

Contract Procedure Rules - Contents

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Definitions Appendix

All costs stated in these Contract Procedure Rules are exclusive of V.A.T., employee costs and fees.

Terms appearing in the definitions appendix are italicised and capitalised.

Further advice can be sought from:-

Legal Services Division in Corporate Services Department
Audit Services in Corporate Services Department
Corporate Procurement Unit (CPU) in Chief Executives Department

A Brief Guide to Contract Procedure Rules

1. These Contract Procedure Rules (issued in accordance with Section 135 of the Local Government Act 1972) are intended to promote good purchasing practice and public accountability and deter corruption. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.
2. *Officers* responsible for purchasing or disposal **MUST** comply with these Contract Procedure Rules. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract (e.g. if Rules 47 to 52 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations in writing or tender submissions. Equally, it may not always be appropriate to make use of an exemption under Rules 13 to 26 even if one might apply or be granted).
3. For the purposes of these Rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail and fax transmissions as well as hard copy.
 - Follow the rules if you purchase goods or services or order building work.
 - Take all necessary procurement, legal, financial and professional advice.
 - Declare any personal financial interest in a contract. Corruption is a criminal offence.
 - Conduct any Service review and appraise the purchasing need.
 - Inform *Corporate Procurement Unit* of any expected or new procurement exercise to allow the *Annual Procurement Plan* to be updated for *Resources Scrutiny* and *Cabinet* (if required).
 - Check whether there is an existing *Corporate Contract* or *Framework Agreement* you can make use of before undergoing a competitive process.
 - Normally allow at least four weeks for submission of bids
 - Contracts will be advertised on the Council's website and on supply2.gov.uk as a minimum.
 - Keep bids confidential.
 - Complete a written contract and/or Council order before the supply or works begin.
 - Where appropriate identify a contract manager with responsibility for ensuring the contract delivers as intended (see Rule 109).
 - Keep records of dealings with suppliers.
 - Assess each contract afterwards to see how well it met the purchasing need and *Value for Money* requirements.
 - On completion of a tender process a report must be compiled detailing the process followed, the evaluation process and the outcome of the tender.

4. In accordance with the *Constitution*, the *Borough Solicitor* shall have the power to make amendments from time to time to these contract procedure rules to reflect decisions made by Council that have an effect on these rules.

Section 1 - Scope

Basic Principles

5. All purchasing and disposal procedures must: -
 - achieve *Best Value* for public money spent
 - be consistent with the highest standards of integrity
 - ensure fairness in allocating public contracts
 - comply with all legal requirements
 - ensure that *Non-commercial Considerations* do not influence any *Contracting Decision*
 - support the council's corporate and departmental aims and policies

Responsibilities

Officers

6. *Officers* responsible for purchasing or disposal must comply with these contract procedure rules, Financial Procedure Rules, the Code of Conduct for Employees, Property Procedure Rules and the Council's Scheme of Delegation, which are all set out in the *Constitution* and with all UK and European Union binding legal requirements. *Officers* must ensure that any *Agents*, *Consultants* and contractual partners acting on their behalf also comply.
7. *Officers* must: -
 - have regard to the guidance in the *Procurement Code of Practice*;
 - before seeking to let another contract check with the CPU whether a suitable *Corporate Contract* or *Framework Agreement* exists. Where a suitable *Corporate Contract* or *Framework Agreement* exists, this must be used unless there is an auditable reason not to do so;
 - if no pre-existing contract is available or there is an auditable reason not to use it then the *Officer* or *CPU* will conduct a procurement exercise ensuring they keep the records required by Rules 30 to 32;
 - provide all relevant information to allow the *CPU* to keep the Corporate Contract Log up to date;
 - provide all relevant information to allow the *CPU* to update the *Annual Procurement Plan*.
 - take all necessary procurement, legal and financial advice;

- ensure that any purchase that represents a *Strategic Procurement* is entered on to the *Strategic Procurement Plan* and that a Procurement Strategy is agreed by Cabinet for such a procurement.
8. When any employee either of the authority or of a service provider may be affected by any transfer arrangement, *Officers* must ensure that the Transfer of Undertaking (Protection of Employment) (*TUPE*) issues are considered and obtain advice from Human Resource Management and Legal Services before proceeding with invitations for *Tenders* or *Quotations*. Where it is considered that *TUPE* will apply the implications should be made clear in the tender document.

