

PART 4b – CONTRACTS PROCEDURE RULES

Effective from ~~24 May 2023~~ 30 May 2015

Approved by Council on ~~X 2023~~ 17 October 2016

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 2015 ("the Regulations"), the Local Government (Contracts) Act 1997 and the Public Services (Social Value) Act 2012; and
 - (iv) 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 18, 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~~ head of service 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 normally follow the guidance in the "Guide to Buying for the Council", which is available on the council's [intranet](#). They should record and be able to explain the reason for any decision to not follow the guide.
- 1.4 In these rules, "bid" is used to refer to tenders and quotations, and the "bidder" is to be construed accordingly.

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 £25,000	Qualified informal procedure

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	<p>or more and other procedures cannot practicably be followed because:</p> <ul style="list-style-type: none"> (i) the contract is an extension of an existing contract; (ii) the goods, materials or works desired are of a proprietary or special character or for other reasons there would be no genuine competition; or (iii) in the opinion of the Chief Executive the need for the goods materials or works is urgent. 	
Small contract	A contract where the estimated value of goods and services to be supplied is less than £25,000.	Informal procedure; Request for quotation Open Tendering Restricted Tendering Framework agreement
Mid-range contract	A contract (other than an exempt contract) where the estimated value of goods and services to be supplied is £25,000 or more, but less than £100,000.	Request for quotation Open tendering Restricted tendering Framework agreement
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	Open tendering Restricted tendering Framework agreement

- 2.2 The buying officer 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 buying officer must determine a realistic pre-estimate of the anticipated costs associated with the contract, including any maintenance costs, and ~~satisfy himself~~ be satisfied 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 <u>head of service</u> must be satisfied that the arrangements made secure the best available terms to the Council commensurate with the contract risk and value and provide adequate protection against fraud and collusion and must report the circumstances to the next available meeting of the relevant committee.
Informal procedure	The procedure is that the buying officer must be satisfied that the arrangements made secure the best available terms to the Council, commensurate with the contract risk and value and provide adequate protection against fraud and collusion.
Request for quotation	The procedure is the buying officer must invite at least three quotations using an approved procurement portal in accordance with rule 6.
Open tendering	The procedure is that the buying officer must advertise the opportunity on the approved procurement portal, including a link to express interest to the opportunity and allow for at least 14 days to submit a tender, in accordance with rule 6.
Restricted tendering	<p>The procedure is the same as open tendering, except that tenders are only to be invited from at least three, but no more than six, prospective tenderers who have been pre-qualified in accordance with rule 5, and:</p> <ul style="list-style-type: none"> (i) If the list contains less than three prospective tenderers, all must be invited to tender; (ii) If the buying officer, after consulting the Procurement Officer, considers a prospective tenderer unsuitable they need not be invited to tender and the Procurement Officer must record in writing the reasons why they were not so invited.
Framework agreement	<p>The procedure is that the buying officer must satisfy himself <u>be satisfied</u> 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~~Head of Governance.

4 CONTRACTS SUBJECT TO THE REGULATIONS: ABOVE THE THRESHOLDS

- 4.1 Where the estimated value of a contract exceeds any relevant threshold in the Regulations then the buying officer **must** consult the Procurement Officer or Head of Governance prior to commencing the procurement and must have regard to any guidance given by them during the procurement process.

5 RESTRICTED TENDERING

- 5.1 A pre-qualified stage is not permitted in any procurement below the threshold set out in the Regulations for goods and services. However, suitability assessment questions relating to a potential tenderer may be asked provided that the questions are relevant and proportionate to the subject matter of the procurement.
- 5.2 When a pre-qualification stage is used, expressions of interest must be sought on the approved procurement portal and tenderers must be complete a standard selection questionnaire. The questionnaire must be evaluated in accordance with the criteria notified to tenderers and a list compiled of tenderers to be invited to the second stage.

6 INVITATION TO TENDER

- 6.1 An invitation to tender for a contract whose value is estimated to exceed £25,000 must include:
- (i) a description of the services, supplies or works being procured;
 - (ii) the procurement timetable including the tender return date and time, which shall allow a reasonable period for the applicants to prepare their tenders;
 - (iii) instructions for completing and returning the tender documentation;
 - (iv) notification that tenders received after the closing date and time will not be considered;
 - (v) a specification and instructions on whether any variants are permissible;
 - (vi) the Council’s terms and conditions of contract;
 - (vii) the evaluation criteria including any weightings;
 - (viii) pricing mechanism and instructions for completion;
 - (ix) whether the Council is of the view that TUPE may apply;
 - (x) form and content of method statements to be provided;
 - (xi) rules for tender submission;
 - (xii) any further information which will inform or assist tenderers in preparing tenders;
 - (xiii) contract finder notice(s).

7 TENDER/QUOTATION CLARIFICATION

- 7.1 Bidders may request clarification on aspects of the competition documentation prior to submission by submitting a clarification question through the approved procurement portal. The buying officer must ensure equal treatment of all bidders, and where relevant should anonymise the question and publish that together with the response to all potential bidders through the approved procurement portal. Care should be taken not to reveal the identity of the bidder or any information which may be deemed to be commercially confidential to them during the clarification process.

