

Appendix 2b



Part 4g

Contract Procedure Rules

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Definitions

Term	Definition
<i>Authorised Signatory</i>	An officer authorised by the Head of Procurement & Projects and/or Chief Solicitor in accordance with the Council's constitution to sign a contract or the Council's seal.
<i>Award Criteria</i>	The criteria by which the successful Quotation or Tender is to be selected (see further Rules 8 and 13.2(e).
<i>Award Procedure</i>	The procedure for awarding a contract as specified in Rules 6, 8, and 13.
<i>Best Value</i>	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.
<i>Candidate</i>	Any person who asks or is invited to submit a Quotation or Tender.
<i>Chief Officers/Directors</i>	The Officers defined as such in Part 7b of the Constitution.
<i>Chief Solicitor</i>	As identified in the Constitution
<i>Chief Financial Officer</i>	The Council's Treasurer (Section 151 Officer) or such other Officer as may be designated by the Treasurer by the Council.
<i>Code of Conduct</i>	The code of conduct for employees as set out from time to time in the Constitution.
<i>Constitution</i>	The constitutional document approved by the Council of which those Contract Procedure Rules form part issued under Section 9P of the Local Government Act 2000.
<i>Consultant</i>	Specialist advisers engaged to provide services to the Council.
<i>Contracting Decision</i>	Any of the following decisions: <ul style="list-style-type: none"> • withdrawal of Invitation to Tender • whom to invite to submit a Quotation or Tender • shortlisting • award of contract or Framework Agreement • any decision to terminate a contract.
<i>Corporate Contract</i>	A contract let by the Council's Corporate Procurement & Projects Team to support the Council's aim of achieving Value for Money.
<i>Corporate Procurement & Projects Team</i>	The Council's central procurement unit charged with providing strategic direction and advice to secure Value for Money in the Council's procurement activities.

Term	Definition
<i>Council's Commissioning & Procurement Strategy</i>	The document setting out the Council's approach to procurement and key priorities for the next few years.
<i>Code of Practice for Tendering and Contracts and any other Procurement Guides or Procedures</i>	Any guidance documents issued from time to time by the Head of Procurement and Projects that support the implementation of these contract procurement rules. These guides are available on the Council's intranet.
<i>European Economic Area</i>	The members of the European Union, and Norway, Iceland and Liechtenstein
<i>Executive</i>	The Council's Executive as defined in the Constitution
<i>Financial Regulations</i>	The Council's financial regulations outlining Officer responsibilities for financial matters prepared by the Chief Financial Officer and becoming part of the Constitution.
<i>Framework Agreement</i>	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
<i>Government Procurement Agreement</i>	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.
<i>Head of Procurement and Projects</i>	The officer with responsibility for leading the Corporate Procurement Service.
<i>High Profile</i>	A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong.
<i>High Risk</i>	A high-risk purchase that is in the opinion of the Chief Financial Officer and/or the Head of Procurement and Projects one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
<i>High Value</i>	A high-value purchase is where the value exceeds £85,000 (goods & services), and £250,000 (works).
<i>Invitation to Tender</i>	Invitation to tender documents in the form required by these contract procedure rules.
<i>Key Decision</i>	Decisions that are defined as key decisions in the Access to Information Rules in Part 4 of the Constitution.
<i>Non-Commercial Considerations</i>	(a)The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the

Term	Definition
	<p>promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').</p> <p>(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.</p> <p>(c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.</p> <p>(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').</p> <p>(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.</p> <p>(f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.</p> <p>(g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.</p> <p>(h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.</p> <p>Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be Non-Commercial Considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply</p>
<i>Parent Company Guarantee</i>	A contract which binds the parent of a subsidiary company whereby if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead.
<i>Quotation</i>	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
<i>Relevant Contract</i>	Contracts to which these contract procurement rules apply (see Rule 6).
<i>Senior Officer/Officer</i>	The Senior Officer/Officer designated by the Chief Officer/Director to deal with the contract in question.

Term	Definition
<i>Shortlisting</i>	The process of selecting Candidates who are to be invited to quote or bid or to proceed to final evaluation.
<i>TED</i>	EU Portal Tenders Electronic Daily, the European Union's Procurement portal.
<i>TUPE / Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246)</i>	Subject to certain conditions, the regulations applying where responsibility for the delivery of works or services for the authority is transferred from one organisation (eg private contractor, local authority in-house team) to another (eg 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.
<i>UK Government Contracts Finder Website</i>	Central Government's portal for publishing contract opportunities and contract awards.
<i>Value for Money</i>	Value for money is not the lowest possible price; it is the most economically advantageous proposal that combines goods or services that fully meet the needs, with the level of quality required, delivery at the time required, and at an appropriate price

A brief guide to Contract Procedure Rules

These contract procedure rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good purchasing practice and public accountability and deter corruption. These Rules are to be subject to, and interpreted in accordance with the Articles and any other provisions of the Council's Constitution.