Directors

9. *Directors* must:-
- ensure that their employees comply with Rules 6 and 7;
 - ensure contracts are signed by the Borough Solicitor or their representative (see Rules 95 to 100) and arrange their safekeeping on Council premises
 - keep a record of exemptions recorded under Rule 18.

Council

10. Council's role is to agree these Contract Procedure Rules and any subsequent revisions of these Rules.

Cabinet

11. Cabinet will make any contracting decision that is considered to be a *Strategic Procurement*. A risk assessment will be carried out to identify those decisions that represent high value and complex decisions. An annual *Strategic Procurement Plan* detailing the main procurement decisions to be made in the following year will then be submitted to *Cabinet*. Following consultation with relevant Cabinet Members each *Strategic Procurement* will have an accompanying strategy including options appraisals and appropriate evaluation criteria. Cabinet will approve any changes to the *Strategic Procurement Plan*.

Resources Scrutiny Committee

12. Resources Scrutiny Committee will have a monitoring role for contracts and tendering. An *Annual Procurement Plan* will be submitted to *Resources Scrutiny Committee* with regular reports detailing the contracts that have been let, performance of existing contracts, and any changes to the plan. *Resources Scrutiny Committee* will also monitor the implementation of the strategy for each *Strategic Procurement*.

Exemptions, Collaborative and E-Procurement Arrangements

13. The Council has the power to waive any requirements within these Contract Procedure Rules for specific projects.
14. Where the value of a proposed contract is estimated to be above £75,000 but expected to fall below the *EU Threshold*, in exceptional circumstances, a *Director* may submit a report to Council requesting that they waive any requirements within these contract procedure rules, stating the reasons for their request. Where a proposed contract is likely to exceed the *EU Threshold* no exemption can be used and the *EU Procedure* applies.
15. Where the value of a proposed contract is expected to fall below £75,000 but above £5,000 in exceptional circumstances a *Director* has the power, under the scheme of delegation in the *Constitution*, to waive any requirements within these contract procedure rules, provided that there is an auditable reason for doing so and the decision represents value for money.
16. Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to council services, the *Director* may approve the exemption but must prepare a report for the next *Cabinet* to support the action taken.
17. Where there is a need to provide individual packages of specialist care that is not covered by existing contract provision a *Director* can approve an exemption but they must prepare a report to support the action. This report will be kept on file for audit purposes.
18. All exemptions, and the reasons for them, must be recorded using the form in the *Procurement Code of Practice*. Exemptions shall be signed by the *Officer/Departmental Finance Officer* and countersigned by the *Director*. The signed form will be kept on file for audit purposes.
19. A procurement exercise can be carried out using an existing Public Sector *Framework Agreement* such as Office of Government Commerce (OGC) Buying Solutions Contracts, provided that the proposed contract is within the scope of the existing framework agreement. The terms and conditions of contract applicable to any framework arrangement, including the requirement to undertake competition between providers, must be fully complied with. Advice must be sought from the *Corporate Procurement Unit*.
20. In order to secure *Value for Money*, the authority may enter into collaborative procurement arrangements. The *Officer* must consult the *Corporate Procurement Unit* where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.

21. All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these contract procedure rules and no exemption is required. However, purchases above the *EU Threshold* must be let under the *EU Procedure*, unless the consortium has satisfied this requirement already by letting their contract in accordance with the *EU Procedures* on behalf of the authority and other consortium members.
22. Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation, will be deemed to comply with these contract procedure rules and no exemption is required. However, advice must be sought from the *Corporate Procurement Unit*.
23. Where the council has been successful in securing external grant funding to deliver a project any rules pertaining to that grant funding will take precedent over these Contract Procedure Rules.
24. The use of e-procurement technology does not negate the requirement to comply with all elements of these contract procurement rules, particularly those relating to competition and *Value for Money*.
25. In advance of either advertising a tender opportunity or carrying out a mini-tender from a *Framework* a decision can be made to carry out an *e-Auction*. Notification of the use of an *e-Auction* must be included in the Tender advert and documentation.
26. The provisions of these rules do not apply to when sourcing suppliers and sub-contractors to service contracts in respect of work awarded under Rule 57 of these rules.

