submit a tender. Where less than 5 have satisfactorily met the pre-qualification criteria the maximum number of suitable contractors must be invited to submit a tender.

7.3.6 A two stage procurement process including pre-qualification should not be used as standard practice but instead when the procurement and contract process is considered high risk.

7.3.7 The Council shall only enter into a contract with a potential supplier if it is satisfied as to the suppliers:-

7.3.7.1 eligibility that he/she is not disbarred from tendering;

7.3.7.2 financial standing; and

7.3.7.3 overall technical ability.

Tenders above Procurement threshold values

7.4 All supplies, services or works having an estimated contract value in excess of the values stipulated in the Public Contracts Regulations 2015 shall be undertaken strictly in accordance with the requirements of that legislation.

7.5 All public notices for such contracts must be in the prescribed form, electronically transmitted via the e-tendering portal, The Chest and on Contracts Finder.

7.6 Placement of additional local/national or other public notices must only be made after the date of despatch.

7.7 The advice and assistance of the Procurement & Contracts Manager must be sought prior to the despatch of any Notice.

SECTION 3: CONDUCTING PROCUREMENT ~~AND DISPOSAL~~**8 FINANCIAL LIMITS AND THRESHOLDS**

- 8.1 All requests for quotations, tendering and contracting, other than detailed in Rule 3 Exemptions, shall be subject to the thresholds shown in Section 7 (Tender Procedure) above ~~on SharePoint.~~
- 8.2 The Council acting as an 'Accountable Body' may be subject to lower financial thresholds than specified in Appendix 1 as stipulated by the funding body
- 8.3 The Council will regularly review and if appropriate revise the Financial thresholds listed ~~on SharePoint.~~

9 AWARD CRITERIA

- 9.1 The basis of tender acceptance and award must be made clear in the tender documentation. Either:-
- Most Economically Advantageous Tender; or
 - Lowest Price where payment is to be made by the Council; or
 - Highest Price if payment is to be received. As more fully described here under
- 9.2 Contracts shall primarily be awarded on the basis of the Most Economically Advantageous Tender which is most likely to offer 'Value for Money' by a robust assessment of cost and quality. Setting evaluation criteria based solely on lowest prices should be done with extreme caution.
- 9.3 For contracts having a value in excess of £100,000, or identified as likely to have significant environmental impacts(s) the evaluation of cost and quality shall include an assessment of 'Whole Life Costs' proportional to the value of the relevant goods, works or services.
- 9.4 Unless there are exceptional reasons, the weighting given to price shall be between 60% and 85%. A lower figure than 60% will require the written approval of the Chief Finance Officer.
- 9.5 An award on the basis of lowest price should be reserved for sectors where it is possible to precisely specify the goods or supplies to be procured or the items are otherwise identical. (For example basic gas and electricity supply prices but not where an element of the supply is to be from renewable or carbon neutral processes)
- 9.6 The award criteria must be established before publication of Invitation to Tender (ITT) and must be included in the documentation issued to potential suppliers as part of the tender process. In the case of contracts that are estimated to be over the procurement thresholds it is encouraged that the evaluation criteria is also published in the initial notice and is required to be included at the SQ stage.
- 9.7 Award Criteria must not include:-
- non-Commercial Considerations;
 - matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement; or
 - criteria used in selection and award - criteria should be distinguished separately at all times in the tendering process.

- 10.1 All Requests for Quotations (RFQs) must include a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers
- 10.2 The Officer must define Award Criteria that are appropriate to the Procurement and designed to secure an outcome giving value for money for the Council.
- 10.3 All Quotations must specify the terms and conditions of contract that will apply.
- 10.4 The Request for Quotation must state that the Council is not bound to accept the lowest or any Quote, and reserves the right not to award the Contract at all.
- 10.5 All Candidates invited to quote must be issued with the same information at the same time and subject to the same conditions via The Chest. Any supplementary information must be given on the same basis.
- 10.6 Quotations must be returned electronically via the Chest, or where an alternative procedure is adopted via email or in writing addressed impersonally to the relevant Director.
- 10.7 The Operational or Specialist Lead may accept the most advantageous Quotations received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these Contract Procedure Rules.
- 10.8 The authority in ~~48.7~~ **the preceding paragraph** may be subject to delegation for quotations under £10,000. However, the decision on acceptance must be taken by an Officer of appropriate seniority and experience and must be formally recorded.

