

Part 8 - Contract Procedure Rules

1. Introduction

1.1. These Contract Procedure Rules (the Rules) apply to the procurement of works, goods and services by the Council. They are intended to ensure that a contract is entered into only in circumstances which can demonstrate:

- Certainty in the terms of the contract
- Consistency in the application of the law and Council policy
- Probity
- Value for money

To achieve these objectives these rules must be followed every time the Council commences a procurement and/or enters into a contract. Contract Procedure Rules are made under section 135 of the Local Government Act 1972. The following types of procurement do not fall within the scope of the Rules:

- 1.1.1. Contracts of direct employment;
- 1.1.2. Contracts solely for the acquisition, disposal, lease or rental of land, existing buildings, other immovable property which are subject to the Property Procedure Rules (NB: Some property transactions may fall within the EU Procurement regime where works, supplies or services are connected with the property transaction. so legal advice should be taken in this instance);
- 1.1.3. the instruction of barristers
- 1.1.4. specialist professional services necessary for legal proceedings (including expert witnesses, experts, mediators, adjudicators, arbitrators and costs draftsmen);
- 1.1.5. unconditional grants by the Council.

- 1.1.6. Genuine emergencies beyond the control of the Council (**NB:** Lack of sufficient planning and/or internal process delays will not constitute special, exceptional or emergency circumstances);
 - 1.1.7. Individual care packages or education placements, it is considered in the Council's interest or is required to meet obligations under the relevant legislation.
 - 1.1.8. Adult social care service packages managed by the Council on behalf of a client under the Personalisation agenda e.g. Managed accounts & Direct Payments/Individual budgets
- 1.2. The Council recognises the benefits to be gained from the introduction of e-tendering, e-auctions, e-reverse auctions, purchasing cards and e-purchase-to-pay software. For the purposes of the Rules, the term "Contract" refers to both paper/hard copy documents and processes and their replication by electronic media. Only e-tendering systems approved by the Assistant Director Procurement and Commissioning may be used.
- 1.3. References to officers or posts in these Rules include their authorised deputies or delegates, in accordance with the Councils Constitution and Councils Scheme of Delegation.
- 1.4. No Contract shall be entered into, nor any tender invited, unless provision is made in the annual budget or is otherwise agreed for the proposed expenditure by the officer with appropriate delegated authority and such is in accordance with the Financial Procedure Rules.

Officers' Responsibilities: Conduct, Conflicts of Interest & Corruption

- 1.5. All Contracts procured under these rules >£1,000 will be undertaken using the Council's e-tendering system unless otherwise agreed by the Assistant Director Procurement and Commissioning,
- 1.6. These Rules are mandatory for all Council Contracts. **All officers must follow these Rules in full, except where a valid waiver under 1.8- 1.12 has been obtained or falls outside the scope of these Rules under in**

accordance with 1.1.1 to 1.1.8. Failure to do so may constitute misconduct leading to disciplinary action. If any officer witnesses or identifies a failure to comply with these Rules, they should raise it with their manager or report it confidentially under the Council's Whistle blowing Policy.

1.7. The Code of Conduct for employees applies to the procurement of all Contracts and, in particular, the following parts:

1.7.1. 4.3 – Relationships with Contractors

1.7.2. 7 – Personal interests

1.7.3. 8 – Equalities

1.7.4. 9 – Separation of roles in tendering

1.7.5. 10 – Corruption

1.7.6. 11 – Use of financial Resources

1.7.7. 12 – Gifts and Hospitality

1.7.8. 13 – Sponsorship – Giving and Receiving

It is every officer's responsibility to be aware of and act in accordance with the Code of Conduct. If in any doubt, officers must seek advice from their manager or Human Resources. All officers engaged in a procurement process shall comply with the Code of Conduct and must not invite or accept or offer any gift or reward in respect of the award or performance of a Contract. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the Bribery Act 2010¹ and section 117 of the Local Government Act 1972.

