

CONTRACT PROCEDURE RULES

1. BASIC PRINCIPLES

1.1 All procurement procedures must:

- 1.1.1 realise value for money by awarding contracts that have the most economically advantageous contribution to delivering the Council's objectives,
- 1.1.2 be consistent with the highest standards of integrity,
- 1.1.3 operate in a transparent manner,
- 1.1.4 ensure fairness in allocating public contracts including managing conflicts of interest,
- 1.1.5 comply with all legal requirements including but not limited to the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 or successor legislation,
- 1.1.6 support all relevant Council priorities and policies, including the Medium-Term Financial Plan.

NB: These Rules shall be applied to the contracting activities of any partnership for which the Council is the accountable body unless the Council expressly agrees otherwise (*see the Delegations to Officers for details of Officers who may action this rule*).

- 1.2 "written" or "in writing" means any expression consisting of words or figures which can be read, reproduced, and subsequently communicated, including information transmitted and stored by electronic means.

2. OFFICER RESPONSIBILITIES**2.1 Officers**

2.1.1 Officers will make sure that:

- (a) they comply with these Contract Procedure Rules (CPRs),
- (b) they comply with the Council's Constitution,
- (c) they comply with the Delegations to Officers;
- (d) the requirement to declare prior to the commencement of the procurement process any personal interest they may have in that process;
- (e) all tenders/quotations are kept confidential;
- (f) a written contract is issued and signed by both parties, or a purchase order is issued before the supply of goods, services or carrying out of works begin;
- (g) Where appropriate identify a Contract Manager with responsibility for ensuring the contract delivers as intended;
- (h) a review of each contract is carried out at an appropriate stage; and
- (i) they comply with all legal requirements.

Officers must ensure that any agents, consultants, and contractual partners acting on their behalf also comply.

2.1.2 Officers will:

- (a) keep any necessary records required by these Contract Procedure Rules,
- (b) take all necessary procurement, legal, financial, and professional advice, taking into account the requirements of these Contract Procedure Rules,
- (c) prior to letting a contract on behalf of the Council, check whether:

- (i) the Contracts Register lists an appropriate contract in place for the Council, or:
- (ii) an appropriate national, regional, or other collaborative contract is already in place.

Where the Council already has an appropriate contract in place, then this must be used unless it can be established that the contract does not fully meet the Council's specific requirements in this particular case, and this is agreed following consultation with a Contracts and Procurement Service.

Where an appropriate national, regional, or collaborative contract is available, consideration should be given to using this, provided the contract offers value for money.

- (d) ensure that when any employee, either of the Council or of a service provider, may be affected by any transfer arrangement, then any Transfer of Undertaking (Protection of Employment) issues are considered and legal and HR advice from within the Council is obtained prior to proceeding with the procurement exercise.

2.1.3 Failure to comply with any of the provisions of these Contract Procedure Rules, the Council's Constitution or any legal requirements may be brought to the attention of the Monitoring Officer, Head of Internal Audit, or relevant Officer as appropriate. Depending on the nature of the non-compliance this may result in disciplinary action being taken.

2.1.4 A contract may be let through any framework agreement to which the Council has access. Where the contract to be let is subject to the Public Contracts Regulations 2015 or the Concession Contracts 2016, use of such framework agreement shall be subject to compliance with those regulations (*see the Delegations to Officers for details of Officers who may action this rule*).

2.2 Chief Officer/Deputy Chief Officers

2.2.1 Chief Officer/Deputy Chief Officers will:

- (a) ensure their Services complies fully and are familiar with the requirements of these Contract Procedure Rules;
- (b) ensure contracts with a value over £5,000 are recorded on the Contracts Register as held and maintained by the Contracts and Procurement Service;
- (c) ensure compliance with English Law and U.K. legislation and Council policy.
- (d) ensure value for money and optimise risk allocation in all procurement matters;
- (e) ensure compliance with any guidelines issued in respect of these Contract Procedure Rules
- (f) take immediate action in the event of a breach of the Contract Procedure Rules or any Code of Practice within their directorate or service area;
- (g) ensure that all existing and new contracts anticipated during the forthcoming financial year are clearly itemised in the Budget supporting documentation;
- (h) make appropriate arrangements for the opening of tenders and their secure retention using secure electronic means;
- (i) ensure original contract documents with a total value over £5,000 are forwarded to a Contracts and Procurement Service for safekeeping;
- (j) ensure effective contract management, contract reviews and monitoring during the lifetime of all contracts in their areas;

- (k) seek and act upon advice from a Contracts and Procurement Service and Performance team where necessary to ensure compliance with these responsibilities; and
- (l) keep records of variations and exemptions of any provision of these Contract Procedure Rules.

