

# **Section D**

## **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 6.1 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 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.
- Appraise the purchasing need and whether it would deliver Value for Money for the Council.
- Check whether there is an existing contract held by the Council, Crown Commercial Service agreement, GMCA or other Central Purchasing Body arrangements you can make use of before undergoing a competitive process.
- Keep bids confidential.
- Complete a written contract or Council order before the supply or works begin.
- Identify a contract manager with responsibility for ensuring the contract delivers as intended.
- Keep records of dealings with suppliers.
- Assess each contract afterwards to see how well it met the purchasing need and Value for Money requirements.

# SCOPE OF CONTRACT PROCUREMENT RULES

## **1. RELEVANT CONTRACTS**

1.1 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 of goods
- concession contracts
- the hire, rental or lease of goods or equipment; and
- the delivery of services.

All Relevant Contracts and Framework Agreements must comply with these Contract Procurement Rules.

1.2 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.

## **2. BASIC PRINCIPLES**

2.1 All purchasing procedures must:

- achieve Best Value and deliver Value for Money 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 (as defined in the Local Government 1988 and other relevant legislation) do not influence any Contracting Decision
- support the Council's corporate and departmental aims and policies
- comply with the Council's procurement policies and other relevant policies.

2.2 The Executive has power to waive any requirements within these Contract Procurement Rules for specific projects (other than the ones required by legislation), and any such decision may be a Key Decision.

## **3. OFFICER RESPONSIBILITIES**

3.1 Officers

3.1.1 Officers responsible for purchasing must comply with these Contract Procurement Rules, Financial Regulations, the Code of Conduct and with all applicable legal requirements including:

- The Public Contracts Regulations 2015,
- The Concession Contracts Regulations 2016
- The Public Services (Social Value) Act 2012

3.1.2 Officers must:

- have regard to the Procurement Guidance and procedures, including any relevant Gateway or similar procedures
- check whether a suitable contract already exists before seeking to let another contract; where a suitable contract exists, this must be used unless there is an auditable reason not to
- keep the records required by Rule 16
- take all necessary legal, financial and professional advice.

3.1.3 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 from the City Solicitor and the Director of Human Resources, Organisational Development & Transformation advice before proceeding with inviting Tenders or Quotations.

3.2 Chief Officers

3.2.1 Chief Officers must:

- ensure that their staff comply with Rule 3.1
- keep registers of contracts completed by signature, rather than by the Council's seal (see Rule 17.3) and arrange their safekeeping on Council premises

3.2.2 At the start of each financial year, each Chief Officer shall prepare a Procurement Plan setting out the Contracts which their departments anticipate it will procure during that financial year, and where possible forthcoming years. This information must be shared with the Integrated Commissioning and Procurement team.

3.2.3 The delegated powers of Chief Officers and, where applicable, Chapter 3A Officers set out in these contract procurement rules may be exercised by other Officers authorised by the Chief Officer / Chapter 3A 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 / Chapter 3A Officer with the delegated power and that administrative procedures are in place to record the authorisation and to record and monitor decisions so taken.

- 3.3 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.
- 3.4 Officers shall comply with Section 117 of the Local Government Act 1972 in relation to the declaration of interest in contracts.

# **PROCUREMENT PROCESS FOR ALL CONTRACT ACTIVITY**

## **4. STEPS PRIOR TO PURCHASE**

4.1 The Officer must appraise the purchase, in a manner commensurate with its complexity and value, and taking into account any Procurement Guidance from the Integrated Commissioning and Procurement Team (along with any relevant wider government 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 City Treasurer it is submitted to the City Treasurer for comment as soon as practicable
- setting out these matters in writing if the Total Value of the purchase is £30,000 or more (inclusive of VAT).

4.2 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.

- 4.3 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.
- 4.4 Social Value, including environmental priorities, must be considered in the procurement process, whether done through formal tender or by approval to purchase from a Chief Officer or by any other way (see the Council's Social Value Policy for more information). For contracts with a total value of £30,000 or more (inclusive of VAT), it must be clearly evidenced how a contract will deliver its social value commitments and how this will be monitored post contract award.
- 4.5 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.
- 4.6 Key stakeholders must be kept informed during the commissioning, procurement, and contract lifetime.

## **5. PRE-TENDER MARKET RESEARCH AND CONSULTATION**

- 5.1 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.

## **6. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS**

The Officer must calculate the Total Value. The Council 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.

All proposed contracts with a Total Value of £30,000 or more (inclusive of VAT) must be referred to the Integrated Commissioning and Procurement Team for consultation and advice and all contract information will need to be published.

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.



