

**1. SECTION 7 - CONTRACT PROCEDURE RULES**

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**1.1 Introduction**

These Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good purchasing practice and public accountability and deter corruption. They are in line with the CIPFA/Local Government Task Force Contract Procedure Rules published 2006. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

Officers responsible for purchasing or disposal must comply with these contract procedure rules. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract. (For example, if Rule 4.1.1 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations in writing or tender submissions. Equally, it may not always be appropriate to make use of an exemption under Rule 2.3 even if one might apply or be granted.)

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include electronic transmissions (e.g. email, fax or via an e-procurement portal) as well as hard copy.

Officers should:

- Follow the rules if purchasing goods or services or order building work.
- Take all necessary legal, financial and professional advice at the appropriate time
- Declare any personal financial interest in a contract. Corruption is a criminal offence.
- Conduct a management review to appraise the purchasing need.
- Check whether there is an existing Corporate Contract which can be made use of before undergoing a competitive process.
- Normally allow at least four weeks for submission of bids
- Keep bids confidential.
- Complete a written contract or Council purchase order before the supply or works begin.
- Identify a contract manager with responsibility for ensuring the contract delivers as intended.
- Keep records of dealings with suppliers.

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- Assess each contract afterwards to see how well it met the purchasing need and Value for Money requirements.

In accordance with the Constitution, the Chief Financial Officer shall have the power to make amendments from time to time to these contract procedure rules after consultation with the Monitoring Officer.

**These Rules must be read in conjunction with the definitions set out at the end of the Rules.**

### **2. Scope of Contract – Procedure Rules**

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#### **2.1 Basic Principles**

All purchasing and disposal procedures must:

- Achieve Best Value for public money spent
- Be consistent with the highest standards of integrity
- Ensure fairness in allocating public contracts
- Comply with all legal requirements
- Ensure that non-commercial considerations do not influence any contracting decision
- Support the Council's corporate and departmental aims and policies
- Comply with the Council's corporate Procurement Strategy.

#### **2.2 Officer Responsibilities**

##### **2.2.1 Officers**

2.2.2 Officers responsible for purchasing or disposal must comply with these contract procedure rules, Financial Regulations, the Code of Conduct and with all UK and European Union binding legal requirements. Officers must ensure that any agents, consultants and contractual partners acting on their behalf also comply.

2.2.3 Officers must:

- Have regard to the Council's current Procurement Strategy
- Check whether a suitable corporate contract exists before seeking to let another contract; where a suitable corporate contract exists, this must be used unless

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there is an auditable reason not to keep the records required by Rule 3.2

- Take all necessary legal, financial and professional advice.

2.2.4 When any employee either of the Council or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.

### **2.2.5 Chief Officers**

2.2.6 Chief Officers must:

- Ensure their staff comply with Rule 2.2.1
- Ensure that registers are kept of:
  - (a) Contracts completed by signature, rather than by the Council's seal (see Rule 16.3) and arrange their safekeeping on Council premises (Major contracts should also be kept with Law and Democracy)
  - (b) Exemptions recorded under Rule 2.3.2. (To be held by Democratic Services)

## **2.3 Exemptions, Collaborative and E-Procurement Arrangements**

2.3.1 The Council and the Policy, Finance and Development Committee have power to waive any requirements within these contract procedure rules for specific projects, and any such decision may be a Key Decision.

2.3.2 A Chief Officer has the power, under the scheme of delegation in the Constitution, in circumstances deemed exceptional by the Head of Law and Democracy, to waive any requirements within these contract procedure rules, provided that, where the contract is likely to exceed £40,000, the relevant Committee Chair is consulted.

2.3.3 Where a proposed contract is likely to exceed the EU Threshold the EU Procedure will apply and the requirements of these contract procedure rules may not be waived other than in the case of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to council services, in which case the provisions of Rule 2.3.4 below will apply.

2.3.4 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to council

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services, the Officer and the Chief Financial Officer or Head of Finance may jointly approve the exemption but they must prepare a report for the next PFD Committee to support the action taken.