Relevant Contracts

27. All *Relevant Contracts* must comply with these contract procedure rules. Where a sub-contractor or supplier is to be nominated by a main contractor then these rules apply as if the tender were for a contract with the Council. A *Relevant Contract* is any arrangement made by, or on behalf of, the authority for the carrying out of Works or for the supply of Goods, Materials or Services. These include, but are not limited to, arrangements for:-
 - the supply or disposal of goods
 - the hire, rental or lease of goods or equipment
 - the delivery of services, including (but not limited to) those related to:-
 - the recruitment of employees
 - land and property transactions
 - financial and consultancy services.

28. *Relevant Contracts* do not include:-

- contracts of employment which make an individual a direct employee of the authority, or
- agreements regarding the acquisition, disposal, or transfer of land (for which *Property Procedure Rules* shall apply).

Section 2 – Common Requirements

Steps prior to Purchase

29. The *Officer* must consider the purchase, according to its complexity and value, and taking into account any guidance in the *Procurement Code of Practice*, by:-
- taking into account the requirements from any relevant *Service* 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, is this a *Strategic Procurement*?
 - 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
 - setting out these matters in writing.
 - ensuring appropriate consultation with relevant Cabinet Members has taken place dependant on nature and level of risk associated with the contract to be tendered.
 - adopting Project Management Methodology where appropriate, ensuring the interests of all stakeholders are represented.
 - identifying the required people who will be responsible for evaluating tenders.

and by confirming that:-

- there is *Cabinet* 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 *Strategic Procurement*, Officers must ensure that the contract is on the Annual Procurement Plan and that all appropriate steps have been taken to comply with the requirement of the Forward Plan and the period for call-in.

Records

30. Where the *Total Value* is greater than £5,000 but less than £75,000, the *Officer* must record :-
- invitations to quote and *Quotations*
 - the method for obtaining bids (see Rules 49 to 52)

- any *Contracting Decision* and the reasons for it
- any exemption under Rules 13 to 26 together with the reasons for it
- the *Award Criteria* in descending order of importance
- documents sent to and received from *Candidates*

31. Where the *Total Value* exceeds £75,000 the *Officer* must record:-

- the method for obtaining bids (see Rules 49 to 52)
- any *Contracting Decision* and the reasons for it
- any exemption under Rules 13 to 26 together with the reasons for it
- the *Award Criteria* in descending order of importance
- All documents sent to and received from *Candidates*
- pre-tender market research
- any decisions about contract terms and the rationale behind the decision
- variation of any contract documents
- any correspondence between tenderer and the council
- clarification and post-tender negotiation (to include minutes of meetings)
- the contract documents
- post-contract evaluation and monitoring
- communications with *Candidates* and with the successful contractor throughout the period of the contract.

32. Records required by this rule must be kept for six years after the term of the contract has expired. Contracts under seal must be kept for 12 years after the term of the contract has expired. Records relating to Post Tender Negotiation can be destroyed 12 months after the term of the Contract has expired. However, written documents which relate to unsuccessful *Candidates* may be microfilmed or electronically scanned or stored by some other suitable method after 12 months from award of contract, provided there is no dispute about the award.

Advertising, Approved Lists and Framework Agreements

Identifying and Assessing Potential Candidates

33. *Officers* shall ensure that, where proposed contracts, irrespective of their *Total Value*, might be of interest to potential *Candidates* located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:-

- the Council's website
- portal websites specifically created for contract advertisements
- Supply2.gov.uk
- national official journals, or

- the Official Journal of the European Union (OJEU)/Tenders Electronic Daily (TED) (even if there is no requirement within the *EU Procedure*).
34. *Officers* are responsible for ensuring that all *Candidates* for a *Relevant Contract* are suitably assessed. The assessment process shall establish that the potential *Candidates* have sound:-
- economic and financial standing
 - technical ability and capacity to
- to fulfil the requirements of the Authority.
35. This shall be achieved in respect of proposed contracts that are expected to exceed £75,000 by selecting firms from:-
- *Approved Lists* of providers, maintained by the authority or on its behalf, and compiled following responses to a public advertisement, or
 - shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement.
36. Public advertisements issued in respect of Rule 35 above shall reflect the potential degree of interest from *Candidates* located within other member states of the EU.