11 INVITATION TO TENDER

- 11.1 Any Invitation to Tender issued by the Council shall include details of the Council's requirements for that particular contract including:-
- 11.1.1 A description of the supplies, services or works being procured;
- 11.1.2 The procurement timetable including tender return date and time. Such date must allow a reasonable period for potential suppliers to prepare and submit their tender;
- 11.1.3 A specification and instructions on whether variants are permissible;
- 11.1.4 The Council's standard terms and conditions of contract, or other suitably prepared T&Cs with the agreement of Legal Services;
- 11.1.5 A statement on the Council's Anti-Bribery, Fraud and Corruption Policy including reference to the Whistle-blowing Policy (Confidential Reporting Code) and the Bribery Act 2010;
- 11.1.6 The evaluation criteria and any weightings considered appropriate;
- 11.1.7 The pricing mechanism and instructions for completion;
- 11.1.8 The form and content of any method statements etc. to be submitted;
- 11.1.9 A statement that the Council does not bind itself to accept the lowest or any tender;
- 11.1.10 A statement that late tenders, incomplete tenders, tenders returned not using the means indicated, or where applicable, not returned in the envelope provided or bearing distinguishing marks that would identify the sender, or those containing an unauthorised alteration will be disqualified;
- 11.1.11 Whether the Council is of the view that the Transfer of Undertakings (Protection of Employment) Regulations 2006 may apply;
- 11.1.12 A list of documents to be returned, and the rules for their submission;
- 11.1.13 Any further information that will inform and assist those invited to tender to prepare and submit tenders;
- 11.1.14 A Non-Collusive Tendering Certificate for completion and return by the tenderer; and
- 11.1.15 A statement that *"The Council does not bind itself to accept the lowest (highest), or any tender"*
- 11.2 Tenders invited in pursuance of Rule 22(1) of the Public Contracts Regulations 2015 shall be returned electronically where the process has taken place via the e-tendering portal.
- 11.3 Where submissions are required in other formats to support the process on The Chest they shall be addressed impersonally to the relevant Director.
- 11.4 Tender return envelopes/labels shall be a plain colour. They shall bear the word 'Tender' followed by the tender subject, and clearly state the deadline for receipt of tenders in the top left

hand corner.

12 SUBMISSION AND RECEIPT OF TENDERS/QUOTATIONS

- 12.1 Candidates must be given an adequate period in which to prepare and submit a proper Tender/Quotation, consistent with the complexity of the contract requirement. The procurement Procedure lays down specific time periods which are required by law and must be adhered to.
- 12.2 Electronic tenders must only be opened after expiry of the closing date in accordance with the provisions of **Clause 13 (“Opening of Tenders/Quotations”)** below. Any opening of tenders prior to the tender return deadline will render the tender exercise invalid
- 12.3 All tender responses shall be returned via the portal where they will be sealed until after the deadline for return has passed when only an appointed verifier can release them.
- 12.4 Where a paper-based exercise is followed for quotations under £10,000, quotation envelopes on their return shall be date stamped, the time of their return inserted and initialed by the staff who first receives them. They will be forwarded to the relevant Director who will store them in a secure locked place where they will remain unopened until after the deadline for return has passed.

13 OPENING OF TENDERS/QUOTATIONS

- 13.1 Tenders and Quotations shall be opened at a single time.
- 13.2 Where the preferred method of the approved e-tendering portal is followed all quotations shall be returned via the portal where they will remain locked until after the final deadline for receipt of tenders when only an appointed verifier can release them.
- 13.3 The relevant Director and a designated member of his/her staff or two designated members of his/her staff shall open written quotations received under any other procedure or in the case of using the e- tendering portal an appointed verifier can release them.
- 13.4 Where a paper-based exercise has been followed for quotations under £10,000 the Form of Tender/Quotation, Non-collusive certificates, form of bond and any priced documents submitted by the potential supplier shall be date stamped and those persons present shall insert their initials within the stamp.
- 13.5 Any Tender/Quotation received after the appointed time for receipt of tenders/quotations for a particular contract shall be disqualified, other than under exceptional circumstances, and shall not be opened save to ascertain the name of the tenderer/potential supplier to whom it shall be returned immediately. The Monitoring Officer must agree if special circumstances apply. The circumstances must be recorded on the procurement file and reported to the Procurement Lead.
- 13.6 Where this is carried out as a paper-based activity the Tender and Quotation return envelopes, or photocopies thereof indicating the date and time of receipt shall be retained as part of the tender file.

14 CLARIFICATION PROCEDURES**General**

14.1 Providing clarification of an Invitation to Tender (ITT) to potential or actual Candidates or seeking clarification of a Tender is permitted only via The Chest.

14.2 The Council may seek clarification via The Chest from potential suppliers in respect of their offer where appropriate. However the same opportunity must be afforded to all potential suppliers to ensure a transparent, non-discriminatory process that affords equality of opportunity.

14.3 Any question points of clarification must be raised by potential suppliers via The Chest. Questions shall be answered promptly and only via The Chest. The same information must also be communicated in writing to all other potential tenderers to ensure transparency and equality. Consideration must be given to extending the timescales for submission if material clarifications are sought, particularly if clarifications are issued within 6 days of the submission deadline.

Post Tender

14.4 Discussions with Tenderers after submission of a Tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content must be the exception rather than the rule and be within the scope of the contract.

14.5 Post tender discussions may only be conducted in circumstances which do not put other tenderers at a disadvantage, distort competition or affect adversely the integrity of the competitive tendering process.

14.6 Where during the tender evaluation process, examination of the most favourable tender or quotation reveals errors or discrepancies, which affect the tender/quotation figure the following process shall be followed:-

- 14.6.1 If the errors or discrepancies are of an arithmetic nature that results in the tender figure being reduced from that submitted, the tenderer etc. will be informed of the errors or discrepancies involved and that the Council intends to treat the tender figure as reduced to reflect the true arithmetic value of the tender/quotation;
- 14.6.2 If the errors or discrepancies are of an arithmetic nature that results in the tender figure being increased from that submitted, the tenderer etc. will be informed of the errors or discrepancies involved and afforded the opportunity to confirm the tender/quotation figure at the original submitted price or to withdraw the tender/quotation offer;
- 14.6.3 In all other circumstances, the tenderer etc. is to be given details of the errors or discrepancies and afforded the opportunity to confirm the tender/quotation figure or withdraw the offer.
- 14.6.4 A reviewed tender price cannot be submitted by the tenderer at this stage unless the competitive procedure with negotiation procedure is being followed.
- 14.6.5 If a tenderer etc. withdraws an offer as a result of 15.6.2 or 15.6.3 above the next most favourable tender shall be examined and treated in the same manner.