- 2.3.5 All exemptions, and the reasons for them, must be recorded using the Exemption Form. Exemptions shall be signed by the Officer and countersigned by the Chief Financial Officer.
- 2.3.6 An exemption must be approved by the Chief Financial Officer:
- Prior to commencing any procurement process using Crown Commercial Services (CCS) Contracts;
  - Prior to abandonment, where a procurement process is to be abandoned.
- 2.3.7 The terms and conditions of contract applicable to any CCS arrangement, including the requirement to undertake competition between providers, must be fully complied with.
- 2.3.8 Financial Services must monitor the use of all exemptions.
- 2.3.9 In order to secure Value for Money, the authority may enter into collaborative procurement arrangements. The Officer must consult the Chief Financial Officer and the Monitoring Officer where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.
- 2.3.10 Purchases made via a local authority purchasing and distribution consortium, other than purchases above the EU Threshold and other purchases below the EU threshold where international suppliers may be interested, are deemed to comply with these contract procedure rules and no exemption is required.
- 2.3.11 Purchases above the EU threshold and other purchases below the threshold where international suppliers may be interested must be let under the EU Procedure, unless the consortium has satisfied this requirement already by letting their contract in accordance with the EU Procedures on behalf of the Council and other consortium members.
- 2.3.12 Any contract entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed and that complies with the contract procedure rules of the leading organisation, will be

deemed to comply with these contract procedure rules and no exemption is required. However, advice must be sought from the Chief Financial Officer and the Monitoring Officer before the contract is entered into.

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

## **2.4 Relevant Contracts**

2.4.1 All Relevant Contracts must comply with these contract procedure rules. A Relevant Contract is any arrangement made by, or on behalf of, the Council for the carrying out of works or for the supply or disposal of goods, materials or services. These include arrangements for:

- The supply and/or disposal of goods
- The hire, rental or lease of goods and/or equipment
- The delivery of services, including (but not limited to) those related to:
  - (a) The recruitment of staff
  - (b) Land and property transactions
  - (c) Financial and consultancy services.

2.4.2 Relevant Contracts do not include:

- Contracts of employment which make an individual a direct employee of the Council,
- Agreements regarding the acquisition, disposal, or transfer of land and/or assets (for which Financial Regulations shall apply).

## **3. Common Requirements**

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### **3.1 Steps Prior to Purchase**

**3.1.1** The Officer must appraise the purchase, in a manner commensurate with its complexity and value and taking into account any guidance in the Procurement Strategy by:

- Taking into account the requirements from any relevant management review or Audit review

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- Appraising the need for the expenditure and its priority
- Defining the objectives of the purchase
- Assessing the risks associated with the purchase and how to manage them
- Considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium
- Ensuring the evaluation methodology for any procurement process must not disadvantage any group of economic operator, including Small / Medium Sized Enterprises or new / start-up companies, in any aspect of the evaluation including but not limited to reference checks and financial assessments
- Consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring
- Drafting the terms and conditions that are to apply to the proposed contract
- Setting out these matters in writing if the total value of the purchase exceeds £50,000.

### 3.1.2 And by confirming that:

- There is approved budgetary provision for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the Constitution.

## 3.2 Records

### 3.2.1 Where the Total Value is less than £50,000, the following records must be kept (which will include logs kept by an e-procurement portal):

#### 3.2.1.1 Invitations to quote and quotations received

#### 3.2.1.2 A record:

- (a) Of any exemptions and the reasons for them
- (b) Of the reason if the lowest price is not accepted
- Written records of communications with the successful contractor or an electronic

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record if a written record of the transaction would normally not be produced.

**3.2.2** Where the total value exceeds £50,000, the Officer must record:

- 3.2.2.1** The method for obtaining bids (see Rule 4.1.1)
- 3.2.2.2** Any contracting decision and the reasons for it
- 3.2.2.3** Any exemption under Rule 2.3 together with the reasons for it
- 3.2.2.4** The award criteria in descending order of importance
- 3.2.2.5** Tender documents sent to and received from candidates
- 3.2.2.6** Pre-tender market research
- 3.2.2.7** Clarification and post-tender negotiation (to include minutes of meetings)
- 3.2.2.8** The contract documents
- 3.2.2.9** Post-contract evaluation and monitoring
- 3.2.2.10** Communications with candidates and with the successful contractor throughout the period of the contract.

