

<b>PART 4b – CONTRACTS PROCEDURE RULES</b>	
<b>Effective from XXXXXXXXX</b>	<b>Approved by Council on XXXXXX</b>

**1 GENERAL**

1.1 Subject to rule 1.2, every contract made by or on behalf of the Council shall comply with:

- (i) these Rules;
- (ii) the Council’s Financial Regulations;
- (iii) all relevant statutory provisions, including in particular the Local Government Act 1988, Part II, the Public Contracts Regulations 2006 and the Local Government (Contracts) Act 1997;
- (iv) any relevant European Council Directive; and
- (v) any direction by the Council or the relevant committee.

1.2 These Rules shall not apply or may be varied where or to the extent that:

- (i) the Council or the relevant committee so resolves;
- (ii) statute or subordinate legislation prescribes otherwise;
- (iii) subject to rule 16, the contract is for consultancy services;
- (iv) the contract is for the services of counsel, professional witnesses or external solicitors in relation to a specific matter;
- (v) The contract has been dealt with by another public authority under a procedure that complies with that authority’s contracts procedure rules for contracts of that kind and the relevant director holds written confirmation of such compliance;
- (vi) the contract relates to goods bought at an auction; or
- (vii) the contract is for goods, works or services of a sensitive nature (such as security) where publication of the tender documents would constitute a security breach and undermine the effectiveness of the final product; or
- (viii) The contract is covered by the Land Transaction Procedure Rules

1.3 Buyers should also refer to the “Guide to Buying for the Council”, which is available on the council’s [intranet](#).

**2 PROCEDURES**

2.1 All contracts will be dealt with under one of the procedures available for that type of contract as set out in the table below.

Type of contract	Definition	Available procedures
Exempt contract	A contract where the estimated value of goods and services to be supplied is £10,000 or more and other procedures cannot	Qualified informal procedure

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	<p>practicably be followed because:</p> <ul style="list-style-type: none"> <li>(i) the contract is an extension of an existing contract;</li> <li>(ii) the contract is for spot purchasing fuel or utilities;</li> <li>(iii) the goods, materials or works desired are of a proprietary or special character or for other reasons there would be no genuine competition; or</li> <li>(iv) in the opinion of the Chief Executive the need for the goods materials or works is urgent.</li> </ul>	
Small contract	A contract where the estimated value of goods and services to be supplied is less than £10,000.	<p>Informal procedure; Request for quotation Electronic auction Constructionline Framework agreement</p>
Mid-range contract	A contract (other than an exempt contract) where the estimated value of goods and services to be supplied is £10,000 or more, but less than £100,000.	<p>Request for quotation Open tendering Restricted tendering Electronic auction Constructionline Framework agreement</p>
Large contract	A contract (other than an exempt contract) where the estimated value of goods and services to be supplied is £100,000 or more	<p>Open tendering Restricted tendering Electronic auction Constructionline Framework agreement</p>

2.2 The relevant director must decide which one of the available procedures to use unless the Council, a meeting of the relevant committee, or the Chief Executive has directed otherwise.

2.3 Descriptions of procedures referred to in the table above are set out in rule 3.

2.4 Before entering into a contract for the purchase of any goods or services or the execution of any work, the relevant director must determine a realistic pre-estimate of the anticipated costs

associated with the contract, including any maintenance costs, and satisfy himself that budgetary provision exists to cover them.

**3 DESCRIPTION OF PROCEDURES**

3.1 The table below contains descriptions of the procedures referred to in rule 2.1

Procedure	Description
Qualified informal procedure	The procedure is that the relevant director must be satisfied that the arrangements made secure the best available terms to the Council and must report the circumstances to the next available meeting of the relevant committee.
Informal procedure	The procedure is that the relevant director must be satisfied that the arrangements made secure the best available terms to the Council.
Request for quotation	<p>The procedure is the relevant director must invite at least three quotations using an approved procurement portal or, if he is satisfied that the interests of the council and the public interest are best served by doing so, by inviting hard copy quotations.</p> <p>Hard copy quotations must be opened at the same time and in the presence of at least two officers who should include one officer from the directorate concerned who had no previous involvement in the bidding process and the Head of Governance or his nominee.</p>
Open tendering	<p>The procedure is that the relevant director must invite tenders using an approved procurement portal or, if he is satisfied that the interests of the council and the public are best served by doing so, by inviting hard copy tenders as set out in rule 4.</p> <p>The time allowed for return of tenders must be at least 14 days.</p>
Restricted tendering	<p>The procedure is the same as or open tendering, save that tenders are only to be invited from at least three, but no more than six, prospective tenderers included on a list compiled in accordance with rule 5, except that:</p> <p style="text-align: center;">(i) If the list contains less than three prospective tenderers,</p>