2.2.2 Chief Officer/Deputy Chief Officers must keep a register of

- (a) contracts entered into by or on behalf of the Council, and
- (b) exemptions recorded under Rule 3 and satisfy themselves that the use of exemptions has been monitored and a record kept by a Contracts and Procurement Service.

3. EXEMPTIONS

- 3.1 Except where the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 apply, the Cabinet/Executive has the power to waive any requirements within these Contract Procedure Rules for specific projects. An exemption under this Rule 3 allows a contract to be placed by direct negotiation with one or more suppliers rather than in accordance with Rule 9.
- 3.2 These Contract Procedure Rules may be exempted where the circumstances meet any of the following criteria within 3.3. An exemption form must be completed and sent to the Head of Procurement & Contracts in the first instance to allow comments which will assist with the approval or rejection of the exemption.
- 3.3 The Head of Procurement & Contracts will then pass this through to the Section 151 Officer and Monitoring Officer for approval prior to consideration by the Chief Executive and the Portfolio Holder for the relevant area, as well as the Portfolio Holder for Finance. This process must be followed in advance of the award of contract, and in compliance with the criteria set out in the Delegations to Officers:
 - 3.3.1 for works, supplies, or services which are either patented or of such special character that it is not possible to obtain competitive prices;
 - 3.3.2 for supplies purchased or sold in a public market or auction;
 - 3.3.3 with an organisation already engaged by the Council for a similar and related procurement and where there is significant benefit to extending the contract to cover this additional requirement that does not breach legal requirements such as the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016;
 - 3.3.4 involving such urgency that it is not possible to comply with the Contract Procedure Rules and there is a significant risk to the council of not acting with urgency;
 - 3.3.5 for the purchase of a work of art or museum specimen, or to meet the specific requirements of an arts or cultural event which cannot be procured competitively due to the nature of the requirement;
 - 3.3.6 in relation to time-limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this;
 - 3.3.7 where relevant legislation not otherwise referred to in these Contract Procedure Rules prevents the usual procurement process from being followed;
 - 3.3.8 goods, works or services contracts may be awarded directly to a legal person where that legal person meets the criteria as set out in Regulation 12 of the Public Contracts Regulations 2015 or Regulation 17 of the Concession Contracts Regulations 2016 (formerly known as "Teckal" companies);

- 3.3.9 where building development opportunities are available to the Council, and have been proven to be financially viable, and the value is under the FTS Thresholds for Works (as per Appendix 2 – Above Public Contracts Regulations 2015 / Concessions Contracts Regulations 2016 thresholds.).
- 3.4 In addition to approval by a Contracts and Procurement Service:
- 3.4.1 the Monitoring Officer must be consulted where purchases are to be made using standing arrangements with another local authority, government department, health authority, primary care trust or statutory undertaker.
- 3.4.2 The Monitoring Officer must be consulted where the contract is an extension to an existing contract and a change of supplier would cause:
- (a) Disproportionate technical difficulties
 - (b) Diseconomies
 - (c) Significant disruption to the delivery of Council services.
- 3.5 Every variation/exemption must be recorded on the Council's Procurement Exemption Form at Appendix 1 to these Contract Procedure Rules and the form will be recorded on a master register to be maintained by a Contracts and Procurement Service.
- 3.6 Where a variation/exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services, Chief Officer/Deputy Chief Officer may approve the exemption but must prepare a report for the next meeting of the Cabinet/Executive to support the action taken.
- 3.7 Where grant conditions require expenditure to be incurred within a financial year, and notification of grant is received so late as to prevent compliance with Rule 9, an exemption may be approved by the Chief Executive on receipt of a report from the relevant service where the Section 151 Officer and Monitoring Officer have been consulted.
- 3.8 A Contracts and Procurement Service must monitor the use of all exemptions.

4. RELEVANT CONTRACTS

- 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, supplies, goods, materials, or services. These include arrangements for:
- 4.1.1 the supply or disposal of goods or materials,
 - 4.1.2 the hire, rental or lease of goods or equipment,
 - 4.1.3 execution of works,
 - 4.1.4 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
 - (d) the supply of staff by employment agents, consultants, or any other companies
- 4.2 Relevant Contracts do not include:
- 4.2.1 contracts of employment which make an individual a direct employee of the authority,
 - 4.2.2 agreements regarding the acquisition, disposal, or transfer of land (to which the Financial Procedure Rules apply),

- 4.2.3 the payment of grants to third parties
- 4.2.4 The lending or borrowing of money by the Council.
- 4.2.5 Contracts between Local Authorities as defined by Clause 12 of the Public Contracts Regulations 2015.
- 4.2.6 Contracts between Local Authorities as defined by Clause 17 of the Concession Contracts Regulations 2016
- 4.2.7 Contracts between Local Authorities as defined by Clause 1 of the Local Authorities (Goods and Services) Act 1970.
- 4.2.8 Section 75 NHS Act 2006 arrangements (although details must be recorded on the Council's Contract Register).