Officers responsible for purchasing must comply with these contract procedure rules. They lay down minimum requirements for every contract made by the Council for the 'execution of work' and for the 'supply of goods or services'.

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail and fax transmissions as well as hard copy.

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

- ❖ Follow the rules if you purchase goods or services or order construction or engineering work
- ❖ Take all necessary procurement, legal, financial and professional advice
- ❖ Declare any personal financial interest in a contract. Bribery and corruption is a criminal offence
- ❖ Conduct any Best Value or Service Review, and/or value for money test, and appraise the purchasing need
- ❖ Check whether there is an existing Corporate Contract, Crown Commercial Service/YPO agreement, AGMA and other joint purchasing arrangements you can make use of before undergoing a competitive process. (NB: a list of live Council contracts exceeding £5,000 in value is published on the Council's website every quarter)
- ❖ Normally allow at least four weeks for submission of bids (not to be submitted by fax or e-mail unless allowed for in the Invitation to Tender documents)
- ❖ Keep bids confidential
- ❖ Complete a written contract or Council order via one of the Council's e-ordering systems before the supply or works begin
- ❖ Identify a contract manager with responsibility for ensuring the contract delivers as intended
- ❖ Keep records of dealings with suppliers
- ❖ Assess each contract afterwards to see how well it met the purchasing need and Value for Money requirements.

Scope of Contract Procedure Rules

1. Basic principles

1.1 All purchasing and disposal procedures must:

- achieve Best Value for public money spent
- be consistent with the highest standards of integrity
- ensure fairness in allocating public contracts
- comply with all legal requirements
- ensure that Non-Commercial Considerations do not influence any Contracting Decision
- support the Council's corporate and departmental aims and policies
- comply with the Council's Commissioning & Procurement Strategy and other relevant policies and Codes of Practice.

2. Officer responsibilities

2.1 Officers

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

2.1.2 Officers must:

- in line with the Duty of Social Value assess the need to deliver the service or acquire the goods in the first place
- have regard to the Code of Practice on Tendering and Contracts
- check whether a suitable Corporate Contract exists before seeking to let another contract; where a suitable Corporate Contract exists, this must be used unless otherwise determined by the Head of Procurement & Projects
- keep the records required by Rule 8
- take all necessary procurement, legal, financial and professional advice.

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

2.2 Chief Officers/Directors

2.2.1 Chief Officers/Directors must ensure:

- that their staff comply with Rule 2.1
- every contract exceeding £25,000 is entered into the Contracts Register maintained by the Head of Procurement & Projects
- dispensations are recorded under Rule 3.3
- exceptions are recorded under Rule 4.3.

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

2.4 Officers shall comply with s117 of the Local Government Act 1972 in relation to the declaration of interest in contracts.

3. Dispensations

3.1 The Executive or an Executive Member acting in pursuance of delegated powers has power to waive any requirements within these contract procedure rules for specific projects.

3.2 Dispensation shall only be granted in 'exceptional circumstances' and for reasons outside the Council's control, when, after certification by the Head of Procurement and Projects it is not possible to comply with these Rules.

3.3 An express note of any dispensation from any of the provisions of these Procedure Rules and of the circumstances by which the dispensation shall have been justified shall be recorded in accordance with Council approved Executive arrangements.

3.4 The Head of Procurement and Projects will keep a register of all Council approved dispensations.

4. Exceptions

4.1 Notwithstanding the provisions of other Contract Procedure Rules, tenders and quotations shall not be required to be invited where the following exceptions apply:

- The Head of Procurement and Projects, after consultation with the relevant Chief Officer/Director and appropriate Cabinet Member, is of the opinion that the work, goods and services can only be obtained from a sole supplier or there would be no benefit to the Council in giving public notice for inviting tenders.
- It is necessary, for unavoidable operational reasons, which are identified by the Senior Officer, to extend the term of a contract, in which case such extension of contract term shall be at the discretion of the Head of Procurement and Projects.
- The contract is for the purchase or production of a work of art or museum specimen within the amount approved in the budget.
- The purchase or sale is to take place by auction or at a public fair or market and that the Head of Procurement and Projects has deemed that the Council's best interest will be served by purchase through auction and has agreed an upper limit for bids.
- The contract is for the engagement of an artiste or performer.
- The contract is applicable to "services" provided in connection with hospitality expenditure, in which case a register of such hospitality shall be kept by the appropriate Senior Officer.
- The contract is for specific work, goods or services that have been granted a standing dispensation by the Council. The Head of Procurement and Projects is to keep a register of all such dispensations.