Application & Waiver of the Rules

1.8. These Rules apply to all Contracts for Supplies, Works or Services entered into by or on behalf of the Council, except where waiver of all or part of the Rules is approved. Waivers should only be sought in

¹ reference the councils anti bribery policy: <http://www.walthamforest.gov.../anti-bribery-policy-stmt.pdf>

exceptional circumstances given the general presumption that competition is the best way to demonstrate best value (see Rule 4.1) and the tendering thresholds set out in Rule 7.2. The Council must comply with the requirements of the EU Procurement regime, in particular Public Contract Regulations (“the Regulations”) as it is not possible to waive these requirements.

1.9. The Rules will only be waived where it can be shown:

1.9.1. The decision does not fall within Rule 9 (exceptions to competitive tendering)

1.9.2. the Councils overall interest, including best value, are met by waiving all or part of the Rules

1.9.3 the agreement of the Assistant Director Procurement and Commissioning is obtained.

1.10. Once sections 1.8 and 1.9 has been complied with waivers may be approved:

1.10.1. by the relevant Executive Director (or, where unavailable, the Chief Executive) for all Contracts with estimated value of up to EU Procurement threshold for Services or £500,000 for works

1.10.2. by Cabinet or the Leader for all other Contracts. If the decision is a Key Decision then the rules relating to Key Decisions must be followed including placing notice of such Key Decisions on the Council’s Forward Plan.

In cases of urgency relating to Key Decisions the Access to Information Rules apply (urgent decisions not on the Forward Plan), the Leader or in his/her absence the relevant Portfolio Holder may make the decision subject to the rules relating to such urgent decisions.

1.11. All waivers will be reported to the Councils Audit Committee on an annual basis by Assistant Director of Procurement and must be justified by the relevant Head of Service.

- 1.12. The Head of Service requesting the waiver **must** keep a written record of any waiver of the Rules, sending a copy to the Assistant Director Procurement and Commissioning using the standard form for waivers of the Rules published from time to time by the Assistant Director Procurement and Commissioning².

Guidance and Advice

- 1.13. Guidance on these Rules and procurement is set out in the Council's Procurement Manual³ and the Community Benefits Toolkit⁴
- 1.14. Advice on the application of these Rules should be obtained from the Assistant Director Procurement and Commissioning and/or the Head of Legal and Democratic Services.

2. Interpretation

- 2.1. The Head of Legal and Democratic Services shall make all decisions relating to the interpretation of these Rules.
- 2.2. These Rules shall be interpreted subject to current European Union (EU) and domestic law relating to public sector works, supplies or services Contracts. Where there is any conflict between these Rules and the law (whether domestic or EU law), the latter shall prevail.

3. Record Keeping

- 3.1. Services must keep a record of compliance with all stages of these Rules, preferably in electronic format. Records should ordinarily be kept by the relevant Contracts manager and should be retained in accordance with the periods set out in the Council's Records Retention Schedule⁵. If records are kept in electronic format only, they must be kept in the same electronic folder and scanned copies of hard copy documents must also be retained on the folder. Services must have systems in place to ensure

² Standard form of waivers: <http://forestnet.lbwf.gov.uk/index/forms-templates/ft-k-s.htm>

³ The Council's Procurement Manual can be found at: [http://forestnet.lbwf.gov.uk/index/finance-procurement-procurement/pm-interactive-procurement-manual.htm](http://forestnet.lbwf.gov.uk/index/finance-procurement/pm-interactive-procurement-manual.htm)

⁴ Community Benefit Toolkit: <http://forestnet.lbwf.gov.uk/index/finance-procurement.htm>

⁵ Council's Records Retention Schedule: <http://forestnet.lbwf.gov.uk/index/lds/cor-rrs.htm>

that authorised officers can readily access all files. Where it is necessary to keep original paper documents, such as a signed Contract, a hard copy file must also be maintained.

- 3.2. For Contracts over £75,000 in value the original Contract, when completed must be sent to, or will be retained by, the Head of Legal and Democratic Services for secure storage.