Approved Lists

37. *Approved Lists* should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. *Approved Lists* cannot be used where the *EU Procedure* applies.
38. *Directors* may draw up :-
- *Approved Lists* of persons ready to perform contracts to supply goods or services of particular types including without limitation on the basis of agreed contract terms
 - criteria for *Shortlisting* from the lists.
39. No person may be entered on an *Approved List* until there has been an adequate investigation into both their financial and their technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list.
40. *Approved Lists* must be drawn up after an advertisement inviting applications for inclusion on the list. The advertisement must be placed to secure the widest publicity among relevant suppliers throughout all member states of the EU. Persons may be entered on a list between the initial advertisement and re-advertisement provided the requirements of Rule 39 are met.

41. The list and *Shortlisting* criteria must be reviewed at least annually and re-advertised at least every three years. On re-advertisement, a copy of the advertisement must be sent to each company on the list, inviting them to reapply. Review means:-
- the reassessment of the financial and technical ability and performance of those persons on the list, unless such matters will be investigated each time bids are invited from that list
 - the deletion of those persons no longer qualified, with a written record kept justifying the deletion.
42. All *Approved Lists* shall be maintained in an open, fair and transparent manner and be open to public inspection.
43. A register of pre-qualified contractors and *Consultants* maintained by or on behalf of central government e.g. Constructionline will be deemed to be an *Approved List* for the purpose of these contract procedure rules and shall not be subject to the requirements of Rules 38 to 42 inclusive.
44. All *Approved Lists* are subject to reporting to the CPU.

Framework Agreements

45. The term of a *Framework Agreement* must not exceed four years and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.
46. Contracts based on *Framework Agreements* may be awarded by either:-
- applying the terms laid down in the *Framework Agreement* (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or
 - where the terms laid down in the *Framework Agreement* are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
 - inviting the organisations within the *Framework Agreement* that are capable of executing the subject of the contract to submit written *Tenders*
 - fixing a time limit which is sufficiently long to allow *Tenders* for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract
 - awarding each contract to the tenderer who has submitted the best *Tender* on the basis of the *Award Criteria* set out in the specifications of the *Framework Agreement*.

Section 3 – Conducting Purchase and Disposal

Competition requirements for purchase, disposal and partnership arrangements

47. The *Officer* must calculate the *Total Value*.
48. The following procedures apply where there are no other procedures that take precedence. Other procedures may include agency agreements with government. If in doubt, *Officers* must seek the advice of the *Head of Strategic Procurement & Contract Management*.

Purchasing – Competition Requirements

49. 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. The persons specified in the third column shall carry out *Shortlisting*.

Total Value	Award Procedure	Shortlisting
Up to £5,000	One oral <i>Quotation</i> (confirmed in writing where the total value exceeds £500)	<i>Officer</i>
£5,001 - £75,000	At least three written <i>Quotations</i>	<i>Officer and Line Manager</i>
£75,001 – EU Threshold	<i>Invitation to Tender</i> by advertisement/list to at least five <i>Candidates</i>	<i>Officer, Assistant Director and a representative from CPU</i>
Above EU Threshold	<i>EU Procedure</i> or, where this does not apply, <i>Invitation to Tender</i> by advertisement/list to at least five <i>Candidates</i>	<i>Officer, Assistant Director, Head of Strategic Procurement & Contract Management.</i>

50. Where it can be demonstrated that there are insufficient suitably qualified *Candidates* to meet the competition requirement, all suitably qualified *Candidates* must be invited.
51. An *Officer* must not enter into separate contracts nor select a method of calculating the *Total Value* in order to minimise the application of these contract procedure rules.
52. Where the *EU Procedure* is required, the *Officer* shall follow the most appropriate route for procurement, taking account of the guidance in the *Procurement Code of Practice*. Advice can be sought from the *CPU*.

Appointment of Consultants

53. Consultant architects, engineers, surveyors and other professional *Consultants* shall be selected and commissions awarded in accordance with the procedures detailed within these Contract Procedure Rules. Where a local, regional or national Framework exists then the *Officer* must use that Framework or demonstrate an auditable reason for not doing so. If a Framework is not used then consultants shall be appointed as outlined above.
54. The engagement of a *Consultant* shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal contract which clearly sets out the terms of their appointment.
55. *Officers* will require *Consultants* to maintain professional indemnity insurance policies to the satisfaction of the relevant *Director* for the period of the contract

Assets for Disposal

56. Assets for disposal must be sent to public auction except where better *Value for Money* is likely to be obtained by inviting *Quotations* and *Tenders*. (These may be invited by advertising on the council's internet site.) In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the *Departmental Finance Officer*.

