



CONTRACT PROCEDURES

Contents¹

1	General	2
2	Estimate of contract value	5
3	Procedures to be employed.....	6
4	Method to be employed.....	7
5	Tendering – general.....	7
6	The invitation to tender	7
7	Receipt and opening of tenders	8
8	Evaluation of tender	9
9	Acceptance of tenders	10
10	Contracts	11
11	Liquidated damages and security	12
12	Prevention of bribery and corruption	13
13	Review of the procedures	13

¹ Click on the item in contents to go to the page reference.

1 General

- 1.1. The primary objective of these contract procedures is to ensure that all contracts for works, services and supplies (goods and services) are entered into by the council in a manner which:
 - (a) secures the best possible value for money
 - (b) is demonstrably free from impropriety.
- 1.2. To do this the selection and award procedures for contracts must be conducted fairly, transparently and in an open and regularised way. The council must conform to relevant legal requirements.
- 1.3. References to the corporate leadership team, chief finance officer and the head of law and governance in these procedures shall have the same meaning as defined in financial regulations.

Application

- 1.4. These contract procedures are made pursuant to the Local Government Act 1972 Section 135 and shall apply to contracts and contracting procedures, whether formal or otherwise, for the purchase of works, goods or services. They relate to both revenue and capital expenditure.
- 1.5. No contract or purchase may be made unless an approved budget exists for the expenditure.
- 1.6. Officers responsible for purchasing or disposal must comply with these contract procedures. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract. (For example, it may not always be appropriate to make use of an exemption in accordance with 1.11 to 1.15 below even if one might apply or be granted.)
- 1.7. For the purposes of these procedures, 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.
- 1.8. Officers responsible for purchasing must:
 - (a) follow the procedures if you purchase goods or services or order building work
 - (b) take all necessary legal, financial and professional advice
 - (c) declare any personal finance interest in a contract. Corruption is a criminal offence
 - (d) conduct a value for money review and appraise the purchasing need

- (e) check whether there is an existing corporate contract you can make use of before undergoing a competitive process
- (f) normally allow at least four weeks for submission of bids subject to any minimum timescales proscribed by law
- (g) keep bids confidential
- (h) complete a written contract and council order before the supply or works begin
- (i) identify a contract manager with responsibility for ensuring the contract delivers as intended
- (j) keep records of dealings with suppliers
- (k) assess each contract afterwards to see how well it met the purchasing need and value for money requirements.

Requirement for compliance

1.9. Subject to procedures 1.10 to 1.14 (below) every contract and procurement made by or on behalf of the council shall comply with:

- (a) these contract procedures
- (b) the financial regulations and the financial procedures
- (c) all relevant statutory provisions or other legal requirements including those implementing the directives of the European Union; and
- (d) any direction by the council or cabinet having appropriate delegated power.

Exceptions and collaborative arrangements

1.10. These contract procedures do not apply or may be varied where or to the extent that:

- (a) the contract is for the acquisition, disposal or transfer of land (for which other financial procedures apply) where there is no development or other agreement attached to the disposal/ transfer.
- (b) the contract is for the employment of individual members of staff
- (c) statute or legislation prescribes otherwise
- (d) goods or materials to be purchased are on sale by public auction

1.11. The council and its cabinet have power to waive any requirements within these contract procedures for specific projects subject to compliance with the law, and any such decision may be a key decision. A record of the reason for exception shall be included in the minutes. No exemption can be used if the EU procedure applies.

- 1.12. In exceptional circumstances, the strategic contracts manager is authorised to waive any requirements within these contract procedures, provided that, where the contract is likely to exceed £50,000, the chief finance officer must also authorise the waiving of these procedures. Any exemption under this paragraph and paragraph 1.10 (c) must be recorded in the register of exemptions by the strategic contracts manager.
- 1.13. A request to waive may also be made where goods or materials to be purchased are:
- (a) proprietary articles or are sold by the manufacturer only at a fixed price
 - (b) obtainable only from a limited number of contractors, in which case at least three shall be invited to submit tenders
 - (c) controlled by trade organisations or if for other reasons there would be no genuine competition
- 1.14. Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to council services, the relevant officer can approve the exemption. This should then be reported to the strategic contracts manager as soon as practical, but for contracts over £50,000 a report should be made to cabinet by the relevant head of service.
- 1.15. The head of law and governance must monitor the use of all exemptions.
- 1.16. In order to secure value for money, the council may enter into collaborative procurement arrangements. The officer must consult the strategic contracts manager where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.
- (a) All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these contract procedures 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.
 - (b) 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 procedures of the leading organisation, will be deemed to comply with these contract procedures and no exemption is required. However, advice must be sought from the procurement service.
- 1.17. The use of e-procurement technology does not negate the requirement to comply with all elements of these contract procedures, particularly those

relating to openness, transparency, honesty and fairness. Tenders received must be kept secure until the opening of tender submissions.

