



# CONSTITUTION OF THE COUNCIL

## Part 4 Section 6

### CONTRACT PROCEDURE RULES

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## 1. Introduction

- 1.1 These Contracts Procedure Rules are standing orders made pursuant to Section 135 of the Local Government Act 1972, **effective as of April 2016 and amended September 2020**. Compliance with the Rules and observance of domestic law from which they emanate (in particular the principles relating to non-discrimination, equal treatment and transparency) is mandatory for all Officers and Members. The Rules ensure that procurement activity is undertaken in a legally compliant, transparent, fair and competitive manner.
- 1.2 Decisions relating to procurement are among the most important decisions that can be made by the Council, its Members and Officers because the money involved is public money and the Council is concerned to ensure that high quality Goods, Services and the execution of Works are procured. Efficient use of resources in order to achieve Best Value is therefore imperative.
- 1.3 These Rules shall apply to all procurement activity where the Council is to procure any Goods, Services or the execution of Works, or enters into a concessions Contract as either a contracting authority or commissioner of such, regardless of the origin of funding (such as external grants, partnership funding, pooled or joint budgets for example).
- 1.4 For the avoidance of doubt, these Rules shall apply to Framework Agreements.
- 1.5 Where relevant, the Council shall have regard to the Public Services (Social Value) Act 2012 (“the Act”). This requires commissioners and procurers at the pre-procurement stage to consider how / what is to be procured may improve social, environmental and economic well-being of Wirral, how it might secure any such improvement and to consider the need to consult. The Council and Officers should refer to the Procurement Toolkit for further guidance.
- 1.6 The Audit and Risk Management Committee shall monitor compliance with the Rules and undertake a review of the Rules every two years. Any failure to comply with any of the provisions of these Rules must be reported immediately to the Director of Law and Governance (Monitoring Officer). Failure by any Officer or Member to comply with the provisions of these Rules may lead to disciplinary action being taken against them.
- 1.7 The Director of Law and Governance (Monitoring Officer) will keep these rules under review and have authority to make minor amendments as required, after consultation with the Head of Commercial Procurement. Any changes will be notified by the Director of Law and Governance (Monitoring Officer) to Strategic Directors for dissemination to officers involved in procurement. Any significant changes require the consent of the Audit and Risk Management Committee.
- 1.8 The Director of Law and Governance (Monitoring Officer), in consultation with the Head of Commercial Procurement, will fully review these rules every two years and report this review to the Audit and Risk Management Committee for approval.

1.9 These Rules should be read in conjunction with the Council's Constitution and in particular the Financial Regulations, the Procurement Toolkit, any relevant guidance documents endorsed by the Council.

## 2. **Interpretations and Definitions**

2.1 In the event of any conflict between these Rules and Council Policy, the requirements of English law shall prevail over Council Policy.

2.2 Any reference to legislation, primary or secondary, shall include any amendments / replacements made from time to time.

2.3 All figures specified in these Rules are exclusive of VAT.

2.4 In the event of any doubt as to the interpretation of these Rules, or as to proper procedure to be followed, advice should be sought from Corporate Procurement in the first instance and reference should be made to the guidance contained in the Procurement Took Kit which should be read in conjunction with these Rules.

2.5 In these Rules the words and phrases below have the following meanings:

|                  |  |
|------------------|--|
| AO               | Authorised Officer and is any Officer, who has delegated authority from the SRO, to carryout commissioning functions.  |
| Best Value       | has the same meaning as that defined in the Local Government Act 1999 as amended from time to time.  |
| Bidder           | any Economic Operator that submits a Quotation or Tender.  |
| Call-off         | an order made/call-off Contract entered into under a Framework Agreement and are subject to the application of Rule 5.1.   |
| Category Manager | the Category Manager is a procurement specialist who has responsibility for all stages of a procurement process for a defined group of products, services or works |
| Concessions      | the granting of a right (exclusive or otherwise) to an economic operator to exploit works or services provided for their own gain with or without payment.         |
| Contract         | a legally binding agreement between the Council and the Contractor for the procurement by the Council of all Goods, Services, the execution of Works and           |

|                                    |   |
|------------------------------------|---|
|                                    | Concessions Contracts and which incorporates the terms and conditions under which the Goods, Services, execution of works and Concessions will be provided.   |
| Contractor                         | the Bidder or Tenderer who the Council enters into a Contract with following the submission of a Quotation or Tender and who is appointed by the Council to provide the Goods, Services, execution of Works or Concessions Contract. They may also be referred to as 'suppliers', 'providers' or 'service providers'. |
| Contracts Finder or Find a Tender  | the web-based portal provided for the purposes of Part 4 of the regulations by or on behalf of the Cabinet Office.  |
| Corporate Procurement              | Provide advice and support at all stages of the procurement process regardless of value. They will conduct procurement activity for contracts of £25,000 or over in value.  |
| Director of Finance (S151)         | the Senior Responsible Officer for Finance and is the most Senior Officer delegated in the Council's Scheme of Delegation for Finance Services, the Officer appointed by the Council pursuant to S151 of the Local Government Act 1972.   |
| Economic Operator                  | any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of Works and/or a work, the supply of Goods or the provision of Services on the market.  |
| EIR                                | the Environmental Information Regulations 2004.   |
| Electronic Purchasing System (EPS) | purchases made online.  |
| Equality Duties                    | The Council's responsibilities as defined within the Equality Act 2010.   |
| Public Contract Regulations-       | Relevant Directives in force.   |

|  |  |
|--|--|
| Exemption/Exception  | the release of the obligation to comply with some or all of these Rules.   |
| Financial Regulations                                      | the written code of procedures forming part of the Council's Constitution which provide a framework for proper financial management and which set out the rules on accounting, audit, administrative procedures and budgeting systems.   |
| FOIA   | the Freedom of Information Act 2000  |
| 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 Call-off Contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.         |
| Goods  | an inherently useful tangible item required by the Council, from time to time.   |
| Head of Commercial Procurement                             | the Senior Responsible Officer for all Council procurement activity.   |
| Director of Law and Governance (Deputy Monitoring Officer) | the Senior Responsible Officer for Legal and is the most Senior Officer delegated in the Council's Scheme of Delegation for Legal Services.  |
| Invitation to Tender                                       | an invitation issued by the Council to Tenderers to submit a Tender or a quote for the provision of Goods, Services, the execution of Works or a Concessions contract in accordance with the Specification or request for those Goods, Services, execution of works or Concessions Contract. |
| Key Decision   | Key decisions are those as set out in Article 13 of the Council's Constitution.  |
| Law and Governance   | The Contract Team within Law and Governance Services can provide legal advice on high-value or complex procurements. Officers are responsible for ensuring that Law and Governance Services are involved in all above threshold contracts and any contracts involving legal                  |