NB: While grants are not covered by these Contract Procedure Rules, there are rules on the awarding of grants which do need to be observed. The Council cannot simply choose to treat procurement as a grant in order to avoid conducting a competitive process.

5. RECORDS

- 5.1 The Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 require contracting authorities to maintain the following comprehensive records of procurement activities:
 - 5.1.1 contract details including value
 - 5.1.2 selection decision
 - 5.1.3 justification for use of the selected procedure
 - 5.1.4 names of bidding organisations, both successful and unsuccessful
 - 5.1.5 reasons for selection
 - 5.1.6 reasons for abandoning a procedure
- 5.1A Most contracts and extensions to contracts will be awarded by Officers making a decision under delegated authority (see Delegations to Officers). All such Officer decisions must be published unless the decision is administrative, minor, or not closely connected to the discharge of an executive function. Some decisions will be subject to Call-in. Where Call-in applies, the winning contractor must be advised that the award of contract is subject to Call-in and will not be confirmed until the Call-in period has expired.
- 5.2 For contracts up to £40,000 the following records must be kept:
 - 5.2.1 invitations to quote (where applicable)
 - 5.2.2 all quotes returned
 - 5.2.3 all tenders/quotes returned;
 - 5.2.4 notification to the successful, and unsuccessful (where applicable) bidders of the outcome of the quotation exercise
 - 5.2.5 the contract;
 - 5.2.6 a written record of:
 - (a) any exemptions and reasons for it; and
 - (b) the reasons if the lowest price is not accepted

- 5.3 A Contracts and Procurement Service should be made aware of any procurement requirements at the earliest opportunity to assist with this process. Where advertising is required by these rules, competitive procurement processes must be advertised on the Council's e-Tendering portal. Where the total value is greater than £40,000.00 but less than £85,000.00 for works, supplies of goods materials or services, the following records must be kept:
- 5.3.1 invitations to quote/tender;
 - 5.3.2 all communication with suppliers;
 - 5.3.3 all tenders/quotes returned;
 - 5.3.4 a completed evaluation sheet with scores and comments justifying the score awarded;
 - 5.3.5 feedback letters to the unsuccessful bidders;
 - 5.3.6 all communications with the successful contractor;
 - 5.3.7 the contract;
 - 5.3.8 a written record of:
 - (a) any exemptions and reasons for it; and
 - (b) the reasons if the lowest price is not accepted
 - 5.3.9 written records of communications with the successful contractor.
- 5.4 For contracts up to £40,000 records should be kept following the principles as above but the actual record kept should be proportionate to the value of the contract.
- 5.5 Where the total value exceeds £85,000.00 for works, supplies of goods, materials or services, the Officer must record the same details as in Rule 5.2 above and any further records as advised by a Contracts and Procurement Service.
- 5.6 Written records required by this Rule 5 must be kept for six years (twelve years if the contract is under seal) after the final settlement of the contract. All documents which relate to unsuccessful candidates (tender responses, feedback letters etc.) must be kept for 12 months from award of contract provided there is no dispute about the award or where there is a dispute, once the dispute is resolved, 12 months from resolution of the dispute.
- 5.7 Prospective candidates must be notified simultaneously in writing and as soon as possible of any contracting decision. 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.
- 5.8 The Freedom of Information Act 2000 gives a general right of public access to all types of 'recorded' information held by public authorities, sets out exemptions from that general right, and places a number of obligations on public authorities with regard to the disclosures of information. The Council will, as a general rule, allow public access to recorded information where possible and the contractor shall agree to the Council making any disclosures in accordance with the Act.

6. RISK ASSESSMENT

- 6.1 Officers must consider any risks in the procurement process including the skills and capacity within the Council to manage the procurement process. Where any risk assessment identifies a need for further specialist advice that specialist advice must be procured in accordance with these rules.

7. ADVERTISING

The Contracts and Procurement Service will ensure that the minimum advertising requirements in the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 and as outlined in Rule 9 are met.

