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A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

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.

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 the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail and fax transmissions as well as hard copy.

Follow the rules if you purchase goods or services or order building work.

Take all necessary legal, financial and professional advice.

Declare any personal financial interest in a contract. Corruption is a criminal offence.

Conduct any Best Value review and appraise the purchasing need.

Check whether there is an existing Corporate Contract you can make use of before undergoing a competitive process.

Keep bids confidential.

Complete a written contract or council 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.

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 Finance Officer shall have the power to make amendments from time to time to these contract procedure rules after consultation with the Head of Legal and Property Services and the Audit and Risk Managers.

If you are in doubt about whether these Contract Procedure Rules apply to a contract or proposed contract you are dealing with, or about their meaning or how to follow them, consult without delay:-

- (a) Your manager.
- (b) The Head of Legal and Property Services.
- (c) Corporate Procurement Manager.
- (d) Internal Audit Service.

The Contract Procedure Rules will only assist you to enter into contracts on behalf of the Council where there is current budget provision or an approved supplementary estimate or special financial provision. You must ensure that there is such provision before you proceed further.

The Contract Procedure Rules form part of and are to be complied with in the same way as the Council's other procedure rules and constitution.

The Contract Procedure Rules are addressed directly to every employee of the Council who is responsible for taking any step that may lead to a contract being entered into of a type specified below. They apply equally to any partnerships the Council may enter into or contracts in respect of which the Council may nominate sub-contractors or suppliers. The Contract Procedure Rules also contain rules which must be followed by the Council, the Cabinet (including Cabinet Portfolio Holders) and by consultants, such as architects or engineers or Public Private Partners, acting for the Council.

These Procedure Rules (as appropriate) will apply to contracts involving the receipt of income as well as expenditure.

What is a Contract?

Contracts are legally binding agreements, and in English law to be binding contracts need not, contrary to popular belief, be in writing. A contract is made when one person offers to do or to supply something for another person and that offer is accepted unconditionally by the person to whom the offer was made, who in turn supplies value.

Contracts may be concluded in writing, by word of mouth, over the telephone, or even by performance. The vast majority of legally binding contracts are in fact concluded by word of mouth and often in total ignorance of both parties that a legally binding commitment has been formed. For example, the purchase of a newspaper from the corner shop, even if unaccompanied by a single spoken word, will constitute a legally binding contract from which legal obligations follow (e.g. to deliver the paper, to pay for it).

It is not the purpose of the Contract Procedure Rules to give a definitive guide on English contract law. The user should however be aware that, in any commercial dealings with a supplier or contractor, his or her actions may be deemed in law to have constituted a fully binding legal contract on behalf of the Council. In any case of doubt the Head of Legal and Property Services will be pleased to advise.

SECTION 1:

SCOPE OF CONTRACT PROCEDURE RULES

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 and 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 and competition policy.

2. OFFICER RESPONSIBILITIES

2.1 Officers

2.1.1 Officers responsible for purchasing or disposal must comply with these contract procedure rules, the Financial Procedural Rules, the Code of Conduct for employees 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.

2.1.2 Officers must check whether a suitable Corporate Contract exists before seeking to let another contract; where a suitable Corporate Contract exists, this must be used unless there is a sound business case not to. In that event the reasons must be documented and approved by the relevant Head of Service.

2.1.3 Where a new requirement for the Council is identified, the participating councils in the shared service partnership must be consulted to see if there is a need for that requirement to create an opportunity to aggregate demand for better procurement, or if there is a contract existing within the shared service that the Council can utilise or to identify the first opportunity available where a shared contract can be provided for the shared service organisations.

2.1.4 When a Contract is likely to have the consequence that 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) Regulations (TUPE) are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.

2.1.5 All IT Hardware and Software purchases are to be made in consultation and with the approval of the Head of IT.

2.2 Chief Officers

2.2.1 Chief Officers must:

- ensure that their staff comply with Rule 2.1
- keep registers of contracts completed by signature, rather than by the council's seal (see Rule 16.3) and arrange their safekeeping on council premises
- ensure any exemptions are recorded.
- Advise the Corporate Procurement Manager of all contracts that are issued, that require annual renewal of maintenance and licensing arrangements.
- The Corporate Procurement Manager will remind users when these maintenance contracts are due for renewal.

3. EXEMPTIONS, COLLABORATIVE AND E-PROCUREMENT ARRANGEMENTS

3.1 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to council services, a Head of Service and Director/Managing Director may jointly approve the exemption but they must prepare a report for the next Cabinet or appropriate committee to support the action taken.

