

# **Section E**

## **Contract Procurement Rules**

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#### **DEFINITIONS**

# A BRIEF GUIDE TO CONTRACT PROCUREMENT RULES

These Contract **Procurement** 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.

Officers responsible for purchasing must comply with these Contract **Procurement** Rules. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract, for example, if Rule 8.1 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations in writing or tender submissions.

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.

Key considerations for officers engaged in purchasing works, goods and services include:

- ❖ 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, Crown Commercial Service agreement, AGMA or other Central Purchasing Body arrangements you can make use of before undergoing a competitive process.
- ❖ Normally allow at least four weeks for submission of bids (not to be submitted by fax or e-mail unless allowed for in the Invitation to Tender documents).
- ❖ 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.

# SCOPE OF CONTRACT PROCUREMENT 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
- 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 other relevant policies.

## 2. OFFICER RESPONSIBILITIES

### 2.1 Officers

2.1.1 Officers responsible for purchasing or disposal must comply with these Contract **Procurement** Rules, Financial Regulations, the Code of Conduct and with all UK and European Union binding legal requirements.

2.1.2 Officers must:

- have regard to the Purchasing Guidance including any relevant Gateway procedures
- comply with the Council's Corporate Procurement Guidance, Contract Management Standards and any Directorate Commissioning Strategies in place at the time the decision is taken
- 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 an auditable reason not to
- keep the records required by Rule 6
- take all necessary legal, financial and professional advice.

2.1.3 When any employee either of the Council or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) issues are considered and obtain legal and personnel advice before proceeding with inviting Tenders or Quotations.

### 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 18.3) and arrange their safekeeping on Council premises
  - exemptions recorded under Rule 3.2.

2.2.2 The delegated powers of Chief Officers set out in these contract procurement rules may be exercised by other Officers authorised by the Chief Officer with the delegated power to act on their behalf and in their name, provided that those Officers report directly or indirectly to the Chief Officer with the delegated power and that administrative procedures are in place to record the authorisation and to record and monitor decisions so taken.

- 2.3 The Officer must comply with the Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the Bribery Act 2010.
- 2.4 Officers shall comply with s117 of the Local Government Act 1972 in relation to the declaration of interest in contracts.

### **3. EXEMPTIONS, COLLABORATIVE AND E-PROCUREMENT ARRANGEMENTS**

- 3.1 The Executive has power to waive any requirements within these Contract **Procurement** Rules for specific projects, and any such decision may be a Key Decision.
- 3.2 A Chief Officer may, (subject to the Deputy Chief Executive and City Treasurer's and a Strategic Management Team (as defined in Part 8 of the Constitution) member's written approval where the Total Value is likely to exceed £50,000 or where the proposed arrangement is estimated to exceed £50,000 in income to the Council) waive any requirements within these Contract **Procurement** Rules, where they are satisfied:
- Goods are to be bought at auction and the Council's best interest will be served by purchase through auction and has agreed an upper limit for bids, or
  - Only one contractor can provide the goods, services or works required and there is no reasonable alternative contractor, or
  - The need for the goods services or works is so urgent that the time needed to comply with the rules would be prejudicial to the Council's interests, or
  - There are value for money reasons justifying a waiver.

Applications to waive any requirement shall be made using the Corporate Procurement Service template documentation available from the Corporate Procurement Service.

- 3.3 Where a proposed contract or agreement is subject to the EU Procedure, a Chief Officer, the Deputy Chief Executive and City Treasurer and Strategic Management Team (as defined in Part 8 of the Constitution) members have no delegated powers. No exemption under Rules 3.1 and 3.2 can be used if the EU Procedure applies.
- 3.4 All exemptions, and the reasons for them, must be recorded by the Chief Officer.
- 3.5 In order to secure Value for Money, the Council may enter into collaborative procurement arrangements with other local authorities, government departments, public bodies or Central Purchasing Bodies and may use Framework Agreements let by other local authorities, government departments, public bodies or Central Purchasing Bodies.
- 3.6 All purchases made via a local authority purchasing consortium are deemed to comply with these Contract **Procurement** Rules and no exemption is required. However, purchases subject to the EU Procedure must be let under the EU Procedure, unless the consortium or Central Purchasing Body has satisfied this requirement already by letting its agreement in accordance with the EU Procedure on behalf of the Council or specifying the Council as a potential user.
- 3.7 Advice must be sought from the City Solicitor's department and/or the Corporate Procurement Service regarding any contracts entered into through collaboration with other local authorities or other public bodies or use of Central Purchasing Body arrangements to ensure compliance with the procurement rules.
- 3.8 The use of e-procurement technology does not negate the requirement to comply with all applicable elements of these contract procurement rules, particularly those relating to competition and Value for Money.