**3.2.3** Records required by this rule must be kept for six years after the end of the contract. However, written documents which relate to unsuccessful Candidates may be microfilmed or electronically scanned or stored by some other suitable method after 12 months from award of contract, provided there is no dispute about the award.

### **3.3 Advertising, Approved Lists and Framework Agreements**

#### **3.3.1 Identifying and Assessing Potential Candidates**

**3.3.2** Officers shall ensure that, where proposed contracts, irrespective of their total value, might be of interest to potential candidates located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- 3.3.2.1** The Council's website
- 3.3.2.2** Portal websites specifically created for contracts
- 3.3.2.3** Advertisements
- 3.3.2.4** National official journals, or

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**3.3.2.5** The Official Journal of the European Union (OJEU) / Tenders Electronic Daily (TED) (even if there is no requirement within the EU Procedure).

**3.3.3** Officers are responsible for ensuring that all candidates for a relevant contract are suitably assessed. The assessment process shall establish that the potential candidates have sound:

**3.3.3.1** Economic and financial standing

**3.3.3.2** Technical ability and capacity to fulfil the requirements of the Council.

**3.3.4** This shall be achieved in respect of proposed contracts that are expected to exceed £50,000 by selecting firms from:

**3.3.4.1** Approved lists of providers, maintained by the Council or on its behalf, and compiled following responses to a public advertisement; or

**3.3.4.2** Shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement.

**3.3.5** Public advertisements issued in respect of Rule 3.3.4 above shall reflect the potential degree of interest from candidates located within other member states of the EU.

**3.3.6** Advertisements must comply with any requirement for publication as set out in national legislation as amended from time to time.

### **3.4 Approved Lists**

**3.4.1** Approved lists should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. Approved Lists cannot be used where the EU Procedure applies.

**3.4.2** Chief Officers may draw up in consultation with the Chief Finance Officer:

**3.4.2.1** Approved Lists of persons ready to perform contracts to supply goods or services of particular types including without limitation on the basis of agreed contract term

**3.4.2.2** Criteria for shortlisting from the lists.

**3.4.3** No person may be entered on an approved list until there has been an adequate



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investigation into both their financial standing and their technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list (in which case this must be made clear on the list).

**3.4.4** Approved lists must be drawn up after an advertisement inviting applications for inclusion on the list. The advertisement must be placed to secure the widest publicity among relevant suppliers throughout all member states of the EU. Persons may be entered on a list between the initial advertisement and re-advertisement provided the requirements of Rule 3.4.3 are met.

**3.4.5** The list and shortlisting criteria must be reviewed at least annually and re-advertised at least every three years. On re-advertisement, a copy of the advertisement must be sent to each person on the list, inviting them to reapply. Review means:

**3.4.5.1** The reassessment of the financial standing and technical ability and performance of those persons on the list, unless such matters will be investigated each time bids are invited from that list

**3.4.5.2** The deletion of those persons no longer qualified, with a written record kept justifying the deletion.

**3.4.6** All approved lists shall be maintained in an open, fair and transparent manner and be open to public inspection.

**3.4.7** A register of pre-qualified contractors and consultants maintained by or on behalf of central government (e.g. Constructionline) will be deemed to be an Approved List for the purpose of these contract procedure rules and shall not be subject to the requirements of Rules 3.4.2 to 3.4.6 inclusive.

### **3.5 Framework Agreements**

**3.5.1** The term of a Framework Agreement must not exceed four years.

**3.5.2** Contracts based on Framework Agreements may be awarded by either:

**3.5.2.1** Applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or

**3.5.2.2** Where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition in accordance

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with the following procedure:

- (a) Inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written tenders
- (b) Fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract
- (c) Awarding each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the Framework Agreement.

### 4. Conducting Purchase and Disposal

#### 4.1 Competition Requirements for Purchase, Disposal and Partnership Arrangements

The Officer must calculate the total value.