14.7 Where post-tender discussions result in a fundamental change to the specification, scope or contract terms, the contract must not be awarded, but re-tendered.

15 EVALUATION

15.1 Evaluation means assessment of tenders submitted against published selection and award criteria. Evaluation must only be against the published criteria, any other assessment which has not been stated on commencement of the procurement is against the principles of fairness and transparency.

15.2 Apart from any debriefing required or permitted by these Contract Procedure Rules, the confidentiality of Quotations, Tenders and the identity of Candidates must be preserved at all times and information about one Candidate's response must not be given to another Candidate. This is subject to the requirements of legislation, for example the Freedom of Information Act 2000.

15.3 Evaluation of the tenders must be carried out by a minimum of two officers of sufficient seniority, skill, knowledge and experience. The evaluation must be carried out collectively and fully documented.

15.4 The arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be corrected and notified to the Tenderer, who should be requested to confirm whether they wish their Tender to be evaluated with the amended amount or whether they wish to withdraw their Tender.

15.5 Where no tenders are fully compliant with the specification, the advice of the Procurement Team must be sought.

16 AWARD

16.1 The most favourable tender or quotation may only be accepted where there is adequate provision in the Revenue estimates approved by the Council or an approved Capital Estimate.

16.2 The most advantageous Quotations and Tenders received in respect of proposed contracts may only be accepted provided they have been sought and evaluated fully in accordance with these Contract Procedure Rules.

16.3 Where tenders are to be accepted these must be done in accordance with the financial thresholds information, [see Appendix 1 held on SharePoint](#).

16.4 Where the most favourable tender received is unacceptable, exceeds the budget provision, despite any adjustments that may be permitted under the Invitation to Tender and these Rules, a report on all tenders for that particular contract, and the options available shall be made to the Cabinet or relevant Council Committee for consideration and decision.

16.5 Where the most favourable quotation received is unacceptable, exceeds the budget provision, despite any adjustments that may be permitted under the Request for Quotation and these Rules, a report on all quotations and the options available shall be prepared by the [Assistant Director Lead/Operational Specialist](#) for consideration and decision by the relevant Director.

16.6 Where a payment is proposed to be made to the Council, and the most favourable tender/quotation is unacceptable, or it is proposed to accept other than the most favourable tender/quotation a report shall be made on all tenders or quotation as described in 25.4 and 25.5 respectively.

16.7 At the conclusion of the tender exercise, having an estimated value above procurement threshold values, and prior to any award being made, there shall be a minimum 10-day standstill period during which unsuccessful suppliers shall be debriefed in writing. No information, other than the following, should be given without taking the advice of the Monitoring Officer:

- The criteria and weightings
- The score of the bidder, the score of the winning bidder and the score of the other bidders which must be kept anonymous
- The name of the winning bidder
- The reasons for the decision, including the characteristics and relative advantages of the winning tender

16.8 If formal objections to the intended award are raised the Officer shall not award the contract and immediately consult the Monitoring Officer and the Procurement & Contracts Manager.

16.9 For below procurement threshold procurement exercises suppliers shall be debriefed as to the outcome of the exercise taking into account the same principles of openness and transparency.

16.10 Acceptance of other than the most economic advantageous Tender must be authorised as follows:

- Up to Tender Threshold

By the Operational or Specialist Lead. This authority will not be subject to delegation. Full details of the reasons for the decision must be recorded, signed by the Service Director and forwarded to the Procurement Team to be held on file.

- Tender Threshold to Procurement Threshold

By the Delegated Executive Decision, based on the formal recommendation of the Director. Full details of the reasons for the decision must be recorded and held on file.

- Over Procurement Threshold

By the Cabinet, based on a formal detailed report submitted by the relevant Director.

- Where the tender is covered by the **Public Contract Regulations Procurement Directives**, then acceptance must comply with these.

17 EXEMPTIONS

17.1 Subject to compliance with applicable legislation, Nothing in these Rules shall require written quotations or tenders to be invited if:-

- (a) the contract is with professional persons for the provision of services where the personal skill of those persons is of primary importance; or
- (b) for other reasons certified by the relevant Director there would be no genuine competition; or
- (c) the contract is for the execution of work, the supply of goods, or services certified by the relevant Director as being required so urgently as not to permit the invitation of quotations or tenders; or
- (d) the works to be executed or the goods, works or services fall within the scope of the existing contract; an extension of an existing contract as stated in the initial contract agreement; or
- (e) the works to be executed or the goods, works or services fall within the scope of an existing contract where there is a genuinely justifiable case to use the existing contract to maintain continuity of supply. Extensions will not be considered where to do so would breach applicable legislation Procurement legislation and UK legislation; or
- (f) the goods, services or works are proprietary or of such a specialised nature that they can only be obtained from one particular supplier; or are sold only at a fixed price and no reasonably satisfactory alternative is available; or