4. Presumption of Competition for Contracts

- 4.1. The Council's presumption is that best value is achieved through competitive tendering. All Contracts shall be competitively tendered, except where allowed by these Rules or a waiver is agreed under Rule 1.10

5. Sustainable Procurement

- 5.1 Before beginning the commissioning process for the supply of any services Authorised Officers must consider whether the Public Services (Social Value) Act 2012 applies to the services. Where it does apply Authorised Officers must make the following considerations at the pre-procurement stage:
- how what is proposed to be procured might improve the economic, social and environmental well-being of the “relevant area”;
 - how in conducting a procurement process the Council might act with a view to securing that improvement; and
 - whether to undertake a consultation on these matters.
- 5.2 The Council's Sustainable Procurement Policy mandates the inclusion of a minimum 10% evaluation weighting for sustainability in all procurements that are tendered through open competition.
- 5.3 The Council has committed to ensuring the London Living Wage (LLW) is paid as a minimum by the Council's contractors and sub-contractors employed in the delivery of certain contracts, excluding social care due to personalisation.

5.3.1 In applying this commitment consideration should be given

to payment of LLW on a case by case basis whether, through the procurement process, it can ensure LLW is secured for employees working on our contracts, whilst acting proportionately and ensuring that the inclusion is relevant.

5.3.2 In all contracts above the OJEU threshold for supplies and services and 1 million pounds for works, Officers must confirm in the business case submitted to the Strategic Procurement Board:

- a) if the LLW will be paid as part of the contract;
- b) that the financial modelling has been done to support this;
- c) if the LLW is not included the reasons supporting this.

5.3.3 Officers can seek advice from Corporate Procurement and or Legal Services as to the procurement, and contractual implications, and wording of the contract terms and conditions.

6. Annual Procurement Plan (APP)

6.1 An Annual Procurement plan will be taken to Strategic Procurement Board in February and Cabinet in the April of each year.

6.2 All procurements where the anticipated total contract value is in excess of EU Thresholds supplies and services contracts or £1,000,000 for works contracts must be reported by each Directorate to Strategic Procurement Board in an Annual Procurement Plan. Strategic Procurement Board will take the APP or an update to that Plan to the Cabinet for approval to procure who have delegated decision powers to change the approval recommendation.

6.3 Where the procurement meets the key decision criteria, as set out in the Council's Constitution:

6.3.1 It is the responsibility of the Director, in consultation with the Lead Member, to agree the recommended Annual Procurement Plan.

6.3.2 Approval of this recommendation by Cabinet determines authorisation required for the procurement, including where decision making is delegated to the Director.

6.4 The Strategic Procurement Board must approve additions to the Annual Procurement Plan or an update to that plan before submitting to Cabinet.

7. Procurement Thresholds

7.1. The procurement requirements in the table below apply according to the estimate total value of the Contract. The procurement requirements below are minimum requirements. For all Contracts of any value, services should consider whether a formal tendering process is appropriate.

7.2. For Contracts over a term of years, the value of the Contract is the total value over the whole Contract including any potential extensions, not its annual value.

Estimated Contract Value	Procurement Requirements	<u>Method of completion of contract</u>
Up to £10,000	<p>At least one written quotation must be received. Where practicable an eligible quotation from a local supplier must be sought. Best value must be obtained and framework and other corporate agreements, where they exist, are used. (Managers must retain sufficient evidence to demonstrate compliance).</p> <p>All quotations over £1,000 must be via the Council's e-tendering system. For under £1,000 written evidence of expenditure must be retained e.g. invoice receipt etc.</p>	Use of Purchase Order.
Contracts from £10,001 to £50,000	At least two written quotations must be received. A quotation from a local supplier must be sought. Where this is not possible the reasons must be recorded. Best value must be obtained and framework and other corporate agreements, where they	Use of Purchase Order or Standard Contract for more complex requirements (refer to 18.4 for requirements for

	<p>exist, are used (Managers must retain sufficient evidence to demonstrate compliance and best value, e.g. oral quotations are not acceptable). If less than two quotes are received the Divisional Director or Head of Service must approve the award. The decision must be recorded in writing and all documentation supporting the decision retained.</p>	<p>sealing)</p>
<p>Contracts from £50,001 to £100,000 (for supplies and services) or £500,000 (for works):</p>	<p>At least three written quotations must be received. A quotation from a local supplier must be sought. Where this is not possible the reasons must be recorded. Best value must be obtained and framework and other corporate agreements, where they exist, are used (Managers must retain sufficient evidence to demonstrate compliance and best value, e.g. oral quotations are not acceptable). If less than three quotes are received the Divisional Director or Head of Service must approve the award subject to discussion with the Assistant Director of Procurement. The decision must be recorded in writing and all documentation supporting the decision retained.</p>	<p>Use of Purchase Order of Standard Contract for more complex requirements</p> <p><u>Over £100,000:</u></p> <p>Sealed by Legal Services</p> <p>(refer to 18.4 for requirements for sealing)</p>