#### **4. RELEVANT CONTRACTS**

- 4.1 All Relevant Contracts and Framework Agreements must comply with these Contract **Procurement** Rules. A Relevant Contract is any arrangement made by the Council (including schools) for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:
  - the carrying out of construction and engineering works
  - the supply or disposal of goods
  - the hire, rental or lease of goods or equipment and
  - the delivery of services.
- 4.2 Relevant Contracts do not include:

- contracts of employment which make an individual a direct employee of the Council, or
- agreements regarding the acquisition, disposal, or transfer of land which do not form part of a wider transaction under which the Council procures works, goods or services.

# 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 Guidance, by:

- satisfying themselves that they have the necessary authority to deal with the purchase and that there is budget provision for the purchase
- taking into account the requirements from any relevant **internal or external** 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
- consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring drafting the terms and conditions that are to apply to the proposed contract
- where the purchase is to be funded from mainstream capital or regarded as capital by the Deputy Chief Executive and City Treasurer it is submitted to the Deputy Chief Executive and City Treasurer for comment as soon as practicable
- setting out these matters in writing if the Total Value of the purchase exceeds £30,000.

5.2 and by confirming that:

- there is member or delegated approval for the expenditure 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.

5.3 Prior to procurement the Officer must ensure that consideration has been given to whether the purchase fits within the commissioning strategy of the service, as set out in the service's Commissioning Forward Plan.



- 5.4 Social Value must be included in any specification, whether done through formal tender or by approval to purchase from a Chief Officer or by any other way. It must be clearly evidenced how a contract will deliver its social value commitments and how this will be monitored post contract award.
- 5.5 Specifications should not be approved or used in procurement without clear statements of requirements for performance measurement and monitoring. These should be approved by Chief Officers or their formal delegated Officers. Implementation plans should be developed in draft at specification stage and refined during the evaluation process so that officers can be clear with bidders how contract monitoring will work in practice
- 5.6 Key stakeholders must be kept informed during the commissioning, procurement and contract lifetime, as set out in the MCC Contract Management Standards

## **6. RECORDS**

- 6.1 Where the Total Value is less than £30,000, the following records must be kept:
- a unique reference number for the contract and the title of the contract
  - invitations to quote or tender and Quotations or Tenders
  - a record:
    - of any exemptions and the reasons for them
    - of any Contracting Decision and the reasons for it including the evaluation of the Quotation or Tender
  - 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 £30,000 the Officer must record (using the Corporate Procurement Service template documentation available from the Corporate Procurement Service):
- a unique reference number for the contract and the title of the contract
  - 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
  - Invitation to Tender documents sent to and Tender documents received from Candidates

- pre-tender market research (if any)
- clarification and post-tender negotiation (to include minutes of any meetings)
- the contract documents
- post-contract evaluation and monitoring
- communications with Candidates and with the successful contractor throughout the period of the procurement.
- record and keep the approval of specification (including Social Value and Contract Monitoring arrangements) by the Chief Officer.

6.3 Records required by this rule must be kept for six years after the end of the contract.

## **7. ADVERTISING, APPROVED LISTS AND FRAMEWORK AGREEMENTS**

### **7.1 Identifying and Assessing Potential Candidates**

7.1.1 Officers shall ensure that, where proposed Relevant Contracts or Framework Agreements, 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 arrangement 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
- portal websites specifically created for contract advertisements (such as the UK Government Contracts Finder website)
- a local or national newspaper or specialist publication
- 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 or Framework Agreement have necessary:

- economic and financial standing, and
- technical ability and capacity

to fulfil the requirements of the Council.

## 7.2 Framework Agreements

7.2.1 The term of a Framework Agreement which is subject to the EU Procedure must not exceed four years save in exceptional cases duly justified, in particular by the subject matter of the Framework Agreement and Framework Agreements may be entered into with one or several providers.