3.2 The Contracts Procedures Rules do not apply to the acquisition or disposal of land (see Part 3 – Responsibility for Executive Functions – Reserved to Cabinet) except where a lease is granted as a part of a principal contract.

3.3 Other than a situation as specified in 3.1 above no exemption from any of the provisions of these Contracts Procedures Rules shall be made unless directed by the Council or the Cabinet.

3.4 The procurement of works, supplies and services valued at greater than **£25,000**, but less than the thresholds under European regulation (excluding VAT), may be made by Official Order in the following exceptional circumstances

3.4.1 The supplies or services are only obtainable from a limited number of contractors. In such a case, the requirement needs to have been advertised in a suitable media and evidence of this advertisement needs to be provided. The Head of Service and the Executive Director may jointly approve the exemption but they must prepare a report for the next Cabinet or appropriate committee to support the action taken.

3.4.2 Where the supply of works, supplies or services constitute an extension of an existing contract valued at less than 50% of the total contract value and under EU Threshold and the extension has been approved by the Cabinet. A contract can only be extended once under this rule.

3.4.3 Where tenders for the supply of works, supplies or services have already been invited by a consortium of which the Council is a member in accordance with the procurement procedures of that consortium. Purchases above the EU Threshold 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 authority and other consortium members or named government agency (I.E. Local Authority).

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 or for the supply of goods, materials or services. These include arrangements for:

- the supply or disposal of goods
- the hire, rental or lease of goods or equipment
- the delivery of services, including (but not limited to) those related to the recruitment of staff, land and property transactions, financial and consultancy services.

4.2 A purchase order number must be provided with every order.

4.3 Relevant Contracts do not include:

- contracts of employment which make an individual a direct employee of the authority
- the acquisition and disposal of land.

INSURANCE

Before entering into a contract for the execution of any work or the provision of goods or services the Council must require the contractor to produce insurance policies in respect of employers' liability and public liability risks for such limits and for such period as specified by the Council's Risk and Insurance Manager.

The Council's Risk and Insurance Manager will issue guidance, which will be renewed annually, on limits of indemnity required from contractors in relation to contracts for works, supplies and services and all contracts must comply with this guidance unless the Chief Finance Officer certifies in writing that it need not apply in any particular case.

Where applicable the contractor must also supply details of their professional indemnity insurance cover.

SECTION 2: COMMON REQUIREMENTS

5. STEPS PRIOR TO PURCHASE

5.1 The Officer must appraise the purchase, in a manner commensurate with its complexity and value, and taking into account any guidance in the Purchasing Guide, by:

- taking into account the requirements from any relevant Best Value/Value for money review
- 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
- 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 £25,000.

5.2 and by confirming that:

- there is appropriate approval for the expenditure (either by cabinet or a committee, a portfolio holder with appropriate delegated authority of an officer with appropriate delegated authority) and the purchase accords with the approved policy framework and scheme of delegation as set out in the Constitution
- if the purchase is a Key Decision, all appropriate steps have been taken.

6. RECORDS

6.1 Where the Total Value is less than £25,000, the following records must be kept:

- Invitations to quote and Quotations
- a record of any exemption and the reasons for it
- of the reason if the lowest price is not accepted
- written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

6.2 Where the Total Value exceeds £25,000 the Procuring Officer must record:

- the method for obtaining bids (see Rule 8.1)
- any Contracting Decision and the reasons for it
- any exemption under Rule 3 together with the reasons for it
- the Award Criteria in descending order of importance including weightings
- Tender documents sent to and received from Candidates
- pre-tender market research
- clarification and post-tender negotiation (to include minutes of meetings)
- the contract documents
- minutes of the evaluation meetings and scoring sheets
- post-contract evaluation and monitoring (or Contract Manager)

- communications with Candidates and with the successful contractor throughout the period of the contract. (or Contract Manager)

7. ADVERTISING, APPROVED LISTS AND FRAMEWORK AGREEMENTS

7.1 Identifying and Assessing Potential Candidates

7.1.1 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:

- the council's website
- Local Press
- portal websites specifically created for contract advertisements
- national official journals, or
- the Official Journal of the European Union (OJEU)/ Tenders Electronic Daily (TED) (even if there is no requirement within the EU Procedure).

7.1.2 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:

- economic and financial standing
- technical ability and capacity to fulfil the requirements of the authority.
- Minutes of the tender list selection meeting together with scoring sheets must be recorded and retained on the relevant file

7.2 Approved Lists

7.2.1 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.