<p>Contracts above £100,000 to EU thresholds* (for supplies and services) or £500,000 (for works)</p>	<p>At least five written quotations must be received. At least two quotation from a local supplier must be sought. Where this is not possible the reasons must be recorded. Best value must be obtained and framework and other corporate agreements, where they exist, are used (Managers must retain sufficient evidence to demonstrate compliance and best value, e.g. by confirmation of oral quotations in writing). If less than five quotes are received the Divisional Director or Head of Service must approve the award subject to discussion with the Assistant Director of Procurement. The decision must be recorded in writing and all documentation supporting the decision retained.</p> <p>In all cases at least 5 Contractors should be invited to Quote (for works) or Tender, unless there is an overriding business or legal justification that this is not required.</p>	<p><u>Up to £100,000:</u></p> <p>Signature on Standard Contract or sealed by Legal Services if required</p> <p><u>Over £100,000:</u></p> <p>Sealed by Legal Services (refer to 18.4 for requirements for sealing)</p>
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7.3 When seeking quotes on a regular basis Officers must ensure that they rotate those suppliers invited to quote i.e. that different suppliers are invited for each exercise. It is acceptable to invite a previously successful supplier for a similar contract, if that supplier performed well. Corporate Procurement will monitor compliance with this requirement.

7.4 * If the value of the tender is less than 10% below the EU thresholds, then officers must consider procuring in accordance with EU rules.

8. Competitive Dialogue, Negotiated and Framework Contracts

8.1. When a service considers that the competitive dialogue or negotiated route is the preferred method of procurement, the Head of Legal and Democratic Services and the Assistant Director Procurement and Commissioning must be consulted before submission of the business case required in accordance with Rule 10.

- 8.2. Framework agreements may be used to procure goods, services and works subject to approval by the Assistant Director Procurement and Commissioning that a particular framework is acceptable to the Council. This includes those available from other Local Authorities or Public sector bodies for use within the Council following an assessment of the terms of the framework ensuring that it offers best value and legal compliance. You must check the Councils Contract register seeking advice from Corporate Procurement to see if there is an existing Contract or a framework agreement that has been approved for use within the Council suitable for the proposed procurement.
- 8.3. Not all frameworks agreements are established in the same way and so when using a framework it is necessary to follow the process applicable to that particular framework. This may include, for example, holding a mini-competition between Contractors appointed under the framework. It is the responsibility of the officer letting the Contract to ensure that the proper process is followed, taking advice from the Assistant Director Procurement and Commissioning and/or the Head of Legal and Democratic Services as necessary.

9. Exceptions to Competitive Tendering

- 9.1. Competitive tendering or the obtaining of quotes is not required where:
- 9.1.1. A legally compliant framework agreement is in place which the Council has procured or has the right to access (subject to complying with the rules applicable to that framework (see Rule 8.3 above));
 - 9.1.2. Existing corporate contracts are in place that the Services/Supplies/Works required can be obtained;
 - 9.1.3. Effective competition is prevented by government or statutory control;
 - 9.1.4. Any repairs, services or works to be executed or parts, goods, materials or services to be supplied in connection with existing

machinery, vehicles, plant or equipment of a proprietary nature where no suitable alternative supplier exists.