Exceptions

- (g) the purchase is through an alternative contract or Framework Agreement or Dynamic Purchasing Systems available to the Council and which has been put together as a result of a lawfully tendered competition; or
- (h) the total estimated value is less than £10,000 although obtaining quotes to ensure best value is encouraged. Where quotations have been sought they should be retained in a format agreed by the Procurement Lead specialist. These contracts should be in the standard terms and conditions that have been approved by Legal services; or
- (i) the contract is for a Disabled Facilities grant and Rule 23 ("Disabled Facilities' Grants") is followed; or
- (j) the prices of the goods or materials are wholly controlled by trade organisations or Government Order and no reasonably satisfactory alternative is available; or
- (k) a purchase is to be made at a public auction, provided that the person bidding is satisfied that the cost of the purchase is reasonable compared to the cost of alternative methods of purchase; or that such procurements that fall under the control of specific legislation such as the Disabled Facilities Grant (DFG) and Apprenticeship schemes. That the procurement of such service is controlled by the relevant legislation

17.2 Rule 3.6 applies in relation to decision making for exemptions.

17.3 The Procurement Specialist, Monitoring Officer and the Chief Finance Officer must be consulted before an exemption or exception is agreed by the relevant Director under clause 17.1. These exemptions and exceptions will be included in the Procurement Schedule and , will be reported to Cabinet by the relevant Director as part of the Corporate Financial Monitoring process to the next available meeting. Exception can be implemented by Administrative Decision, exemptions and waivers can be implemented dependent on the financial threshold in accordance with 3.6.. These exemptions and exceptions must be obtained prior to the agreement of any contractual agreement with a supplier.

18 Waiving the Rules

18.1 Any waiving of the of these R rules must be completed and authorised prior to the commencement of agreeing any contractual agreement with any supplier

18.2 Subject to UK applicable law any of these Rules may be waived in consultation with the Procurement Specialist and the Chief Finance Officer. Waivers should be included in the Procurement Schedule to be approved by Council as part of the budget setting process.

- 18.3 In the event of waivers being obtained and not included in the Procurement Schedule then these waivers must be reported to the first available Cabinet detailing the reasoning why obtained by the relevant officer
- 18.4 If this is not possible, waivers shall be approved by the Monitoring Officer where they are satisfied that to do so is justified in special circumstances and those special circumstances and the advantages and disadvantages of the alternative options are identified.
- 18.5 Waivers should be reported to the next meeting of the Cabinet or relevant Committee of the Council if over £10,000 or above, or by the relevant Director as part of the Corporate Financial Monitoring process if less than £10,000.
- 18.6 Waivers relating to insurance claims where the procurement requirements of the insurer have been followed will only need to be reported as part of the Corporate Financial Monitoring process even if over £100,000.
- 18.7 All waivers will be recoded centrally in a format agreed by the Procurement Specialist.

19 FRAMEWORK AGREEMENTS

- 19.1 The Council authority has access to numerous frameworks that we can call on for the delivery of services.
- 19.2 The frameworks are both external and internal. The framework can be accessed by the authority.
- 19.3 The use of Frameworks must be approved by the Procurement specialist in conjunction with Legal Services to ensure that the objectives and use of the framework is suitable for the council to adopt
- 19.4 There are one or more suitable suppliers who are party to the framework;
- 19.5 An options appraisal proportionate to the contract value has been conducted to ensure the council is obtaining best value;
- 19.6 The duration of any call off contract that results is calculated to take account of the nature and volatility of the market for the goods, works or services that are being procured;
- 19.7 All framework instructions are complied with, such as those relating to:-
- which organisations can access the framework;
 - use of direct award or mini competition;
 - terms and conditions; and
 - contract duration;
- 19.8 The use of the Framework Agreement is recorded in the electronic Contract Register. This should include framework reference numbers, lot numbers and the name and company registration number (where appropriate) of the supplier.

20 CONSORTIA

- 20.1 Where the Council joins one or more bodies/contracting authorities in a consortium or partnership and the contract is being tendered and awarded by that consortium or partnership, the Council shall not be required to invite further tenders, provided that these Rules have been followed to the extent that they are not inconsistent with the procedure(s) adopted by that consortium or partnership for awarding contracts.

21 COLLABORATIVE CONTRACTS (EXCLUDING FRAMEWORK AGREEMENTS)

- 21.1 In order to secure Value for Money, the Council may enter into collaborative procurement arrangements. This may be with or through another local authority, government department, statutory undertaker or public service purchasing consortium.
- 21.2 The views of the relevant Portfolio Holder shall be sought before any decision is made as to whether to enter into collaborative procurement arrangements.
- 21.3 Before undertaking a collaborative agreement, Officers should obtain advice from the Legal Specialist and the contact the Procurement Specialist. Fundamentally it is the responsibility of the lead authority putting in place a collaborative procurement process or framework agreement to ensure the process is fully compliant with all relevant procurement legislation. However, the Council has a clear responsibility not to utilise any contractual agreement which is not fully compliant and can be held accountable should they do so.
- 21.4 Where collaborative agreements are entered into the Officer must:-

- clarify who is the contracting authority;
- ensure there is a legal agreement that protects the interests of the Council, which may include the use of a memorandum of agreement;
- ensure that where the overall contract values are above Procurement Thresholds the contract was let in accordance with procurement procedures and that any procurement activity below the Procurement Thresholds is conducted with due regard to the procurement based principles; and
- ensure that the duration of any call off contract is calculated to take account of the nature and volatility of market for the goods, works or services being procured.