8 RECEIVING TENDERS AND QUOTATIONS

- 8.1 The buying officer must ensure that (unless the Head of Governance ~~has~~ has agreed otherwise) no bid is considered for acceptance unless it has been received on the approved procurement portal no later than the time and date specified for submission.

9 ERRORS IN BIDS

- 9.1 Errors in bids must be dealt with by asking the bidder to confirm the bid as submitted or withdraw their bid. However, where a bidder has made a visible and genuine arithmetical error, they may be given an opportunity to correct that error. Other than where specifically provided for in the Regulations (e.g. when using the Competitive Dialogue procedure) no other adjustment, revision or qualification is permitted.
- 9.2 Careful consideration must be given to the effect of any procedure adopted when dealing with errors in bids and the reflection which any such procedure may have on the integrity of the Officers and Members of the Council. It is essential that whatever procedure is adopted is transparent and fair and equitable to all bidders.

10 EVALUATION AND AWARD

- 10.1 The competition documentation for any contract must include evaluation criteria for the award of the contract.
- 10.2 The evaluation criteria must be intended to ensure that the contract is awarded to a suitable bidder whose bid is the most economically advantageous to the council.
- 10.3 All bids shall be evaluated in accordance with the evaluation criteria notified to bidders in the competition documentation.
- 10.4 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.
- 10.5 Heads of Service should ensure that proper records of all procurement activity are retained in electronic or hard copy format as appropriate.
- 10.6 The highest standards of probity are required of all officers and members involved in the procurement, award and management of Council contracts. It is essential to maintain effective audit trails at all stages throughout the procurement procedure particularly where approval or agreement is required.

11 STANDSTILL PERIOD

- 11.1 For all contracts under the Regulations, a ten-calendar day 'standstill period' must be observed between the decision to award and contract conclusion. Although the Standstill period is counted in calendar days, it must end on a working day. Buying officers should consult the Procurement Officer for advice of the specific detail which must be included in Standstill Letters under the Regulations. The Standstill Period is an express requirement in the Regulations and must be followed.

12 POST-TENDER NEGOTIATIONS

- 12.1 Where a procurement is conducted pursuant to the Regulations through either the Open or Restricted procedures no post tender negotiations are permitted. However, the Council may seek clarification from bidders where appropriate.
- 12.2 At all times during the procurement (whether subject to the Regulations or not), the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.

13 CONTRACT AWARD NOTICE

- 13.1 All contracts awarded under the Regulations must be announced by means of a Contract Award Notice on Find a Tender, transmitted no later than 30 calendar days after the date of the award.
- 13.2 All contracts awarded above £25,000 in value whether openly advertised or not must be published on Contracts Finder in accordance with the Regulations and published Crown Commercial Service (CCS) guidance.

14 NOMINATED SUB-CONTRACTORS

- 14.1 This Rule applies where a sub-contractor or supplier is to be nominated to a main contractor.
- 14.2 If the estimated amount of a sub-contract exceeds £25,000 , bids for the nomination must be invited and dealt with in accordance with these Rules as if the bids invited were for a contract with the Council, unless the relevant director considers that it is not reasonably practicable to obtain competitive tenders or quotations.
- 14.3 Any invitation for nomination under Rule 14.2 must require the bidder 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.

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15 STANDARDS

- 15.1 The contract must require goods and materials to comply with any relevant specification issued by a relevant standards agency , unless the buying officer considers it inappropriate.

16 PREVENTION OF BRIBERY

- 16.1 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:
- 16.2 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;

- 16.3 similar acts have been done by any person employed by the contractor or acting on their behalf; or
- 16.4 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.

DATA PROTECTION

- 17.1 As part of evaluation, the buying officer is required to make an assessment of whether there are any data protection implications to the Council, and if there are, to seek guidance from the Council's Data Protection Officer and Procurement Officer.
- 17.2 Notwithstanding anything else in these rules, where a contract will require or allow the contractor to process personal data on behalf of or held by the council, the contract will only be awarded to a bidder who the council is satisfied will implement appropriate technical and organisational measures to ensure processing will meet the requirements of the Data Protection Act 2018 and protect data subjects' rights and who is willing to enter into any contractual terms required by any competent authority to be included in a contract between a processor and controller.
- 17.3 Where a contract is not awarded to the leading bidder because the council is not satisfied as required by rule 17.2, or because the leading bidder is unwilling to enter into any such contractual terms, the council may exclude the leading bidder and award the contract as if the leading bidder had not made its bid.
- 17.4 In this rule, "controller" "processor" and "personal data" have the same meaning as in the Data Protection Act 2018.

18. CONSULTANTS

- 18.1 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.

19. BREACH OF CONTRACTS PROCEDURE RULES

- 19.1 In the event of a significant breach of these Rules, the Chief Financial Officer shall report details to the next meeting of the [Executive Finance and Democracy](#) Committee, with any proposals for remedial action.