7.2.2 Officers may draw up in consultation with the Procurement manager, 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 terms criteria for Shortlisting from the lists.

7.2.3 No Candidate may be entered on an Approved List until there has been an adequate investigation into both their financial and their technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list.

7.2.4 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. Candidates may be entered on a list between the initial advertisement and re-advertisement provided the requirements of Rule 7.2.3 are met.

7.2.5 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 candidate on the list, inviting them to reapply. Review means:

- the reassessment of the financial and technical ability and performance of those candidates on the list, unless such matters will be investigated each time bids are invited from that list
- the deletion of those candidates no longer qualified, with a written record kept justifying the deletion.

7.2.6 All Approved Lists shall be maintained in an open, fair and transparent manner and be open to public inspection.

7.2.7 A register of pre-qualified contractors and Consultants maintained by or on behalf of central government (e.g. Construction line) 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 7.2.2 to 7.2.6 inclusive.

7.3 Framework Agreements

7.3.1 The term of a Framework Agreement must not exceed four years and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.

7.3.2 Contracts based on Framework Agreements may be awarded by either:

- 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
- 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 with the following procedure: inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written Tenders, 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
- 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.

SECTION 3 : CONDUCTING PURCHASE AND DISPOSAL

8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The Officer must calculate the Total Value. The total value must include the cost of any annual maintenance and licensing and is to be the anticipated total cost for the whole length of the contract.

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 Finance Officer.

8.1 Purchasing – Competition Requirements

8.1.1 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.

Total Value	Award Procedure
£2k or Under	One Oral Quotation (confirmed in writing where the Total Value exceeds £500)
£2,001 - £25,000	Three written and meaningful quotations.. If three written quotes cannot be obtained and an exemption as specified in paragraph 3 does not apply, then the requirement should be advertised.
£25,001–EU Threshold	Invitation to Tender and advertise to at least three and no more than six candidates.
Above EU Threshold	EU Procedure or, where this does not apply, Invitation to Tender and advertise/ to at least four and no more than six Candidates.

8.1.2 Where it can be demonstrated that there are insufficient suitably qualified Candidates to meet the competition requirement, all suitably qualified Candidates must be invited.

8.1.3 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.

8.1.4 Where the EU Procedure is required, the Officer shall consult Head of Legal and Property Services or Procurement Manager to determine the method of conducting the purchase.

8.1.5 If more than one contractor is to be appointed (some contracts may be split into lots) the number of tenderers invited to tender, as indicated in clause 8.1.1 above, may be increased.

8.2 Assets for Disposal

8.2.1 Assets (excluding land) 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 Finance Officer.

8.3 Providing Services to External Purchasers

8.3.1 The Chief Finance Officer and Procurement Manager and the Financial Procedure Rules must be consulted where contracts to work for organisations other than the authority are contemplated.

8.4 Collaborative and Partnership Arrangements

8.4.1 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 Procurement Manager.

8.5 The Appointment of Consultants to Provide Services

8.5.1 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 8.1.

8.5.2 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.

8.5.3 Records of consultancy appointments shall be maintained in accordance with Rule 6.

8.5.4 Consultants shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the relevant Head of Service for the periods specified in the respective agreement.

9. PRE-TENDER MARKET RESEARCH AND CONSULTATION

9.1 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 Procurement Manager.

10. STANDARDS AND AWARD CRITERIA

10.1 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 Head of Legal and Property Services must be consulted if it is proposed to use standards other than European standards.

10.2 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:

- 'most economically advantageous' (MEAT), where considerations other than price also apply.
- 'lowest price' where payment is to be made by the Council
- 'highest price' if payment is to be received, or

If (MEAT) is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. Sub criteria must be accompanied by their relative weightings.

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.

10.3 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.

11. INVITATIONS TO TENDER/QUOTATIONS

11.1 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. If the Candidate can prove that late submission was no fault of their own, then a tender can be accepted.

11.2 The unacceptable tenders shall be opened by a representative from the Legal and Property Services team only to ascertain the name of the Candidate to enable the documents to be returned. No details of the tenders shall be disclosed.

11.3 All Invitations to Tender shall include the following:

(a) A specification that describes the authority'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 together with their weightings.

(f) Notification that no Tender will be considered unless it is enclosed in a sealed envelope (when required) or container which bears the word 'Tender' followed by the subject to which it relates, but no other name or mark indicating the sender. Electronic tendering can be used in the future on agreement with the Council's audit team.