22 PARTNERSHIPS

- 22.1 Whenever the Council enters into a formal partnership the Council will ensure Governance arrangements are agreed in writing and include tendering responsibilities and arrangements.
- 22.2 Where the Council acts as Lead Authority in the partnership these Contract Procedure Rules shall whenever practicable be followed.
- 22.3 Before entering into contracts, written agreements shall be made with funding partners regarding the level of and conditions attached to any funding.
- 22.4 Where the Council is not the lead Authority partner, the tendering procedure rules agreed by the partnership shall be followed.

23 DISABLED FACILITIES' GRANTS ("DFGS")

- 23.1 DFGs help to fund adaptations to enable ~~people to stay living in their home~~ increased independence – safety and minimising the effects of disability, enabling the carer to continue to care and prevention of admission to more institutional care. Adaptations can include but are not limited to stair lifts, ~~wet floor~~ level access shower areas and access ramps etc.
- 23.2 Contracts for DFGs must be entered into in line with the Council's DFG Policy and DFG Procedure as updated from time to time. The DFG Policy states that the Council will complete the paperwork with the contractor on behalf of, and as the agent for, the applicant in accordance with the DFG Procedure. This means that even though the Council signs the paperwork with the contractor, and in most cases makes payment to the contractor on the ~~client's~~ applicant's behalf, the contract agreement is between the applicant and contractor, and that the Public Contracts Regulations 2015 (as amended) do not apply to these contracts, because the Council is not a party to the contract acting in its own capacity.
- 23.3 As at the date of the introduction of this Rule 23 into these Contract Procedure Rules:
- 23.3.1 in accordance with Housing Grants, Construction and Regeneration Act 1996 (as amended) an application for a grant must contain at least two estimates from different contractors of the cost of carrying out the relevant works, unless the Council as the local housing authority otherwise directs in any particular case;
- 23.3.2 the Council's position is that at least two estimates from different contractors shall be obtained for the relevant works in all cases, irrespective of the value or the anticipated value of the relevant works;
- 23.3.3 the DFG Policy sets out the Council's requirements for obtaining quotes, which will usually be under a framework. Where quotes are being obtained under a framework the rules of the framework must be followed. Where works are not covered by the framework quotes must be obtained through the Council's tendering portal (the Chest) seeking at least two competitive tenders.
- 23.3.4 Where the applicant seeks their own contractor to carry out works required – the applicant is to source at least two comparable quotes.
- 23.4 These Contract Procedure Rules shall be updated in line with any changes to the legislation or government guidance applicable to DFGs.

24 ACCOUNTABLE BODY

- 24.1 Tendering arrangements must conform with this Council's and any appointed partner(s) Contract Procedure Rules, and be capable of providing evidence of this to the Council, its agents and auditors.

N.B. Failure to follow the funding body's tendering rule is likely to result in funds being clawed back, leading to a potential budget deficit to be financed by the Council

25 E-PROCUREMENT

25.1 The use of e-procurement technology does not negate the requirement to comply with all elements of these Contract Procedure Rules, particularly those relating to competition and Value for Money.

26 RELEVANT CONTRACTS

26.1 All Relevant Contracts must comply with these Contract Procedure Rules. A Relevant Contract is any arrangement made by, or on behalf of, the Council, other than those in 10.2 above/below.

26.2 Relevant Contracts do not include:

- contracts of employment which make an individual a direct employee of the Council, or
- agreements regarding the acquisition, disposal, or transfer of land (for which the Financial Framework shall apply).

26.3 Providing Services to External Organisations

26.4 The Monitoring Officer, the Chief Finance Officer, Directors as appropriate, Financial Services (insurance) and the Procurement Specialist must be consulted where contracts to work for organisations other than the Council are contemplated.

SECTION 4: CONTRACT AND OTHER FORMALITIES**27 CONTRACT FORMALITIES**

27.1 All contracts having an estimated total value of ~~£25,000~~10,000 and above, and any other case where the Monitoring Officer so decides shall be in writing.

27.2 Every such contract entered into on behalf of the Council shall be in a form approved by the Monitoring Officer and shall be signed by two duly authorised officers of the Council or the Monitoring Officer or made under the common seal of the Council attested by at least one officer in accordance with the Council's Constitution. The Monitoring Officer will specify when electronic signatures are appropriate.

27.3 Contract formalities must be carried out and completed to the satisfaction of the Monitoring Officer before the contractor commences any work under the contract.