8. FRAMEWORK AGREEMENTS

8.1 **Framework Agreements** (see the *Delegations to Officers* for details of Officers who may action this rule):

8.1.1 Framework Agreement has the same meaning as in the Public Contracts Regulations 2015 - "Framework Agreement means an agreement between one or more contracting 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.

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

8.1.3 Contracts based on Framework Agreements may be awarded in one of two ways, as follows:

- (a) where the terms of the agreement are sufficiently precise to cover the particular call-off, by applying the terms laid down in the Framework Agreement without re-opening competition, or
- (b) where the terms laid down in the Framework Agreement are not precise or complete enough for the particular call-off, by holding a further competition in accordance with the following procedure:
 - (i) inviting the organisations within the Framework Agreement, that are capable of executing the subject of the contract, to submit bids, with an appropriate time limit for responses, taking into account factors such as the complexity of the subject of the contract,
 - (ii) awarding each contract to the bidding organisation who has submitted the most economically advantageous tender on the basis of the relevant Award Criteria set out in the Framework Agreement.

Where a Framework Agreement is used and the arrangements under that Agreement include further competition, the *Delegations to Officers* details which Officers may seek, receive, and evaluate quotations/tenders.

8.1.4 Most contracts will then be awarded by Officers making a decision under delegated authority. All such Officer decisions must be published unless the decision is administrative, minor, or not closely connected to the discharge of an executive function. Some decisions will be subject to Call-in. Where Call-in applies the winning contractor must be advised that the award of contract will not be confirmed until the Call-in period has expired.

9. COMPETITION REQUIREMENTS / ASSETS FOR DISPOSAL

9.1 Competition Requirements

9.1.1 Chief Officers/Deputy Chief Officers must establish the total value of the procurement including whole life costs and incorporating any potential extension periods which may be awarded. Where the Public Contracts Regulations 2015 or the Concession Contracts Regulations 2016 rules apply, Chief Officers/Deputy

Chief Officers must also ascertain the value of a contract in accordance with those rules.

9.1.2 Contracts must not be artificially under or over-estimated or divided into two or more separate contracts where the effect is to avoid the application of Contract Procedure Rules, the Public Contracts Regulations 2015, or the Concession Contracts Regulations 2016.

9.1.3 Where the estimated total value for a purchase or concession is within the values in the first and second columns of the table below, the tendering procedure in the third column must be followed (*see the Delegations to Officers for details of Officers who may action this rule*).

Works and Concessions	Supply of Goods, Materials and Services	Tendering Procedure
£0 to £5,000	£0 to £5,000	One quote - this should be a local provider wherever possible. A purchase order must be raised.
£5,001 - £10,000	£5,001 - £10,000	Two written quotes – one should be a local provider wherever possible. A purchase order must be raised.
£10,001 to £40,000	£10,001 to £40,000	At least three written quotes shall be sought and two must be received. Local providers must be given an opportunity to provide a quote, wherever possible. A purchase order must be raised
£40,001 to £85,000	£40,001 to £85,000	At least five written quotations shall be sought via a Request for Quotation via e-Tendering Portal. Local providers must be given an opportunity to provide a quote, wherever possible. A purchase order must be raised.
£85,001 up to Public Contracts Regulations 2015/Concessions Contracts Regulations 2016 threshold*)	£85,001 up to Public Contracts Regulations 2015/Concessions Contracts Regulations 2016 threshold*)	Open tender via E-Tendering Portal including Contracts Finder. A social value clause must be built into the specification and contract. (Public Service (Social Value) Act 2012). A purchase order must be raised
Above Public Contracts Regulations 2015/Concessions Contracts Regulations 2016 threshold*)	Above Public Contracts Regulations 2015/Concessions Contracts Regulations 2016 threshold*)	UK Public Procurement Procedure – via E-Tendering Portal & Find a Tender notice. Local social value clause must be built into the specification of the contract. (Public Service (Social Value) Act 2012). A purchase order must be raised

* As per Appendix 2 – Above Public Contracts Regulations 2015 / Concessions Contracts Regulations 2016 thresholds.

9.1.4 Where it can be demonstrated that there are insufficient suitably qualified candidates to meet the competition requirements, all suitably qualified candidates must be invited (*see the Delegations to Officers for details of Officers who may action this rule*).

9.1.5 Where services are currently purchased internally, i.e., from within the Council, for internal provision, the requirement to obtain other quotations or tenders does not

apply. However, the purchaser may choose to seek alternative quotations/tenders for the purpose of market testing.

- 9.1.6 Where the Public Contracts Regulations 2015 or the Concession Contracts 2016 apply, the procuring Officer shall consult a Contracts and Procurement Service to determine the procedure for conducting the procurement exercise.