2 Estimate of contract value

- 2.1. Before any invitation to quote or tender is released the relevant employee is required to draw up in writing a specification of the council's requirement. This is to make clear all aspects of the goods, works and services the council intends to procure and over what period.
- 2.2. From this an estimate is to be made of the value of a contract or purchase to allow for the correct procedure to be followed. This estimate and the basis of it is to be recorded in writing by the relevant employee.

Under £10,000

- 2.3. Where it appears likely that the cost of any works, goods, materials or services will not exceed £10,000 before tenders or quotations are requested, the strategic contracts manager is authorised to enter into a written contract on behalf of the council.

Over £10,000

- 2.4. Where it appears likely that the cost of any works, goods, materials or services will exceed £10,000, before tenders or quotations are requested, a written estimate of the cost must be submitted to the strategic contracts manager. The applicability of any part of these procedures referring to value or amount shall, where relevant, be determined on the basis of that estimate whether or not the contract relates to capital or revenue expenditure.

Over European procurement limits

- 2.5. Before entering into a contract for the supply of goods, services or the execution of any work which is first estimated to exceed European procurement limits in value or amount, the appropriate employee or other person shall submit to the cabinet a report giving an estimate of the probable expense for the supply of goods or the execution of the work. The report must be marked as a key decision.

Calculation of estimate

- 2.6. For the purpose of deciding the correct procedure to be followed it is requirement that all foreseeable purchases or contracts for the service be aggregated. The estimate shall be calculated on the basis of any continuing purchase of a number of similar items made from a single supplier and no attempt shall be made to avoid obtaining tenders by:
 - (a) estimating the price for one article only when the order is for several articles; or

- (b) placing two or more orders to keep the total sum below the financial limit, or if potentially likely to exceed EU procurement limits, the guidance as stated in regulation 8 of the Public Contracts Regulations 2006.

Estimates must relate to the total value over the whole term of the contract including all fees, insurance premiums and any other amounts payable.

3 Procedures to be employed

- 3.1. Where the council intends to purchase relatively low value goods and services an abbreviated procedure may be followed. This depends on the value of purchases. Employees making use of these procedures must ensure that they consider at least one alternative supplier to those most often approached on each occasion.

Up to £10,000

- 3.2. Orders for goods, works and services below £10,000 in value can be placed with the most appropriate supplier, giving consideration to any relevant factors. Three quotations should be obtained in writing wherever possible. For goods and services that are likely to be a regular requirement estimates should be undertaken of the likely annual procurement as set out in 2.6 above.

£10,000 - £50,000

- 3.3. Any contract between £10,000 and £50,000 in value or amount for the supply of goods or materials or the execution of any work will require at least three written quotations to be obtained. The employee undertaking the exercise must consult with the procurement service and record the details of the product/service specified in writing and the prices quoted, which are to be recorded when they are given. An order for the successful quoted amount must then be raised under normal procedures.

£50,000 - European procurement limits

- 3.4. Any contract between £50,000 and European procurement limits in value or amount for the supply of goods or materials or the execution of any work will require at least three written tenders to be obtained by the procurement service.

Joint procurement

- 3.5. Where specific procedures have not been agreed and a procurement is being undertaken jointly with other public sector bodies or organisations, where one of those other bodies or organisations acts as the lead authority, then the contract and procurement procedures for that organisation will apply.

4 Method to be employed

Framework Agreements, also known as approved lists

- 4.1. 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.
- 4.2. Contracts based on framework agreements may be awarded by either:
- (a) 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
 - (b) 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.

5 Tendering – general

- 5.1. All tenders shall be required to be submitted on a form of tender prepared or approved by the council.

6 The invitation to tender

- 6.1. The invitation to tender must be sent to any suitable contractor, unless it was predetermined that some selection process was to be used to limit the numbers. The invitation to tender must include the main contract terms required and is to specify:
- (a) that no tender will be considered unless contained in a plain sealed envelope (to be supplied by the council) endorsed "Tender" followed by the subject to which it relates or the contract number

- (b) that the tender envelope shall not bear any name or mark indicating the sender and that tenders submitted by facsimile or email are not acceptable and will not be considered
- (c) the address to which tenders are to be submitted
- (d) the closing date and time for receipt of tenders
- (e) the period for which a tender must remain valid
- (f) whether variant tenders will be considered and if so in what form
- (g) whether a bond or parent company guarantee will be required
- (h) professional, employers and public liability and other insurance required
- (i) that the council is not obliged to accept the lowest (or highest as the case may be) or any tender.