27.4 Every such contract shall include:-

- 27.4.1 The supplies, services or works to be furnished/delivered, had or done [including appropriate technical specification];
- 27.4.2 The price to be paid with a statement of any discounts or other deductions;
- 27.4.3 Payment terms which should normally state payment in arrears. However where payment in advance is necessary the rationale for this should be fully documented, and where payments in advance exceed £10,000 a documented risk assessment must be approved by the relevant Operational or Specialist Lead unless the supply relates to computer software.
- 27.4.4 The time or times within which the contract is to be performed/undertaken;
- 27.4.5 Valid copies of the minimum appropriate insurance to be held by the contractor at the commencement of the contract and on each subsequent anniversary;
- 27.4.6 Clauses(s) for the way in which any arbitration is to proceed under the contract;
- 27.4.7 A clause prohibiting the contractor from transferring, assigning (directly or indirectly) to any person whatsoever, any portion of the contract without the prior written permission of the Council, or from subletting any portion of the contract without such permission other than maybe customary in the trade concerned;
- 27.4.8 In every contract for the execution of works or the supply of goods and materials and in every contract where the estimated value exceeds £60,000 (except where the contract is entered into under partnering arrangements) there shall be a consideration of the need for liquidated damages. Where it is considered that provision should be made for liquidated damages, the requirement and amount of such provision shall be determined in consultation with the Chief Finance Officer who shall consider the nature of the contract and its associated risks. The calculation shall be recorded and filed with the contract documents;
- 27.4.9 A clause stating the retention of any appropriate amount determined following consultation with the Monitoring Officer that will be withheld until clearance of the Final Account.
- 27.4.10 That all goods, materials and workmanship must be at least to the standard specified having regard

to the relevant European, British or equivalent body, and must otherwise be fit for purpose;

- 27.4.11 A clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered or given or agreed to give any person any gift, consideration or any kind of inducement or reward for doing or forbearing to do or to have done any action in relation to obtaining or execution of the contract with the Council;
- 27.4.12 A clause empowering the Council to cancel the contract and recover from the contractor the amount of any loss resulting from such cancellation if the contractor or any person employed by him/her or acting on his behalf shall have committed any 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.
- 27.4.13 A clause prohibiting the Contractor from transferring or assigning, directly or indirectly, any portion of the contract to any person or organisation without the express written consent of the Council.
- ~~27.4.14~~ A clause that the contractor, his staff, agents and any sub-contractors are required to comply with the Council's Anti-Fraud and Corruption, Modern Slavery, Safeguarding, Prevent, GDPR procedures and the Whistle-blowing Policy (Confidential Reporting Code) or equivalent for reporting any such events. ~~A copy of the Whistle-blowing policy currently applicable shall be included in the schedule of documents of the Invitation to Tender under clause~~ The Policies will be available on the Chest along with the Invitation to Tender documents.

27.5 A clause that the contractor will comply with the provisions of:

- The Council's Equality and Diversity Policy including requirements of the Equality Act 2010;
- All obligations of the Council under the Human Rights legislations;
- All restrictions and requirements of the Council under Data Protection legislation;
- All restrictions and requirements that may be imposed on the Council under the Freedom of Information Act 2000; and
- The Health and Safety at Work etc Act 1974 and any other legislation made thereunder or relevant to the health and safety of employees.
- The TUPE requirements (where applicable).

27.6 Where a formal contract is not required the Director or relevant officer will notify acceptance in writing to the successful contractor and place the necessary order. This must include the Council's relevant standard terms and conditions.

27.7 Where the annual amount spent with any one contractor or on any one specific type of goods, works or services exceeds £25,000 and outside an existing contractual agreement, a review must be carried out to assess the procurement method and a formal contractual agreement put in place.

Sub Contractors

27.8 Where any sub-contractor or supplier is to be nominated to a main contractor/supplier for the execution of a contract with the Council, these Contract Procedure Rules shall apply as if the Council was entering into a direct contract with the sub-contractor or supplier.

27.9 Details of contracts must be entered on the Council's contracts register

28 SAFEGUARDS FOR DUE PERFORMANCE

Liquidated Damages

28.1 Every written contract must, where appropriate, provide for the payment of liquidated damages by the contractor in the event of his default.

28.2 The level of damages required will be determined by the relevant Director, in consultation with the Chief Finance Officer.

Failure to Deliver

28.3 In every contract for the execution of work, supply of goods, materials or services where appropriate having an estimated value of £25,000 and above a clause shall be inserted to secure that, should the contractor fail to deliver the goods, materials or execute the service or works or any part or portion thereof within the time or times specified in the contract, the Council, may without prejudice to any other remedy for breach of contract, either wholly or in part, or to the extent of such default, and to provide for the execution of the work or service by other means, or to purchase other goods or materials, as the case may be make good

- Such default; or

- In the event of the contracts being wholly determined, the unexecuted work or service or the goods or materials to be delivered

28.4 The clause shall further secure that the amount by which the cost of providing for the execution of the work or service by other means, or the purchasing of other goods or materials, exceeds the amount which would have been payable to the contractor had he executed the contract, or portion thereof, within the time or times specified therein, shall be payable by the contractor.

Performance Bonds

28.5 The use of and level of, retentions on other contracts shall be agreed with the Chief Finance Officer prior to the publication of the proposed terms and conditions within the tender documents. Performance Bonds will normally only be applied to building and facilities contracts.

28.6 The Council shall require and take sufficient security for the due performance of all contracts exceeding £60,000 where appropriate. For works contracts the amount of security shall be the retention of 10% of the contract sum during the life of the contract, such retention to be released on issue of the certificate of practical completion of the contract.

28.7 In any particular contract or class of contract the Chief Finance Officer may decide that the Council's interest in the proper performance of the contract can be appropriately protected by specifying and taking a different form of security

29 PREVENTION OF CURRUPTION

29.1 The Officer must comply with the Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. High standards of conduct are obligatory. It will be for the Officer to prove that anything received was not received corruptly. Corrupt behaviour is a crime under the statutes referred to in [this Rule 27.2 below](#) and is likely to lead to disciplinary action.