These procedures, as outlined below, are based on three broad mechanisms for procuring a contract, that are available to the Council:

- Undertake a tender or quotes exercise (clause 6.1)
- Call-off from an external or internal framework agreement, either by awarding directly to one provider (where the framework rules allow for a direct award) or by undertaking a further competition inviting members of the particular framework (clause 6.2)
- Award directly to one provider without a competitive exercise, which except for the smallest value contracts, is permitted only under specific circumstances (see clause 6.3)

## 6.1 Purchasing – Competition Requirements

6.1.1 Where the Total Value for a purchase is within the values in the first column below, the Award Procedure in the second column must be followed, except when calling-off from a framework, which is covered separately in clause 6.2.

Total Value (Including VAT)	Award Procedure
Up to £5,000	One oral Quotation (confirmed in writing where the Total Value exceeds £500)
£5,001 – £29,999	<ul style="list-style-type: none"> <li>• Request at least three written Quotations; or</li> <li>• one written Quotation for consultancy services; or</li> <li>• under certain circumstances and only with advice from the Integrated Commissioning and Procurement Team, one written Quotation (otherwise referred to as direct award) for non-consultancy spend may be appropriate. See section 6.3 for more detail on this.</li> </ul>

<p>£30,000 - Statutory UK Threshold</p>	<ul style="list-style-type: none"> <li>• At least three written Quotations; or</li> <li>• Invitation to Tender by advertisement to at least three Candidates; or</li> <li>• Under certain circumstances and only with advice from the Integrated Commissioning and Procurement Team, direct award may be appropriate. See section 6.3 for more detail.</li> </ul> <p>Officers must follow the advice of the Integrated Commissioning and Procurement Team on which option is most appropriate.</p> <p>The opportunity must be implemented through the Council's procurement portal for both Quotations or Tenders unless otherwise agreed by the Integrated Commissioning and Procurement team.</p> <p>All open Tenders will need to be advertised on the relevant UK Government websites within 24 hours of the opportunity being advertised in any other way.</p>
<p>Above Statutory UK Threshold</p>	<p>Statutory Procedure (where advertisement required under Statutory Procedure the opportunity must also be advertised on relevant UK Government websites).</p>

6.1.2 Irrespective of Rule 6.1.1 Relevant Contracts and Framework Agreements that are subject to European Union grant funding requirements shall be advertised in accordance with published guidance.

6.1.3 Note many works contracts may follow what is known as a two-stage contracting approach. For the purposes of the above table, officers should consider the estimated total value of both elements of the contract (i.e. the pre-construction services agreement and the works contract).

## 6.2 Framework Agreements and Dynamic Purchasing Systems

6.2.1 Framework agreements and dynamic purchasing systems have different arrangements that apply to them.

6.2.2 The term of a Framework Agreement, which is subject to the Statutory Procedure must not exceed four years save in exceptional cases duly justified, as agreed with the Integrated Commissioning and Procurement Team and Legal Services.

- 6.2.3 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.
- 6.2.4 Where a Framework Agreement is concluded with more than one provider, contracts based on that Framework Agreement shall be awarded in accordance with the terms of the framework which may include one or all of the following terms:
- (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.
- 6.2.5 Where an external Framework Agreement is used to award a contract, the City Solicitor will need to be consulted and agree with the Framework's terms and conditions and to review the Call off Contract terms, and Integrated Commissioning and Procurement will need to ensure compliance with statutory requirements. Other advice, for example financial advice, may also be needed prior to terms and conditions being agreed. Before awarding a contract directly to one provider without following a further competition process, it needs to be ensured the particular Framework allows for a direct award.

### **6.3 Awarding a contract without going through competition**

- 6.3.1 In exceptional circumstances it may be appropriate to award a contract to a provider without going through a competitive exercise following the procedures set out in 6.1.1, or only inviting two Tenders or Quotes when three would normally be required. Integrated Commissioning and Procurement must be consulted and will advise on the suitability of such a procedure. For contracts with a value under the Statutory threshold, a direct award of a contract to a provider (or the seeking of only two Quotes and Tenders) is permitted, when one or more of the following apply where:

- goods/ services/ works are only obtainable from one provider and there is no other to allow genuine competition;
- the execution of works or the supply of goods or services are controlled by a statutory body;
- it would deliver Value for Money to the Council;
- the contract is for education, health or social care services, if it is considered in the Council's interests and to meet its obligations under relevant legislation;
- the execution of works or the supply of goods and services that are required so urgently as not to permit compliance with the requirements of competition;
- the contract is for security works and the publication of documents or details in the tendering process could prejudice the security of the Council and Manchester residents;

6.3.2 For contracts with a value over the Statutory Threshold, competition is required except in specific circumstances permitted in procurement regulations. Where these circumstances are met, the council may award contracts but only after having consulted with Integrated Commissioning and Procurement. Direct award through a relevant framework is permitted, where direct award is allowed for under the framework agreement, and where direct award can be justified, even if the value of the call-off is over the Statutory Threshold.