The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with government. If in doubt, Officers must seek the advice of the Chief Financial Officer

##### 4.1.1 Purchasing – Competition Requirements

**4.1.2** Where the total value for a purchase is within the values in the first column below, the award procedure in the second column must be followed. Shortlisting shall be done by the persons specified in the third column.

<b>Total Value</b>	<b>Award Procedure</b>	<b>Shortlisting</b>
<b>Up to £3,000</b>	One oral Quotation (confirmed in writing where the Total Value exceeds £500)	Budget Holder
<b>£3,001-£50,000</b>	Three written Quotations	Budget Holder and Chief Officer
<b>£50,001–£EU-Threshold</b>	Invitation to Tender to at least three and no more than six Candidates	Budget Holder and Chief Officer
<b>Above EU Threshold</b>	EU Procedure or, where this does not apply, Invitation to Tender by advertisement/list to at	Consult the Chief Financial Officer see Rule 4.1.5

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	least four and no more than six Candidates	
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- 4.1.3** Where it can be demonstrated that there are insufficient suitably qualified candidates to meet the competition requirement, all suitably qualified candidates must be invited.
- 4.1.4** An Officer must not enter into separate contracts nor select a method of calculating the total value in order to minimise the application of these contract procedure rules.
- 4.1.5** Where the EU Procedure is required, the Officer shall consult the Chief Financial Officer to determine the method of conducting the purchase.
- 4.1.6 Assets for Disposal**
- 4.1.7** Assets for disposal must be sent to public auction except where better Value for Money is likely to be obtained by inviting quotations and tenders (these may be invited by advertising on the Council's internet site). In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the Chief Financial Officer or the nominated substitute.
- 4.1.8 Providing Services to External Purchasers**
- 4.1.9** The Chief Financial Officer must be consulted and regard had to Financial Regulations where contracts to work for organisations other than the Council are contemplated.
- 4.1.10 Collaborative and Partnership Arrangements**
- 4.1.11** Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these contract procedure rules. If in doubt, Officers must seek the advice of the Chief Financial Officer and the Monitoring Officer.
- 4.1.12 The Appointment of Consultants to Provide Services**
- 4.1.13** Consultant architects, engineers, surveyors and other professional consultants shall be selected and commissions awarded in accordance with the procedures detailed within these contract procedure rules and as outlined in 4.1.2.

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**4.1.14** The engagement of a consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment.

**4.1.15** Records of consultancy appointments shall be maintained in accordance with Rule 3.2.

**4.1.16** Consultants shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the relevant Chief Officer for the periods specified in the respective agreement.

### **4.2 Pre-Tender Market Research and Consultation**

**4.2.1** The Officer responsible for the purchase:

- May consult potential suppliers prior to the issue of the Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential candidate, but;
- Must not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential Candidates or distort competition, and
- Should seek advice from the Chief Financial Officer.

### **4.3 Standards and Award Criteria**

**4.3.1** The Officer must ascertain what are the relevant British, European or international standards which apply to the subject matter of the contract. The Officer must include those standards which are necessary properly to describe the required quality. The Chief Financial Officer and the Monitoring Officer must be consulted if it is proposed to use standards other than European standards.

**4.3.2** The Officer must define award criteria that are appropriate to the purchase and designed to secure an outcome giving value for money for the Council. The basic criteria shall be:

- 'lowest price' where payment is to be made by the Council
- 'highest price' if payment is to be received, or

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- 'most economically advantageous', where considerations other than price also apply.

**4.3.3** If the last criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service and quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters.

**4.3.4** 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.

### **4.4 Invitations to Tender/Quotations**

**4.4.1** The Invitation to Tender shall state that no Tender will be considered unless it is received by the date and time stipulated in the Invitation to Tender. No Tender delivered in contravention of this clause shall be considered.

**4.4.2** All Invitations to Tender shall include the following:

- a. A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
- b. A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- c. A requirement for tenderers to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion.
- d. Notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense.
- e. A description of the award procedure and, unless defined in a prior advertisement, a definition of the award criteria in objective terms and if possible in descending order of importance.