- 9.1.5. The ongoing maintenance, updating and support of existing ICT hardware and/or software that are proprietary in nature and no suitable alternative supplier exists.
- 9.1.6. The Contract provides in writing for an extension to the length of the Contract's term and the following conditions are met:
- a. the extension is for substantially the same works, goods and/or services provided in the original Contract;
 - b. the financial terms for the extension are as agreed in the original Contract;
 - c. the length of the extension is not longer than that permitted by the original Contract;
 - d. the total value of the extension is not more than the total value of the original Contract. Approval of a business case must be sought from the Strategic Procurement Board for all proposed extensions where the original contract is above the EU threshold for supplies or services.
 - e. the appropriate authority/approval is in place in accordance with the Council's scheme of delegation. and
 - f. such extension would not breach the Public Contracts Regulations
- 9.1.7. Special educational needs or social care contracts if, in the opinion of the responsible officer, following consultation with the Assistant Director Procurement and Commissioning, it is considered in the Council's interest or is required to meet obligations under the relevant legislation.
- 9.1.8. Where the goods, services or works are only available from a single supplier or are available only at a fixed price and no

suitable alternative is available in accordance with EU procurement law.

- 9.1.9. Where a separate legal entity is set up with another Contracting Authority or the Council establishes a wholly owned company and wishes to award a contract to that legal entity in accordance with EU Regulation 12 (Teckal/Hamburg)
- 9.2. With regards the exceptions, advice should be sought from Assistant Director of Procurement and Assistant Director of Legal Services if there is any risk that such would breach EU rules, where applicable.
- 9.3. With the exception of procurements using framework agreements under Rule 9.1.1 the Executive Director must be able to demonstrate that any decision not to seek competitive tenders fully complies with this Rule 9, was reasonable in all the circumstances and was in the best interests of the Council. The decision must be recorded in writing and all documentation supporting the decision must be retained.
- 9.4. In the event of the use of the exception, the requirement to comply with the Regulations and Directives remains. A voluntary award notice without competition should be published for any exception granted that is in excess of the OJEU threshold, the procedures leading to the award under the Regulations must be followed.

10. Approval to Procure

- 10.1. No procurement process shall commence without the formal approval of the Strategic Procurement Board and Cabinet as required by Rule 6 and Rules 10.2 and 10.3 below.
- 10.2. A business case must be produced for all requirements with a Contract value above the EU Procurement thresholds for supplies or services Contracts or £1,000,000 for works Contracts. The business case must be submitted to the Strategic Procurement Board for approval.

10.3. All Contracts with a Contract value of more than £1,000,000 are key decisions the business case following approval by the Strategic Procurement Board must be reported to Cabinet for approval to commence the procurement process except where it has already been reported to Cabinet as part of the Annual Procurement Plan..

11. Invitations to Tender & Advertising

11.1. Where a competitive tender process is to be undertaken tenders will as a minimum be advertised as follows:

Estimated Contract Value	Advertising Requirements
Contracts up to the EU Threshold	<ol style="list-style-type: none"> 1. all quotes up to EU threshold on the portal- www.londontenders.org 2. Where a service decides to advertise an opportunity rather than seek quotes then this must also be advertised on Contracts Finder (via the portal- www.londontenders.org)
Contracts above EU thresholds	Compliance with EU advertising rules including issue of Prior Indicative Notice and Contract Notice in the Official Journal of the European Union (OJEU) and in Contract Finder in accordance with UK Procurement Regulations (via the Council's tendering portal – www.londontenders.org),

11.2. Services may also consult the Assistant Director Procurement and Commissioning to discuss any additional appropriate forms of advertising for individual Contracts.

11.3. The Public Procurement Regulation 2015 require mandatory use of e-communications which require the free and unrestricted electronic availability of procurement documents for all contracts above the EU thresholds⁶. The rules include: timing and scope of e-communication requirements, accessibility, security, and exceptions to the mandatory use of e-communication. The Councils e-tendering system meets these

⁶ Guidance on electronic procurement and electronic

requirements, where though officers consider this not practical they should consult the Assistant Director Procurement and Commissioning

12. Receipt of Tenders

- 12.1. Where tenders have not been carried out electronically, following prior agreement by the Assistant Director Procurement, officers must contact Corporate Procurement to agree the process for receiving such tenders.

13. Opening of Tenders

- 13.1. Where the Council's electronic tendering system has been used only those officers authorised within the system to accept tenders shall do so once the closing date and time has passed.
- 13.2. Where tenders have not been carried out electronically, officers must contact Corporate Procurement to agree the process for opening such tenders.

14. Receipt/Opening of Quotes

- 14.1 The receipt and opening of quotes will be carried out by the service department not Corporate Procurement. The officer concerned must ensure their Director has been informed and ensure that the receipt and opening of quotes is equal, transparent, non-discriminatory and proportionate.