|                       |  |
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|                       | issues for example TUPE or State Aid. The Contract Team within Law and Governance Services can provide legal advice on specialist IT, social care, education and housing related contracts.  |
| Modification          | any variation to a Contract, including an extension or overspend   |
| Officer               | any employee of the Council which shall include any person engaged by the Council to act as an agent or consultant on its behalf.  |
| Post Tender Report    | a summary of the outcomes delivered by the procurement activity.   |
| SQ                    | Qualification questionnaire and is the document used by the Council to screen potential Tenderers in accordance with the Regulations.  |
| Procurement Smartform | a document providing details of the procurement activity and the authority to commence it as required in accordance with Rule 7.1.or for the approval or notification of Exceptions to CPR's; Extensions to Contracts ; Variations to Contracts Contract Award; Breach Notice. |
| Procurement Toolkit   | the documents which detail the processes, procedure and regulations to follow when carrying out a procurement activity.  |
| Purchasing Cards      | transaction cards which work in a similar way to charge cards and can be used by an AO to purchase Goods and/or Services.  |
| Quotation             | a formal offer submitted by a Bidder to supply goods, Services, execute Works or operate a Concessions Contract at a defined price.  |
| Regulations           | the Public Contracts Regulations 2015, and The Concessions Regulations 2016, as amended or replaced from time to time, which implement the public procurement directives.  |

|                       |   |
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| Regulations Threshold | the financial threshold identified by the UK Procurement Regulations, as amended from time to time, and where applicable, requires the procurement activity to be subject to the Regulations.   |
| Rules                 | these Contract Procedure Rules  |
| Scheme of Delegation  | the scheme identified within the Council's Constitution which delegates powers and duties of the Council to Officers under Section 101 of the Local Government Act 1972 and all other powers enabling such delegation necessary for the discharge of the Council's functions. |
| SCM                   | the Senior Category Manager or similar role with equivalent experience and seniority within Corporate Procurement   |
| Services              | the time, effort and expertise required by the Council, from time to time, and supplied by a Contractor.  |
| Specification         | the outputs, outcomes and the scope and nature of Goods, services, execution of Works or concessions Contract required by the Council from a procurement activity.  |
| Social Value          | a requirement upon the contractor to improve the economic, social, and environmental wellbeing of the Borough of Wirral which is relevant and proportionate to the primary purpose of the procurement.  |
| SRO                   | Senior Responsible Officer and is the Officer delegated in the Council's Scheme of Delegation for the relevant service with the responsibility for the award of the Contract.   |
| Tender                | a formal offer submitted by a Tenderer to the Council at a stated price in response to a Specification to supply Goods, Services, execute Works or operate a Concessions Contract.  |
| Tenderer              | any Economic Operator that submits a Tender.  |



|                  |  |
|------------------|--|
| Tendering Portal | Wirral tendering and sourcing portal.  |
| TUPE             | the Transfer of Undertakings (Protection of Employment) regulations 2006 as amended from time to time.   |
| Value for Money  | the optimum combination of whole-life costs, price, quality and benefits to meet the Council's requirement. Such a term equates to the UK procurement requirement of most economically advantageous offer, as well as the duty of Best Value as defined by the Local Government Act 1999 as amended from time to time. |
| Works            | the provision of physical activity which is directed toward the production or accomplishment of something by the Contractor, from time to time.  |
| Writing          | the requirement that any document should be in writing is satisfied where (apart from the usual meaning of that expression) the text of it is created and transmitted by electronic means, in legible form, and capable of being used for subsequent reference.  |

### 3. **Principles and Responsibilities**

#### 3.1 **Principles**

3.1.1 All procurement activity must comply with the obligation under the UK-EU Trade and Cooperation Agreement and where applicable the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 as amended, and any relevant retained EU legislation.

- a. non-discrimination;
- b. openness/transparency;
- c. equal treatment for all; and
- d. proportionality

3.1.2 All procurement activity must be compliant with the latest national legislation, and the Council Constitution and have regard to:

- a. **The need to achieve accountability** through effective mechanisms which enable Officers and Members of the Council to maintain the highest standards

- of integrity and honesty and to enable them to discharge their responsibility on issues of procurement risk and expenditure of public money;
- b. **The need to provide consistent procurement policy to suppliers and achieve competitive supply;**
  - c. **The need to meet commercial, regulatory and Corporate Priorities of the Council;**
  - d. **The need to achieve efficiencies** by administering procurement processes which are cost effective.
  - e. **The need to ensure Value for Money**
  - f. **The need to ensure fair-dealing** by ensuring that suppliers are treated fairly and without unfair discrimination, including protection of commercial confidentiality where compatible with the Council's obligations under FOIA and EIR;
  - g. **The need to maintain integrity** by excluding corruption or collusion with suppliers or others from procurement processes;
  - h. **The need to ensure informed decision-making** based on accurate information;
  - i. **The need to ensure legality** in the administration of procurement processes and award of contracts;
  - j. **The need to promote responsiveness** by endeavouring to meet the aspirations, expectations and needs of the community served by the procurement processes;
  - k. **The need to provide transparency** by ensuring that there is openness and clarity on the Council's procurement policy and its delivery.
  - l. **The need to create and retain an audit trail in relation to each procurement activity**
  - m. The consideration of **Risk**

## 3.2 **The Responsibilities of Officers and Members**

- 3.2.1 Officers and Members involved in procurement activity must comply with these Rules, the Council's Financial Regulations, and the Council's Employees Code of conduct/Members Code of Conduct. They must also have due regard to any guidance provided by Corporate Procurement.
- 3.2.2 Failure to comply with any of these rules may be considered a **breach of the Officers Code of Conduct and may result in disciplinary action.**
- 3.2.3 Where it becomes apparent that a Service has failed to comply with the CPRs a Breach Notice, as set out in the Procurement Smartform should be completed and submitted to the Head of Commercial Procurement and Internal Audit. Internal Audit will ,if the breach exceeds £50,000 in value, submit a report to the Head of Commercial Procurement and the Director of Law and Governance ( with appropriate recommendations) before reporting to the Audit and Risk Management Committee and/or the Corporate Governance Group. Breaches up to £50,000 will be reported to the Corporate Governance Group by Corporate Procurement in consultation with Internal Audit.

## 4. **Contracts to which these Rules do not apply**

- 4.1 These rules **do not** apply to the following:
- a. employment contracts for Officers engaged on a PAYE basis;
  - b. Contracts relating solely to the disposal or acquisition of securities and investments; - Treasury Management Strategy
  - c. Contracts for the acquisition of an interest in land and property;
  - d. Contracts for the appointment of Counsel or the appointment of experts for the purpose of legal or potential legal proceedings by the Director of Law and Governance (Monitoring Officer).

5. **Contracts which do not require full competition**

The Senior Responsible Officer (SRO)/Authorised Officer (AO) must complete a Procurement Smartform in accordance with Rule 12 where any of the circumstances outlined below are applicable and the procurement may be excepted from the requirement of Rule 9 (Quotations) and Rule 10 (Tenders).

5.1 **Call-Off contracts**

- 5.1.1 Call-off Contracts where a suitable Framework Agreement has been identified in accordance with Rule 6.3.