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- f. Notification that no tender will be considered unless it is submitted via the Council's secure e-procurement portal unless specific circumstances restrict the ability to undertake the tender exercise (e.g. the use of electronic means of communication would require specific tools, equipment, devices or file formats that are not generally available or supported by generally available applications) when tenders shall be submitted as set out in 4.6.4 below.
- g. A stipulation that any tenders submitted by other means shall not be considered unless specific circumstances restrict the ability to undertake the tender exercise electronically when tenders shall be submitted as set out in 4.6.4 below.
- h. The method by which any arithmetical errors discovered in the submitted tenders is to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice-versa.

**4.4.3** All Invitations to Tender or Quotations must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 5.1).

**4.4.4** The method by which a start-up company is to be evaluated.

**4.4.5** The Invitation to Tender or Quotation must state that the Council is not bound to accept any Quotation or Tender.

**4.4.6** All Candidates invited to Tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

### **4.5 Shortlisting**

**4.5.1** Any Shortlisting must have regard to the financial and technical standards relevant to the contract and the award criteria. Special rules apply in respect of the EU Procedure.

**4.5.2** The Officers responsible for Shortlisting are specified in Rule 4.1.2.

**4.5.3** Where approved lists are used, Shortlisting may be done by the Officer in accordance with the shortlisting criteria drawn up when the approved list was compiled (see Rule 3.4.2). However, where the EU Procedure applies, approved lists may not be used.

### **4.6 Submission, Receipt and Opening of Tenders/Quotations**

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- 4.6.1** Candidates must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of Tenders. The EU Procedure lays down specific time periods (seek guidance from Chief Financial Officer).
- 4.6.2** All tenders must be returned via the Council's secure e-procurement portal (unless specific circumstances restrict the ability to undertake the tender exercise (e.g. the use of electronic means of communication would require specific tools, equipment, devices or file formats that are not generally available or supported by generally available applications)) when tenders shall be submitted as set out in 4.6.4 below.
- 4.6.3** Tenders received by hardcopy, fax or other electronic means (e.g. email) must be rejected, unless they have been specifically requested (e.g. where use of an e-procurement portal is not appropriate due to specific circumstances).
- 4.6.4** Where use of an e-procurement portal is not appropriate, all tenders must be returned to the Chief Executive.
- 4.6.5** The Officer must not disclose the names of candidates to any staff involved in the receipt, custody or opening of Tenders.
- 4.6.6** The Monitoring Officer shall be responsible for the safekeeping of tenders until the appointed time of opening. Each tender must be:
- Suitably recorded so as to subsequently verify the date and precise time it was received
  - Adequately protected immediately on receipt to guard against amendment of its contents
  - Recorded immediately on receipt in the Tender Record Log.
- 4.6.7** Candidates must be provided with a contact point in case they experience any problems in submitting their tender electronically. Candidates must also be advised that failure to advise the Council of the problem before the deadline for return of tenders will mean they have lost their opportunity to tender. Where a sending problem is received in time, consideration should be given to extending the deadline for submission and all candidates should be advised accordingly of any extension of time.

**4.7 Clarification Procedures and Post-Tender Negotiation**

- 4.7.1** Providing clarification of an Invitation to Tender to potential or actual candidates or seeking clarification of a tender, whether in writing or by way of a meeting, is permitted. However, 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 (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an EU Procedure where this might distort competition, especially with regard to price.
- 4.7.2** If post-tender negotiations are necessary after a single-stage tender or after the second stage of a two-stage tender, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best tender and after all unsuccessful Candidates have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the tender documents. Officers appointed by the Chief Officer to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
- 4.7.3** Post-tender negotiation must only be conducted in accordance with guidance issued by the Chief Financial Officer and the Monitoring Officer, who must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by at least two officers, one of whom must be from a team independent to that leading the negotiations.
- 4.7.4** Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

**4.8 Evaluation, Award of Contract, and Debriefing Candidates**

- 4.8.1** Apart from the 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, other than areas covered by The Freedom of Information Act 2000 must not be given to another candidate.
- 4.8.2** Contracts must be evaluated and awarded in accordance with the award criteria.



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During this process, Officers shall ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily. Where tender prices are substantially in excess of the pre-tender estimates, whether published or otherwise, consideration shall be given to abandonment of the procurement process.