6.3.3 All direct awards - i.e., awards made without a going through a competitive process - must be fully documented with reasons recorded which demonstrate that the direct award is genuinely required.

6.3.4 All proposed direct award contracts with a Total Value of £30,000 or more (inclusive of VAT) must be referred to the Integrated Commissioning and Procurement team for consultation and advice and all contract information will need to be published.

6.3.5 All decisions on direct award must take into account:

- Probity
- Value for Money principles
- Social and Ethical Values

## 6.4 Register of Key Decisions

A Contract with a spending or saving of £500,000 or more and/or has a significant effect on two or more wards incurs a Key Decision. When this happens, the Key Decision Process must be followed, including prior publication on the Register of Key Decisions, along with any relevant Access to Information Rules. For more information on Key Decisions please see Part 4, Section B, Rule 15 of this constitution.

## 6.5 [...]

## 6.6 Providing Services to External Purchasers

6.6.1 The 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.

## 6.7 Collaborative and Partnership Arrangements

6.7.1 Collaborative and partnership arrangements where services/goods/works are supplied to the Council are subject to UK procurement legislation and must follow these Contract Procurement Rules. If in doubt, Officers must seek the advice of the City Solicitor and the Integrated Commissioning and Procurement Team.

## 7. ADVERTISING

### 7.1 Identifying and Assessing Potential Candidates

7.1.1 Officers shall ensure that in respect of a proposed Relevant Contracts or Framework Agreement, a sufficiently accessible advertisement (as well as any additional advertisement required by applicable UK legislation) is published. Generally, the greater the interest of the arrangement to potential bidders, 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 Find a Tender (even if there is no requirement within the Statutory 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.

## 8. STANDARDS AND AWARD CRITERIA

8.1 The Officer must ascertain the standards necessary to properly describe the subject matter of the contract having regard to any relevant British or international standards.

8.2 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 criteria set by applicable UK legislation or, where there are no such criteria, 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 Statutory 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 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 Procurement Guidance when defining the Award Criteria.

8.3 Award Criteria must not include:

Non-Commercial Considerations that are prohibited under UK law and must be non discriminatory

## **9. INVITATIONS TO TENDER/QUOTATIONS**

9.1 The Invitation to Tender and Quotation 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 City Treasurer's prior approval.

9.2 All Invitations to Tender shall include the following:

9.2.1 A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.

9.2.2 A requirement for tenderers to declare that the Tender / Quotation content, price or any other figure or particulars concerning the Tender / Quotation have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).

9.2.3 A requirement for tenderers to complete fully and sign all relevant Tender / Quotation documents including a form of Tender and certificates relating to canvassing and non-collusion.

- 9.2.4 Notification that Tenders / Quotations are submitted to the Council on the basis that they are compiled at the tenderer's expense.
- 9.2.5 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.
- 9.2.6 Unless the Tender is sought in accordance with an electronic tendering process which is approved by the City Treasurer and City Solicitor and/or which is permitted by the Invitation to Tender documents, a statement that any Tenders submitted by electronic means shall not be considered.
- 9.2.7 The terms and conditions of contract that will apply (see Rule 17).
- 9.3 The Invitation to Tender or Quotation may state that the Council is not bound to accept any Quotation or Tender.

## **10. SHORTLISTING**

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

## **11. SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS**

- 11.1 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 Statutory Procedure lays down specific time periods (see guidance in the Procurement Guidance).
- 11.2 All Tenders must be returned in accordance with the Invitation to Tender.
- 11.3 Tenders received by any electronic means other than through the procurement portal used by the Council (e.g. e-mail) must be rejected, unless they have been sought in accordance with an electronic tendering process which is approved by the City Treasurer and City Solicitor and/or they are permitted by the Invitation to Tender documents,
- 11.4 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.

## **12. CLARIFICATION PROCEDURES**

- 12.1 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 a Statutory Procedure where this might distort competition, especially with regard to price.

### **13. EVALUATION**

- 13.1 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.
- 13.2 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.
- 13.3 The arithmetic in compliant Quotations / 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 / Quotation, rather than the overall price, were stated within the Invitation to Tender / Quotation as being dominant, an amended Tender / Quotation price may be requested to accord with the rates given by the tenderer.