- The Head of Procurement and Projects, after consultation with the relevant Chief Officer/Director and appropriate Cabinet Member, is of the opinion that the need for the goods services or works is so urgent that the time needed to comply with the rules would be prejudicial to the Council’s interests.
- The Head of Procurement and Projects, after consultation with the relevant Chief Officer/Director and appropriate Cabinet Member, is of the opinion that there are value for money reasons justifying a waiver.

4.2 Where a proposed contract or agreement is subject to the EU Procurement Directives, Chief Officers/Directors, and the Head of Procurement and Projects have no delegated powers. No exception under Rules 4.1 can be used if the EU Procurement Directives apply, and tenders shall be invited in accordance with the provisions of these Rules.

4.3 All exceptions, and the reasons for them, must be signed by the relevant Chief Officers/Directors, and Head of Procurement and Projects, recorded and held by the Head of Procurement and Projects. The relevant Cabinet Member must be informed of the exception.

5. Collaborative, framework and e-procurement arrangements

5.1 In order to secure Value for Money, the Council may enter into collaborative procurement arrangements with other local authorities, government departments, public bodies or public service purchasing consortium and may use Framework Agreements let by other local authorities, government departments, public bodies or public service purchasing consortium.

5.2 All purchases made via a local authority purchasing consortium are deemed to comply with these contract procedure rules and no exemption is required. However, purchases subject to the EU Procurement Directives must be let under the EU Procurement Directives, unless the consortium has satisfied this requirement already by letting their contract in accordance with the EU Procurement Directives on behalf of the Council and other consortium members.

5.3 Advice must be sought from the Head of Procurement and Projects regarding any contracts entered into through collaboration with other local authorities or other public bodies to ensure compliance with the procurement rules.

5.4 The Council may also establish its own Framework Agreement if it represents the most appropriate procurement process. Advice must be sought from the Head of Procurement and Projects to ensure compliance with the procurement rules. Framework Agreements shall be compiled in the following manner:

- (a) Any such list shall be compiled and maintained in accordance with the Code of Practice on Tendering and Contracts, and
- (b) The term of any Framework Agreement shall not normally exceed four years
- (c) The appropriate Senior Officer may at any time amend the specified rates of a company on the framework when notified by that company in writing of the change, providing that the proposed changes are in accordance with the terms for such variations and margins agreed at the time the framework bids are accepted.

5.5 The use of e-procurement technology (eg; e-procurement orders) does not negate the requirement to comply with all applicable elements of these contract procurement rules, particularly those relating to competition and Value for Money.

6. Relevant contracts

6.1 All Relevant Contracts and Framework Agreements must comply with these contract procedure rules. A Relevant Contract is any arrangement made by the Council for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

- the carrying out of construction and engineering works
- the supply or disposal of goods
- the hire, rental or lease of goods or equipment, and
- the delivery of services.

6.2 Relevant Contracts do not include:

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

6.3 Where tenders are required to be invited for work or goods or services of a similar nature to that already being executed or supplied within the preceding twelve months by a contractor for the Council who was awarded business pursuant to these Contract Procedure Rules:

- (a) The appropriate Senior Officer, after consultation with the Head of Procurement and Projects and Cabinet Member, may decide that it would be to the benefit of the Council to negotiate an extension to the existing contract with the contractor or supplier concerned
- (b) The terms for such an extension shall, having regard to any variations in prices generally for work or goods or services of that nature, be no less favourable than for the contract current at the time of negotiation or the last contract undertaken, as the case may be.

Providing that:

- (i) in all cases, this does not conflict with any statutory provisions or with the European Union Procurement Directives, in which case the Procurement Directives shall prevail and tenders shall be invited in accordance with the provisions of these Rules.
- (ii) the tender shall be awarded and reported in accordance with Contract Procedure Rule 19.

6.4 Where tenders are required to be invited but the appropriate Senior Officer considers that, for reasons outside his reasonable control, the contract is required so urgently as to make it impossible to invite tenders by 'public notice', then:

- (a) The appropriate Senior Officer after consultation with the Head of Procurement and Projects and Cabinet Member, may decide to invite a tender from such person or persons who in the opinion of the appropriate Senior Officer is or are most suitable to execute the work or supply the goods or services and, such tender or tenders may be negotiated.

Providing that:

- (i) in all cases, this does not conflict with any statutory provisions or with the European Union Procurement Directives, in which case the Statute or the European Union Directives shall prevail and, tenders shall be invited in accordance with the provisions in these Contract Procedure Rules.
- (ii) The tender shall be awarded and reported in accordance with Contract Procedure Rule 19 and 20.