Providing Services to External Purchasers

57. Where contracts to work for organisations other than the authority are contemplated the relevant *Director* must satisfy themselves that the work can be carried out with no detrimental effect to the Council and this decision is made in consultation with the relevant cabinet Member. A report detailing under which Statutory Powers they are tendering must be submitted to the *Borough Solicitor* for confirmation. If, following a risk assessment, the decision is deemed to be a *Strategic Procurement* then it must be entered on the *Strategic Procurement Plan*.

Collaborative and Partnership Arrangements

58. Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these contract procedure rules. If in doubt, *Officers* must seek the advice of the *Borough Solicitor* and the *Corporate Procurement Unit*.

Pre-tender Market Research and Consultation

59. The *Officer* responsible for the purchase:-
 - may consult potential suppliers prior to the issue of the *Invitation to Tender* in general terms about the nature, level and standard of the supply, contract

packaging and other relevant matters, provided this does not prejudice any potential *Candidate*, but

- must not seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential *Candidates* or distort competition, and
- should seek advice from the *Corporate Procurement Unit*.

Standards and Award Criteria

60. The *Officer* must ascertain what are the relevant British, European or international standards that apply to the subject matter of the contract. The *Officer* must include those standards that are necessary properly to describe the required quality.
61. The *Officer* must define *Award Criteria* that are appropriate to the purchase and designed to secure an outcome giving *Value for Money* for the authority. The basic criteria shall be:-
 - ‘lowest price’ where payment is to be made by the authority
 - ‘highest price’ if payment is to be received, or
 - ‘most economically advantageous’, where considerations other than price also apply.
62. If the last criterion is adopted, it must be further defined by reference to sub-criteria that 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, economic benefits to the local community, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters. If you are unsure please contact CPU for advice on award criteria and related tender specifications.
63. *Award Criteria* must not include:-
 - *Non-commercial Considerations*
 - matters that discriminate against suppliers from the *European Economic Area* or signatories to the *Government Procurement Agreement*.

Invitations to Tender/Quotations

64. The *Invitation to Tender* shall state that no *Tender* will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*. No *Tender* delivered in contravention of this clause shall be considered. All *Invitations to Tender* and *Quotations* will be issued through the Council’s *e-Tendering & Contract Management System*, so far as such a system is available. Exceptions to this can be made if it is

deemed that the process will disadvantage a particular sector or company.

65. All *Invitations to Tender* shall include the following:-
- (a) A specification that describes the authority's requirements in sufficient detail to enable the submission of competitive offers.
 - (b) A requirement for tenderers to declare that the *Tender* content, price or any other figure or particulars concerning the *Tender* have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
 - (c) A requirement for tenderers to complete fully and sign all *Tender* documents including a form of *Tender* and certificates relating to canvassing and non-collusion.
 - (d) Notification that *Tenders* are submitted to the council on the basis that they are compiled at the tenderer's expense.
 - (e) Notification that no *Tender* will be considered unless it is enclosed in a sealed envelope or container which bears the word '*Tender*' followed by the subject to which it relates, but no other name or mark indicating the sender.
 - (f) A stipulation that any *Tenders* submitted by fax or other electronic means shall not be considered.
 - (g) 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.
 - (h) The method by which any arithmetical errors discovered in the submitted *Tenders* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender* or vice versa.
66. All *Invitations to Tender* or *Quotations* must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rules 90 to 100).
67. The *Invitation to Tender* or *Quotation* must state that the council is not bound to accept any *Quotation* or *Tender*.
68. All *Candidates* invited to *Tender* or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

Shortlisting

69. Any *Shortlisting* must have regard to the financial and technical standards relevant to the contract and the *Award Criteria*. Special rules apply in respect of the *EU Procedure*.
70. The Officers responsible for *Shortlisting* are specified in Rule 49.
71. When *Approved Lists* are used then *Shortlisting* can be carried out by an *Officer* in accordance with the *Shortlisting* criteria drawn up when the *Approved List* was compiled (see Rule 38). However, where the *EU Procedure* applies, *Approved Lists* may not be used.