7.2.2 Where a Framework Agreement is concluded with a single provider contracts let under that Framework Agreement shall be awarded within the limits of the terms specified in the Framework Agreement

7.2.3 Where a Framework Agreement is concluded with more than one provider contracts based on that Framework Agreement shall be awarded as follows:

- (i) direct award without re-opening competition where all the terms governing the provision of the works/services/supplies concerned are set out in the Framework Agreement and the objective criteria for determining which provider shall perform the contract are identified in the Framework Agreement; or
- (ii) where the Framework Agreement sets out all the terms governing the provision of the works/services/supplies concerned and where the Framework Agreement states that it may be used, partly by direct award and partly by reopening competition provided that the Framework Agreement sets out the objective criteria which will be used to determine whether a contract will be placed by a re-opening of competition or by direct award; or
- (iii) where the Framework Agreement does not include all the terms governing the provision of the works/services/supplies concerned, by holding a further competition with the providers which are party to the Framework Agreement

# CONDUCTING PURCHASE AND DISPOSAL

## 8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The Officer must calculate the Total Value.

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

### 8.1 Purchasing – Competition Requirements

8.1.1 Subject to Rules 8.1.2 and 8.5 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   |
|------------------------|---|
| Up to £2,000           | One oral Quotation (confirmed in writing where the Total Value exceeds £500)  |
| £2,001 – £30,000       | At least three written Quotations   |
| £30,001 – EU Threshold | Invitation to Tender by advertisement to at least three Candidates (the opportunity must also be advertised on the UK Government Contracts Finder website within 24 hours of the opportunity being advertised in any other way) |
| Above EU Threshold     | EU Procedure (where advertisement required under EU Procedure the opportunity must also be advertised on UK Government Contracts Finder website)  |

8.1.2 Irrespective of Rule 8.1.1 Relevant Contracts and Framework Agreements that are subject to European Union grant funding requirements shall be advertised in accordance with published guidance, ERDF National Procurement Requirements (ERDF-GN-1-004) as amended from time to time.

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 Procurement Rules.

8.1.4 Where the Total Value exceeds £50,000 the Corporate Procurement Service should be consulted prior to the commencement of the procedure.

## 8.2 Assets for Disposal

8.2.1 Assets for disposal must be sent to public auction except where the Deputy Chief Executive and City Treasurer is satisfied that better Value for Money is likely to be obtained by inviting Quotations or Tenders (these may be invited by advertising on the Council's web site).

## 8.3 Providing Services to External Purchasers

8.3.1 The Deputy Chief Executive and City Treasurer must be consulted where contracts to work for other organisations are contemplated and any bid, tender and contract for work shall be made in accordance with the Financial Regulations.

## 8.4 Collaborative and Partnership Arrangements

8.4.1 Collaborative and partnership arrangements where services/goods/works are supplied to the Council are subject to all UK and EU procurement legislation and must follow these Contract **Procurement** Rules. If in doubt, Officers must seek the advice of the City Solicitor and the Corporate Procurement Service.

## 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 **Procurement** Rules and as outlined below.

| Total Value            | Award Procedure  |
|------------------------|--|
| Up to £30,000          | One oral Quotation (confirmed in writing where the Total Value exceeds £2,000) approved by a relevant Approving Officer                          |
| £30,001 – EU Threshold | Three written Quotations (the successful one shall be approved by a relevant Approving Officer)  |
| Above EU Threshold     | EU Procedure (where advertisement required under EU Procedure the opportunity must also be advertised on UK Government Contracts Finder website) |

## **Agreements shall be completed as specified in Rule 18.2 (Contract Formalities).**

- 8.5.2 Irrespective of Rule 8.5.1 Relevant Contracts and Framework Agreements that are subject to European Union grant funding requirements shall be advertised in accordance with published guidance, ERDF National Procurement Requirements (ERDF–GN-1-004) as amended from time to time.
- 8.5.3 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.
- 8.5.4 Records of consultancy appointments shall be maintained in accordance with Rule 6.
- 8.5.5 Consultants shall be required to provide evidence of, and maintain appropriate professional indemnity insurance policies for the periods specified in the respective agreement.
- 8.5.6 The instruction of external legal advisers must only be carried out by the City Solicitor and the instruction of counsel shall not be subject to the requirements of Rules 8.5.1 – 8.5.4 (inclusive)

## **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 **or favour** 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.

## **10. STANDARDS AND AWARD CRITERIA**

- 10.1 The Officer must ascertain the standards necessary to properly describe the subject matter of the contract having regard to any relevant British, European or international 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 one of the following:
  - ‘most economically advantageous’ where considerations of quality, price, social value and other relevant factors apply or
  - ‘lowest price’ where payment is to be made by the Council (provided that lowest price is not permissible under the EU Procedure) or

- 'highest price' if payment is to be received

If the first criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, relevant community benefit and social considerations (where permitted by UK and European Union Law and in accordance with the Council's Ethical Procurement Policy) aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters. Supplier suitability assessment questions may also be asked by the Council provided such are relevant to the subject matter of the procurement, are proportionate and are used to assess whether bidders meet requirements or minimum standards of suitability, capability, legal status and financial standing. Officers shall have regard to the Purchasing Guidance when defining the Award Criteria.