Common requirements

7. Steps prior to purchase

7.1 The Officer must appraise the purchase, in a manner commensurate with its complexity and value, and taking into account any guidance in the Code of Practice on Tendering and Contracts, by:

- satisfying themselves that they have the necessary authority to deal with the purchase and that there is budget provision for the purchase
- taking into account the requirements from any relevant Best Value and/or 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
- considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium
- consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring drafting the terms and conditions that are to apply to the proposed contract
- where the purchase is to be funded from mainstream capital or regarded as capital by the Chief Financial Officer it is submitted to the Chief Financial Officer or his nominated representative for comment as soon as practicable
- where the contract value exceeds £85,000 (goods and services) or £250,000 (works) ensure that the tender process is managed by the Head of Procurement and Projects or his nominated representative.

and by confirming that:

- there is Cabinet Member or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the Constitution
- if the purchase is a Key Decision, all appropriate steps have been taken.

8. The process & records

8.1 Classification of Contracts

8.1.1 Every contract proposed to be let by the Council shall be classified as either

- (a) A contract for the execution of work, or
- (b) A contract for the supply of goods or services and
- (c) As either High Value or Low Value in each classification, in accordance with the Financial Limits for Contracting as set out in the Council's Financial Regulations.

8.1.2 Where the Total Value of the contract is less than £85,000 (goods and services) or £250,000 (works), the contract will be categorised as **Low Value** and the following process to secure a minimum of three competitive quotations is considered appropriate and must be followed:

- (a) The process of obtaining quotations must comply with the corporate 'Code of Practice on Tendering and Contracts'. Quotations must be in writing and be obtained from contractors, which, in the course of their normal business, supply the type of goods or materials or execute the type of work required to be done
- (b) Where possible, a minimum of two quotations must be provided by local suppliers (FY postcode)
- (c) Where the contract value exceeds £25,000 and the Senior Officer wishes to seek quotations from the open marketplace the quotation must be advertised on Contracts Finder. In these circumstances the Head of Procurement & Projects or his nominated representative must be contacted for advice and support
- (d) The contract should be awarded to the contractor submitting the 'most economically advantageous' quotation that represents best value for money for the Council. The Senior Officer shall be responsible for settling the contract terms and prices in consultation with the Head of Procurement and Projects, who shall keep a register of all contracts awarded.

8.1.3 The requirement to obtain three competitive quotations (as detailed in 8.1.2 above) shall not apply when:

- (a) Corporate contract exists for the type or range of work, goods or services required, such contract having been itself established by the Head of Procurement and Projects in accordance with the provisions of these procedure rules. In such case, purchase orders shall be placed with the nominated contractor, without the requirement for further competition.

- (b) The Head of Procurement and Projects, in consultation with the Senior Officer, is of the opinion that it is not possible to obtain three quotations; or there would be no benefit to the Council in obtaining competitive bids (as in the case of sole supply, specialised repairs, parts, plant and materials or specialist professional services or in cases of extreme urgency). The decision must be confirmed in writing and recorded.
 - (c) The work or service to be executed constitutes an extension of an existing contract on terms which, having regard to any variations in prices generally for work or goods or services of that nature, are no less favourable than for the contract current at the time of negotiation. Such an extension must be approved by the appropriate Senior Officer after consultation with the Head of Procurement and Projects.
 - (d) The requirement is exempt under the provisions of Contract Procedure Rule 4.1.
- 8.1.4 Although under the provisions of Contracts Procedure Rule 8.1.3 there is no requirement for three competitive quotations to be obtained:
- (a) the quotation, which it is intended to accept, shall be made in writing
 - (b) the Senior Officer remains responsible for securing value for money, probity and accountability and periodically "testing the market" for such items in order to ensure that the best terms reasonably available are being secured.
- 8.1.5 Purchase Orders, (via one of the Council's e-ordering systems) should be placed (subject to budgetary provision) and payment made, in accordance with the Council's Financial Regulations and the corporate 'Code of Practice on Tendering and Contracts'.
- 8.1.6 Where the Total Value of the contract exceeds £85,000 (goods and services) or £250,000 (works), the contract will be categorised as **High Value** and the following tender process is considered appropriate and must be followed. (NB: All high value tenders must be procured through the Corporate Procurement & Projects Team):
- (a) A clear business case exists for the procurement and finance is approved in accordance with the Council's Commissioning and Procurement Strategy and Financial Regulations
 - (b) The tender is advertised and public notice has been given
 - (i) via the Council's e-tendering system and Contracts Finder where the contract value exceeds £25,000;
 - (ii) in one or more local newspapers circulating in the Borough; and where appropriate, in one or more newspapers or journals circulating among such persons as undertake such contracts, and;
 - (iii) where required by law (>£164,176 goods & services / £4,104,394 works wef 1/1/16), in the Official Journal of the European Union in a manner that complies with European Union advertising rules. (NB: monetary value thresholds are reviewed every two years);

- (iv) expressing the nature and purpose thereof, inviting tenders for its execution, and stating the last time for delivery (receipt) of tenders which shall be at a time and date specified, not being less than 10 days from the date of publication of the notice.