15. Award of Contracts

- 15.1. Subject to 13.1 and 13.3, and the caveats set out in paragraph 8.5.2 of the Council's General Scheme of Delegation the table below sets out the delegated powers of officers to approve Contract awards. These thresholds will automatically be varied with changes to the Council's General Scheme of Delegation.

Estimated Contract Value	Authorisation required
Up to £10,000	Team Managers/Cost Centre Managers
Up to £50,000	Group Managers/Unit Managers

Up to £250,000	Divisional and Assistant Directors, Head of Legal and Democratic Services, Chief Information Officer
Up to £500,000	Chief Executive, Executive and Corporate Directors
Up to £1 million	Chief Executive, Executive and Corporate Directors and one of Chief Executive, Chief Finance Officer or Monitoring Officer

Subject to Article 14.4.2 of the Constitution all officers may approve and sign any Contracts up to the maximum value allowed in this table for their level of delegated authority. Any officer approving a Contract award shall sign a Contract Award Report (in the form of the template in the Procurement Manual).

- 15.2. All Contracts must be awarded based on the advertised evaluation criteria included in the advert or invitation to tender documentation and cannot be changed after the receipt of submissions.
- 15.3. Where a tender/quote that is recommended to the Executive Director for acceptance by the relevant Head of Service or their authorised deputy is in excess of the approved estimate but can be amended to fall within the estimate by a minor adjustment to the approved works, goods or services, the tender can only be accepted with the agreement of the Director of Finance and the Head of Legal and Democratic Services to the proposed adjustments.
- 15.4. Where a Contract has been tendered in accordance with EU Procurement the Contract cannot come into force until a mandatory “standstill” period of at least ten calendar days has elapsed from the date of notifying tenderers in writing of the Contract award decision.

16. Post-Tender Negotiations

- 16.1. Post-tender negotiations may only take place if the tender documents allow for negotiation and the basis for such negotiation or such negotiations otherwise comply with the EU and domestic law.

16.2. In all other circumstances, all valid tenderers should be invited to re-tender on a revised specification.

17. Award of Contracts – Notification

17.1. When a Contract is awarded, all services must:

17.1.1. Where applicable, publish the Contract Award Notice in OJEU.

17.1.2. All contracts must be published on Contracts Finder, via the Council's e-tendering system in accordance with the UK, Public Procurement Regulations 2015.

17.1.2 Conclude the Contract and promote to the Council's Contract register via the Council's e-tendering system unless the Assistant Director of Procurement and Commissioning has approved a manual tender or the procurement was via another e-tendering system.

18.4 If the procurement has been carried out outside of the e-tendering system (only with the prior approval of the Assistant Director Procurement), then services must notify Corporate Procurement who will update the Contract Register.

18. Form of Contracts and Standard Terms

18.1. All orders/Contracts and grants shall be authorised through SAP (EBP module) unless the process specifically excludes this.

Form of Contracts

18.2. All Contracts must be in writing or an official order in lieu and a copy kept by the relevant service or held electronically. All Contracts over £75,000 in value shall be in a form approved by the Head of Legal and Democratic Services and the original shall be held by the Head of Legal and Democratic Services in accordance with Rule 3.2.

- 18.3. Contract documents must be retained in accordance with the Corporate Retention Policy or for a minimum period of six years from the contract end date and, if under seal for a period of twelve years from the contract end date.

Sealing of Contracts

- 18.4 A contract must be sealed where:
- 18.4.1 the contract is over £100,000 in value;
 - 18.4.2 the Council wishes to enforce the contract for a period of more than 6 years;
 - 18.4.3 the price paid or received under the contract is a nominal price that does not reflect the value of the supplies or services;
 - 18.4.4 it is required by the parties.
- 18.5 Where contracts are completed by each side adding their common seal, the affixing must be attested by or on behalf of the Assistant Director of Legal Services. The Assistant Director of Legal Services is responsible for the process of sealing contracts.