29.2 The following clause must be put in every written Council contract (excluding framework call-offs):-

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

29.2.1 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 / Supplier does not know what has been done); or

29.2.2 commit an offence under Section 117(2) of the Local Government Act 1972 or the Bribery Act 2010; or

29.2.3 commit any fraud in connection with this or any other Council order or contract whether alone or in conjunction with Council Members, contractors, suppliers, or employees.

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

27.4 Where a supplier's standard terms and conditions are being used they must contain the equivalent of this clause.

30 DECLARATION OF INTEREST

30.1 Every Officer and Member of the Council has a responsibility to declare any links or personal interests that they may have with purchasers, suppliers and /or contractors if they are engaged in contractual or purchasing decisions on behalf of the Council, in accordance with the applicable Codes of Conduct.

SECTION 5: CONTRACT MANAGEMENT

31 MANAGING CONTRACTS

Freedom of information

31.1 The Council shall fulfil its obligations under the Freedom of Information Act 2000 (as amended) in respect of any application made under the Act in relation to the contracts it has entered into and the manner in which the contract was procured.

Statistics

31.2 The Procurement Specialist or such other officer nominated by the Chief Finance Officer shall be responsible for ensuring the Council meets its reporting requirements Rules required by the [Ministry of Housing Communities and Local Government Department for Levelling Up, Housing and Communities](#) or others.

31.3 Directors and Operational and Specialist Leads shall upon request of the nominated

officer provide the details and any information necessary to complete these returns with the minimum of delay.

Extensions

- 31.4 A contract for goods, services or works shall only be extended where the contract terms and conditions expressly provide for an option for extension. Requests for extensions should consider both the cumulative contract value and the period of the contract.
- 31.5 Any such extension shall be considered where the contract:-
- 31.5.1 has been successful in demonstrating performance targets identified in the original contract were met;
- 31.5.2 will demonstrate Service Improvement or innovative service delivery processes;
- 31.5.3 is able to demonstrate that such extension will deliver Value for Money; or
- 31.5.4 where there is a genuinely justifiable case to extend to maintain continuity of supply or site experience.
- 31.6 Any such extension shall be subject to: -
- adequate budget provision;
 - the extension being priced at the original contract rates subject to any adjustment mechanism set out in the contract;
 - the agreement of the supplier; and
 - compliance with Procurement legislation.
- 31.7 Any proposed contract extension shall be approved by the Chief Finance Officer.

Consultants

- 31.8 It shall be a condition of the appointment and engagement of the services of any consultant, not being an officer of the Council, who is to be responsible to the Council for the supervision of a contract, or design of any scheme etc. on behalf of the Council that: -the appointment will be undertaken in accordance with these Rules which includes the use of appropriate framework agreements;
- consideration will be given to any requirement for vetting, data protection, intellectual property rights etc.;
 - consideration will be given to the most appropriate form of payment, including based on inputs (usually time) or output based;
 - the consultant will be prohibited from bidding for the work, service etc. and any subsequent stage unless this was the specific purpose of their appointment;
 - that in supervising any contract on behalf of the Council the Consultant shall comply with these Rules as though he/she was a Director of the Council, subject to the modification that the procedure to be followed in inviting and opening tenders shall be approved in advance by the relevant Director;
 - at any time during the period of carrying out the contract procedure during his/her appointment, the Consultant shall produce to the Chief Finance Officer or authorised representative, on request, all the records maintained by him/her in relation to the contract; and
 - On completion of the appointment/contract he/she shall without delay transmit all records in relation to any contract to the relevant Director.

32 RISK ASSESSMENT AND CONTINGENCY PLANNING

32.1 For all contracts, contract managers must:-

- maintain a risk register during the contract period;
- undertake appropriate risk assessments; and
- ensure contingency measures are in place for identified risks

33 CONTRACT MONITORING, EVALUATION AND REVIEW

- 33.1 Each Director responsible for the awarding of contracts, which provide for payment to be made by instalments, shall arrange for the keeping of a register, to the satisfaction of the Chief

Finance Officer, to show the state of account on each contract between the Council and a contractor, together with any other payments and related professional fees.