Submission, Receipt and Opening of Tenders/Quotations

72. *Candidates* must be given an adequate period in which to prepare and submit a proper *Quotation* or *Tender*, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of *Tenders*. The *EU Procedure* lays down specific time periods (see guidance in the *Procurement Code of Practice*).
73. When the *e-Tendering & Contract Management System* is used tenders will be held securely until the appropriate time and date for release. All hard copy *Tenders* must be returned to the *Borough Solicitor*.
74. *Tenders* received by fax or other electronic means (e.g. email) must be rejected, unless they have been sought in accordance with the Council's *e-Tendering & Contract Management System*.
75. The *Officer* must not disclose the names of *Candidates* to any staff involved in the receipt, custody or opening of *Tenders*.
76. The *Head of Strategic Procurement & Contract Management* shall be responsible for the management of the *e-Tendering & Contract Management System* and the safekeeping of *Tenders* until the appointed time of opening. Each *Tender* must be:-
 - suitably recorded so as to subsequently verify the date and precise time it was received
 - adequately protected immediately on receipt to guard against amendment of its contents
 - recorded immediately on receipt in the *Tender Record Log*.
77. The *Borough Solicitor* must ensure that all *Tenders* are opened at the same time when the period for their submission has ended. The *Officer* or their representative must be present. *Tenders* must be opened in the presence of two Officers representing the *Borough Solicitor*.

78. Upon opening, a summary of the main terms of each *Tender* (i.e. significant issues that are unique to each *Tender* submission and were not stated in the *Tender* invitation documents such as *Tender* sum, construction period, etc) must be recorded in the *Tender Record Log*. The summary must be initialled on behalf of the *Borough Solicitor*.

Clarification Procedures and Post-tender Negotiation

79. Providing clarification of an *Invitation to Tender* to potential or actual *Candidates* or seeking clarification of a *Tender*, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a *Tender* and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an *EU Procedure* where this might distort competition, especially with regard to price.
80. If post-tender negotiations are necessary after a single-stage *Tender* or after the second stage of a two-stage *Tender*, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best *Tender* and after all unsuccessful *Candidates* have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the *Tender* documents. *Officers* appointed by the *Director* 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.
81. Post-tender negotiation must only be conducted in accordance with the guidance issued by the *Borough Solicitor* who, together with the *Corporate Procurement Unit*, 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.
82. Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

Evaluation, Award of Contract, and Debriefing Candidates

83. Apart from the debriefing required or permitted by these contract procedure rules, the confidentiality of *Quotations*, *Tenders* and the identity of *Candidates* must be preserved at all times and information about one *Candidate's* response must not be given to another *Candidate*.
84. 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.
85. The arithmetic in compliant *Tenders* must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw

their *Tender*. Alternatively, if the rates in the *Tender*, rather than the overall price, were stated within the *Tender* invitation as being dominant, an amended *Tender* price may be requested to accord with the rates given by the tenderer.

86. *Officers* may accept *Quotations* and *Tenders* received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these contract procedure rules. The Cabinet shall also approve the awarding of contracts that represent a *Strategic Procurement*
87. Where the *Total Value* is over £75,000, the *Officer* must notify all *Candidates* simultaneously and as soon as possible of the intention to award the contract to the successful *Candidate*. 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. In the event that an unsuccessful *Candidate* challenges the decision then the *Officer* shall not award the contract. They should immediately seek the advice from the *Head of Strategic Procurement & Contract Management*.
88. The *Officer* shall debrief in writing all those *Candidates* who submitted a bid about the characteristics and relative advantages of the leading bidder. No information, other than the following, should be given without taking the advice of the *Borough Solicitor* or *Head of Strategic Procurement & Contract Management*:-
- how the *Award Criteria* were applied
 - the prices or range of prices submitted, in either case not correlated to *Candidates*' names
 - the names of *Candidates* where there were three or more *Candidates*.
89. If a *Candidate* requests in writing the reasons for a *Contracting Decision*, the *Officer* must give the reasons in writing within 15 days of the request. If requested, the *Officer* may also give the debriefing information at Rule 88 above to *Candidates* who were deselected in a pre-tender *Shortlisting* process

Section 4 – Contract and Other Formalities

Contract Documents

Relevant Contracts

90. All *Relevant Contracts* shall be in writing. The Council's order form or standard terms and conditions issued by a relevant professional body must be used wherever possible.
91. 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.

92. In addition, every *Relevant Contract* must also state clearly as a minimum:-

- that the contractor may not assign or sub-contract without prior written consent
- any insurance requirements
- health and safety requirements
- ombudsman requirements
- data protection requirements, if relevant
- that charter standards are to be met if relevant
- race relations requirements
- Disability Discrimination Act requirements
- Freedom of Information Act requirements
- where *Agents* are used to let contracts, that *Agents* must comply with the council's contract procedure rules
- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.