Terms and Conditions

- 18.6 Every written Contract or official order in lieu thereof shall specify:
- 18.6.1 the works, goods, services or materials to be supplied or performed;
 - 18.6.2 the price to be paid with a statement of discounts or other deductions;
 - 18.6.3 the duration of time or times within which the Contract is to be performed; and
 - 18.6.4 the place or places for delivery or performance.
 - 18.6.5 the terms and conditions that apply to the Contract.

- 18.7 Every written Contract shall include a clause which gives the Council the right to immediately terminate the Contract if the Contractor, or any of its employees or agents, commits an offence under the Bribery Act 2010. Appropriate clauses are included in the Council's standard terms and conditions of Contract.
- 18.8 Every written Contract shall include a clause requiring any sub-Contractor permitted to be employed by the Contractor to be paid by the Contractor within 30 days of the issuing of a valid invoice.
- 18.9 There may be occasions where it is necessary to use a supplier's terms and conditions of Contracts. The use of such terms must be approved by the Assistant Director Procurement and Commissioning and the Head of Legal and Democratic Services

Insurance

- 18.10 All Contracts must require the Contractor to maintain the Council's minimum acceptable levels of insurance for the duration of the Contract. The minimum acceptable levels of public liability, employers liability and professional indemnity insurance cover will depend on the risks associated with the Contract and must be approved by the Council's Insurance Manager **prior** to the commencement of the procurement exercise. .
- 18.10 Officers responsible for the Contract management and monitoring process are required to obtain copies of the Contractor's insurance documents prior to the Contract being let and must ensure that these remain current for the duration of the Contract. This officer must also ensure that current copies of the insurance documents are held on the Council's e-tendering system.. If there is any doubt regarding a Contractor's level or validity of insurance cover, the Contract manager must seek advice from the Council's Insurance Manager before accepting the documents.

19 Variations to the Scope of Contracts

- 19.1 The Contract Manager may agree with a Contractor to carry out additional works or services that were not included in the original contract but which,

through change control or unforeseen circumstances, have become necessary.

19.2 Prior to the variation of the scope of a contract:

19.2.1 A budget must be allocated for that expenditure

19.2.2 Value for money must be demonstrated

19.2.3 The relevant Head of Service / Director must agree the variation

19.2.4 Legal advice must be sought where required.

19.2.5 Supplies, services or works must not exceed 50% of the total value of the original contract and must represent best value

19.2.6 All variations must be signed off using the conditions and documentation agreed within the contract

19.2.7 Variations to contracts must be authorised in accordance with the financial scheme of delegation.

17.1. Advice should be sought from the Assistant Director Procurement and Commissioning and the Head of Legal and Democratic Services when considering whether the proposed variation is lawful under the EU procurement rules

17.2. Cabinet must agree variations that are key decisions.

17.3. Notwithstanding the above, officers responsible for contract administration of Works contracts are able to meet contractual obligations to make payments and issue instructions in accordance with the contract terms to mitigate risks of costs arising from delay on site.

20 Claims from Contractors

20.1 Claims from Contractors in respect of matters not clearly within the terms of any existing Contract shall be referred to the Head of Legal and Democratic Services for consideration of the Council's legal liability and,

where necessary to the Director of Finance for consideration, before a settlement is reached. No payment will be made without the appropriate decision made by either Cabinet, where the matter is a key decision, or an authorised officer under the Council's Scheme of Delegation.

21 Bonds and Other Security

21.1 Every Contract exceeding £500,000 in value (or Contracts of lower value where the Director of Finance considers it necessary) for works, services, goods or materials to be provided otherwise than at one time, shall require a form of security based on the risk of the Contract. Advice should be sought from the Assistant Director of Finance and Head of Legal and Governance, to determine the degree of security (if any) required to protect the Council from a Contractor default. The decision will be based on the risks associated with the Contract, for example:

- The value of the Contract
- The type of goods / services / works being procured
- The payment profile for the Contract
- The financial strength of the company
- Affordability and proportionality

21.2 The security required may be a performance bond or in the case of a subsidiary a parent copy guarantee. Affordability and proportionality must always be taken into consideration when deciding whether some form of financial security is appropriate and required.

22 Partnerships / Shared Services

22.1 In normal circumstances, only the Council's Cabinet or committees and/or officers with delegated powers may make procurement decisions including decisions to enter into a Contract on the Council's behalf.