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	<p>all must be invited to tender;</p> <p>(ii) If the director, after consulting the Chief Financial Officer, considers a prospective tenderer unsuitable they need not be invited to tender and the director must record in writing the reasons why they were not so invited.</p>
Electronic auction	The procedure is set out in rule 6.
Constructionline	<p>The procedure is the same as for open tendering, save that tenders are only to be invited from at least three, but no more than six, appropriately qualified persons included in the Constructionline register.</p> <p>The persons invited to tender must be selected at random from those appropriately qualified, save that for contracts where the estimated value of goods and services to be supplied is less than £75,000, selection of up to half of those persons invited to tender may be on the basis of their previous contracting history with the council.</p>
Framework agreement	<p>The procedure is that the relevant director must be satisfied that the framework agreement has been let in compliance with all relevant legislation and can lawfully be accessed by the council.</p> <p>Goods, services or works supplied through a framework agreement must be ordered in compliance with the specific rules and procedures for accessing that framework.</p>

3.2 “Approved procurement portal” means a procurement portal approved for the time being by the Director of Resources and notified on the procurement pages of the council’s intranet.

**4 HARD COPY TENDERING**

4.1 Hard copy tendering should only be used in exceptional circumstances. This rule sets out how it should be carried out.

4.2 The relevant director must give public notice in one or more local newspapers, on the council’s website and, if the estimated value of goods and services to be supplied exceeds £50,000, (except where 4.4 applies) in one or more appropriate trade journals (if they exist).

- 4.3 The notice must set out the nature and purpose of the contract, invite tenders, give instructions on how to submit a tender and state the closing date for tenders (including reference to the fact that tenders will not be accepted after 12.00 noon on that date).
- 4.4 Where a contract notice in the appropriate form is placed in the Official Journal of the European Union, there is no need to advertise in a trade journal.
- 4.5 No tender or may be considered unless:
- (i) it has been recorded as having been received no later than 12.00 noon on the closing date for the receipt of tenders; and
  - (ii) it has been received in a sealed envelope marked “Tender for [name of contract]” and the envelope had no marking identifying the tenderer.
- 4.6 All tenders must be opened together in the Town Hall or other Council offices.
- 4.7 The following persons must be present when tenders are opened:
- (i) the chairman or vice-chairman of the relevant committee;
  - (ii) the Head of Governance or an officer nominated by him or her; and
  - (iii) the director or, if it is impracticable for him or her to attend, another senior officer of the same directorate.
- 4.8 At the time of opening of the tenders, the Head of Governance or his nominee must ensure that a record is made of all the tenders received and their values.

## **5 COMPILATION OF LISTS**

- 5.1 This rule sets out how lists are to be compiled for restricted tendering
- 5.2 The relevant director must give at least ten days notice of the compilation of a list from which persons are to be invited to tender.
- 5.3 The notice must set out the nature and purpose of the contract and state the closing date for applications to be included in the list of persons to be invited to tender.

## **6 ELECTRONIC AUCTIONS**

- 6.1 Under this procedure the relevant director must give at least ten days public notice of the compilation of a list from which persons are to be invited to bid.
- 6.2 The notice must set out the nature and purpose of the contract, state the closing date for applications to be included in the list of persons to be invited to bid.
- 6.3 All of the applicants to be included in the list must be invited to bid, except that if the director, after consulting the Chief Financial Officer, considers that an applicant is unsuitable or does not have the technical capacity to participate in the tender process, that applicant need not be invited to bid. The director must record in writing why that applicant was not invited to bid.
- 6.4 The invitation to bid must state that the contract is to be let by way of electronic auction and that instructions on how to participate in the auction will be sent by email to those invited to participate.
- 6.5 The instructions must, when considered with any additional guidance and training provided to bidders, be sufficient to allow them to participate in the electronic auction and must set out the

start and end times of the auction and the circumstances in which any automatic extensions of time will be triggered.