### 10.3 Award Criteria must not include:

- non-Commercial Considerations that are prohibited under UK and European Union law
- 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 the Council reserves the right to reject a Tender that is not received by the date and time stipulated in the Invitation to Tender. No Tender delivered in contravention of this requirement shall be considered without the Deputy Chief Executive and City Treasurer's prior approval.

11.2 All Invitations to Tender shall include the following:

- 11.2.1 A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
- 11.2.2 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).
- 11.2.3 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.
- 11.2.4 Notification that Tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense.
- 11.2.5 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.



- 11.2.6 Unless the Tender is sought in accordance with an electronic tendering process which is approved by the Deputy Chief Executive and City Treasurer and City Solicitor and/or which is permitted by the Invitation to Tender documents, a statement that any Tenders submitted by fax or other electronic means shall not be considered.
- 11.2.7 A submission on contract monitoring should be required from bidders, within the qualifying and quality documentation at the Invitation to Tender stage
- 11.2.8 Bidders' contract monitoring proposals should achieve a minimum threshold as defined in the Invitation to Tender Documents to be considered for tender evaluation

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 18).

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

## **12. SHORTLISTING**

12.1 Shortlisting for contracts or agreements which are not subject to the EU Procedure may only be undertaken where permitted by UK law. Special rules apply to Shortlisting for contracts or agreements which are subject to the EU Procedure and these are set out in the EU Procedure.

## **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 Council's requirement. Normally at least four weeks should be allowed for submission of Tenders. The EU Procedure lays down specific time periods (see guidance in the Purchasing Guidance).

13.2 All Tenders must be returned in accordance with the Invitation to Tender.

13.3 Tenders received by fax or other electronic means (e.g. e-mail) must be rejected, unless they have been sought in accordance with an electronic tendering process which is approved by the Deputy Chief Executive and City Treasurer and City Solicitor and/or they are permitted by the Invitation to Tender documents,

13.4 Each Tender must be:

- suitably recorded so as to verify the date and precise time it was received
- adequately protected on receipt to guard against amendment of its contents.

## **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) are 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.

## **15. EVALUATION**

- 15.1 Apart from the debriefing required or permitted by these Contract **Procurement** 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 Invitation to Tender as being dominant, an amended Tender price may be requested to accord with the rates given by the tenderer.

## **16. POST TENDER NEGOTIATIONS**

- 16.1 Post-tender negotiations under the EU Procedure can only be undertaken on the grounds allowing for such specified in the EU Procedure. For all other procedures if post-tender negotiations are necessary after a single-stage Tender process or after the second stage of a two-stage Tender process, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the most economically advantageous 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.
- 16.2 Post-tender negotiation must only be conducted in accordance with the guidance issued by the City Solicitor who, together with the Corporate Procurement Service, 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 division independent to that leading the negotiations.
- 16.3 Where post-tender negotiation would result in fundamental changes to a Relevant Contract or Framework Agreement (such as to the specification or price) which would be likely to distort competition the contract or agreement must not be awarded but re-tendered.

## **17. AWARD OF CONTRACTS AND FRAMEWORK AGREEMENTS AND DEBRIEFING CANDIDATES**

- 17.1 Chief Officers may accept Quotations and Tenders received in respect of proposed contracts and Framework Agreements, provided they have been sought and evaluated fully in accordance with these Contract **Procurement** Rules and, in respect of proposed contracts and Framework Agreements that are expected to exceed £250,000 (relating to either expenditure or income) with the approval of the Deputy Chief Executive and City Treasurer and a Strategic Management Team (as defined in Part 8 of the Constitution) member.
- 17.2 For contracts and Framework Agreements subject to the EU Procedure, the Officer must notify all Candidates simultaneously and as soon as possible of the intention to award the contract or Framework Agreement to the successful Candidate and provide information required by the EU Procedure specifying the name(s) of the successful Candidate(s), the award criteria and the reasons for the decision including the score of the Candidate being debriefed and the successful Candidate(s) and the characteristics and relative advantages of the successful tender. 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 or Framework Agreement. If the decision is challenged by an unsuccessful Candidate then the Officer shall not award the contract or Framework Agreement until the advice of the City Solicitor's department and Corporate Procurement Service has been obtained. The requirement to notify candidates of the intention to award a contract or Framework Agreement in this Rule 17.2 does not apply to:
- contracts and Framework Agreements that are not subject to the full application of the EU Procedure (such as social and other specific services listed under the EU Procedure, or where the value is under the EU Threshold) and
  - contracts subsequently called off and awarded based on a Framework Agreement that was let in accordance with the EU Procedure
- 17.3 If a Candidate requests in writing the reasons for a Contracting Decision relating to an unsuccessful Quotation or Tender it has submitted, the Officer must give in writing the name(s) of the successful Candidate(s), the award criteria and the reasons for the decision including the score of the candidate being debriefed and the successful Candidate(s) and the characteristics and relative advantages of the successful tender.