(g) A stipulation that any Tenders submitted by fax shall not be considered.

(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.

11.3 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 16).

11.4 The Invitation to Tender or Quotation must state that the council is not bound to accept any Quotation or Tender.

11.5 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.

12. SHORTLISTING

12.1 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.

12.2 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 7.2.2). However, where the EU Procedure applies, Approved Lists may not be used.

13. SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS

13.1 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.

13.2 All Tenders must be returned to the appropriate Officer named in the tender documentation or the Head of Legal and Property Services.

13.2.1 All tenders for contracts estimated to be for £50,000 or more must be opened at one time and only in the presence of the Head of Legal and Property Services, or an officer nominated by that Head of Legal and Property Services.

13.2.2 All tenders for contracts estimated to be below £50,000 must be opened at one time and only in the presence of the Head of Service or their representative and another officer in the same department not below the grade of Principal Officer.

The nominee who receipt's the tender 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 and recorded immediately on receipt in the Tender Record Log.

13.3 The appointed receiver of the tender must ensure that all Tenders are opened at the same time when the period for their submission has ended.

14. CLARIFICATION PROCEDURES

14.1 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, unless the Negotiated procedure has been used.

14.2 Negotiations may only take place provided:

- (i) that the requirements of relevant European Community directives and United Kingdom legislation are adhered to; and
- (ii) the person or body overseeing the contract has given written approval before the tendering process begins and the decision to do so is minuted; and
- (iii) the documents sent out to prospective tenderers stated that negotiation may take place and the basis upon which such negotiation shall take place

14.3 The circumstances under which such negotiations may take place are where:

- (i) high levels of innovation are required as part of the tender solution
- (ii) the new contract will involve radical changes from existing practices
- (iii) there are a number of alternative proposals or solutions that the Council is considering
- (iv) the specification has a number of alternative packages or elements

14.4 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.

14.5 Post-tender negotiation must only be conducted in accordance with the guidance issued by the Head of Legal and Property who, together with the Procurement Manager, must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two Officers, one of whom must be from a service independent to that leading the negotiations. The independent representative can be a representative from another council if the tender is a collaborative procurement.

14.6 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

15. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING CANDIDATES

15.1 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 must not be given to another Candidate.

15.2 Contracts must be evaluated and awarded in accordance with the Award Criteria. 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.

15.3 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.

15.4 Where the Total Value is over £25,000, the Officer must notify all Candidates simultaneously and as soon as possible of the intention to award the contract to the successful Candidate. For contracts where the EU procedure has been applied, 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 Head of Legal and Property

15.5 The Officer shall debrief 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 Head of Legal and Property

- 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.

15.6 If a Candidate requests in writing the reasons for a Contracting Decision, the Officer must give the reasons in writing within 10 days of the request. If requested, the Officer may also give the debriefing information at Rule 15.5 above to Candidates who were deselected in a pre-tender Shortlisting process.

SECTION 4: CONTRACT AND OTHER FORMALITIES

16. CONTRACT DOCUMENTS

16.1 Relevant Contracts

16.1.1 All Contracts and Quotations shall be in writing and held in accordance with rule 6.

16.1.2 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.

16.1.3 The council's order form or standard terms and conditions issued by a relevant professional body must be used wherever possible. This form of contract needs to be approved by the Head of Legal and Property

16.1.4 In addition, every Contract of purchase over £25,000 must also state clearly as a minimum:

- that the contractor may not assign or sub-contract 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
- all equality requirements
- 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.

16.1.5 The formal advice of the Head of Legal and Property must be sought for the following contracts:

- where the Total Value exceeds £25,000
- where the risk is outside acceptable parameters
- those involving leasing arrangements
- where it is proposed to use a supplier's own terms
- those involving the purchase of application software.
- those that are complex in any other way.

16.2 Contract Formalities

16.2.1 Agreements shall be completed as follows:

Total Value	Method of Completion By
Up to £25,000	Signature by any of the following Head of Service or authorised representative, Head of Legal and Property or Executive Director, Managing Director, Chief Finance Officer (see Rule 16.2.3)
Above £25,001 (Excluding Sealing)	Signature by any two of the following, Head of Service, Executive Director, Managing Director, Head of Legal and Property, Chief Finance Officer (see Rule 16.2.3)
Where risk and high value seem appropriate	Sealing (see rule 16.3)

16.2.2 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 Executive Director for the relevant service area or Managing Director. An award letter is insufficient.

16.2.3 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.

