

Section 8 The Contract and Procurement Procedure Rules

1 Introduction

- 1.1 Members and Officers delegated powers are subject to these rules. **Non-compliance may result in disciplinary action.** If you are in any doubt about whether the Rules apply, you must always check with the Head of Procurement.
- 1.2 In these rules Head of Procurement means the Head of Service with responsibility for procurement (currently Head of Audit, Assurance and Procurement) or such member of the Corporate Procurement team as the Head of Procurement may nominate.
- 1.3 These rules:
- i. do not apply to internal purchases or service provision, only where you need to buy something from outside the Council.
 - ii. must be followed by the Strategic Partnership when procuring goods, services or works on behalf of the Council
 - iii. apply to all any contract that results in the Council giving something (usually money) in exchange for goods, services or works.
 - iv. apply to the disposal of surplus goods or equipment and to concession contracts.
 - v. applies to the appointment of consultants
 - vi. does not cover grants which the Council may receive or make, unless the grant arrangements amount to a contract for services.
 - vii. do not normally apply to the sale and purchase of property but may apply in relation to development agreements.
- 1.4 The most important principles are **transparency, openness and fair competition**. Whenever we are buying things for the Council we must always:
- i) comply with applicable EU Procurement legislation
 - ii) act to promote competition; and
 - iii) (when spend is over EU thresholds) consider how what is proposed to be procured might improve the economic, social and environmental well-being of the borough.

- 1.4 The Head of Procurement is responsible for keeping the Rules under review and monitoring compliance.

2 Before We Start

- 2.1 Ensure that all the necessary approvals under the constitution have been obtained for incurring the expenditure and undertaking the competitive process.
- 2.2 The value of a contract means the estimated total monetary value over its full duration, including any extension options (**not the annual value**). Where the duration of a contract is indeterminate, this should be the estimated value of the contract over a period of four years. Contracts must not be artificially split to reduce the value to avoid the Rules.

Who can buy things?

- 2.3 Directors should ensure that procurement is undertaken by their procurement professionals or, where departments or functions have no specialist capability, by authorised persons who can demonstrate skills and knowledge appropriate to the task and have undertaken any mandatory training put in place by the Head of Procurement.
- 2.4 Before starting a procurement process, we should identify the need and fully assess options for satisfying it. If a suitable Corporate Contract is available it must be used unless agreed otherwise with the Head of Procurement. For Low Value Procurements officers should do this in accordance with any guidance issued by the Corporate Procurement Team. For contracts over £80k in value a procurement business case must be approved by Head of Procurement before you start the proposed procurement process.
- 2.5 For contracts over £500,000 or those which involve the transfer of Council employee(s) to a contractor, Service Managers must:
 - i) seek a decision from the Executive Member as to whether tenders are to be invited under the Service Manager's recommended contract strategy;
 - ii) once tenders have been evaluated, unless requested by the Executive Member a further decision from the Executive Member as to whether a contract is to be awarded is not necessary

3 How We Buy the Things We Need

- 3.1 The Council's primary tool for procuring contracts is the Chest e-tendering system. Contracts which are to be advertised valued over £25k must also be advertised on the Government's Contracts Finder website. Use of any system other than the Chest must be approved by the Head of Procurement.

Full tender procedures for high value transactions

- 3.2 Contracts over £80,000, including those over EU thresholds, must be advertised via the Chest and, the Government's Contracts Finder website for at least 10 days, inviting expressions of interests for the contract and stating the last date when the expressions of interest or tenders must be submitted to the Council.
- 3.3 When the works or services are to be tendered in collaboration with one or more other public body(ies), separate advertisement is not necessary provided an advertisement is placed by the collaborating group.
- 3.4 All procurement projects valued above EU Thresholds should be the responsibility of a lead officer who is experienced in managing major projects and has relevant procurement experience.

Full Tender Procedures (not over the EU thresholds)

- 3.5 Where tenders are to be invited for a higher value contract (but not over EU procurement thresholds) the procedure to be followed must be determined prior to advertising and must be one of the following:
 - i) open tender (all interested contractors submit a tender in response to an advertisement);
 - ii) restricted procedure (expressions of interest from interested contractors in response to an advertisement, followed by a pre-qualification exercise to assess contractors capabilities to meet the requirements of the contract, the short listed suppliers are then invited to tender);
 - iii) where a Framework arrangement exists in respect of the subject matter, tenders shall be invited using the Framework arrangement from capable contractors;
 - iv) such other procedure as approved by Head of Procurement
- 3.6 A pre-qualification questionnaire must not be used for any contract tendered with a value below EU Thresholds.

Intermediate-value transactions

- 3.7 For transactions valued **over £3,000 but at or below £80,000**, at least three quotations must be invited through the Chest before a purchase order or contract is issued. If capable suppliers within the borough are known they must be invited to quote.
- 3.8 If only one quotation is received you **must** seek some more quotations or obtain an **exemption** from the Rules in accordance with section 13. Receipt of two comparable quotations will be sufficient in these circumstances.