7 Receipt and opening of tenders

- 7.1. All tenders shall be addressed to the procurement service and shall remain in the safe in general administration services team until the time appointed for their opening.
- 7.2. All tenders shall, as soon as they are received at the office of the general administration services team, be recorded and endorsed with the date and time of receipt, numbered consecutively in order of receipt and kept securely until they are due to be opened. Tenders bearing a mark which identifies the tenderer are to be retained until formally opened.
- 7.3. Tenders shall be dealt with as soon as possible after the closing date and time for receipt and shall be opened at the same time and in the presence of the head of service or a senior officer appointed by him or her and at least one other officer from the procurement service. A representative of Internal Audit may also be asked to attend in appropriate cases. No other persons shall be in attendance at the opening of tenders. All opened tenders shall be initialled by the employees present.
- 7.4. Any tender received after the time specified for receipt shall be opened to ascertain the name and address of the tenderer but no details of the tender shall be disclosed – the tenderer will be notified that the tender was received late and will not be considered.
- 7.5. A record of the main elements of a tender is to be made at the time of opening. This record is to stipulate:
 - (a) the name of the tenderer
 - (b) the basic tender price or prices or predetermined prices for elements of the contract
 - (c) any other matters relevant to the tender
 - (d) tenders excluded by virtue of identification

- (e) any problems encountered with the tender.

The record is to be signed as correct by all persons present at the opening of tenders.

8 Evaluation of tender

- 8.1. Where an error is discovered in tender documents before the closing date/time, all suppliers who have been sent tender documents must be contacted and advised of the error. If a supplier has already submitted their tender they must be allowed an opportunity to submit a new tender before the closing date/time.
- 8.2. After the opening of tenders, if there is an obvious error in a tender submitted (for example the result of a calculation is incorrect or there is a typing error in a value), the head of service may allow the supplier to be contacted and afforded the opportunity to correct the error or withdraw their submission. All communication must be in writing.

Tender evaluation

- 8.3. Evaluation of tenders must be carried out by at least two suitable persons capable of evaluating the tenders, if necessary including (in addition) external advisors. Where external advisors are to be appointed they are normally to be involved at the contract specification (pre tender) stage of these procedures.

Clarification procedures and post-tender negotiation

- 8.4. This section applies to tenders where the value of the contract is below the public procurement threshold. For tenders above the public procurement threshold advice is available from the strategic contracts manager.
- 8.5. Post tender negotiations may only take place if the tender documents stated and reserved the right to do so.
- 8.6. Negotiations must be conducted by a team of at least two officers of the council.
- 8.7. Negotiations must be conducted with all suppliers unless there are clear reasons for excluding one or more suppliers.
- 8.8. Written records must be retained of all negotiations.

9 Acceptance of tenders

Minimum number

- 9.1. Where less than three valid tenders are received then no tender shall be awarded until a report detailing the results of the tender evaluation has been considered by the strategic contracts manager.

Acceptance of the lowest (or highest) tender

- 9.2. The head of service shall be authorised to accept the lowest tender if payment is to be made by the council or the highest tender if payment is to be received by the council except where fewer than three valid tenders have been received in which case selection will be dealt with as outlined in 9.1 above.

Acceptance of other than the lowest (or highest) tender

- 9.3. A tender other than the lowest tender if payment is to be made by the Council or the highest tender if payment is to be received by the Council, shall not be accepted until the Strategic contracts manager has considered a written report from the appropriate employee, consultant or agent.
- 9.4. In considering the tenders consideration may be given not only to the prices quoted but also to factors (such as the quality of the service or goods offered) relative to a cheaper quotation and the suitability of the contractor in relation to the council's policies. Consideration must also be given to the original estimate of the value of the contract and an explanation given for any significant difference. A report summarising these findings and recommending which (if any) of the tenders is to be accepted and on what terms must then be submitted to the strategic contracts manager.

Commencement of work

- 9.5. Except in cases especially authorised by the strategic contracts manager, contractors shall not be allowed to commence work until the contract has been signed and, where required, the necessary bond has been secured or other security accepted.