5.2 **No competitive market**

- 5.2.1 Where any of the following circumstances apply and subject to Rule 5.2.2:

- a. Proprietary or patented goods or services are proposed to be purchased which, in the opinion of the AO, are only obtainable from one person, and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented goods is available; or
- b. The AO can demonstrate that no genuine competition can be obtained in respect of the purchase of particular Goods, Services or execution of works; or
- c. The AO is satisfied that the Services or execution of Works are of such a specialist nature that they can only be carried out by one person (e.g. statutory undertakers); or
- d. Goods are proposed to be purchased by or on behalf of the Council at a public auction; or
- e. Goods or Services are proposed to be purchased which are of a specialist or unique nature (such as antiquities for museums or a particular performance artist)

Further guidance can be provided by Corporate Procurement and an AO must seek advice where there is any doubt and comply with Rule 10.

5.2.2 The AO, in conjunction with the Director of Law and Governance (Monitoring Officer) and, the Head of Commercial Procurement, shall ensure that the Contract terms and conditions are appropriate taking into account all relevant factors (such as benefit and risk to the Council) and ensure that the Contract complies with Rule 11.

### 5.3 Exemptions as prescribed by legislation

5.3.1 Certain other arrangements contained in domestic legislation may permit an exemption from the requirement for competition. Contact Corporate Procurement for advice.

## 6 Corporate Contracts

### 6.1 Use of Corporate Contract

6.1.1 If a Council contract exists which covers the subject matter of the proposed procurement (a Corporate Contract) it must be used unless one of the following conditions applies:

- The corporate contractor has confirmed that the goods or services are not available within the required timescale.
- The corporate contractor has confirmed that they are unable to fulfil the requirement.
- The corporate contract is subject to an unresolved dispute or an exit plan has been exercised.
- The corporate contractor's financial position has altered and a status of administration or liquidation has been applied.
- The corporate contractor is in breach of contract and a termination notice has been issued.
- The Corporate Contract is no longer value for money and the Council is entitled in law to procure the goods or services elsewhere.

6.1.2 Where an officer seeks to no longer use a corporate contract, they will arrange for consent to be obtained in writing from the Head of Commercial Procurement.

## 7. Pre-Procurement Process

### 7.1 Authority to carry out procurement activity

7.1.1 Any procurement activity carried out on behalf of the Council must be carried out by an SRO with the appropriate delegated authority as set out in the Scheme of Delegation. For all procurements valued at £25,000 or greater the SRO must submit a Procurement Smartform to Corporate Procurement, prior to starting the relevant procurement activity. By submitting the Procurement Smartform the SRO confirms that they have the authority and budget to carry out the procurement activity. When a single quote is obtained above £5000 up to the threshold of £25,000, this requires the senior or peer agreement of a DMT member of the relevant department prior to the proposed action. It is the responsibility of the

commissioner to obtain this agreement and retain the appropriate evidence should it subsequently be required.

7.1.2 Any proposed procurement for I.T. or Telecomms products or services must be referred to the Head of Digital by the SRO for approval to proceed further. This approval should be recorded by the SRO and Head of Digital. The Procurement Smartform can be completed and submitted when this approval has been granted.

## 7.2 Appraisal of the procurement activity

7.2.1 The AO, together with Corporate Procurement, must conduct an options appraisal of the route to market and consider the following:

- a. Value for Money;
- b. The need for the expenditure and its priority;
- c. The objectives of the purchase;
- d. Whether it is a Key Decision;
- e. Any risks associated with the purchase and how to manage them;
- f. The market;
- g. TUPE and pensions;
- h. Which procurement method is most likely to achieve the purchasing objectives;
- i. Existing and compliant Framework Agreements or other arrangements; and
- j. The economic, social and environmental wellbeing of the borough and the benefit which the procurement process can bring to the community and have regard to the duty to secure continuous improvement in accordance with Best Value, ***the Council's Social Value Policy, Social Value Guidance and Social Value Framework.***

7.2.2 Where award for a Contract for services may result in **employees** of the Council or its Contractor **transferring to a new employer**, the **advice** of the Director of Finance and the Director of Law and Governance (Monitoring Officer) **must be obtained** before the commencement of the procurement activity to ensure compliance with **TUPE**, and other related legislation, and to assess the implications in respect of pension arrangements.

7.2.3 The AO must ensure that an appropriate Tender Specification or request for a Quotation commensurate to the scope of the Goods, Services, and execution of Works or Concessions Contract required is written prior to the commencement of any procurement activity. Advice from Corporate Procurement must be sought where it is proposed that a Tender Specification or request for a Quotation is not used.

7.2.4 For procurement under the Regulations Thresholds, the use of PQQs is no longer permitted. However, the Regulations do permit the use of suitability assessment questions where they are relevant to the subject matter of the procurement and are proportionate. Advice must be sought from Corporate Procurement where it is proposed that such questions are to be used.

7.2.5 The Authorising Officer, together with Corporate Procurement, in all Supplier / Contractor sectors and areas identified as vulnerable to serious and organised crime include within the **quotation / tender** documentation the following statement:

*“Wirral Council has identified that the scope of this procurement falls within a business sector which may be attractive to infiltration by organised crime groups. Wirral Council therefore reserves the right to include enhanced probity checks / requirements at both the selection and award stages of the procurement.”* as set out in the invitation to tender.

### 7.3 Framework Agreements

7.3.1 Where, following an options appraisal as required by Rule 7.2 a suitable Framework Agreement is identified, the AO must ensure that:

- a. Any Call-off Contract is entered into in accordance with the terms of the relevant Framework Agreement; and
- b. Where applicable, a further competition (the tender process required by the Framework Agreement) is held in accordance with rules of the Framework Agreement.
- c. Authority to proceed must be obtained from the Head of Commercial Procurement or his delegated representative.

7.3.2 For the avoidance of doubt, a Framework Agreement is considered suitable where it has either been entered into by:

- a. the Council in compliance with these Rules; or
- b. another local authority, a local authority purchasing consortium or central government where the Framework Agreement has been tendered and awarded in accordance with public procurement legislation, and the Council is identified as a contracting authority.

7.3.3 Where a Framework Agreement has been set up following an UK Tender, there must be full compliance with UK rules when awarding Call-off Contracts under it.

7.4 Pre-Procurement Market Research and Consultation (Soft Market Testing can be referenced within Guide 9 of the Procurement Toolkit) and must be in accordance with Public Contract Regulations

7.4.1 The AO responsible for the procurement activity and Corporate Procurement:

- a. Before commencing a procurement procedure commissioners may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements;
- b. For this purpose, commissioners may, for example, seek or accept advice from independent experts or authorities or from market participants;

- c. Such advice may be used in the planning and conduct of the procedure, provided that it does not result in a violation of the principles of non-discrimination and transparency;
- d. Appropriate measures must be undertaken to ensure that competition is not distorted by participation of the candidate or tenderer in:
  - i. The communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure
  - ii. The fixing of adequate time limits for the receipt of tenders
- e. The candidate or tenderer shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to treat economic operators equally.
- f. Prior to any such exclusion, candidates or tenderers will be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting completion.

Advice and support must be sought from Corporate Procurement in all instances.

## 7.5 Estimating the Total Value of a Contract or Framework Agreement

7.5.1 The Council must not split Contracts or Framework Agreements to avoid public procurement rules or calculate the value of Contracts in such a way as to deliberately avoid exceeding the Regulation Thresholds or any threshold identified in these Rules. Therefore all Contracts should be dealt with according to their total value and all Officers must calculate the total value (excluding VAT) of any Contract. The value of a Contract should be calculated as follows and applies to the aggregate value of the Contract:

**Yearly contract value X Contract Period in years (including any option to extend) = Total value**

Where the duration of the contract is indeterminate or is longer than four years, this should be taken to be the estimated value of the contract over a period of four years.