### **14. POST TENDER/QUOTES NEGOTIATIONS**

- 14.1 Post tender negotiations under the Statutory Procedure can only be undertaken on the grounds allowing for such specified in the Statutory Procedure. For all other procedures if post tender/quotes negotiations are necessary after receiving quotes, 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 bidder who is identified as having submitted the most economically advantageous Quote or Tender and after all unsuccessful Candidates have been informed. During negotiations quotes or tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the Quote or Tender documents. Officers appointed by the Chief Officer to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
- 14.2 Post tender/quote negotiation must only be conducted in accordance with the guidance issued by the City Solicitor who, together with the Integrated Commissioning and Procurement Team, 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.
- 14.3 Where post tender/quote 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 a request for new quotes or a re-tender must be conducted.



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

- 15.1 Chief Officers and Chapter 3A 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 City Treasurer and, in the case of Chapter 3A Officers, the approval of the Chief Officer to whom the Chapter 3A Officer reports. In all cases budget provision must be available.
- 15.2 For contracts and Framework Agreements subject to the Statutory 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 Statutory 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 the Integrated Commissioning and Procurement Team has been obtained. The statutory requirement to notify candidates of the intention to award a contract or Framework Agreement in this Rule 15.2 does not apply to:
- contracts and Framework Agreements that are not subject to the full application of the Statutory Procedure (such as social and other specific services listed under the Statutory Procedure, or where the value is under the Statutory Threshold) and
  - contracts subsequently called off and awarded based on a Framework Agreement that was let in accordance with the Statutory Procedure
- 15.3 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.
- 15.4. Requirements for contract reports in relation to direct awards as describe in section 6.3:
- 15.4.1. 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, written approval must be given by the City Treasurer and the Chief Officer to whose

service the contract relates to direct award a contract. Approval will be subject to the Directorate satisfying one or more of the items listed in 6.3.1 of this document.

15.4.2. Where the Total Value is likely to exceed the Statutory UK Threshold the City Treasurer and other Chief Officers have no delegated powers. None of the items listed in 6.3.1 can be used if the Total Value exceeds the Statutory UK Threshold.

## **16. RECORDS**

16.1 Where the Total Value is less than £30,000 (inclusive of VAT), the following records must be kept:

- a unique reference number for the contract and the title of the contract
- invitations to quote and Quotations
- a record 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.

16.2 Where the Total Value is £30,000 or more (inclusive of VAT) the Officer must record:

- a unique reference number for the contract and the title of the contract
- the method for obtaining bids (see Rule 6.1)
- any Contracting Decision and the reasons for it
- the Award Criteria in descending order of importance
- Quote or Invitation to Tender documents sent to and Quote or 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.
- any other records and accompanying Notices as required by regulations.

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

16.4 Relevant information for all contracts with a Total Value of more than £30,000 (inclusive of VAT) will need to be published on Contracts Finder, or any other required government website.

# CONTRACT AND OTHER FORMALITIES

## 17. CONTRACT DOCUMENTS

### 17.1 Relevant Contracts

17.1.1 All Relevant Contracts with a value of £30,000 or more (inclusive of VAT) shall be in writing.

17.1.2 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.

17.1.3 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.

17.1.4 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

17.1.5 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.

## 17.2 Contract Formalities

17.2.1 Agreements shall be completed as follows:

Total Value (inclusive of VAT)	Method of completion	By
Up to £29,999.99	One Signature	Authorised Signatory (see definitions)
£30,000 - £74,999	Two signatures or sealing	Two Authorised Signatories (see definitions) or for Sealing see Rule 17.3
£75,000 - £149,999	Sealing	See Rule 17.3
Above £150,000 AND construction and related professional service appointments	Sealing	See Rule 17.3

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

## 17.3 Sealing

17.3.1 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. The affixing of the Council's seal and the Authorised Signatory signature shall be arranged by the City Solicitor's Department,

17.3.2 Every Council sealing will be uniquely numbered, recorded and signed by a person authorised by the City Solicitor.

17.3.3 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
- the value is exceeding £75,000.

## **18. BONDS AND GUARANTEES**

18.1 The Officer must consult the City Treasurer about whether a Guarantee is necessary when a Candidate has a parent company or other companies and:

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

18.2 The Officer must consult the 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 or there is concern about the stability of the Candidate.

# CONTRACT MANAGEMENT

## **19. MANAGING CONTRACTS**

- 19.1 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.
- 19.2 Contract managers must follow the procedures set out in the Council's Procurement Guidance.
- 19.3 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.
- 19.4 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.