93. All contracts will be let using the council's *Standard Terms and Conditions*. The formal advice of the *Borough Solicitor* must be sought for contracts for which it is not proposed to use the *Standard Terms and Conditions* for example:-

- where it is proposed to use Industry Standard Contracts e.g. NEC Conditions of Contract
- where the contractor or supplier wants to vary the council's standard terms and conditions
- where it is proposed to use a supplier's own terms
- those involving leasing arrangements.

Contract Formalities

94. *Relevant Contracts* shall be completed as follows:-

- Up to £75,000 signature *Director and Borough Solicitor* or Authorised Signatory i.e. person authorised by Borough Solicitor (see Rule 97)
- Above £75,000 sealing (see Rules 98 to 100).

95. All contracts must be concluded formally in writing before the supply, service or construction work begins, and in any event before payments are made, except in exceptional circumstances, and then only with the written consent of the *Borough Solicitor*. An award letter is insufficient.

96. The *Officer* responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

Sealing

97. Where contracts are completed by each side adding their formal seal, such contracts shall be signed by the *Borough Solicitor* or Authorised Signatory i.e. person authorised by Borough Solicitor together with the fixing of council's seal.
98. Every council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal.
99. 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, or
 - the *Total Value* exceeds £75,000.

Bonds and Parent Company Guarantees

100. The *Officer* must consult with an *Assistant Director* responsible for finance about whether a *Parent Company Guarantee* is necessary when a *Candidate*:-
 - is a subsidiary of a parent company and the *Total Value* exceeds £250,000, or
 - award is based on evaluation of the parent company, or
 - there is some concern about the stability of the *Candidate*.
101. The *Officer* must consult with an Assistant Director responsible for finance about whether a *Bond* is needed:-
 - where the *Total Value* exceeds £1,000,000, or
 - where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the *Candidate*.

Prevention of Corruption

102. The *Officer* must comply with the *Code of Conduct for Employees* and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the *Officer* to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 104 below.
103. The following clause must be put in every written Council contract:-

‘The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:-

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or*
- (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or*
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.*

Any clause limiting the Contractor’s liability shall not apply to this clause.’

Declaration of Interests

- 104. If it comes to the knowledge of a member or an employee of the authority that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the council, he or she shall immediately give written notice to the *Borough Solicitor*. The *Borough Solicitor* shall record such declarations.
- 105. Such written notice is required irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest is distinct from a direct pecuniary interest in as much as it is not a contract to which the member or employee is directly a party.
- 106. A shareholding in a body not exceeding a total nominal value of £1,000 or 1 per cent of the nominal value of the issued share capital (whichever is the less) is not a pecuniary interest for the purposes of this Procedure Rule.
- 107. The *Borough Solicitor* shall maintain a record of all declarations of interests notified by members and *Officers*.

Section 5 - Contract Management

Managing Contracts

- 108. Where appropriate, taking account of cost, longevity and risk associated with the contract, sponsoring departments are to name contract managers for all new contracts. All such contracts must have a named council *Contract Manager* and a named company contract manager for the entirety of the contract.
- 109. *Contract Managers* must follow the procedures set out in the council’s *Procurement Code of Practice*.

Risk Assessment and Contingency Planning

110. A business case must be prepared for all procurements with a potential value over the *EU Threshold*. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
111. For all contracts with a value of over £75,000, contract managers must:-
- maintain a risk register during the contract period
 - undertake appropriate risk assessments and for identified risks
 - ensure contingency measures are in place.

Contract Monitoring, Evaluation and Review

112. All contracts which have a value higher than the *EU Threshold* limits, or which are *High Risk*, are to be subject to monthly formal review with the contractor.
113. During the life of the contract, the *Officer* must monitor in respect of:-
- performance
 - compliance with specification and contract cost
 - any *Value for Money* requirements
 - user satisfaction and risk management.
114. Where the *Total Value* of the contract exceeds £500,000, the *Officer* must make a written report to *Resources Scrutiny Committee* evaluating the extent to which the purchasing need and the contract objectives (as determined in accordance with Rule 29) were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

Definitions Appendix

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

Approved List - A list drawn up in accordance with Rules 37 to 44.

Assistant Director - The *Officers* defined as such in the *Constitution*

Award Criteria - The criteria by which the successful *Quotation* or *Tender* is to be selected (see further Rules 60 to 63 and 65(g)).