Low-value transactions

- 3.9 For transactions valued at or below £3,000 at least one written quotation (can be via email) must be obtained, preferably using the Chest, from a supplier before a formal purchase order is issued specifying the supplies, services or works and setting out prices and terms of payment unless a framework already exists. Your purchase order must contain a standard form of terms and conditions of contract between the Council and the supplier.

Framework agreements

- 3.10 You **must** investigate whether frameworks are relevant for each case as you could get better value for the Council by using an existing framework (either procured by the Council or another organisation such as another authority or a central purchasing organisation such as YPO) and that you can properly use them. You **must** consult the Head of Procurement before using an existing framework agreement.
- 3.11 If there is not a framework already in place (or if one does not exist with partners which you can use) then you must consider if it would be better value to set up a framework, especially where you are going to need to buy the same or similar things again in the future.
- 3.12 For any procurement (call-off) where the terms laid down in the framework agreement are sufficiently precise to cover the particular requirement, the call-off can be awarded without re-opening competition.
- 3.13 For any procurement (call-off) where the terms laid down in the framework agreement are not precise or complete enough for the particular call-off, a further competition should be held with all those suppliers within the framework capable of meeting the particular need.
- 3.14 Select lists and preferred suppliers must not be used without the prior approval of the Head of Procurement.

4 The EU Directives

Additional requirements for transactions valued over EU thresholds

- 4.1 Contract values above which procedures governed by the EU Directives apply are currently (from 1st January 2014- please note that these thresholds are amended bi-annually):

For supplies and services (including goods and consultancy services):	£172,514
For works:	£4,322,012

- 4.2 If your contract has a value over the threshold you must consider whether you must procure under the Public Contracts Regulations 2006 and seek advice from the Head of Procurement. You must follow any

applicable the requirements of the regulations (including but not limited to the publishing of notices and following mandatory timescales).

- 4.3 Use of a PIN (pre information or periodic indicative notice) should be considered where it would help to stimulate markets or where reduced tendering timescales would be desirable.
- 4.4 Your contract must be tendered under one of the processes set out in the Regulations and, unless you are using the Restricted or Open procedure, the process must be approved by the Head of Procurement.
- 4.5 For each contract, except where indicated below, a Contract Notice in the specified form must be published electronically via the Chest in the Supplement to the Official Journal of the European Union (OJEU). Advertisements published additional to this:
 - must not appear in any form before a Contract Notice is transmitted to OJEU; and
 - must not contain any information additional to that contained in the Contract Notice in OJEU.

5 Receiving and opening tenders

- 5.1 Every response to an invitation to tender for a transaction valued over £80,000 must be delivered via the Chest. If a waiver is obtained not to use the Chest then appropriate safeguards to ensure the fairness, transparency and integrity of the tender process as the Head of Procurement thinks reasonable must be followed and evidenced.

6 Evaluating tenders

- 6.1 Where written quotations are invited for contracts valued at or below £80,000 then the bidder submitting the lowest price compliant bid must be awarded any resulting contract, unless alternative pre-determined criteria are detailed in the document used to invite bids in which case those criteria must be used.
- 6.2 For contracts valued over £80,000 and for all contracts governed by EU Directives, evaluation should be based on the identification of the Most Economically Advantageous Tender ("MEAT") unless the Head of Procurement agrees to assessment based on lowest price.
- 6.3 A copy of the evaluation criteria and weightings to be used must be approved by the Head of Procurement before tenders are invited.
- 6.4 Evaluation involves scoring quotes or tenders objectively by a panel (for tenders the panel must consist of at least three or more officers and/or independent experts) using criteria which must:

- i) be pre-determined and weighted as detailed in the invitation to tender documentation;
 - ii) be strictly observed at all times throughout the tender process;
 - iii) reflect the principles of Best Value;
 - iv) include price;
 - v) consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal should be taken into account;
 - vi) be capable of objective assessment;
 - vii) avoid discrimination or perceived discrimination on the basis of nationality, or other cause contrary to any of the Council's policies; and
 - viii) include where appropriate criteria that assess the impact on the economic, social and environmental well-being of the borough in accordance with any Social Value Policy which may be adopted by the Council
- 6.5 Any resulting contract must be awarded to the tenderer which submits the most economically advantageous tender, ie the tender that achieves the highest score in the objective assessment.

7 Awarding contracts and Audit Trails

- 7.1 The results of the tender evaluation process must be recorded and uploaded to the Chest.
- 7.2 A contract must only be awarded and signed by a person authorised to do so, who must ensure that the appropriate budget holder has the funds in place to sustain the contract prior to award.
- 7.3 Service Managers should ensure that proper records including records of any savings are placed on the Chest for all procurement activity conducted on the Chest and retained in hard copy for all other procurement activity.
- 7.4 Each Director must maintain a register of all contracts in their department that are not on the Chest and have a record of where copies of all contracts are kept.
- 7.5 Orders subsequent to any contract awarded must be via the Council's P2P system unless otherwise agreed by the Head of Procurement.