16.3 Sealing

16.3.1 Where contracts are completed by each side adding their formal seal, such contracts shall be signed by the Head of Legal and Property or their nominee

16.3.2 Every council sealing will be consecutively numbered, recorded and signed. The seal must not be affixed without the proof that the appropriate authority to enter the contract has been obtained under the scheme of delegation

16.3.3 A contract must be sealed where:

- the council may wish to enforce the contract more than six years after its end
- The contract is valued at more than £150,000

16.4 All contracts for the purchase of motor vehicles or mechanical plant irrespective of value must be in writing and may only be signed by at least two of the following: the Managing Director, Executive Director, the Chief Finance Officer or the Head of Legal and Property (or authorised representative) except where the contract exceeds £150,000 in value in which case it must be sealed in accordance with 16.1 above.

17. CONTRACT SURETY

17.1 The Officer must consult the Chief Finance Officer about whether a Parent Company Guarantee is necessary when a Candidate is a subsidiary of a parent company and:

- the Total Value exceeds £150,000, or
- award is based on evaluation of the parent company, or there is some concern about the stability of the Candidate.

17.2 The Officer must consult the Chief Finance 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.

17.3 The decision by the Chief Finance Officer on the need for surety is final.

18. PREVENTION OF CORRUPTION

18.1 The Officer must comply with the Code of Conduct for employees 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 18.2 below.

18.2 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 Council members, contractors or employees. Any clause limiting the Contractor’s liability shall not apply to this clause.”

19. DECLARATION OF INTERESTS

19.1 If it comes to the knowledge of a councillor or an employee of the authority that a contract in which he or she has a personal 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 Legal and Property

19.2 The Head of Legal and Property shall maintain a record of all declarations of interests notified by councillors and Officers.

19.3 The Head of Legal and Property will ensure every councillor signs and receives a copy of the Council's code of conduct for councillors

SECTION 5: CONTRACT MANAGEMENT

20. MANAGING CONTRACTS

20.1 Heads of service in sponsoring departments are to name contract managers for all new contracts. All contracts must have a named council contract manager for the entirety of the contract.

21. RISK ASSESSMENT AND CONTINGENCY PLANNING

21.1 A business case for new procurements must be prepared for all procurements with a potential value over the EU Threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case. This is also appropriate for contracts that have been identified as significant risk to the Council.

21.2 Where the risk and financial value of the Contract is deemed appropriate, contract managers must:

- maintain a risk register during the contract period
- undertake appropriate risk assessments and for identified risks
- ensure contingency measures are in place.
- Manage the contract in accordance with best practice.

22. CONTRACT MONITORING, EVALUATION AND REVIEW

22.1 All contracts which have a value higher than the EU Threshold limits, or which are High Risk, are to be subject to monthly formal review with the contractor. The review may be conducted quarterly if permitted by the Chief Finance Officer.

22.2 For all contracts with a value higher than the EU Threshold limits, or which are High Risk, an annual report must be submitted to Leadership Team

22.3 A council-developed 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.

22.4 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.

SECTION 6: EU PROCUREMENT RULES

The E.U. Procurement Rules apply where the value of the contract exceeds the relevant thresholds. These thresholds change on a regular basis, so confirm them with either the Corporate Procurement Manager or via Website www.ogc.gov.uk, but for reference these are approximately as follows:-

Supplies	£156,442
Services	£156,442
Works.....	£3,927,260

Classification of “supply”, “service” and “works” contracts:-

Supply contracts are contracts for the purchase or hire of goods and for any siting or installation of those goods.

Service contracts are contracts under which the purchaser engages a contractor to provide services.

Works contracts are contracts for the carrying out of civil engineering or building works or under which such facilities are provided to meet specific user requirements.

There is, however, no value-based formula for determining into which category a mixed works/supplies or works/services contract falls. In such cases the contract should be classified according to its predominant purpose.

In determining whether the threshold has been reached the rules require aggregation of:-

The estimated value of separate contracts for meeting a single requirement.

In particular defined circumstances, the consideration paid or expected to be paid where a series of contracts or a renewable contract is entered into for supplies of the same type.

Only the following tendering procedures are provided for:-

The ‘open procedure’ under which all interested persons may tender for the contract. The timescale for this procedure is 52 days from date of submission.

The ‘restricted procedure’ under which only selected persons may submit tenders for the contract. The timescale for this procedure is a minimum of 37 days from date of submission. Invitation to Tender stage is 40 days.