- 4.8.3** The arithmetic in compliant tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their tender. Alternatively, if the rates in the tender, rather than the overall price, were stated within the tender invitation as being dominant, an amended tender price may be requested to accord with the rates given by the tenderer.
- 4.8.4** Officers may accept quotations and tenders received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these contract procedure rules and, in respect of proposed contracts that are expected to exceed £250,000, the approval of the relevant Committee Chair has been secured. The awarding of contracts that are expected to exceed £500,000 shall also be approved by the Policy, Finance and Development Committee.
- 4.8.5** Where the total value is over £50,000, the Officer must notify all candidates simultaneously and as soon as possible of the intention to award the contract to the successful Candidate. The Officer must provide unsuccessful candidates with a period of at least ten days in which to challenge the decision before the Officer awards the contract. If the decision is challenged by an unsuccessful candidate then the Officer shall not award the contract and shall immediately seek the advice of the Monitoring Officer.
- 4.8.6** The Officer shall debrief in writing all those candidates who submitted a bid about the characteristics and relative advantages of the leading bidder. No information, other than the following, should be given without taking the advice of the Monitoring Officer:
- How the Award Criteria were applied
  - The prices or range of prices submitted, in either case not correlated to candidates' names
  - The names of candidates where there were three or more candidates.

**4.8.7** If a Candidate requests in writing the reasons for a contracting decision, the Officer must give the reasons in writing within 15 days of the request. If requested, the Officer may also give the debriefing information at Rule 4.8.6 above to candidates who were deselected in a pre-tender shortlisting process.

## **5. Contract and Other Formalities**

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### **5.1 Contract Documents**

#### **5.1.1 Relevant Contracts**

**5.1.2** All relevant contracts that exceed £50,000 shall be in writing.

**5.1.3** All relevant contracts, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done).
- The provisions for payment (i.e. the price to be paid and when).
- The time, or times, within which the contract is to be performed.
- The provisions for the Council to terminate the contract.
- Duration of the contract (in particular an end date).
- The Council's purchase order form or standard terms and conditions issued by a relevant professional body must be used wherever possible.
- In addition, every relevant contract of purchase over £50,000 must also state clearly as a minimum:
  - That the contractor may not assign or subcontract without prior written consent
  - Any insurance requirements
  - Health and safety requirements
  - Ombudsman requirements
  - Data protection requirements, if relevant
  - That charter standards are to be met, if relevant
  - Race relations requirements
  - Equality Act requirements

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- Anti-Bribery requirements
- Termination process
- Freedom of Information Act requirements
- Where agents are used to let contracts, that agents must comply with the Council's contract procedure rules
- A right of access to relevant documentation and records of the contractor for monitoring and audit purposes, if relevant

**5.1.4** The formal advice of the Monitoring Officer must be sought for the following contracts:

- Where the Total Value exceeds £50,000
- Those involving leasing arrangements
- Where it is proposed to use a supplier's own terms
- Those that are complex in any other way.

### **5.1.5 Contract Formalities**

**5.1.6** Agreements shall be completed as follows:

<b>Total Value</b>	<b>Method of Completion</b>	<b>By</b>
<b>Up to £3,000</b>	Signature	Budget Holder (see Rule 5.1.8)
<b>£3,001-£50,000</b>	Signature	Chief Officer (see Rule 5.1.8)
<b>£50,001-£EU-Threshold</b>	Sealing	See Rule 5.1.9

**5.1.7** All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Chief Financial Officer. An award letter is insufficient.

**5.1.8** The officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

### **5.1.9 Sealing**

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**5.1.10** Where contracts are completed by each side adding their formal seal, such contracts shall be signed by the Head of Law and Democracy or other authorised signatory together with the fixing of the Council's seal.

**5.1.11** Every council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed without the authority of the Council, a Committee, the Leader, Chair of Committee or Chief Officer (or those authorised by any of them) acting under delegated powers.

**5.1.12** A contract must be sealed where:

- The Council may wish to enforce the contract more than six years after its end
- The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services
- There is any doubt about the authority of the person signing for the other contracting party
- The Total Value exceeds £50,000; or
- This is legally required.