Acceptance of tenders and award of contracts

- 9.6. The head of service may accept tenders based on the award criteria.
- 9.7. When a contract is awarded, notification must be given to the successful supplier and the unsuccessful suppliers. The notification must state the basis of the acceptance of the winning. Unsuccessful suppliers must be given the reason why their individual tender was unsuccessful and be offered feedback on their tender submission. A 10-day standstill period must then be observed between notification of award and entering in to a contract.

- 9.8. The notification of award must make clear that it is subject to a formal contract and that any challenge may negate the ability of the council to enter in to such a contract.

10 Contracts

Contract documentation

- 10.1. All contracts must be in writing. For purchases up to £50,000 a purchase order referring to the terms and conditions may be used where the contract is of a non-complex nature. In all other cases the form of contract must be agreed with the strategic contracts manager.
- 10.2. The contract must, as a minimum, contain the following terms:

- (a) that the supplier may not sub-let, assign or transfer to any person all or part of the contract without the written permission of the council
- (b) the goods, services or works to be supplied
- (c) the price to be paid including any discounts
- (d) the period for compliance/term of the contract
- (e) any insurance requirements
- (f) termination rights.

Contracts under seal

- 10.3 Every contract which exceeds European procurement limits in value shall be sealed in accordance with Article 14 of the council's constitution.

Contract terms

- 10.4 Under this procedure contracts shall specify:
- (a) the work, materials, matters or things to be furnished, supplied or done (including any appropriate technical specifications)
 - (b) the price to be paid with a statement of discounts or other deductions
 - (c) the time or times within which the contract is to be performed.

Assignment

- 10.5 Every written contract for the execution of work or the supply of goods or materials shall prohibit the contractor from transferring or assigning, directly or indirectly, to any other person or persons the whole or any

portion of his or her contract without the written permission of the council. Sub-letting of any part(s) of the work, except to the extent permitted in the tender document shall also be prohibited.

11 Liquidated damages and security

Liquidated damages

- 11.1. Unless waived by the strategic contracts manager, every contract which is estimated to exceed £50,000 in value or amount (and in any other contract of a lesser amount if the strategic contracts manager considers it appropriate), for the execution of works (or where appropriate for the supply of goods or materials by a particular date or series of dates) shall provide for the payment of liquidated damages by the contractor in case the terms of the contract are not duly performed.
- 11.2. Consideration is to be given to the inclusion of a clause requiring payment of unliquidated damages in the event of the failure of the contractor to complete the contract to the required specification or within the timescale agreed.

Breach of contract

- 11.3. In every written contract for the supply of goods or materials which exceeds £50,000 in value or amount, a clause shall be inserted to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the council, without prejudice to any other remedy, shall be at liberty to determine the contract either wholly or to the extent of such default in breach of contract.
- 11.4. In such case as set out in 11.3 above, the council may purchase other goods or materials as the case may be, of the same or similar description to make good such default or, in the event of the contract being wholly determined, the goods or materials remaining to be delivered.
- 11.5. The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor, shall be recoverable from the contractor.

Performance bonds

- 11.6. Where a tender exceeds £100,000 in value or amount and is for the execution of works or for the supply of goods or materials by a particular date or series of dates, a performance bond or other sufficient security amounting to 10% of the contract sum for the performance of the contract shall be obtained.

11.7. In other cases a bond shall be obtained where the strategic contracts manager deems it necessary.

12 Prevention of bribery and corruption

12.1. Members and employees involved in the letting of contracts and the purchase of goods and services must ensure they comply with the relevant code of conduct.

12.2. Any gift offered, either during a contract process or prior to or after the procedure, must be reported in accordance with the council's procedures for these matters. If any person believes such a gift to have been offered as an inducement the appropriate member of the corporate leadership team and the head of law and governance are to be informed immediately.

12.3. Every written contract shall include a clause to secure that the council shall be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor shall have:

- (a) offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the council; or
- (b) for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the council; or
- (c) if the like acts shall have been done by any person employed by the contractor or acting on his or her behalf (whether with or without the knowledge of the contractor); or
- (d) if in relation to any contract with the council the contractor or any person employed by him or her or acting on his or her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or any amendment or re-enactment of them; or
- (e) shall have given any fee or reward the receipt of which is an offence under subsection 2 of Section 117 of the Local Government Act 1972; or
- (f) shall have offered, promised or given a bribe (a financial or other advantage) to another person to induce that person to perform improperly a relevant function, which is an offence under the Bribery Act 2010.

13 Review of the procedures

The chief finance officer will review and amend these contract procedures periodically as appropriate.