Award Procedure - The procedure for awarding a contract as specified in Rules 47 to 58; 60 to 63; and 83 to 89.

Best Value - The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council. This terminology has now, in many instances, been superseded by *Value for Money*.

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

Borough Solicitor - The officer defined as such in the *Constitution*.

Cabinet - The Council's cabinet as defined in the *Constitution*.

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

Chief Finance Officer - The Director of Finance and Performance or such other Officer as may be designated Chief Finance Officer by the Council.

Chief Internal Auditor

Committee - A Committee that has power to make decisions for the Council, for example a joint committee with another local authority, but not a Scrutiny Committee.

Constitution - The constitutional document approved by the Council which:-

- allocates powers and responsibility within the Council and between it and others
- delegates authority to act to the *Cabinet*, *Committees* and *Officers*
- regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

Consultant - Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the council has no ready access to employees with the skills, experience or capacity to undertake the work.

Contract Manager - The *Officer* appointed by the relevant *Director* to have responsibility for managing the contract.

Contracting Decision - Any of the following decisions:-

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

Corporate Contract - A contract let by the *Corporate Procurement Unit* to support the council's aim of achieving *Value for Money*.

Corporate Procurement Unit - The Council's central procurement unit charged with providing strategic direction and advice to secure *Value for Money* in the council's procurement activities.

Departmental Finance Officer - The most senior *Officer* representing the *Director of Corporate Services* or designated by him/her to provide financial advice to the *Director* of the relevant Department.

Director The Officers defined as such in the *Constitution*.

e-Auction - A secure electronic hosted system by which suppliers bid against each other to reduce prices.

e-Tendering and Contract Management System - The system the Council has adopted to carry out tendering electronically.

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

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

European Economic Area - The 15 members of the European Union, and Norway, Iceland and Liechtenstein.

Financial Procedure Rules - The financial regulations outlining *Officer* responsibilities for financial matters issued by the *Chief Finance Officer* in accordance with the *Constitution*.

Framework Agreement - An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

Government Procurement Agreement - The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the *European Economic Area* are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.

Head of Strategic Procurement and Contract Management - Officer responsible for managing the Corporate Procurement Unit.

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

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

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

Invitation to Tender - Invitation to tender documents in the form required by these Contract Procedure Rules.

Line Manager - The *Officer's* immediate superior or the *Officer* designated by the Director to exercise the role reserved to the line manager by these Contract Procedure Rules.

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

Non-commercial Considerations:-

- (a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').

- (b) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.
- (c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.
- (d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').
- (e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.
- (f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.
- (g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.
- (h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.

Workforce matters and industrial disputes, as defined in paragraphs (a) and (d) above, cease to be non-commercial considerations to the extent necessary or expedient to comply with *Best Value*; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (*TUPE*) may apply.

Officer - The Officer designated by the *Director* to deal with the contract in question.

Parent Company Guarantee - A contract that binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the council, the council can require the parent company to do so instead.

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

Procurement Code of Practice - The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these contract procedure rules. This is available on the Council's intranet.

Procurement Strategy - The document that sets out the Council's approach to procurement and key priorities for the next few years.

Property Procedure Rules - Rules that apply to the acquisition, disposal or transfer of land or property.

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

Relevant Contract - Contracts to which these contract procedure rules apply (see Rules 27 and 28).

Resources Scrutiny Committee - Resources Scrutiny Committee as defined in the *Constitution*.

Shortlisting - The process of selecting *Candidates* who are to be invited to quote or bid or to proceed to final evaluation.

Standard Terms and Conditions - The contractual terms that the *Borough Solicitor* has agreed and that form part of the Council's contract.

Strategic Procurement - A decision that Members believe is high risk, high profile or high value enough to be made by *Cabinet*.

Strategic Procurement Plan - The plan of all Strategic Procurements that is taken to *Cabinet* for approval.

Supervising Officer - The *Line Manager's* immediate superior.

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

Tender Record Log - The log kept by the Director of Corporate Services or his representative to record details of *Tenders* (see Rule 78).

Total Value - The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:-

- (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period
- (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months
- (c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48
- (d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result
- (e) for *Nominated Suppliers and Sub-contractors*, the total value shall be the value of that part of the main contract to be fulfilled by the *Nominated Supplier or Sub-contractor*.

TUPE Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246) - Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

Value for Money - Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.