7.5.2 The value of a Framework Agreement means the estimated amount payable by the users of the Framework Agreement for the Goods, Services or execution of Works (excluding VAT) under Call-off Contracts entered into over the entire possible duration of the Framework Agreement.

7.5.3 Framework Agreements must not be for more than four years (including options to extend) unless otherwise authorised by the Director of Law and Governance (Monitoring Officer) and the Head of Commercial Procurement.

7.5.4 The value of the Contract or Framework Agreement will determine which procurement activity to follow in accordance with Table 1 below subject to Rules 7.5.6 and 7.5.7:

**Table 1**Goods, Services and Concessions

| <b>Value</b>                    | <b>Procurement Activity</b>  | <b>Quotation /Tender process Managed by:</b>   |
|---------------------------------|--|--|
| £0-£1,999.99                    | No requirement for a quotation   | Departmental responsibility  |
| £2,000 - £25,000                | Minimum one Quotation in accordance with Rule 8 - Quotations   |  |
| £25,000 – PCR Thresholds        | Minimum of five quotations in accordance with Rule 9   | Corporate Procurement through the Tendering Portal (and Contracts Finder / Find a Tender)          |
| Above the Regulation Thresholds | In accordance with Rule 10 – Tenders and the most appropriate procedure permitted by the Regulations | Corporate Procurement through the Tendering Portal, UK Notice and Contracts Finder / Find a Tender |

**\*WHERE ANY OPPORTUNITY OVER £25k IS OPENLY ADVERTISED, IT MUST BE PLACED ON CONTRACTS FINDER BY CORPORATE PROCUREMENT**

- 7.5.5 For procurements above £1,999, and below £25,000 the Director responsible for the procurement must make adequate arrangements to ensure that the chosen supplier is selected by reference to objective criteria such as technical ability and value for money and that the chosen supplier is not selected for any other contract within the same financial year without undergoing a competitive procurement. A written record of the decision making process must be kept and open to inspection by financial, legal and procurement officers.
- 7.5.6 Irrespective of the value in Rule 7.5.4 Contracts and Framework Agreements that are subject to grant funding requirements shall be advertised in accordance with published guidance.
- 7.5.7 The AO and Corporate Procurement shall ensure that, where proposed Contracts or Framework Agreements, irrespective of their value, might be of interest to potential Economic Operators located in other states, a sufficiently accessible advertisement is published.
- 7.5.8 Quotations for construction works, below regulation thresholds, shall only be invited from contractors who are members of Constructionline and the Safety Scheme in Procurement (SSIP) or any other comparable pre-selection model. If quotations are invited on a restricted basis, at least six contractors shall be invited to quote to be selected in accordance with the Council's policy on the procurement of such contracts (available on the Procurement website).



7.5.9 Where the value of the Contract is below £25,000, its procurement must comply with the general principles contained in Rule 3.1.2 and a Quotation sought if the procurement would otherwise not be so compliant.

## 7.6 **Standards and Award Criteria**

7.6.1 Before inviting Quotations or Tenders, the AO, with support from the Corporate Procurement, must ascertain any relevant British, international standards which apply to the subject matter of the Contract. The AO must include those standards or equivalent where they are necessary to describe the required quality.

7.6.2 The AO must define award criteria that is appropriate to the procurement activity and designed to secure an outcome giving Value for Money for the Council. The basic award criteria shall include one of the following:

- a. Most economically advantageous tender (“MEAT”) – where considerations other than price also apply;
- b. Lowest price – where payment is to be made by the Council;
- c. Highest price – if payment is to be received by the Council;

If MEAT is the chosen award criteria, advice must be obtained from Corporate Procurement to ensure that it is compatible with the UK Directives and the Regulations.

7.6.3 The AO must seek advice from Corporate Procurement to ensure any award criteria are compliant with relevant legislation and best practice.

## 8 **The Tendering Portal**

8.1 The Council’s Tendering portal, shall be used for procurement activities of £25,000 and above.

- a. The web based portal facilitates online tendering to ensure access to a wide spectrum of suppliers, process efficiency, standardisation and compliance.
- b. Officers must use this system for all procurement with a value of £25,000 and above unless the Head of Commercial Procurement, Legal Services and Internal Audit have provided written consent for an Exception.
- c. The elements of the procurement process carried out using the Tendering Portal are highlighted below and within the Procurement Toolkit.

## 9. **Quotations**

### 9.1 **Requests for Quotations**

9.1.1 All Quotations, including those in further competitions under Framework Agreements, must be confirmed in writing before a decision to award can be made and all Quotations, of £25,000 and above in value, must be stored on the Tendering Portal

9.1.2 When requesting a Quotation, an appropriate description of the Goods, Services, execution of Works or Concessions (commensurate with the value of the Contract)

setting out the Council's requirements in sufficient detail must be provided to prospective Bidders to enable the submission of competitive Quotations.

9.1.3 The request for a Quotation shall also make reference to or include the following as a minimum:

- a. the terms and conditions of Contract that will apply; and
- b. notification that Quotations are submitted to the Council on the basis that they are compiled at the Bidder's expense; and
- c. a description of the award criteria as appropriate and in accordance with Rule 7.6; and
- d. the date and time by which a Quotation is to be submitted by; and
- e. that the Council is not bound to accept any Quotations submitted.

9.1.4 The proposed form of Contract must comply with Rule 11 and where possible the Council's standard terms and conditions of Contract must be used. Advice must be sought from Law and Governance Services and approval given by the Director of Law and Governance (Monitoring Officer) where alternative terms and conditions are used.

9.1.5 Where requests for a Quotation are sought from more than one prospective Bidder, where possible, the request must be sent to each Bidder at the same time and contain the same conditions. Any supplementary information must be given on the same basis.

## 9.2 Submission and Receipt of Quotations

9.2.1 Unless agreed by Corporate Procurement, bidders must be given a minimum of two weeks in which to prepare and submit a Quotation, timescales should be consistent with the complexity of the Contract requirement and provide bidders with a reasonable opportunity to prepare and submit a Quotation.

9.2.2 In the event that an abnormally low Quote is received, the AO must take advice from Corporate Procurement on how to proceed.

9.2.3 Any Quotation (including all associated documents) submitted after the specified date and time for submission of Quotations shall only be accepted or considered by the Council with agreement from the Director of Law and Governance (Monitoring Officer) and the Head of Commercial Procurement.

9.2.4 If fewer than the minimum number of Quotations is received as stipulated in Table 1 in Rule 7.5, then advice must be sought for a decision from the Head of Commercial Procurement as to whether to proceed. Any decision must be recorded in writing and stored on the Tendering Portal.

## 9.3 Amendments to Quotations

9.3.1 The Council may accept amendments to Quotations, including those in further competitions under Framework Agreements, providing they are received prior to the closing date for submissions. In such circumstances, any alterations must be made by resubmitting a new Quote and clearly highlighting which Quotation (and

associated documents) is correct and which should be considered as part of the procurement activity.