8.1.7 All tenders received shall be opened in accordance with Contract Procedure Rule 15.

8.1.8 Contract Procedure Rule 8.1.5 shall not apply where:

- (a) there is an invitation to negotiate a tender in accordance with the provisions in Contract Procedure Rule 6.3 and Contract Procedure Rule 6.4, or to any tender negotiated following such an invitation.

8.1.9 Records required by clause 8.1.6 and 8.1.8 must be kept for six years after the end of the contract.

9. Advertising and framework agreements

9.1 Identifying and Assessing Potential Candidates

9.1.1 Officers shall ensure that, where proposed Relevant Contracts or Framework Agreements, irrespective of their Total Value, might be of interest to potential Bidders located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the arrangement to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- the Council's e-tendering portal The Chest
- portal websites specifically created for contract advertisements (such as the UK Government Contracts Finder website)
- a local or national newspaper or specialist publication
- national official journals, or the Official Journal of the European Union (OJEU)/ Tenders Electronic Daily (TED) (even if there is no requirement within the EU Procedure).

9.1.2 When using a procurement portal provider (ie The Chest) the information must also be published on the UK Government Contract Finder website within 24 hours of when it is first advertised where the contract value exceeds £25,000. Officers should ensure that key information such as contract authority name, contract title and description are presented consistently across platforms (eg between TED, The Chest and Contracts Finder).

9.1.3 Officers are responsible for ensuring that all Bidders for a Relevant Contract or Framework Agreement have the necessary:

- economic and financial standing
- technical ability and capacity, and
- relevant licences and accreditations (where applicable)
- to fulfil the requirements of the Council.

9.2 Framework Agreements

- 9.2.1 The term of a Framework Agreement which is subject to the EU Procurement Directives must not exceed four years save in exceptional cases duly justified, in particular by the subject matter of the Framework Agreement and Framework Agreements may be entered into with one or several providers.
- 9.2.2 Where a Framework Agreement is concluded with a single provider contracts let under that Framework agreement shall be awarded within the limits of the terms specified in the Framework Agreement.

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

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

Conducting purchase and disposal

10. Competition requirements for purchase, disposal and partnership arrangements

10.1 Purchasing – Competition Requirements

10.1.1 Having determined the classification of the contract as detailed at Rule 8.1 the Officer must calculate the Total Value of the contract. The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with government. If in doubt, Officers must seek the advice of the Head of Procurement and Projects.

10.1.2 Subject to Rule 10.1.4 where the Total Value for a purchase is within the values in the first column below, the Award Procedure in the second column must be followed.

Total Value	Award Procedure
Low value up to £85,000 for goods and services, and £250,000 for works	At least three written Quotations, two of which must be sourced through local suppliers with an FY postcode where possible. If the contract value exceeds £25,000 and the quotation is advertised in a manner which is open to the marketplace (ie: not restricted to just 3 or more bidders) the opportunity must

Total Value	Award Procedure
	also be advertised on the UK Government Contracts Finder website within 24 hours of the opportunity being advertised in any other way
High Value above £85,000 for goods and services, and £250,000 for works and below EU thresholds	Invitation to Tender by advertisement to at least three Candidates (the opportunity must also be advertised on the UK Government Contracts Finder website within 24 hours of the opportunity being advertised in any other way)
Above EU thresholds >£164,176 – (goods & services) >£4,104,394 – (works)	EU Procedure (where advertisement required under EU Procedure the opportunity must also be advertised on UK Government Contracts Finder website)

10.1.3 The value of the contract should be calculated as follows:

- (a) where periodical payments are to be made (eg; monthly) multiply the monthly payment by the total term of the contract including any options to extend in the total term
- (b) where an undefined quantity of works, goods or services is to be executed or supplied an estimate of the total value of the contract over its entire duration based upon historical data/usage where available
- (c) A Senior 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.

10.1.4 Irrespective of Rule 10.1.2 Relevant Contracts and Framework Agreements that are subject to European Union grant funding requirements shall be advertised in accordance with published guidance, ERDF National Procurement Requirements (ERDF-GN-1-004) as amended from time to time.

10.1.5 Where the Total Value exceeds £25,000 the Corporate Procurement and Projects team should be consulted prior to the commencement of the procedure.

10.2 Assets for Disposal

10.2.1 Assets for disposal must be sent to public auction except where the Head of Procurement and Projects is satisfied that better Value for Money is likely to be obtained by inviting Quotations or Tenders. (These may be invited by advertising on The Chest or the Council’s web site).

10.3 Providing Services to External Purchasers

10.3.1 The Head of Procurement and Projects must be consulted where contracts to work for other organisations are contemplated and any bid, tender and contract for work shall be made in accordance with the Financial Regulations.