# CONTRACT AND OTHER FORMALITIES

## **18. CONTRACT DOCUMENTS**

### **18.1 Relevant Contracts**

18.1.1 All Relevant Contracts that exceed £30,000 shall be in writing.

18.1.2 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.

18.1.3 The Council's standard terms and conditions as defined by the City Solicitor, or:

- standard contract forms issued by a relevant professional body; or
- when appropriate, officers working in formal partnership arrangements with the NHS should comply with NHS forms for NHS contracts;

must be used wherever possible. Agreement from the City Solicitor must be sought if any variation to such terms and conditions.

18.1.4 In addition, every contract or agreement 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
- data protection requirements, if relevant
- Equality Act 2010 requirements
- anti-bribery compliance
- Freedom of Information Act requirements
- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.

- that the Council shall pay the contractor and the contractor shall pay its subcontractors within 30 days of an undisputed invoice

18.1.5 The advice of the City Solicitor must be sought for the following Relevant Contracts or Framework Agreements:

- those involving leasing arrangements
- where it is proposed to use a supplier's own terms or
- those that are complex in any other way.

## 18.2 Contract Formalities

18.2.1 Agreements shall be completed as follows:

| Total Value   | Method of completion      | By  |
|---|---------------------------|---|
| Up to £30,000   | One Signature             | Authorised Signatory                        |
| £30,001 - £150,000  | Two signatures or sealing | Two Authorised Signatories or see Rule 18.3 |
| Above £150,000 AND construction and related professional service appointments | Sealing                   | See Rule 18.3                               |

18.2.2 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances.

18.2.3 Contracts between £50,000 - £150,000 that are classed as low risk (as set out in the Council's Contract Management Standards, and use MCC standard terms and conditions only require one signature.

## 18.3 Sealing

18.3.1 Where contracts or agreements are completed by each side as a deed, such contracts shall be executed by the fixing of the Council's seal, and must be witnessed by an Authorised Signatory.

18.3.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal.

18.3.3 A contract must be sealed where:

- the Council may wish to enforce the contract more than six years after its end

- the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services
- there is any doubt about the authority of the person signing for the other contracting party.

## **19. BONDS AND PARENT COMPANY GUARANTEES**

19.1 The Officer must consult the Deputy Chief Executive and City Treasurer about whether a Parent Company Guarantee is necessary when a Candidate is a subsidiary of a parent company and:

- the Total Value exceeds £250,000, or
- selection and/or award is based on evaluation of the parent company, or
- there is some concern about the stability of the Candidate.

19.2 The Officer must consult the Deputy Chief Executive and City Treasurer 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.

# 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 Council contract manager for the entirety of the contract.
- 20.2 Contract managers must follow the procedures set out in the Council's Purchasing Guidance.
- 20.3 The Contract Management Standards set out a governance framework with the roles and responsibilities of all involved in contract management decisions during each phase of the commissioning and contract management lifecycle.
- 20.4 Specifically executive members should be kept informed at each stage of the commissioning and contract management stages as set out in the Commissioning and Contract Management Standards.

## **21. RISK ASSESSMENT AND CONTINGENCY PLANNING**

- 21.1 A business case 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.
- 21.2 For all contracts with a value of over £75,000, contract managers must consider maintaining a risk register during the contract period undertake appropriate risk assessments and for identified risks ensure contingency measures are in place.

## **22. CONTRACT MONITORING, EVALUATION AND REVIEW**

- 22.1 The Deputy Chief Executive and City Treasurer may require that a Council-developed Gateway review process may 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.
- 22.2 During the life of the contract, the Officer must monitor in respect of:
- performance
  - compliance with specification and contract
  - cost
  - user satisfaction and risk management.