22.2 Unless a partnership or other body has a separate legal identity from the Council and has delegated, Contractual or statutory authority to act on the Council's behalf;

- 22.2.1 the partnership or body can only make recommendations to the Council in respect of the procurement of goods, services and/or works;
- 22.2.2 the Council will then decide whether to procure those services and will comply with these Rules; *and*
- 22.2.3 the Council and the Contracting service and manager remain legally and financially accountable for the Contract.

23 Contract or Grant/Funding Agreement

- 23.1 Whenever the value of a grant exceeds the EU threshold for the supply of goods or services legal advice shall be obtained (even when previously approved standard conditions of grant are used) before agreeing to make the grant, in relation to determining whether the grant may be a Contract for goods and/or services that should be subject to the EU procurement rules rather than a grant.

Glossary of Terms:

Authorised Officer(s)	means those officers of the Council identified as such by the Head of Service in the Council’s Scheme of Delegation to undertake procurement and contracting on behalf of the Council (including authorisation of expenditure, preparing and/or negotiating contract documentation, awarding and signing contracts and/or managing contracts).
Best Value	means the optimum combination of price and quality identified through the Most Economically Advantageous Tender (MEAT).
Contract	means an agreement between the Council and any other organisation, including another public authority, made by formal agreement or by issue of a letter of

	acceptance or official purchase order for works, supplies or services.
E-Auctions/Reverse Auctions	The use of electronic media to conduct a tendering or bidding exercise where suppliers are able to bid, in secure, controlled conditions, for a Contract.
E-Procurement	The electronic system used in the Council to electronically raise requisitions, purchase orders, goods receipts and invoice payments.
E-Tendering	The carrying out of the tendering process using electronic means, such as the internet and specialist e-tendering software applications. It includes undertaking the tasks of advertising the requirements for goods and services, registering suppliers, and issuing and receiving tender documents via the internet, as well as automating the evaluation of responses to a tender. Systems also incorporate Contract management functionality.
EU	means European Union.
EU Procurement	A procurement conducted in accordance with the relevant EU Directives and the corresponding UK legislation including in particular the Public Contracts Regulations as amended or replaced from time to time.
EU Treaty Principles	means the principles of transparency, equal treatment and non-discrimination in the letting of any Contract.
Forward Plan	Is the list of Key Decisions published by the Council

Framework Agreement	An agreement with suppliers which sets out the terms and conditions under which specific purchases can be made throughout the term of the agreement and which where necessary has been tendered in accordance with EU Procurement
Goods	means tangible products that can be consumable or non consumable.
OJEU	means the Official Journal of the European Union
Project Officer	means the officer designated by the relevant Head of Service as having responsibility for the planning and co-ordination of any particular procurement project. For the avoidance of doubt, the Project Officer may also be the relevant Head of Service. The Project Officer is accountable for the delivery of the project on time, within budget, and in accordance with all relevant internal procurement rules and Public Procurement Legislation.
Public Procurement Legislation	means all relevant external procurement rules and regulations applying in England.
Quotation	A formal statement or promise usually submitted by a potential supplier in response to a request for a quotation to supply specified supplies, works or services required by a purchaser at specific prices within a specific time frame. (A quotation should be distinguished from an Estimate, which is not a fixed price). A quotation is not advertised openly and suppliers are invited to quote from a selected list using ProContract or other Council approved list. N.B. A Contract arises on acceptance of a quotation.

	<p>Unless otherwise specified a quotation may be subject to the supplier's terms and conditions of business and those terms and conditions become part of the Contract. Therefore a request for quotations should specify that the quotation is subject to the Council's terms and conditions.</p>
Services	<p>Includes, for example, services such as maintenance of equipment, transportation, consultancy, technical services etc as defined by the current Public Contract Regulations.</p>
Tender	<p>A sealed bid submitted in response to an invitation to tender, which invitation contains detailed information on requirements including a specification and terms and conditions, and is advertised to the open market in accordance with these rules.</p>
Variation	<p>Any alteration, modification, addition to or deletion of any requirement of the Contract terms or specification.</p>
Works	<p>Includes all construction and repairs in respect of physical assets (buildings, roads, etc.).</p>