10.4 Collaborative and Partnership Arrangements

10.4.1 Collaborative and partnership arrangements where services/goods/works are supplied to the Council are subject to all UK and EU procurement legislation and must follow these contract procedure rules. If in doubt, Officers must seek the advice of the Head of Procurement and Projects.

10.5 The Appointment of Consultants to Provide Services

10.5.1 Consultant architects, engineers, surveyors and other professional Consultants shall be selected and commissions awarded in accordance with the procedures detailed within these contract procedure rules and as outlined below.

10.6 Contracts for Consultancy Services – Works

10.6.1 If the appropriate Senior Officer considers it in the best interests of the Council to employ consultants for specific works assignments, then the Senior Officer shall consult the appropriate Cabinet Member and provide the following information in support of the decision:

- (i) details of the services to be provided
- (ii) the duration of the employment
- (iii) the estimated costs and how those costs are to be met, and
- (iv) in the case of consultants, a recommended appointment.

10.7 Consultancy Services – Non-Works

10.7.1 If the appropriate Senior Officer, after consultation with the appropriate Cabinet Member considers it to be in the best interests of the Council to appoint consultants to carry out any investigations, feasibility study or other assignment not related to works, then a report shall be made, to the Corporate Leadership Team (contracts classed as high value) or the appropriate Chief Officers/Directors, (contracts classed as low value):

- (i) giving details of the services to be provided
- (ii) the duration of the employment
- (iii) stating the estimated costs and, after consultation with the Chief Financial Officer, how these costs are to be met
- (iv) seeking approval to proceed with the appointment of consultants.

10.7.2 Tenders or quotations shall then be invited in accordance with the provisions in these Contract Procedure Rules.

10.7.3 It shall be a condition of the engagement of the service of any consultant (not being officers of the Council) that in relation to such engagements, they shall:

- (a) comply fully with these Contract Procedure Rules

- (b) at any time during the period of the engagement, produce to the appropriate Senior Officer or authorised representative on request, all the records maintained in relation to the engagement
- (c) on completion of an engagement, transmit all such records to the appropriate Senior Officer
- (d) on completion of an engagement, transmit all work performed to the appropriate Senior Officer. Copyright and title of any work performed belongs to the Authority
- (e) The engagement of consultants must comply with the 'Code of Practice for Engaging Consultants'.

10.7.4 Irrespective of Rule 10.5.1 Relevant Contracts and Framework Agreements that are subject to European Union grant funding requirements shall be advertised in accordance with published guidance, ERDF National Procurement Requirements (ERDF–GN-1-004) as amended from time to time.

10.7.5 The engagement of a Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment.

10.7.6 Records of consultancy appointments shall be maintained in accordance with Rule 8.

10.7.7 Consultants shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the Head of Procurement and Projects for the periods specified in the respective agreement.

10.7.8 The instruction of external legal advisers must only be carried out by the Chief Solicitor and the instruction of counsel shall not be subject to the requirements of Rules 10.5.1 – 10.7.5 (inclusive).

11. Pre-tender market research and consultation

11.1 The Officer responsible for the purchase:

- (a) 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
- (b) 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.

12. Standards and award criteria

12.1 The Officer must ascertain the standards necessary to properly describe the subject matter of the contract having regard to any relevant British, European or international standards The Head of Procurement and Projects or the Chief Solicitor must be consulted if it is proposed to use standards other than European standards.

- 12.2 The Officer must define Award Criteria that are appropriate to the purchase and designed to secure an outcome giving Value for Money for the Council. The basic criteria shall be one of the following:
- ‘lowest price’ where payment is to be made by the Council
 - ‘highest price’ if payment is to be received, or
 - ‘most economically advantageous’, where considerations other than price also apply.
- 12.3 If the last criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, relevant community benefit and social considerations (where permitted by UK and European Union Law and in accordance with the Council’s Suppliers Charter) aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters. Supplier suitability assessment questions may also be asked by the Council provided such are relevant to the subject matter of the procurement, are proportionate and are used to assess whether bidders meet requirements or minimum standards of suitability, capability, legal status and financial standing. Officers shall have regard to the Code of Practice on Tendering and Contacts when defining the Award Criteria.
- 12.4 Award Criteria must not include:
- non-Commercial Considerations that are prohibited under UK and European Union law
 - matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement.