### **5.2 Bonds and Parent Company Guarantees**

**5.2.1** The Officer must consult the Chief Financial Officer about whether a Parent Company Guarantee or some other form of security is necessary when a Candidate is a subsidiary of a parent company and:

- The Total Value exceeds £250,000, or
- Award is based on evaluation of the parent company, or
- There is some concern about the stability of the Candidate.

**5.2.2** The Officer must consult the Chief Financial Officer about whether a Bond is needed:

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

### **5.3 Prevention of Corruption**

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**5.3.1** 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. It will be for the Officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 5.3.2 below.

**5.3.2** The following clause must be put in every written council contract:

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

*(a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or*

*(b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or*

*(c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Councillors, contractors or employees. Any clause limiting the Contractor's liability shall not apply to this clause."*

### **5.4 Declaration of Interests**

**5.4.1** If it comes to the knowledge of a Councillor or an employee of the Council that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Head of Law and Democracy .

**5.4.2** Such written notice is required irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest is distinct from a direct pecuniary interest in as much as it is not a contract to which the Councillor or employee is directly a party.

**5.4.3** A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not a pecuniary interest for the purposes of this standing order.

**5.4.4** The Head of Law and Democracy shall maintain a record of all declarations of interests notified by Councillors and Officers.

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**5.4.5** The Head of Law and Democracy shall ensure that the attention of all Councillors is drawn to the Code of Conduct for Councillors.

### **6. Contract Management**

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#### **6.1 Managing Contracts**

**6.1.1** Chief Officers are to name contract managers for all new contracts entered into within their service. All contracts must have a named Council contract manager for the entirety of the contract.

**6.1.2** Contract managers must have regard to the Council's procurement strategy.

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

**6.2.1** A formal business case must be prepared for all procurements with a potential value over the EU Threshold. The procurement process must also be included on the Corporate Programme Register. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

**6.2.2** For all contracts with a value of over £50,000, contract managers must:

- Maintain a risk register during the contract period
- Undertake appropriate risk assessments for identified risks
- Review risk assessments annually for current contracts
- Ensure contingency measures are in place.

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

**6.3.1** All contracts which have a value higher than the EU Threshold limits, or which have been calculated as High Risk, using the Council's Risk Management Methodology, are to be subject to monthly formal review with the contractor.

**6.3.2** For all contracts with a value higher than the EU Threshold limits, or which are High Risk, an annual report must be submitted to the Contract Management Board. This Board will consist of the Chief Financial Officer and the Monitoring Officer.

**6.3.3** A Council-developed Gateway review process must be applied to all contracts deemed to be High Risk, High Value, or High Profile. This process must be applied at key stages of major procurements.

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**6.3.4** During the life of the contract, the Officer must monitor in respect of:

- Performance
- Compliance with specification and contract
- Cost
- Any Value for Money requirements
- User satisfaction and risk management.

**6.3.5** Where the Total Value of the contract exceeds £250,000, the Officer must make a written report to the relevant Committee Chair evaluating the extent to which the purchasing need and the contract objectives (as determined in accordance with Rule 3.1.2) were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

### 7. Definitions Appendix

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<b>Agent:</b>	A person or organisation acting on behalf of the Council or on behalf of another organisation.
<b>Approved List:</b>	A list drawn up in accordance with Rule 3.4.
<b>Award Criteria:</b>	The criteria by which the successful Quotation or Tender is to be selected (see further Rules 4.3 and 4.4.2e).
<b>Award Procedure:</b>	The procedure for awarding a contract as specified in Rules 4.1, 4.3 and 4.8.
<b>Best Value:</b>	The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council. This terminology has now in many instances been superseded by Value for Money.
<b>Bond:</b>	A document under which, if the contractor does not do what it has promised under a contract, the Council can claim from the bank or

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insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Council against the contractor's failure to perform the contract.