9.3.2 A Quotation may be amended after the closing date for submission if the amendment is made only in order to correct arithmetical errors or. ambiguities Such amendments may only be made with the prior approval of the Head of Commercial Procurement and Senior Manager Internal Audit.

#### 9.4 Evaluation of Quotations

9.4.1 All compliant Quotations, including those in further competitions under Framework Agreements, must be checked by the AO and validated to ensure they are arithmetically correct. The AO must seek advice from Corporate Procurement if there is any doubt. If arithmetical or other obvious errors are found they should be notified to the Bidder, who should be requested to confirm, or withdraw or seek permission to amend their Quotation. If the rates in the Quotation prevail over the overall price, an amended Quotation may be requested to accord with the rates given by the Tenderer. All amendments to correct any error may only be allowed at the discretion of the Head of Commercial Procurement who may seek advice from the Director of Law and Governance (Monitoring Officer). Any decision to allow an amendment must have regard to the general principles contained in Rule 3.1.2.

9.4.2 Where the Most Economically Advantageous Tender is used as the award criteria, all evaluations including an explanation of the reasons for the scores should be recorded by the AO, and where appropriate (£25,000 and above) recorded on the Tendering Portal. The AO must then confirm to Corporate Procurement that the Contract can be awarded in accordance with Rule 9.5 by submission of a Procurement Smartform.

9.4.3 Officers must ensure transparency and fairness during the evaluation process.

#### 9.5 Contract Award – through a Quotation Process

9.5.1 The Contract will be awarded in accordance with the award criteria used.

9.5.2 Where the Quotation is not within the relevant approved budget but additional budgetary provision is available, the relevant AO, with the approval of the Director of Finance (S151 Officer), may accept the Quotation ensuring compliance with the Financial Procedure Rules/Regulations.

9.5.3 The approval to award the Contract must be given in accordance with the Council's Scheme of Delegation.

9.5.4 All award decisions must be recorded and a Procurement Smartform signed and dated by the SRO or delegated representative for the relevant service and, **where necessary** signed by the Director of Law and Governance (Monitoring Officer) and the Head of Commercial Procurement e.g. if Rules 5 or 12 apply.

9.5.5 Once the decision has been made and the approval given to award the Contract, the AO, through Corporate Procurement, must send a Contract award notice to the winning Bidder(s) and inform unsuccessful bidders of the outcome.

9.5.6 Prior to commencement of the Contract, the Contract must be completed in accordance with Rule 11.2 unless Rule 11.2.5 applies.

9.5.7 Law and Governance Services will, where necessary, advise on the formalities for completion of the contract by parties other than the Council and how to ensure that the Contract is legally binding.

## 10. **Tenders**

### 10.1 **Invitations to Tender**

10.1.1 All Tender opportunities must be placed on the Tendering Portal and, where appropriate, Contracts Finder/Find a Tender in accordance with Table 1 at Rule 7.5.

10.1.2 The Invitation to Tender shall include the following where appropriate:

- a. A form upon which the Tenderer can provide details of its bid (“Form of Tender”);
- b. A reference to the Council’s ability to award in whole, in part or not at all;
- c. A Specification that describes the Council’s requirements in sufficient detail to enable the submission of competitive offers;
- d. the terms and conditions of Contract that will apply;
- e. 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);
- f. A requirement for Tenderers to fully complete and sign all Tender documents including the Form of Tender and certificates relating to canvassing and non-collusion;
- g. Notification that Tenders are submitted to the Council on the basis that they are compiled at the Tenderer’s expense;
- h. A description of the award procedure and the evaluation criteria to be used to assess Tenders including any weighting as considered appropriate and in accordance with Rule 6.6. The evaluation criteria must be clear, concise and unambiguous and must be approved by the AO in consultation with Corporate Procurement. The evaluation criteria cannot be amended once published in the Invitation to Tender;
- i. The method by which any arithmetical errors discovered in the submitted Tenders are to be dealt with and in particular, whether the overall price prevails over the rates in the Tender or vice versa;
- j. Whether the Council is of the view that TUPE will be applicable in relation to the procurement activities;
- k. Whether additional arrangements will be required in relation to pension provision;
- l. Provisions relating to the Council’s termination rights in the event that corruption is discovered;
- m. The relevance and application of any parent company guarantees and/or bonds;
- n. That the Council is not bound to accept Tenders.

10.1.3 The proposed form of Contract must comply with Rule 10 and where possible the Council's standard terms and conditions of Contract must be used. Advice must be sought from Law and Governance Services and approval given by the Director of Law and Governance (Monitoring Officer) where alternative terms and conditions are used.

10.1.4 All Tenderers invited to Tender must be issued with the same information at the same time and contain the same conditions. Any supplementary information must be given on the same basis.

10.1.5 All communications relating to Tenders must be recorded on the Tendering Portal. .

## 10.2 Pre and Post Tender Clarification Procedures

10.2.1 Providing pre-Tender clarification to potential or actual Tenderers, or seeking clarification of a Tender, is permitted subject to Rule 9.2.3.

10.2.2 Post-tender clarification may be undertaken with Tenderers only where it is essential in order to be completely clear about any fundamental aspect of the Tender submission before the completion of the Tender evaluation process and subject to Rule 10.2.3.

10.2.3 All pre- and post- tender communication must be conducted either in writing or in a meeting recorded by Corporate Procurement. All correspondence or meetings must be documented and retained on the Tendering Portal . **Where a meeting is required, there must always be more than one Officer present.**

10.2.4 At all times during the clarification process, the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.

10.2.5 Unless otherwise permitted by the Regulations, in no circumstances are post-award negotiations permitted that would materially change the contract.

## 10.3 Submission and Receipt of Tenders

10.3.1 Tenderers must be given a reasonable period in which to prepare and submit a proper Tender, consistent with the complexity of the Contract requirement and in accordance with the Regulations.

10.3.2 Any tender (including all associated documents) submitted after the specified date and time for submission of Tenders shall only be accepted or considered with agreement from the Director of Law and Governance (Monitoring Officer) and Head of Commercial Procurement.

10.3.3 All Tenders received, including those in further competitions under Framework Agreements, must remain unopened until the specified closing date and time has passed.

10.3.4 If less than the minimum number of Tenders is received as stipulated in Table 1 in Rule 7.5, then advice must be sought for a decision from the Head of Commercial

Procurement on how to proceed. Any decision must be recorded in writing and stored on the Tendering Portal .

#### **10.4 Verifying and Opening Tenders**

10.4.1 Tenders for contracts valued at £500,000 or above must be opened and verified by an Officer who is independent of the procurement activity to which the Tender relates.

10.4.2 Tenders below £500,000 must be opened and verified by Corporate Procurement.

10.4.3 All tenders must be submitted through the Tendering Portal unless an exception in writing has been obtained from the Head of Commercial Procurement.

10.4.3 A record of all tenders received will be kept and will include;

- service name
- contractor's names
- tender value
- date
- reason for any disqualifications
- name of those who were invited but did not submit a tender

10.4.4 Any request for an extension to a tender period by an AO must be made no later than 3 working days before the tender closing date and agreed by the Head of Commercial Procurement. If an extended date is permitted all tenderers must be advised.