13. Invitations to tender/quotations

- 13.1 The Invitation to Tender shall state that the Council reserves the right to reject a Tender that is not received by the date and time stipulated in the Invitation to Tender. No Tender delivered in contravention of this requirement shall be considered without the Head of Procurement and Projects prior approval.
- 13.2 All Invitations to Tender shall include the following:
- (a) A specification that describes the Council’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, certificates relating to canvassing and non-collusion, and identification of any part of their submission deemed to be commercially sensitive or confidential
 - (d) Notification that Tenders are submitted to the Council on the basis that they are compiled at the tenderer’s expense

- (e) A description of the Award Procedure and, unless defined in a prior advertisement (eg a Prior Information Notice), a definition of the Award Criteria in objective terms and if possible in descending order of importance
- (f) Unless the Tender is sought in accordance with an electronic tendering process which is approved by the Head of Procurement and Projects and/or the Chief Solicitor and/or which is permitted by the Invitation to Tender documents, a statement that any Tenders submitted by fax or other electronic means shall not be considered.

13.3 All Invitations to Tender or Quotations must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 20).

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

14. Shortlisting

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

15. Submission, receipt and opening of tenders/quotations

15.1 Bidders must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the complexity of the Council's requirement. Normally at least four weeks should be allowed for submission of Tenders. The EU Procurement Directives lays down specific time periods (see guidance in the Code of Practice for Tendering and Contracts).

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

15.3 Tenders received by fax or other electronic means (e.g. email) must be rejected, unless they have been sought in accordance with an electronic tendering process which is approved by the Head of Procurement and Projects and/or Chief Solicitor and/or which is permitted by the Invitation to Tender documents.

15.4 Each Tender must be:

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

16. Clarification procedures

16.1 Providing clarification of an Invitation to Tender to potential or actual Bidders 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 (ie post-tender negotiations) are the exception rather than the rule. In particular, they must not be conducted in an EU Procedure where this might distort competition, especially with regard to price.

17. Evaluation

- 17.1 Apart from the debriefing required or permitted by these contract procedure rules, the confidentiality of Quotations, Tenders and the identity of Bidders must be preserved at all times and information about one Bidder's response must not be given to another Bidder.
- 17.2 Contracts must be evaluated and awarded in accordance with the Published 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.
- 17.3 The arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their Tender. Alternatively, if the rates in the Tender, rather than the overall price, were stated within the Invitation to Tender as being dominant, an amended Tender price may be requested to accord with the rates given by the tenderer.

18. Post tender negotiations

- 18.1 Post-tender negotiations under the EU Procurement Directives can only be undertaken on the grounds allowing for such specified in the EU Procurement Directives. For all other procedures if post-tender negotiations are necessary after a single-stage Tender process or after the second stage of a two-stage Tender process, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the most economically advantageous Tender and after all unsuccessful Candidates have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the Tender documents. Officers appointed by the Chief Officers/Directors, 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.
- 18.2 Post-tender negotiation must only be conducted in accordance with the guidance issued by the Head of Procurement and Projects who, together with the Corporate Procurement & Projects Team, must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two officers, one of whom must be from a division independent to that leading the negotiations.
- 18.3 In the case of a submitted tender complying with the specification but exceeding the amount approved by the Executive by more than 5%, then:
- (a) the appropriate Senior Officer may negotiate a revised tender with an amended specification with the lowest tenderer and any other tenderer whom the Senior Officer considers appropriate, if to do so will bring the negotiated tender sum within 5% of the amount approved under the Financial Procedure Rules;
 - (b) the negotiated tender shall not be accepted until the Chief Financial Officer is satisfied that budget provision has been made for the additional cost.
- 18.4 If the amount of the tender proposed to be accepted exceeds the amount of the budgetary provision by more than 5%, or if there are revenue consequentials not fully provided for, then, in consultation with the Chief Financial Officer a report on the scheme together with a financial statement must be submitted to the Executive or Cabinet Member who shall recommend whether or not the scheme should proceed

(above £250,000 – Key Decision Executive approval / below £250,000 Cabinet Member Non Key Executive Decision).

18.5 Where post-tender negotiation would result in fundamental changes to a Relevant Contract or Framework Agreement (such as to the specification or price) or conflict with any statutory provisions or with the European Union procurement directives which would be likely to distort competition the contract or agreement must not be awarded but re-tendered.

19. Award of contracts and framework agreements and debriefing candidates

19.1 Chief Officers/Directors, may accept Quotations and Tenders received in respect of proposed contracts and Framework Agreements, provided they have been sought and evaluated fully in accordance with these contract procedure rules.

19.2 Proposed contracts and Framework Agreements that are expected to be categorised as **High Value** (relating to either expenditure or income) are subject to an Officer Non-Key Decision prior to formal award of the contract to the successful Bidder.