The ‘negotiated procedure’ under which a purchaser may negotiate the terms of the contract with one or more persons selected by it. As a general rule there must be a call for competition. But in certain specified cases the negotiated procedure may be used without a call for competition. The timescale for this procedure is a minimum of 37 days from date of submission. Invitation to Negotiation stage is 40 days.

NB: Public authorities have a free choice between the open and restricted procedures but may only use the negotiated procedure in limited circumstances.

'Competitive Dialogue' - for use only in relation to particularly complex contracts where use of the open or restricted procedures will not allow the award of the contract.

'Design contests' - for use only in relation to specialised contracts and which involves strict adherence to the rules contained in the Regulations.

For annual values above the EU Threshold:-

Tenders must be placed in accordance with the EU Procurement Rules.

The Corporate Procurement Manager will act as the Council's gateway for all contracts above the EU Thresholds

DEFINITIONS

Please also see the Jargon Buster that is electronically published

Agent A person or organisation acting on behalf of the council or on behalf of another organisation.

Approved List A list drawn up in accordance with Rule 7.2.

Award Criteria The criteria by which the successful Quotation or Tender is to be selected (see further Rules 10 and 11.2e).

Award Procedure The procedure for awarding a contract as specified in Rules 8, 10 and 15.

Best Value 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.

Bond An insurance policy: if the contractor does not do what it has promised under a contract with the council, the council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the council against a level of cost arising from the contractor's failure.

Cabinet The council's cabinet as defined in the Constitution.

Candidate Any person who asks or is invited to submit a Quotation or Tender.

Chief Finance Officer

The Head of Strategic Finance or such other Officer as may be designated chief finance Officer by the council.

Chief Officer The Officers defined as such in the Constitution.

Code of Conduct for employees The code regulating conduct of Officers as set out in the constitution

Committee 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.

Constitution The constitutional document approved by the council which:

- allocates powers and responsibility within the council and between it and others
- delegate's authority to act to the Cabinet, Committees, Portfolio Holders and Officers
- regulates the behaviour of individuals and groups through
- rules of procedure, codes and protocols.

Consultant 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.

Contracting Decision Any of the following decisions:

- composition of Approved Lists
- withdrawal of Invitation to Tender
- whom to invite to submit a Quotation or Tender Shortlisting
- award of contract
- any decision to terminate a contract.

Corporate Contract A contract let by the Strategic Procurement and Contract Management Service to support the council's aim of achieving Value for Money.

EU Procedure The procedure required by the EU where the Total Value exceeds the EU Threshold.

EU Threshold The contract value at which the EU public procurement directives apply.

European Economic Area All members of the European Union, and Norway, Iceland and Liechtenstein.

Financial Procedure Rules The financial rules outlining Officer Responsibilities for financial matters issued by the Chief Finance Officer in accordance with the Constitution.

Framework Agreement 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.

Government Procurement Agreement 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.

Head of Legal and Property As identified in the Constitution.

High Profile A high-profile purchase is one that could have an impact on functions integral to council service delivery should it fail or go wrong.

High Risk A high-risk purchase is one which presents the potential for substantial exposure on the council's part should it fail or go wrong.

High Value A high-value purchase is where the value exceeds the EU Threshold values.

Invitation to Tender Invitation to tender documents in the form required by these contract procedure rules.

Key Decision Decisions that are defined as key decisions in the Constitution.

Line Manager 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.

Nominated Suppliers and Sub-contractors Those persons specified in a main contract for the discharge of any part of that contract.

Non-commercial Considerations

- (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').
 - (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.
 - (c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.
 - (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').
 - (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.
 - (f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.
 - (g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.
 - (h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.
- 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 there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (TUPE) may apply.

Officer The Officer designated by the Chief Officer to deal with the contract in question.

Parent Company Guarantee 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.

Portfolio Holder A member of the Cabinet to whom political responsibility is allocated in respect of specified functions.

Priority Services Those services required to be tendered as defined in the EU public procurement directives.

Procurement Strategy The document setting out the council's approach to procurement and key priorities for the next few years.

Purchasing Guide The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these contract procedure rules. The guide is available on the council's intranet.

Quotation A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).

Relevant Contract Contracts to which these contract procedure rules apply (see Rule 4).

Short listing The process of selecting Candidates who are to be invited to quote or bid or to proceed to final evaluation.

Supervising Officer The Line Manager's immediate superior.

Tender A Candidate's proposal submitted in response to an Invitation to Tender.

Tender Record Log The log kept by the director of resources to record details of Tenders (see Rule 13.5).

Total Value 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 authority 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.