- 33.2 Payments to contractors on account of contracts shall be made only on a certificate issued by the relevant person.
- 33.3 Subject to the provision of the contract in each case, every variation shall be authorised in writing by the relevant person. Each variation shall include an estimate of the increase or reduction in cost arising from that variation of the contract. Any variations must be within the scope of the contract.
- 33.4 When the net effect of such variations exceeds the following limits, this shall be reported as soon as possible to the Cabinet or relevant Committee of the Council:
- 33.5 for contracts up to £100,000 (in amount or budgetary provision) – 3% of the contract sum or budgetary provision (but not less than £1,000)
- 33.6 for contracts in excess of £100,000 (in amount or budgetary provision) - £3,000 + 1.5% of the excess of the contract sum or budgetary provision over £100,000.
- 33.7 Provided that it shall not be necessary to report such net effect in the case of contracts undertaken under agency or contractual arrangements on behalf of another local or public authority where that authority has approved the cost of the variation.
- 33.8 Where the relevant person issues a certificate and the amount to be paid on that certificate, when added to amounts previously certified for payment, would result in the contract sum or budgetary provision being exceeded, then the certificate shall be accompanied by a report fully explaining the position from the relevant person to the Chief Finance Officer.
- 33.9 The final certificate of completion of any contract shall not be issued until the relevant person has produced to the Chief Finance Officer a detailed final statement of account and all relevant documents, if required. The Chief Finance Officer shall, to the extent that is considered necessary, examine final accounts for contracts and shall be entitled to make all such enquiries and receive such information and explanations as may be required in order to be satisfied as to the accuracy of the accounts.
- 33.10 Every works contract and every other contract which is estimated to exceed £60,000 in value or amount shall, where appropriate, include provision for liquidated damages, except where the contract is a partnering contract entered into under the Council's procurement policy. Where there has been a delay in the completion of a contract and an extension of time is not appropriate to be authorised, the relevant person shall impose the liquidated damages clause in all instances, unless, after consultation with the Monitoring Officer, it is decided it is inappropriate to do so.
- 33.11 A report as to final costs under each contract shall, after agreement of the final account, be incorporated into the Post Implementation Review submitted to the Senior Management Team, Cabinet or relevant Committee by the appropriate Director after consultation with the Chief Finance Officer.
- 33.12 Claims from contractors in respect of matters not clearly within the term of any existing contract shall be referred to the Monitoring Officer for consideration of the Council's legal liability and, where necessary, to the Chief Finance Officer for financial consideration, before a settlement is reached.
- 33.13 Where a contractor enters into liquidation or receivers are appointed or the contractor makes arrangement or composition with his/her creditors, the relevant person shall report the full circumstances in writing to the Cabinet or relevant Committee of the Council as soon as they are known to him/her.

Procurement Schedule

A plan identifying the projects and contracts that are expected to be procured during the financial year. Where possible the Procurement Schedule should also identify the lead officer and an outline timetable. This should be signed-off by the relevant Operational and Specialist Lead, Directors and Council at the beginning of each financial year.

Contract Period

The period over which a contract is delivered. The period determined must comply with European and National legislation, allow for continuous improvement, enable appropriate exit strategies, and enable the contract to be packaged to encourage delivery in the most cost effective manner

Contracts Register

The register held by the Council containing of all written contracts entered into by the Council.

E-Procurement / e-tendering

An electronic procurement process using proprietary software or media to enable the tender/quotation process to be undertaken electronically. It provides all the controls applicable to manual tendering as required by these rules.

Procurement Regulations

The Legislation setting out the defined mandatory procurement procedures that must be followed when procuring supplies, services or works above the pre-determined threshold values in force for the time being that are.

Statutory-based Principles

The principles which impact on all procurement regardless of value. These must be adhered to and include principles of equality, non-discrimination, transparency, mutual recognition and proportionality.

Framework Agreement

Contracts awarded following a compliant tender exercise that provides for the 'call-off' of supplies, services or works against a supplier. The Framework provides a non-binding offer without obligation; a binding contract coming into effect once the Council initiates a 'call-off'

ITT

Invitation to Tender

~~OJEU~~

~~Official Journal of the European Union. The advertising medium for tenders above procurement threshold values or the UK equivalent~~

Officers

Shall include, Directors, Lead Specialists and Specialists

Directors shall mean the Director of Customers and Commercial Services and / or the Director of Innovation and Resources.

Performance Bond

Applicable to contracts over £60,000 in value where there are potentially high levels of risk. The Council seeks security to mitigate such risk, and this is normally in the form of a parent company guarantee or a Performance Bond. The use of, and level of, retentions on other contracts shall be agreed with the Chief Finance Officer prior to the publication of the proposed terms and conditions within the tender documents. Performance Bonds will normally only be applied to building and facilities contracts.

Procurement

The mechanism and processes by which the Council acquires the supplies (goods), services and works necessary to achieve delivery of its objectives. It will include all associated performance measurement, monitoring and other controls necessary to complete such delivery.

Procurement Cards

Approved purchasing cards generally used as a mechanism for ordering and invoicing low value goods and services. Purchasing Cards are not credit cards.

Procurement Thresholds

The thresholds that apply for the purposes of the Public Contracts Regulations 2015, Utilities Contracts Regulations 2016, Concession Contracts Regulations 2016 and the Defence and Security Public Procurement Regulations 2011.

Regulations/PCR2015

The UK regulations implementing the EU public procurement directives, currently the Public Contract Regulations 2015.

RFQ

Request for Quotation

Risk Management

Risks associated with procurement exercises shall be identified, assessed and managed

Supplier

Any person, firm, organisation or body providing or potentially providing supplies (goods) services or works to the Council.

Value for Money

The optimum combination of quality and cost taking into account 'whole life costs'.

Whole Life Costs

The costs associated with a procurement from the initial definition of need to the actual procurement of the supplies services or works their delivery and operation through to the end of the useful life and/or disposal.

~~THE COSTS ASSOCIATED WITH A PROCUREMENT FROM THE INITIAL DEFINITION OF NEED, TO THE ACTUAL PROCUREMENT OF THE SUPPLIES, SERVICES OR WORKS, THEIR DELIVERY AND OPERATION THROUGH TO THE END OF THE USEFUL LIFE AND/OR DISPOSAL.~~