#### **10.5 Amendments to Tender**

10.5.1 The Council may accept amendments to Tender submissions, including those in further competitions under Framework Agreements, providing they are received prior to the closing date for submissions.

10.5.2 A Tender may be amended after the closing date for submission if the amendment is made only in order to correct arithmetical errors or ambiguities . Such amendments may only be made with the prior approval of the Head of Commercial Procurement and Internal Audit informed.

#### **10.6 Evaluation of Tenders**

10.6.1 In the event that an abnormally low Tender is received, the AO must take advice from Corporate Procurement on how to proceed.

10.6.2 All compliant Tenders, including those in further competitions under Framework Agreements, must be checked by the AO and validated to ensure they are arithmetically correct. The AO must seek advice from Corporate Procurement if there is any doubt. If arithmetical errors or other ambiguities are found they should be notified to the Bidder, who should be requested to confirm, or withdraw or seek permission to amend their Tender. If the rates in the Tender prevail over the overall price, an amended Tender may be requested to accord with the rates given by the Tenderer. All amendments to correct any error may only be allowed at the discretion of the Head of Commercial Procurement who may seek advice from the Director of

Law and Governance (Monitoring Officer). Any decision to allow an amendment must have regard to the general principles contained in Rule 3.1.2.

10.6.3 Where the Most Economically Advantageous Tender is used as the award criteria, all evaluations including an explanation of the reasons for the scores should be recorded on the Tendering Portal The AO must then confirm to Corporate Procurement that the Contract can be awarded by updating the Smartform

10.6.4 During the evaluation process, the evaluation of quality should be separate from that of price to ensure so that one cannot influence the other before the final scoring of bids is completed. Unless agreed with Corporate Procurement all evaluation criteria should be based on the standard scoring model. For contracts valued at £100k or above, Social Value must be applied to the evaluation and will be a minimum of 5% and a maximum of 20% of the scoring model.

10.6.5

| <b>Standard Scoring Model</b> |                              |                                    |
|-------------------------------|------------------------------|------------------------------------|
|                               | <b>Contracts up to £100k</b> | <b>Contracts of £100k and more</b> |
| <b>Price</b>                  | <b>70%</b>                   | <b>65%</b>                         |
| <b>Quality</b>                | <b>30%</b>                   | <b>20%</b>                         |
| <b>Social Value</b>           | <b>Discretionary</b>         | <b>15%</b>                         |

Officers must ensure transparency and fairness during the evaluation process.

## 10.7 Financial Evaluations

10.7.1 Corporate Procurement shall obtain financial profile reports of bidders for all appropriate procurements of £100k and above.

10.7.2 Financial profile reports for procurements of £100k and above, shall be considered jointly by the commissioning service and Corporate Procurement for the purposes of deciding to include the bid in the evaluation stage. Financial profile reports for procurements equal in value to the appropriate Regulation Threshold and above shall be submitted to the Director of Finance (S151) for the approval or rejection of the bidder to proceed to the evaluation stage in accordance with the following principles.

10.7.3 No tender shall be rejected on the grounds of lack of financial standing unless the criteria for rejection are clearly stated in the published pre-tender documentation and the tender can be rejected in accordance with those criteria.

10.7.4 The financial standing criteria must comply with Regulation 58 of the Public Contracts Regulations 2015 as being related to and proportionate to the subject matter of the contract and compliant with the requirements on minimum yearly turnovers and ratios between assets and liabilities set out in the Regulation.

10.7.5 Where the Director of Finance(S151) considers it to be necessary, annual accounts shall be obtained from bidders for appraisal.

## 10.8 Contract Award – through a Tender process

- 10.8.1 The winning Tenderer shall be awarded the Contract in accordance with the award criteria used.
- 10.8.2 Where the Tender is not within the relevant approved budget but additional budgetary provision is available, the relevant SRO, can only accept the tender by having prior approval of the Director of Finance (S151 Officer), and complying with the Financial Regulations.
- 10.8.3 The approval to award the Contract must be given in accordance with the Council's Scheme of Delegation.
- 10.8.4 All award decisions must be recorded and a Procurement Smartform signed and dated by the SRO for the relevant service and where necessary signed by the Director of Law and Governance (Monitoring Officer) and the Head of Commercial Procurement e.g. if Rules 5 or 12 apply.
- 10.8.5 A contract which has a contract value above the Regulation thresholds can only be awarded after a notice of the proposed award has been given to all unsuccessful Tenderers and the 10 day standstill period has elapsed from the date the notice was given. If the 10 days expire on a non-working day, then the notice period will be deemed to have lapsed on the next working day.
- 10.8.6 Once the decision to award a Contract is made, each Tenderer must be notified by the AO and Corporate Procurement in writing of the outcome. All Tenderers must be notified simultaneously and as soon as possible of the intention to award the Contract to the successful Tenderer(s) and this should be done via the Tendering Portal. The letters must include a description of the relative advantages of the successful Tenderer.
- 10.8.8 All challenges by Tenderers must be dealt with immediately by the SRO/AO, in consultation with Law and Governance Services and Corporate Procurement, before the award process proceeds.
- 10.8.9 Prior to commencement of the Contract, the Contract must be completed in accordance with Rule 11.2 unless Rule 11.2.5 applies.
- 10.8.10 Law and Governance Services will, where necessary, advise on the formalities for completion of the contract by parties other than the Council and how to ensure that the Contract is legally binding.
- 10.8.11 The AO and Corporate Procurement must publish a contract award notice in accordance with Public Procurement Regulations and on the Council's eSourcing Portal no later than 48 days after the date of award of the Contract where a Contract value exceeds the Regulation threshold and has been tendered pursuant to the Regulations or is subject to the relevant provision of the Regulations relating to Contract award.



10.8.12 Contract award letters, feedback to Tenderers and the contract Terms and Conditions, including any incidental documentation must be approved by Corporate Procurement prior to sending, where the value of the Contract is over the Regulation Thresholds.

10.8.13 Contract award letters and notices must be issued through the Tendering Portal unless otherwise authorised by the Head of Commercial Procurement

## 10.9 **Enquiries about the Tender process**

10.9.1 The confidentiality of Tenders and the identity of Tenderers must be preserved at all times insofar as this is compatible with the Councils' obligations under FOIA and EIR.

10.9.2 If the Council receives a request for information under the FOIA as a result of the de-briefing process, the request must be referred to both the Head of Commercial Procurement and the relevant Officer of the Council who deals with such requests. The Council will be responsible for responding to the request.

10.9.3 Any challenges, complaints or requests for feedback, clarification or further information must be referred to the Head of Commercial Procurement who will advise on how to respond and notify the Director of Law and Governance (Monitoring Officer).

## 11. **Contract Provisions and Contract Formalities**

### 11.1 **Contract Provisions**

11.1.1 All contracts must be in writing and must set out the parties' obligations, rights and risk allocations. Advice must be sought from Corporate Procurement as to the appropriate form of Contract to be used and where possible, be on the Council's standard terms and conditions.