- 6.6 The tender process must be by way of an auction conducted over the Internet, in which bidding for the contract is conducted openly and in competition between bidders and in which bidders may make unlimited repeat bids.
- 6.7 The “leading bid” is the lowest bid if payment is to be made by the Council or the highest bid if payment is to be received by the Council.
- 6.8 The director must satisfy himself that the tender process:
- (i) allows all bidders to see the amounts of the bids of all other bidders (but not necessarily their identities);
  - (ii) allows all bidders equal access to post their bids;
  - (iii) complies with the start and end times and the extension triggers set out in the instructions to bidders;
  - (iv) Is sufficiently secure to protect the commercial confidentiality of the council and bidders, consistent with the purposes of an electronic auction; and
  - (v) generates an audit trail of the process.
- 6.9 The director must accept the leading bid at the end time of the auction. Any other bid may be accepted only if the Chief Financial Officer is satisfied that to do so is in the best interests of the Council. The reasons for and circumstances of that acceptance must then be reported to the next meeting of the relevant committee.

## **7 SPECIFICATIONS AND EVALUATION CRITERIA**

An invitation to tender or bid for a contract whose value is estimated to exceed £10,000 must include:

- (i) a detailed specification comprising a description of the services, supplies or works that the successful tenderer will be expected to provide. It must incorporate performance targets or criteria for acceptance of the services, supplies or works. It must form the basis of the written contract agreed between the Council and the supplier; and
- (ii) if criteria in addition to price are to be used, a description of the criteria that the council intends to take into account in deciding which tender to accept and the weighting that it intends to apply to those criteria.

## **8 RECEIVING TENDERS AND QUOTATIONS**

- 8.1 This Rule applies where tenders or quotations have been invited. It also applies to applications to be included in the list of persons to be invited to bid under rule 5 or 6.
- 8.2 No bid or application to be invited to bid may be considered unless it complies with all directions and requirements set out in relation to it (including the requirements of any relevant approved portal) and has in accordance with these rules or the procedures of the relevant approved portal.

## **9 ACCEPTING TENDERS AND QUOTATIONS**

- 9.1 When exercising any delegated power to accept a tender or quotation, the director must:

- (i) if evaluation criteria were specified in the invitation to tender or quotation, accept the tender or quotation that scores most highly using the criteria and weightings set out; or
  - (ii) if no such criteria were specified and if he is satisfied as to financial and technical suitability, normally accept the lowest tender or quotation if payment is to be made by the Council or the highest tender if payment is to be received by the Council.
- 9.2 Any other tender or quotation may be accepted only if the Chief Financial Officer is satisfied that to do so is in the best interests of the Council. The reasons for and circumstances of that acceptance must then be reported to the next meeting of the Finance and Democracy Committee.
- 9.3 No tender or quotation that exceeds the pre-estimate by more than 20% may be accepted without the approval of the Chief Executive following consultation with the chairman of the Finance and Democracy Committee.
- 9.4 All tenders or quotations must be examined for errors and discrepancies. Where that examination reveals errors or discrepancies which would affect the figures in an otherwise successful tender or quotation, the chief officer must give details of the errors or discrepancies to the bidder and invite the bidder to confirm the tender or quotation as submitted, or withdraw it. If the tender or quotation is withdrawn, consideration of the tenders or quotations will then proceed as if that tender or quotation had not been submitted.
- 9.5 After exercising any delegated power to accept a tender or quotation, the director must ensure that a record of the contract is placed on any contract register maintained within the relevant approved portal and provide sufficient details of the contract to the Head of Governance for him to arrange for the contract to be registered on the council's own contract register.