<b>Candidate:</b>	Any person who asks or is invited to submit a Quotation or Tender.
<b>Chief Officer:</b>	The Officers defined as such in the Constitution.
<b>Code of Conduct:</b>	The Code of Conduct for Officers regulating conduct of Officers issued by the Chief Financial Officer.
<b>Committee:</b>	A committee which has power to make decisions for the Council; for example a Joint Committee with another local authority, but not a Scrutiny Committee.
<b>Constitution:</b>	The constitutional document approved by the Council which: <ul style="list-style-type: none"><li>• Allocates powers and responsibility within the Council and between it and others</li><li>• Delegates authority to act to the Leader, Committees and Officers</li><li>• Regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.</li></ul>
<b>Consultant:</b>	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work.
<b>Contract Management Board:</b>	The group of Officers that meets regularly to consider procurement issues on a corporate basis.
<b>Contracting Decision:</b>	Any of the following decisions: <ul style="list-style-type: none"><li>• Composition of Approved Lists</li><li>• Withdrawal of Invitation to Tender</li><li>• Whom to invite to submit a Quotation or Tender</li><li>• Shortlisting</li><li>• Award of Contract</li><li>• Any decision to terminate a contract.</li></ul>



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<b>EU Procedure:</b>	The procedure required by the EU where the Total Value exceeds the EU Threshold.
<b>EU Threshold:</b>	The contract value at which the EU public procurement directives apply.
<b>European Economic Area:</b>	The 28 Members of the European Union, and Norway, Iceland and Liechtenstein.
<b>Chief Financial Officer:</b>	As identified in the Constitution.
<b>Financial Regulations:</b>	The financial regulations outlining officer responsibilities for financial matters issued by the Chief Financial Officer in accordance with the Constitution.
<b>Framework Agreement:</b>	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
<b>Government Procurement Agreement:</b>	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.
<b>Monitoring Officer:</b>	As identified in the Constitution.
<b>High Profile:</b>	A high-profile purchase is one that could have a significant impact on functions integral to Council service delivery should it fail or go wrong.
<b>High Risk:</b>	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
<b>High Value:</b>	A high-value purchase is where the value exceeds the EU Threshold values.
<b>Invitation to Tender:</b>	Invitation to Tender documents in the form required by these contract procedure rules.

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<b>Line Manager:</b>	The Officer's immediate superior or the Officer designated by the Chief Officer to exercise the role reserved to the line manager by these contract procedure rules.
<b>Nominated Suppliers and Sub-contractors:</b>	Those persons specified in a main contract for the discharge of any part of that contract.
<b>Non-Commercial Considerations:</b>	<ul style="list-style-type: none"><li>(a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').</li><li>(b) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.</li><li>(c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.</li><li>(d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').</li><li>(e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.</li><li>(f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.</li><li>(g) Financial support or lack of financial support by contractors for any institution to or from which the Council gives or withholds support.</li><li>(h) Use or non-use by contractors of technical or professional services provided by the Council under the Building Act 1984 or the Building (Scotland) Act 1959.</li></ul> <p>Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where</p>

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there is a transfer of staff to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) may apply.

<b>Officer:</b>	The Officer designated by the Chief Officer to deal with the contract in question.
<b>Parent Company Guarantee:</b>	A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead.
<b>Priority Services:</b>	Those services required to be tendered as defined in the EU public procurement directives.
<b>Procurement Strategy:</b>	The document setting out the Council's approach to procurement and key priorities for the next few years. This can be found on the Intranet.
<b>Quotation:</b>	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
<b>Relevant Contract:</b>	Contracts to which these contract procedure rules apply (see Rule 2.4).
<b>Shortlisting:</b>	The process of selecting Candidates who are to be invited to quote or bid or to proceed to final evaluation.
<b>Supervising Officer:</b>	The Line Manager's immediate supervisor.
<b>Tender:</b>	A Candidate's proposal submitted in response to an Invitation to Tender.
<b>Tender Record Log:</b>	The log kept by the Monitoring Officer to record details of Tenders (see Rule 4.6.5).
<b>Total Value:</b>	The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows: (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months

(c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48

(d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result

(e) for Nominated Suppliers and Sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the Nominated Supplier or Sub-contractor.

**TUPE:**

(Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246) - Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the Council is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

**Value for Money:**

Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.