11.1.2 All contracts, irrespective of value, shall, where appropriate, clearly specify as a minimum:

- a. What is to be supplied (i.e. the Works, materials, services, matters or things to be furnished, had or done)
- b. The provisions for payment (i.e. the price to be paid and when)
- c. The time, or times, within which the contract is to be performed
- d. The provisions for the Council to terminate the Contract and break clauses.
- e. The provision for collateral warranties from sub-contractors.
- f. The provision of Bond of Surety where applicable, Legal and Procurement to advise.
- f. Dispute resolution process.

11.1.3 Law and Governance Services can provide advice on Contract specific terms and conditions.

### 11.2 **Contract Formalities**

- 11.2.1 Once a decision to award has been made in accordance with Rule 9.5.3 or 10.7.3, the contract must be either be signed by the Officer authorised to award the Contract under Council's Scheme of Delegation or by Seal and in accordance with Rule 11.3.2.
- 11.2.2 Where the Contract is to be in writing, the AO must arrange with Law and Governance Services for the Contract including all schedules and appendices to be signed by all parties. This can be done in two ways:
- a. Sending bound hard copies of the Contract to the winning Bidder(s) or Tenderer(s) for signing; or
  - b. Sending electronic copies of the Contract to the winning Bidder(s) or Tenderer(s) for printing, binding and signing.
- 11.2.3 Before arranging for the Contract to be signed or sealed on behalf of the Council, the Law and Governance Services must check that the returned signed Contract has not been amended or altered by the winning Bidder(s) or Tenderer(s) without prior written agreement by the Council.
- 11.2.4 All Contracts which are to be formally completed in writing must be completed before the Goods are supplied, or the Service, execution of Works or Concessions Contract begins, except in exceptional circumstances, and then only with the prior approval from the Director of Law and Governance (Monitoring Officer).
- 11.2.5 All contracts must include clear provisions as to the amounts and timing of payments due under the contract. Payments should be paid in arrears upon the production of satisfactory evidence of performance. Where the total amount payable under the contract cannot be ascertained the contract must include a clear mechanism for calculating the amounts due, for example by reference to a bill of quantities or schedule of rates, and the maximum amount payable must be stated.
- 11.2.6 Approval of the relevant SRO and the Head of Commercial Procurement is required if payment is required in advance or partially in advance as necessary for provision of the service or in line with statutory guidance. Evidence of such approval and the reasons for it must be recorded.
- 11.2.7 A purchase order must be raised in the e-Procurement system for all goods, services and works requirements to be acquired through an EPS and for all Contracts. The purchase order must attach the terms and conditions of Contract between the Council and the Contractor. The exception to this is where payment is to be made by certificate within the contract conditions.  
(e.g. New Engineering Contract 3)
- 11.2.8 The AO must ensure that the person signing on behalf of the Contractor has requisite legal authority to bind the Contractor. Where there is any doubt, the AO must seek advice from Legal Services.

### 11.3 **Contracts under Seal**

11.3.1 A Contract must be sealed where:

- a. The Council wishes to extend the liability period under the Contract and enforce its terms for up to 12 years; or
- b. The price to be paid or received under the Contract is a nominal price and does not reflect the value of the goods or services; or
- c. The Contract value is £100,000 or above.

11.3.2 The seal must be affixed in accordance with the provisions of the Council's Constitution.

11.3.3 All contracts with a value of £100,000 or over will be sealed by Law and Governance Services. Contracts between £50,000 and £100,000 in value shall be signed by an authorised signatory from Law and Governance Services.

11.3.4 When the steps for finalising the contract are complete the contract can be issued to the supplier for execution as a Deed or for signature (as appropriate).

11.3.5 The supplier will seal or sign the contracts in duplicate but leave them undated.

11.3.6 Law and Governance Services must notify Corporate Procurement, Finance and the relevant SRO when the contract has been executed.

11.3.7 The contract will be dated when the Council's seal is affixed.

11.3.8 Electronic signatures may be used in accordance with the Electronic Signatures Regulations 2002, provided the security arrangements have been approved by the relevant SRO.

#### 10.4 **Transfer of Contracts**

11.4.1 No Contract should be transferred from one Contractor to another without first consulting Law and Governance Services. Contracts can only be transferred if approved in accordance with the table below:

| <b>Value of Contract/Quote</b> | <b>Decision Maker</b>   |
|--------------------------------|---|
| All values                     | Director of Finance (S151 Officer) and the Director of Law and Governance (Monitoring Officer) or their nominees in accordance with the Council's Scheme of Delegation and consultation with the Head of Commercial Procurement |

#### 11.5 **Insurance**

11.5.1 The AO is responsible for checking that all chosen contractors provide written evidence of adequate insurance to cover public liability, employers' liability and if necessary professional indemnity for the full duration of the contract.

11.5.2 Indemnity levels must reflect the risk to the Council which typically will be for each and every contract;

- £10 million for Public liability
- £5 million for Employers liability (or statutory minimum)
- £2 million for Professional indemnity

11.5.3 In some cases where the contract is of low risk the levels required may be reduced but only following written consent of the Director of Finance (S151 Officer) or nominee. For major contracts of long duration where contractor’s exposure to liability is high, it may be appropriate to require higher limits.

**12. Waiving the Rules**

**12.1 Procedure Rules Approval**

- 12.1.1 Where an Officer intends to seek an exemption or exception to these rules as they apply to all procurements they shall arrange for consent to be obtained in writing.
- a. Such consent shall be evidenced on a Procurement Smartform Document signed by the authorised appropriate Officer/s depending on the value of the procurement as set out in the table below **prior** to the start of the procurement process.
  - b. The Procurement Smartform must be completed by the SRO/AO quoting which of the Exceptions listed below apply and why. The Procurement Smartform must be checked by Law and Governance Services and Procurement prior to signing by the authorised Officer/s.
  - c. Consent to waiving the rules will only be approved in exceptional circumstances and only when the Public Contract Regulations do not apply.

**12.2 Summary Table: Officers authorised to approve waiving of the Contract Procedure Rules**

| <b>Under £50,000</b> | <b>Under £100,000</b>   |  | <b>£100,000 and over</b>  | <b>Over threshold</b>   |
|----------------------|-------------------------|--|---|---|
| Category Manager     | Senior Category Manager |  | Approval of Head of Commercial Procurement and Director of Law and Governance (Monitoring Officer) or Delegated representatives | Unable to waive unless exempt from the Regulations and the Chief Executive, Director of Law and Governance (Monitoring Officer) and the Head of Commercial Procurement provide prior approval |

**12.3 Exemptions**

- 12.3.1 Contracts which are exempt from the application of the Regulations and these rules include:
- a. Contracts relating solely to the acquisition or disposal of an interest in land and buildings
  - b. Transactions conducted by the Director of Finance (S151 Officer) in respect of dealing in the money market or obtaining finance for the Council
  - c. Employment contracts

**12.4 Exceptions**

- 12.4.1 Requests to waive these rules for under UK threshold contracts (or where the thresholds do not apply) may be authorised in the following circumstances, supported in all cases by appropriate evidence;
- a. goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative.
  - b. compatibility issues such that procurement from another source would be uneconomic given the investment in previous infrastructure;
  - c. a waiver of the rules would be in the interests of the Council, be lawful, and provide value for money;
  - d. Where there is a legal requirement to contract with a particular supplier.
  - e. Contracts awarded to sole suppliers because of exclusive rights.