## **10 STANDSTILL PERIOD**

- 10.1 The successful bidder should be notified promptly following acceptance of the tender or quotation with an "Alcatel" letter. A template of this letter can be downloaded from the 'Going out to tender' page on the Council's intranet.
- 10.2 All unsuccessful bidders should be notified promptly with an "Alcatel" letter and must include the scores of the successful bidder against the individual unsuccessful bidders scores and a summary of reasons for the scores. The letter must also include a list of bid prices and bidders, although the names of the firms submitting bids should not be matched to the prices. A template of this letter can be downloaded from the 'Going out to tender' page on the Council's intranet
- 10.3 The Council cannot award a contract until the minimum standstill period of 11 days has been completed.
- 10.4 If you receive a request for a debrief from any of the unsuccessful bidders during the standstill period, they must be seen within the standstill period. If this is not possible then the standstill period **MUST** be extended for a debrief to take place.
- 10.5 After the debrief if the unsuccessful bidder is asked to provide further evidence by the Council or the unsuccessful bidder requests the council to provide additional information, Then the standstill period **MUST** be extended to allow this to happen
- 10.6 Once this period has been completed and there has been no legal challenges by any of the unsuccessful bidders an award letter can be issued to the successful bidder.
- 10.7 A further letter should be issued to the unsuccessful bidders notifying them that the standstill has been completed and an award letter has been issued.

- 10.8 By following rule 10.7 if the Council receives a legal challenge by an unsuccessful bidder, it reduces the time limit from 6 months to 30 days from the day after the date when the Council has awarded the successful bidder the contract.
- 10.9 If one or more of the unsuccessful bidders challenge the award after the standstill period has been completed then seek advice from the Council's legal team.

## **11 POST-TENDER NEGOTIATIONS**

- 11.1 After the receipt of tenders, officers may need to contact tenderers to clarify technical and contractual information as part of the evaluation process. Any such communication must be confidential and a written record made of the reason for contact and the decision made.
- 11.2 Negotiations after the submission of a tender may only be commenced after the chief officer has agreed with the Head of Governance the procedures to be adopted. Similarly, any resulting contract must be approved by the Head of Governance.

## **12 NOMINATED SUB-CONTRACTORS**

- 12.1 This Rule applies where a sub-contractor or supplier is to be nominated to a main contractor.
- 12.2 If the estimated amount of a sub-contract exceeds £10,000, tenders for the nomination must be invited and dealt with in accordance with these Rules as if the tenders invited were for a contract with the Council, unless the relevant director considers that it is not reasonably practicable to obtain competitive tenders,
- 12.3 Any invitation for nomination under Rule 12.2 must require the tenderer to agree that if selected they will enter into a contract with the main contractor which indemnifies the main contractor in relation to the works or goods included in the sub-contract.

## **13 WRITTEN CONTRACTS AND CONTRACT RECORDS**

- 13.1 Every contract which exceeds £10,000 in value must be in writing and must specify:
- (i) the work to be done, or services or goods or materials to be provided, including any appropriate technical specifications;
    - (a) the price to be paid, with a statement of discounts or other deductions; and
    - (b) the time or times within which the contract is to be performed.
- 13.2 The relevant chief officer must keep such records of the letting and management of every contract as he considers appropriate or as the Director of Resources may direct.

## **14 BRITISH AND EUROPEAN STANDARDS**

The contract must require goods and materials to comply with any relevant specification issued by the British Standards Institution or any European Standard, unless the director considers it inappropriate.

**15 PREVENTION OF BRIBERY**

Every contract that exceeds £50,000 in value must include a clause allowing the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if:

- 15.1 the contractor has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything relating to the contract or any other contract with the Council or for favouring or not favouring any person in relation to such contract;
- 15.2 similar acts have been done by any person employed by the contractor or acting on their behalf; or
- 15.3 the contractor or any person employed by them or acting on their behalf has committed any offence under the Bribery Act 2010 or given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

**16 CONSULTANTS**

These Rules apply to the engagement of consultants, with the proviso that in circumstances requiring flexibility or where there are specialised needs, the relevant director may agree alternative arrangements with the Chief Executive.

**17 BREACH OF CONTRACTS PROCEDURE RULES**

In the event of a significant breach of these Rules, the Chief Financial Officer shall report details to the next meeting of the Finance and Democracy Committee, with any proposals for remedial action.