19.3 For contracts and Framework Agreements subject to the EU Procurement Directives, the Officer must notify all Candidates simultaneously and as soon as possible of the intention to award the contract or Framework Agreement to the successful Candidate and provide information required by the EU Procurement Directives specifying the name(s) of the successful Candidate(s), the award criteria and the reasons for the decision including the score of the Candidate being debriefed and the successful Candidate(s) and the characteristics and relative advantages of the successful tender. The Officer must provide unsuccessful Candidates with a period of at least ten days (standstill period) in which to challenge the decision before the Officer awards the contract or Framework Agreement. If the decision is challenged by an unsuccessful Candidate then the Officer shall not award the contract or Framework Agreement and shall immediately seek the advice of the Head of Procurement and Projects. The requirement to notify candidates of the intention to award a contract or Framework Agreement in this Rule 19.3 does not apply to:

- contracts and Framework Agreements that are not subject to the full application of the EU Procurement Directives (such as social and other specific services listed under the EU Procurement Directives, or where the value is under the EU threshold), and;
- contracts subsequently awarded and called off based on a Framework Agreement that was let in accordance with the EU Procurement Directives.

19.4 If a Candidate requests in writing the reasons for a Contracting Decision, the Officer must give in writing the name(s) of the successful Candidate(s), the award criteria and the reasons for the decision including the score of the candidate being debriefed and the successful Candidate(s) and the characteristics and relative advantages of the successful tender within 10 days of the request. If requested the Officer must also give the debriefing information referred to in Rule 19.3 above to Candidates who were unsuccessful in a permitted pre-qualification Shortlisting process.

19.5 Publishing Contract Awards

19.5.1 For contracts and Framework Agreements subject to the EU Procurement Directives details of all contracts awarded should be published on Tenders Electronic Daily (TED).

- 19.5.2 For contracts and Framework Agreements with a contract value above £25,000 details of all contracts awarded should be published on the UK Government Contracts Finder website including those that may not have been openly advertised.
- 19.5.3 The following details must be published within a reasonable time and no later than 90 calendar days after the contract award date:
- who has won the contract (successful bidder)
 - the contract value
 - for procurements below the EU threshold indicate whether or not the winning supplier is a small business or voluntary organisation or charity.

Contract and other formalities

20. Contract documents

20.1 Relevant Contracts

20.1.1 All Relevant Contracts that exceed £25,000 shall be in writing.

20.1.2 All Relevant Contracts, irrespective of value, shall clearly specify:

- what is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done)
- the provisions for payment (i.e. the price to be paid and when)
- the time, or times, within which the contract is to be performed
- the provisions for the Council to terminate the contract.

20.1.3 The Council's standard terms and conditions or standard contract forms issued by a relevant professional body must be used wherever possible.

20.1.4 In addition, every contract or agreement must also state clearly as a minimum:

- that the contractor may not assign or sub-contract without prior written consent
- any insurance requirements
- health and safety requirements
- data protection requirements, if relevant
- race relations requirements
- corrupt practices as detailed in the Bribery Act 2010
- Disability Discrimination Act requirements
- Freedom of Information Act requirements
- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant
- that the Council shall pay the contractor and the contractor shall pay its subcontractors within 30 days of an undisputed invoice.

20.1.5 All contractors are expected to sign the Council's Suppliers Charter and adopt the principles therein.

20.1.6 The advice of the Head of Procurement and Projects and/or the Chief Solicitor must be sought for the following Relevant Contracts or Framework Agreements:

- where the Total Value exceeds £25,000
- those involving leasing arrangements
- where it is proposed to use a supplier's own terms, or
- those that are complex in any other way.

20.2 Contract Formalities

20.2.1 Agreements shall be completed as follows:

Total Value	Method of Completion	By
Up to £25,000	signature	Authorised Signatory/Relevant Senior Officer
Above £25,000	2 signatures	either the Head of Procurement and Projects or Chief Solicitor and the relevant Chief Officer/Director,
Works contracts above £250,000	2 signatures and sealing	Chief Solicitor or authorised representative and the relevant Chief Officer/Director,

20.3 The Officer must consult the Chief Financial Officer 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.

20.4 The Officer must consult the Chief Financial Officer about whether a Bond is needed:

- where the Total Value exceeds £1,000,000, or
- where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the Candidate.

CONTRACT MANAGEMENT

21. Managing contracts

21.1 Directors/Heads of Service in sponsoring departments are to name contract managers for all new contracts. All contracts must have a named Council contract manager for the entirety of the contract.

21.2 Contract Managers must follow the procedures set out in the Council’s Guide to Contract Management.

22. Risk assessment and contingency planning

- 22.1 A business case must be prepared for all procurements with a potential value over the EU Threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
- 22.2 For all contracts with a value of over £85,000, contract managers must consider maintaining a risk register during the contract period, undertake appropriate risk assessments and for identified risks ensure contingency measures are in place.

23. Contract monitoring, evaluation and review

- 23.1 The Chief Financial Officer may require that a Council-developed Gateway review process may be applied to all contracts deemed to be High Risk, High Value, or High Profile. This process must be applied at key stages of major procurements.
- 23.2 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.