**12.5 Records of Waiver**

12.5.1 All exemptions or exceptions should be recorded by Corporate Procurement in the Contract Procedure Rules Exceptions Register and be available for inspection as required. All original Procedure Rules Approval Document evidencing waiving of the rules must be available when required.

**13. Extension or Variation/Overspend of Contracts**

13.1 The relevant SRO must not enter into variations or overspends which are within the scope of the original procurement but would increase the value of the contract singly or cumulatively by an additional 5% for contracts which are valued at £100,000 or more and 10% contracts up to £100,000 beyond the approved budget without the approval of the Director of Finance (Chief Finance Officer). A business case will be required to obtain this approval. Evidence of such approval must be recorded in writing in a Procurement Smartform.

13.2 Contract extensions must be considered for approval by the Director of Finance and the Head of Corporate Procurement (or delegated representatives). Evidence of approval granted or rejected must be recorded in writing in a Procurement Smartform

**Summary Table: Procurement Officers authorised to approve contract extensions.**

Extensions

| <b>Under £50,000</b> | <b>Under £100,000</b>   | <b>£100,000 and above</b>                       |
|----------------------|-------------------------|---|
| Category Manager     | Senior Category Manager | Head of Procurement or Delegated representative |

- 13.2 The Head of Commercial Procurement will keep a record of such approvals.
- 13.3 The SRO can extend or vary a contract provided;
- there is provision within the contract to extend (and this has not already been utilised to its full extent)
  - the budget has been confirmed in writing or confirmation there is the budget available
  - authority is recorded in writing and
  - Legal Services prepare the documentation to record the terms of the extension or variation (if necessary depending upon the provisions of the contract).
- 13.4 If there is no provision within the contract notice or in the contract terms for extensions, legal advice should be sought.
- 13.5 Legal advice must be sought on the need to re-procure if changes amount to a significant or material alteration to the contract advertised or there is a proposed change to a named subcontractor.

**14. Sale of Council Goods or Assets**

- 14.1 When selling Council goods or assets Officers must comply with the aims of these rules (Rule 3) specifically the need to achieve best value, ensure transparency, openness, nondiscrimination, probity and accountability.
- 14.2 Appropriate authority under the relevant scheme of delegation for the sale must be evidenced before commencing the sale process.
- 14.3 The table below sets out the minimum measures Officers must take to ensure that sales achieve best value.

| Sale with value of under £10,000               | Sale with value under £50,000  | Sale with value over £50,000 |
|--|--|------------------------------|
| Minimum of 3 offers required wherever possible | Procurement to advise on the need to advertise to achieve an appropriate level of interest | Advertise sale appropriately |

- 14.4 Corporate Procurement can advise officers on compliance regarding sales if required.

**15. Application of the Contract Procedure Rules to Schools**

- 15.1 The Schools Fair Funding Scheme (FFS) governs the management by each school of its delegated and devolved budget as determined in s.48 of the School's Standards and Framework Act 1998. Schools (other than academies) are encouraged to follow these Rules, (unless Governing bodies have taken decisions to

change reporting arrangements) but where there is conflict between the Rules and the FFS, the FFS will take precedence.

## 16. **Declarations of Interest, Anti-Bribery and Corruption**

- 16.1 The Council's reputation with regards to procurement activity is important and should be safeguarded from any imputation of dishonesty or corruption. All elected Members and Officers are reminded of their responsibilities in relation to gifts, hospitality and any conflicts of interest and should ensure they comply with the obligations set out in the Council's Members' Code of Conduct and Officers' Code of Conduct respectively and any other relevant policies, guidance or strategies relating to bribery, fraud and corruption issued or endorsed by the Council from time to time.
- 16.2 Any Member or Officer must declare any interest which could influence their judgment in relation to procurement activity in accordance with the Council's Code of Conduct.
- 16.3 No gifts or hospitality should be accepted from Bidders or Tenderers involved in procurement activity except in accordance with the Council's Code of Conduct.
- 16.4 Members and Officers involved in a procurement process must not have contact with Bidders or Tenderers whilst documents are out to tender or whilst bids are being evaluated, except, formally, through the Tendering Portal . Exceptional circumstances, where contact forms part of the process, can only be conducted with the prior written consent of the Director of Law and Governance (Monitoring Officer) and Head of Commercial Procurement.

## 17. **Reporting to Members**

- 17.1 The Officer responsible for awarding the Contract shall notify in writing the Head of Commercial Procurement who shall report at half yearly intervals to the Audit and Risk Management Committee, whenever;
- a contract is awarded the total value of which exceeds £500,000 or
  - a variation or extension to a contract value of £100,000 of greater is approved by the Director of Finance (S151 Officer) or
  - there is a waiver of the Contract Procedure Rules in relation to a contract which exceeds £100,000 in value.

## 18. **Contract Management**

- 18.1 All Contracts must have a Council Contract Owner for the entirety of the Contract. In the event that there is no named Contract Owner the AO will fulfil the role of Contract Owner.
- 18.2 The Contract Owner will be responsible for reviewing monitoring and evaluating the contract to ensure that its provisions and the services within it are being followed and performed as they should be.
- 18.3 During the life of the Contract, the Contract Owner should monitor the Contract in respect to the following:

- a. Performance (against agreed KPIs where relevant);
- b. Compliance with specification and contract;
- c. Cost;
- d. Any Best Value duties;
- e. Continuous Improvement;
- f. user satisfaction; and
- g. Risk Management
- h. Be responsible, in accordance with the Council's Equality Duties, for ensuring that workforce profiles are submitted annually from all contractors.

18.4 Where the Contract is to be re-let, this information should be available early enough to inform the approach to re-letting the next contract.

18.5 Corporate Procurement can provide advice and support on good practice in performance management of Contracts £25,000 and over

18.6 All Contracts, of £25,000 and over in value, must be included and published on the Contracts Register maintained by Corporate Procurement. This is a mandatory requirement and it is the responsibility of the SRO for each Service to ensure that they have informed Corporate Procurement of the Contracts they are responsible for and provided them with the information necessary to update the Contracts Register accordingly.

## 19. **Retaining Relevant Documents**

19.1 All records in relation to the award of Contracts and the associated procurement process, including supporting documentation, shall be stored by Corporate Procurement in an electronic filing system to be available for inspection by the Council's internal and external auditors, or Officer, immediately upon request. Records will be retained in accordance with relevant regulations applicable to electronic record retention.

19.2 Records of contracts shall be retained as follows:

|   |   |
|---|---|
| Contracts with a value between £25,000 and £249,999                   | for six years after the end of the Contract   |
| All sealed Contracts and Contracts with a value of £250,000 and above | For twelve years after the end of the Contract  |
| Contracts that are grant funded regardless of value                   | Must comply with retention period above or the terms and conditions of the grant, whichever is the longer |

19.3 If legislation related to any individual Contract stipulates a longer retention period than this, then the legislation requirements takes precedence over the Council's minimum periods.

19.4 Once executed, the Council shall retain one original of the complete Contract documents in line with the timescales in the table above and one copy of the complete Contract documents shall be provided to the Contractor.