8 Standstill Period

8.1 For all contracts tendered a 'standstill period' must be observed between the decision to award and final contract signing. For tenders subject to the Regulations this must not be less than ten calendar days, for other tenders it must be for a proportionate period which must be approved by the Head of Procurement, if less than ten days. Once the decision to award a contract is made, each tenderer must be notified in writing on the outcome of the tender process. This notification must include:

- i) details of the contract award criteria;
- ii) the reasons for the decision, including the characteristics and relative advantages of the successful tender,
- iii) the score the tenderer obtained against those award criteria;
- iv) the score the winning tenderer obtained;
- iv) the name of the winning tenderer; and
- v) details of when the standstill period will end.

8.2 Where a tenderer requests a debrief within the standstill period this must be given. Even if a tenderer asks for a debrief outside of the standstill period we are still obliged to provide this. If any complaint or objection to the contract award is raised then the award process must cease and advice obtained from the Head of Procurement and must not recommence without the permission of the Head of Procurement.

9 Contract Award Notice

All contracts over EU thresholds (including Part B or light touch regime contracts) must be announced by means of a Contract Award Notice in OJEU transmitted no later than 48 calendar days after the date of award through the Chest.

10 Conditions of contract

10.1 All transactions must use a form of contract approved by the Council Solicitor, usually this will be the Council's Standard Terms and Conditions.

10.2 All contracts not executed under seal must be signed by two authorised Council officers.

10.3 Contracts with a value over EU Thresholds or considered to be of a strategically important or politically sensitive nature or where the extended **limitation period** would be of value, must be in writing and executed under seal by legal services.

10.4 Contracts with other public bodies, or for insurance or banking arrangements, or for the lease or purchase of vehicles, machinery, equipment or software need not be sealed.

10.5 The Council Solicitor must:

- i) keep a record or list of all model sets of conditions of contract;
- ii) review all current conditions of contract, at least every 2 years, or when new legislation is introduced.

10.6 All contracts must require the contractor to agree to one of the Council's preferred payment methodologies, either e-invoicing or payment card unless otherwise agreed by the Head of Procurement.

11 Bonds, Security and Parent Company Guarantees

11.1 The person buying for the Council must consult the Council Solicitor on all tenders where the total value exceeds EU thresholds to determine if a bond, parent company guarantee or other security is required.

12 Disposing of surplus goods and stores

12.1 Service Managers are responsible for the disposal of their own surplus goods, including equipment and items on inventories and stores. *These disposals are* subject to the conditions set out in paragraph G.4 and G.6 of the Council's Financial Procedure Rules and in Standing Financial Instruction 23. The same competitive process for buying supplies, services and works must also be applied to the disposal of surplus goods or such other competitive procedure is followed as agreed by the Head of Procurement and Director of Finance.

12.2 If you are in any doubt, professional advice must be sought when making valuations of goods to be disposed of.

13 Exemptions from the Rules

Exemptions from these Rules must be obtained in advance in accordance with the following procedure.

13.1 An exemption cannot be given for any EU procurement.

13.2 The relevant Director may agree to a waiver of one or more specific rules, where following consideration of a report (in a form set by Corporate Procurement) from the procuring officer and the recommendations of the Head of Procurement if the Director is satisfied that:

- the nature of the market for the works to be carried out or the goods to be purchased or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of the Rules is justifiable; or

- the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
- the circumstances of the proposed contract are covered by legislative exemptions (whether under EU Directives or English law); or
- there are other circumstances which are genuinely exceptional.

13.3 Any contracts awarded subject to a waiver must be uploaded to the Chest.

14 Transfers/Novation of Contracts

14.1 In appropriate circumstances the Council may agree to transfer a contract.

14.2 This decision must be taken by the delegated Executive Member for contracts of a value in excess of £250,000, and by the relevant Chief Officer for contracts of a value up to £250,000.

15 Conflicts of Interest

15.1 Any interest which may affect the award of a contract of any value under these Rules must be declared. Every officer authorised to buy supplies services or works must make a written declaration of interests to his/her Director and update it immediately when an interest changes. An officer who enters into a contract without declaring any such interest will have committed a disciplinary offence. Officers must comply with the requirements of Standing Financial Instruction 12 in relation to such declarations.

15.2 Employees of the Council are obliged by law to notify the Chief Executive as soon as possible and in writing if they learn that the Council has entered or proposes to enter into a contract in which the employee has a pecuniary interest (direct or indirect).

15.3 The Monitoring Officer must either certify such interests as being acceptable or take any necessary action in respect of potential conflicts of interest and the officer should take no part in the award of a contract by the Council.

16 Hospitality

16.1 Officers must comply with the requirements of the Council's Code of Conduct and Standing Financial Instruction 21.

17 Variations and extensions

17.1 Subject to any statutory restrictions and compliance with these Rules, a Service Manager may authorise the following extensions and variations to an existing contract either:

- i) an extension for a particular period provided for within the terms and conditions of the contract (but subject to satisfactory outcomes of contract monitoring); or
- ii) subject to approval by the Head of Procurement that the variation does not amount to the award of a new contract under procurement law, any other variation, and if relevant a consequent change in price, determined in accordance with the contract terms, provided the authorised officer considers that the variation still offers best value to the Council.

17.2 Contracts procured under the EU Regulations must not be extended or varied without consulting the Head of Procurement.