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

- 20.1 A business case must be prepared for all procurements with a potential value over the Statutory Threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
- 20.2 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.

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

- 21.1 The 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.
- 21.2 During the life of the contract, the Officer must monitor in respect of:
  - performance, including social value
  - compliance with specification and contract
  - cost
  - user satisfaction and risk management.

## **22. CONTRACT EXTENSIONS, VARIATIONS OR MODIFICATIONS**

- 22.1. Where provision is made for an extension within the contract where the total value of the contract including the extension is below £250,000, this should be approved by the appropriate Officer, provided that budget provision is available. Where provision is made for an extension in the contract and where the total value of the contract including the extension is £250,000 or above, approval for extension shall

be referred to the City Treasurer and the Chief Officer to whose service the contract relates, provided that budget provision is available.

- 22.2. An options appraisal must be undertaken to determine if it represents Value for Money to extend the contract and any approval required must be sought in a timely manner.
- 22.3. No extension shall be made until funding has been secured in accordance with the Council's Financial Regulations or any other similar requirement.
- 22.4. A contract with the provision to extend may be extended before the expiry date of the contract where it is in accordance with its original terms and conditions (which must expressly allow for extension) and where an extension delivers Value for Money.
- 22.5. For contracts below the statutory thresholds, a new procurement will be required if there is a variation which is a substantial variation and a variation shall be considered substantial which where one or more of the following conditions is met:
  - the variation introduces new conditions which had they been part of the original procurement procedure would have allowed other candidates to be selected to bid or the contract to be awarded to another tenderer
  - the variation changes the economic balance in favour of the contractor
  - the variation extends the scope of the contract considerably
  - the variation makes the contract materially different in character from the contract initially entered into
- 22.6. For contracts above the statutory thresholds, in accordance with the relevant legislation, contracting authorities may make contract modifications without the need of a new procurement, but always after consulting with the Integrated Commissioning and Procurement Team. Approval for the modification shall be referred to the City Treasurer and the Chief Officer to whose service the contract relates. The relevant authorised signatories (as set out in 17.2.1) will need to sign or seal the modification. All contract modifications must be carried out within the scope of the original contract and must not materially affect or change the contract.



## DEFINITIONS

“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, a Chief Officer or a Chapter 3A Officer, in accordance with the Council’s constitution to sign a contract or (only in the case of an officer authorised by the City Solicitor) the Council’s seal.
Award Criteria	The criteria by which the successful Quotation or Tender is to be selected (see further Rules 8 and 9.2.5).
Award Procedure	The procedure for awarding a contract.
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
Chapter 3A Officers	The Officers set out in Chapter 3A of Part 3, Section F of the Constitution.
Chief Officers	The Officers defined as such in Part 8 of the Constitution.
City Solicitor	As identified in the Constitution.
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 Procurement Rules form part issued under Section 9P of the Local Government Act 2000.

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 Integrated Commissioning and Procurement Team to support the Council's aim of achieving Value for Money.
City Treasurer	The Council's City Treasurer or such other Officer as may be designated City Treasurer by the Council.
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 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.
Guarantee	A contract which binds the parent or group company of a contracting party whereby if the contracting party fails to do what it has promised under a contract with the Council, the Council can require the parent or group company to do so instead.
Head of Integrated Commissioning and Procurement	The officer with responsibility for leading the Integrated Commissioning and Procurement Team.
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 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 Statutory Threshold values.
Integrated Commissioning and Procurement Team	The Council's central procurement unit charged with providing strategic direction and advice to secure Value for Money in the Council's procurement activities.
Invitation to Tender	Invitation to tender documents in the form required by these Contract Procurement 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</li> </ul>

	<p>authority gives or withholds support.</p> <p>(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.</p> <p>Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be Non-Commercial Considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply.</p>
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 Plan	A plan setting out timelines and milestones for future procurements
Procurement Guidance	Any guidance documents issued from time to time by the City Treasurer and/or Integrated Commissioning and Procurement Team that support the implementation of these contract procurement rules. The guidance is available on the Council's intranet.
Quotation / Quote	A Candidate's offer submitted in response to a Council Invitation to Quote (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.
Statutory Procedure	The procurement procedure required by UK law for goods, works and services where the Total Value exceeds the Statutory Threshold.
Statutory Threshold	The value(s) at which the relevant UK public procurement law applies.
Tender	A Candidate's offer submitted in response to a Council Invitation to Tender.

<p>Total Value</p>	<p>The whole of the value (inclusive of VAT) or estimated value (in money or equivalent value) calculated as follows:</p> <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 agreement or the dynamic purchasing system</li> </ul>
<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>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>