9.2 Assets for Disposal (see the Delegations to Officers for details of Officers who may action this rule):

9.2.1 Assets for disposal must be dealt with in accordance with the Council's Financial Procedure Rules.

9.2.2 Assets for disposal must be sent to Public Sale except where better value for money is likely to be obtained by inviting quotations and tenders. In the latter event, the method for disposal of surplus or obsolete stocks/stores or assets other than land must be determined as follows:

Total Value	Procedure
Where the cost of disposal is likely to outweigh the value of the asset for disposal	By (in order of preference) 1. gifting to a local organisation if they can make use of the asset; 2. disposal for recycling; or 3. disposal by the most environmentally friendly option possible.
Up to £10,000	Two written quotations or public sale
£10,000.01 and above	At least three written quotations or public sale, or an invitation to tender

10. PRE-TENDER MARKET TESTING AND CONSULTATION

10.1 The Council may consult potential suppliers, prior to the issue of the Invitation to Tender or Request for Quotation, 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 organisation (see the Delegations to Officers for details of Officers who may action this rule).

10.2 When engaging with potential suppliers, the Council may use any advice in the planning and conduct of the procurement procedure, provided that it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

10.3 The council shall take appropriate measures to ensure that competition is not distorted by the participation of a candidate or tenderer who has provided any advice by ensuring all other candidates and tenderers are provided with all of the information the advising candidate or tenderer has received or given and that all candidates or tenderers are given sufficient time to respond to the tender or quote.

10.4 In undertaking any market testing activities, the Officer responsible must seek advice from a Contracts and Procurement Service.

11. EVALUATION CRITERIA AND STANDARDS (see the *Delegations to Officers for details of Officers who may action this rule*):

11.1 Evaluation Criteria

11.1.1 In any procurement exercise the successful bid should be the one which:

- (a) offers the lowest price where payment is to be made by the Council, or offers the highest price if payment is to be received, or:
- (b) offers the most economically advantageous balance between quality and price. In the latter case, the Council will use criteria such as qualitative, environmental and/or social aspects, linked to the subject matter of the contract to determine that an offer is the most economically advantageous. Such criteria may include:
 - (i) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental, and innovative characteristics and trading and its conditions;
 - (ii) organisation, qualification, and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
 - (iii) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

11.1.2 Issues that are important to the Council in terms of meeting its corporate objectives can be used to evaluate bids. The criteria can include, for example sustainability considerations, support for the local economy, or the use of sub-contractors. The bidding organisations' approaches to continuous improvement and setting targets for service improvement or future savings could also be included. All criteria must relate to the subject matter of the contract, be in line with the Council's corporate objectives and must be objectively quantifiable and non-discriminatory.

11.1.3 The procurement documentation should clearly explain the basis of the decision to bidding organisations, making clear how the evaluation criteria specified in the process will be applied, the overall weightings to be attached to each of the high-level criteria, how the high-level criteria are divided into any sub-criteria and the weightings attached to each of those sub-criteria.

11.1.4 The evaluation criteria must not include:

- (a) Non-commercial considerations
- (b) Matters which discriminate against suppliers who are signatories to the *Government Procurement Agreement*.

11.2 Standards

11.2.1 Relevant British and International standards which apply to the subject matter of the contract, and which are necessary to properly describe the required quality must be included within the contract.

11.2.2 Officers should refer to the Procurement and Contracts Service if they have any queries or require further guidance.

12. INVITATION TO TENDER / REQUEST FOR QUOTATION (see the *Delegations to Officers for details of Officers who may action this rule*)

12.1 Invitations to Tender/Requests for Quotation must be issued in accordance with the requirements of these Contract Procedure Rules.

12.2 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, subject to 15.5.3. No tender delivered in contravention of this Rule 12 shall be considered.

12.3 All Invitations to Tender shall include the following:

12.3.1 A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers, together with the terms and conditions of contract that will apply.

12.3.2 A requirement for candidates to declare that the tender content, price or any other figure or particulars concerning the tender submitted by the candidate has not been disclosed by the candidate to any other party (except where such disclosure is made in confidence for a necessary purpose).

12.3.3 A requirement for candidates to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion.

12.3.4 Notification that tenders are submitted to the Council on the basis that they are compiled at the candidate's expense.

12.3.5 A description of the award procedure and, unless defined in a prior advertisement, a definition of the award criteria in objective terms and the percentage weighting of each criterion in the evaluation.

12.3.6 The method by which arithmetical errors discovered in the submitted tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa.