## DEFINITIONS

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| “Approving Officer”                       | An officer referred to and/or identified in Chapters 2 and 3A of Part 3 (scheme of delegation) of the Constitution  |
| Authorised Signatory                      | An officer authorised by the City Solicitor in accordance with the Council’s constitution to sign a contract or the Council’s seal.   |
| Award Criteria                            | The criteria by which the successful Quotation or Tender is to be selected (see further Rules 10 and 11.2.5).   |
| 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. |
| Candidate                                 | Any person who applies for, asks or is invited to submit a Quotation or Tender.   |
| Central Purchasing Body                   | Means a contracting authority which provides centralised purchasing activities and which may also provide ancillary purchasing activities   |
| Chief Officers                            | The Officers defined as such in Part 8 of the Constitution.   |
| City Solicitor                            | As identified in the Constitution.  |
| Deputy Chief Executive and City Treasurer | The Council’s Deputy Chief Executive and City Treasurer or such other Officer as may be designated Deputy Chief Executive and City Treasurer by the Council.  |
| Code of Conduct                           | The code of conduct for employees as set out from time to time in the Constitution.   |
| Commercial Board                          | The group of Officers that meets regularly to consider procurement issues on a corporate basis.   |
| 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 of which those Contract <b>Procurement</b> Rules form part issued under Section 9P of the Local Government Act 2000.  |

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| Consultant                       | Specialist advisers engaged to provide services to the Council.   |
| Contracting Decision             | Any of the following decisions: <ul style="list-style-type: none"> <li>• withdrawal of Invitation to Tender</li> <li>• whom to invite to submit a Quotation or Tender</li> <li>• shortlisting</li> <li>• award of contract or Framework Agreement</li> <li>• any decision to terminate a contract.</li> </ul> |
| Corporate Contract               | A contract or agreement let by the Council's Corporate Procurement Service to support the Council's aim of achieving Value for Money.   |
| Corporate Procurement Service    | The Council's central procurement unit charged with providing strategic direction and advice to secure Value for Money in the Council's procurement activities.   |
| EU Procedure                     | The procurement procedure required by the EU for goods, works and services where the Total Value exceeds the EU Threshold.  |
| EU Threshold                     | The value at which the EU public procurement directives apply.  |
| European Economic Area           | The members of the European Union, and Norway, Iceland and Liechtenstein.   |
| Executive                        | The Council's Executive as defined in the Constitution.   |
| Financial Regulations            | The Council's financial regulations outlining Officer responsibilities for financial matters prepared by the Deputy Chief Executive and City Treasurer and becoming part of 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 Corporate Procurement    | The officer with responsibility for leading the Corporate Procurement Service.  |



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| 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 that is in the opinion of the Deputy Chief Executive and City Treasurer 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 <b>Procurement</b> Rules.   |
| Key Decision                  | Decisions that are defined as key decisions in the Access to Information Rules in Part 4 of the Constitution.   |
| Non-Commercial Considerations | <ul style="list-style-type: none"> <li>(a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').</li> <li>(b) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.</li> <li>(c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.</li> <li>(d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').</li> <li>(e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.</li> <li>(f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.</li> <li>(g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.</li> <li>(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.</li> </ul> |

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|                          | 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 2006 (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 whereby 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.   |
| Procurement Strategy     | The document setting out the Council's approach to procurement and key priorities for the next few years.  |
| Purchasing Guidance      | Any guidance documents issued from time to time by the Deputy Chief Executive and City Treasurer and/or Corporate Procurement Service that support the implementation of these contract procurement rules. The guidance 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 procurement rules apply (see Rule 4).  |
| Shortlisting             | The process of selecting Candidates who are to be invited to quote or bid or to proceed to final evaluation.   |
| Tender                   | A Candidate's offer submitted in response to a Council Invitation to Tender.   |
| Total Value              | The whole of the value (net of VAT) or estimated value (in money or equivalent value) calculated as follows: <ul style="list-style-type: none"> <li>(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</li> <li>(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</li> <li>(c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48</li> <li>(d) in the case of framework agreements and dynamic purchasing systems, the maximum estimated value of all contracts envisaged for the total term of the framework</li> </ul> |

|   | agreement or the dynamic purchasing system   |
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| <p>TUPE/Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246)</p> | <p>Subject to certain conditions, the regulations applying 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 or service.</p> |
| <p>Value for Money</p>  | <p>Value for money is not the lowest possible price; it is the most economically advantageous proposal that combines goods or services that fully meet the needs, with the level of quality required, delivery at the time required, and at an appropriate price.</p>  |