12.4 The Invitation to Tender or Requests for Quotation must state that the Council is not bound to accept any tender or quotation.

12.5 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. Where a candidate asks a clarification question regarding the tender or quote, the question and the answer will be provided to all candidates.

12.6 Under the Public Contract Regulations 2015, the Council is required to request an explanation of the price or costs proposed in a tender where that price or those costs appear to be **abnormally low** in relation to the requirement.

12.7 Advice should be sought from the Contracts & Procurement Service during this investigation process to ensure that the requirements of the Public Contract Regulations 2015 are complied with.

13. **SHORTLISTING**

Any shortlisting (i.e., supplier selection or pre-qualification) must have regard to the economic and financial standing and the technical and professional ability of the candidates to deliver the required goods, services or works.

14. **SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS** (see the *Delegations to Officers for details of Officers who may action this rule*):

14.1 **Tenders**

14.1.1 Bidding organisations must be given an adequate period in which to prepare and submit a proper quotation or tender, consistent with the complexity of the contract requirements.

14.1.2 Tender Contents:

Each tender must contain, where relevant:

- (a) An undertaking signed by the tenderer that to the best of their knowledge and belief they have complied with all the relevant provisions of the Health and Safety at Work Act 1974 and regulations made under it or where they have not complied, an explanation of the remedial action they have taken to ensure compliance;
- (b) A statement that the tenderer will comply with all current relevant British Standard Specification or Code of Practice or equivalent international standards offering guarantees of safety, reliability, and fitness for purpose;
- (c) A statement by the tenderer that they will not try to obtain or receive by whatever means any information which gives or is intended to give the tenderer or another party any unfair advantage over any other tenderer (including the Council's own workforce) in relation to the tendering for and award of any contract;
- (d) A statement that the Council shall not be liable for expenses incurred in the preparation of tenders; nor shall the Council be bound to accept the lowest or any tenders submitted; and shall have reserved to them the right to invite fresh tenders should they consider that course desirable.

14.2 Electronic Arrangements

- 14.2.1 Tenders, Quotations, Further Competition bids and Selection Questionnaires will be received electronically and will be opened by a Contracts and Procurement Service. The system will not allow any quotations to be opened until the allocated return date / time has passed. *(See the Delegations to Officers for details of Officers who may action this rule.*

14.3 Hard Copy Arrangements

- 14.3.1 In the limited circumstances where a Quotation, Further Competition bid or Tender cannot be received electronically, a Contracts and Procurement Service will consult with the Monitoring Officer to agree a suitable way to receive the Quotation, Further Competition bid or Tender.

15. CLARIFICATION PROCEDURES AND POST TENDER NEGOTIATIONS

- 15.1 Seeking clarification of a tender received whether in writing or by way of a meeting is permitted. However, any such clarification must not involve changes to the basic features of the bidding organisation's submission and all tenderers must be treated equally *(see the Delegations to Officers for details of Officers who may action this rule).*
- 15.2 Post tender negotiation means negotiations with any tenderer after submission of a tender and before the award of the contract with a view to obtaining an adjustment in price, delivery, or content. *Where the value of the Tender is above the threshold in the Public Contracts Regulations 2015, or the Concession Contracts Regulations 2016 advice must be sought from a Contracts and Procurement Service. Where post tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered (see the Delegations to Officers for details of Officers who may action this rule).*
- 15.3 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 has previously been identified as submitting the best tender. 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/Deputy 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.

- 15.4 Post tender negotiation must only be conducted in accordance with guidance given by the Monitoring Officer and a Contracts and Procurement Service.
- 15.5 The Monitoring Officer and a Contracts and Procurement Service must be consulted and agree:
 - 15.5.1 Wherever it is proposed to enter into post tender negotiation;
 - 15.5.2 About whether negotiation is with all tenderers;
 - 15.5.3 To either accept or reject late submissions before opening any of the responses. Late submissions must only be accepted in exceptional circumstances.
- 15.6 Negotiations must be conducted by a team of at least two officers, one of whom must be from a section independent to those leading negotiations (*see the Delegations to Officers for details of Officers who may action this rule*).

16. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING OF ORGANISATIONS

- 16.1 **Evaluation** (*see the Delegations to Officers for details of Officers who may action this rule*):
 - 16.1.1 The evaluation of bids must be conducted in accordance with the evaluation criteria set out in the procurement documents provided to bidding organisations, and in line with any guidance given by a Contracts and Procurement Service.
 - 16.1.2 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 Invitation to Tender as being dominant, an amended tender price may be requested to accord with the rates given by the tenderer.
 - 16.1.3 Deputy Chief Officers must ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 16.2 **Award of Contract and Contract Extensions** (*see the Delegations to Officers for details of Officers who may action this rule*):
 - 16.2.1 The Council is required to notify successful and unsuccessful bidders of the outcome of a procurement process, in writing, in as timely a fashion as possible.
 - 16.2.2 Where a contract was advertised with an extension option and that extension option forms part of the contract, the decision to extend the contract may be made after ensuring that taking up the extension option delivers value for money.
 - 16.2.3 Decisions on award of contract and contract extensions must be made in accordance with the Delegations to Officers.
- 16.3 **Debriefing**
 - 16.3.1 The debriefing of organisations will be sent by a Contracts and Procurement Service, in line with the relevant Officer's evaluation comments.

17. CONTRACT DOCUMENTS

17.1 Format of Contract Documents

17.1.1 Every Relevant Contract/must be in writing and must state clearly:

- (a) what is to be supplied (description and quality)
- (b) payment provisions (amount and timing and seeking electronic invoices)
- (c) when the Council will have the right to terminate the contract
- (d) that the contract is subject to the law as to prevention of corruption

The Council's standard terms and conditions must be used where possible.

17.1.2 In addition, every Relevant Contract for purchases over £25,000.00 for works, supplies of goods, materials or services must also as a minimum state clearly:

- (a) that the contractor may not assign or sub-contract without prior written consent
- (b) any insurance and liability requirements
- (c) health and safety requirements
- (d) ombudsman requirements
- (e) data protection requirements if relevant
- (f) that charter standards are to be met if relevant
- (g) requirements under the Equalities Act 2010
- (h) obligations under the Care Act 2014 in safeguarding adults and children
- (i) a right of access to relevant documentation and records of the contractor for monitoring and audit purposes, including obligations under the FOI Act 2000 and 2015 Transparency Code
- (j) requirements under the Counter-Terrorism and Security Act 2015 and Prevent Strategy where applicable
- (k) obligations under the Public Interest Disclosure Act 1998 including employee whistleblowing.
- (l) Statement requirements under the Modern Slavery Act 2015.

17.1.3 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 Monitoring Officer. An award letter is insufficient.

17.1.4 All contracts must include the following paragraph:

'The Contractor recognises that the Council is under a duty to act in a manner which is compatible with the Convention rights as defined by Section 1(1) of the Human Rights Act 1998 ('Convention Rights'). This duty includes a positive obligation on the Council to ensure that contractors providing services on the Council's behalf act in a way which is compatible with the Convention Rights. The Contractor therefore agrees to provide the Services and comply with its other obligations under this contract in a manner which is compatible with the Convention Rights.'

17.1.5 The Officer responsible for securing the signature of the contractor must ensure that the person signing for the contracting party has authority to bind it.

17.2 **Contract Signature** (*see the Delegations to Officers for details of Officers who may action this rule*):

17.2.1 A contract entered into by or on behalf of the Council must:

- (a) Where the contract is in the form of a deed (see below), be made under the Council's seal and attested as required by the Constitution, or:
- (b) Where the contract is in the form of an agreement, either:
 - (i) be signed by at least two officers of the Council authorised as required by the Constitution, or:

- (ii) be formalised by the sending of an award letter and the subsequent issuing of a purchase order.
- 17.2.2 A contract must be in the form of a deed (see below) and sealed where;
- (a) The Council wishes to enforce the contract for more than six years after it ends;
or
 - (b) The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; or
 - (c) Where there is any doubt about the authority of the person signing for the contracting party.

A contract in the form of a deed must state in the signature pages that the Contractor and the Council are executing the contract as a deed. Where an Officer is unsure whether a Contract should be signed under hand, or sealed, they must contact the Procurement & Contracts service to seek advice.

17.3 Legal Services Review of Tenders and Contracts

17.3.1 To ensure the integrity of the procurement process:

- (a) All proposed Invitations to Tender, where they are not in compliance with the Council's harmonised contract documentation or standard terms and conditions issued by a relevant professional body, will be reviewed by the Deputy Chief Officer.
- (a) Any proposed Invitations to Tender which are subject to the Public Contracts Regulations 2015 or the Concession Contracts Regulations 2016, or which are deemed to be of high risk, must be reviewed by the Deputy Chief Officer.
- (b) Any proposed contract where there is any deviation from the contract terms included in the invitation to tender must be reviewed by the Deputy Chief Officer

18. LIQUIDATED DAMAGES, BONDS AND PARENT COMPANY GUARANTEES

18.1 Every formal written contract which exceeds £85,000.00 in value or amount and is for the execution of works shall provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed.

18.2 The Officer must consult the Deputy Chief Officer when a tenderer is a subsidiary of a parent company and the officer does not think that a parent company guarantor is necessary, and:

18.2.1 The total value exceeds £85,000.00.

18.2.2 Award is based on evaluation of the parent company, or

18.2.3 There is some concern about the stability of the tenderer.

18.3 The officer must consult the Deputy Chief Officer about whether a bond is needed:

18.3.1 Where the total value exceeds £85,000.00.

18.3.2 Where it is proposed to make stage payments or other payments in advance of receiving the whole of the subject matter of the contract.

19. PREVENTION OF CORRUPTION

19.1 Rules and regulations pertaining to the prevention of corruption are outlined in the Council's Financial Procedure Rules and must be adhered to.

19.2 The following clauses 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:

- 19.2.1 Offer, give, or agree to give 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
- 19.2.2 Commit an offence under the Bribery Act 2010 or Section 117(2) of the 1972 Act; or
- 19.2.3 Commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors, or employees.

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

- 19.3 Any suspected irregularity shall be referred to the Audit Manager who shall notify the Monitoring Officer where necessary. Any examination of contractors' or tenderers' books and records as a result of any such suspected irregularity shall be conducted by the Audit Manager. If, in the investigation of any irregularity, the Monitoring Officer considers that disciplinary procedures may need to be invoked, the appropriate Chief Officer/Deputy Chief Officer shall also be notified.

20. DECLARATION OF INTERESTS

Rules and regulations pertaining to the Declaration of Interests are outlined in the Code of Conduct for Employees within the Constitution and must be adhered to.

21. CONTRACT MANAGEMENT / MONITORING

- 21.1 All contracts must have an appointed Contract Manager for the entirety of the contract. The responsible Deputy Chief Officer must ensure a Contract Manager is designated prior to award.

22. POST CONTRACT MONITORING AND EVALUATION

- 22.1 During the life of the contract the Contract Manager must monitor in respect of:

- 22.1.1 performance
- 22.1.2 compliance with specification and contract
- 22.1.3 cost
- 22.1.4 any Best Value requirements
- 22.1.5 user satisfaction and risk management
- 22.1.6 social value or any other contractual obligations to deliver additional value arising from the contract

- 22.2 Where the Total Value of the contract exceeds £85,000.00 the Officer must make a written report evaluating the extent to which the purchasing need and contract objectives 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.

- 22.3 For contracts awarded under £85,000, if, at any point during the delivery of the contract, the cost looks likely to exceed £85,000 the Contract Manager must notify a Contracts and Procurement Service. A Contracts and Procurement Service and the Contract Manager will consider the following options:

Where the amount by which the total contract value exceeds £85,000 is not significant, allow the contract to run to its natural conclusion;

Where the amount by which the total contract value exceeds £85,000 is significant and the contract allows termination, terminate the existing contract, and retender.

Where the amount by which the total contract value exceeds £85,000 is significant and the contract does not allow termination, or continuing with the contract represents value for money, allow the contract to run to its natural conclusion

23. INTERNAL PROVIDERS

Where an in-house Service is bidding in competition for the provision of goods, works or services, care must be taken to ensure a fair process between the in-house provider Service and external bidding organisations.

24. EXTERNAL BODY GRANT FUNDING

24.1 Where a procurement process is funded, in whole or part, by grant funding which has been awarded to the Council by an external funding body, a Contracts and Procurement Service must ensure that any rules or conditions imposed by the funding body are adhered to, in addition to the requirements of these Contract Procedure Rules.

24.2 Where there is any conflict between these Contract Procedure Rules and the rules or conditions imposed by the funding body, the stricter requirement should be followed.

25. APPOINTMENT OF CONSULTANTS

25.1 The engagement of consultant architects, engineers and surveyors or other professional consultants including Counsel shall be subject to completion of a formal letter, contract of appointment or brief.

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

25.3 Consultants shall be selected, and commissions awarded in accordance with the values and procedures recorded in the table in Rule 9.1.3 above for services.

25.4 Records of consultancy appointments shall be maintained in accordance with Rule 5.

26. REVIEW AND AMENDMENT OF CPR

These Contract Procedure Rules shall be reviewed and updated, as necessary.

27. TERMINATION OF CONTRACTS *(see the Delegations to Officers for details of Officers who may action this rule)*

The Delegations to Officers details which Officers may terminate a contract. Any termination must be strictly in accordance with the terms of the contract and subject to consultation with the Monitoring Officer and Section 151 Officer and in some cases with the relevant Portfolio Holder.