

**MALVERN HILLS DISTRICT COUNCIL**

**CONTRACT PROCEDURE RULES**

**APRIL 2019**



# MALVERN HILLS DISTRICT COUNCIL

## CONTRACT PROCEDURE RULES

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## **INTRODUCTION AND BASIC PRINCIPLES**

### **1 Introduction**

Contract procedure rules ensure that the Council lets contracts in a fair, consistent, honest, legal and transparent manner. The rules have a statutory basis (section 135 of the Local Government Act 1972) which promotes good purchasing practice and public accountability. Adhering to contract procedure rules is the best defence against potential challenge or allegations that a purchase has been made incorrectly or fraudulently.

These rules must be read in conjunction with the Council's Constitution and in particular the Financial Regulations.

### **2 Legal Principles**

All procurement activity must comply with all of the following principles of European Union (EU) Law and Public Contracts Regulations 2015.

- Free movement of goods and services;
- Non-discrimination/ equal treatment for all;
- Openness/ transparency;
- Proportionality

### **3 MHDC Principles**

The Council's procurement principles are presented in detail in the Procurement Strategy. They guide how we conduct and continue to develop our procurement activities. As a council we will preserve the highest standards of honesty, integrity, impartiality and objectivity.

- Outcomes – we will be clear about our objectives and required outcomes through every procurement undertaken;
- Value for money – the Council expects to deliver value for money in all procurement activity;
- Performance monitoring and transparency – all contract procurement activities will include targets and performance measures which will be monitored throughout the contract life;
- Relationships with suppliers – the Council is keen to support local businesses and SMEs and work closely with all suppliers to ensure that we continue to deliver high quality services to our residents.

## **COMPLIANCE AND ESSENTIAL REQUIREMENTS**

### **4 Compliance**

**All staff with financial and/ or purchasing responsibilities must comply with Contract Procedure Rules. This includes any purchasing activity on behalf of other organisations or using external grant funding. These rules present the minimum requirements and more rigorous procedures may be appropriate for some contracts. Exemptions to these rules can only be used in exceptional**

**circumstances as detailed in rule 8. Any failure to comply with Contract Procedure Rules could result in disciplinary action.**

Any references to 'the Council' include any committee or persons acting with delegated authority on behalf of the council, as set out in the Council's Constitution, Scheme of Delegation and/ or Financial Regulations.

## **5 Summary of essential requirements**

All staff with purchasing responsibilities must:

- Conduct an appraisal of the purchasing need and the requirement to obtain best value for money;
- Follow contract procedure rules when purchasing goods or services;
- Check with line manager and Procurement about responsibilities and take all necessary legal, financial and professional advice;
- Check whether there is an existing corporate or national framework or contract that can be used before undergoing a competitive process;
- Agree a timetable for the procurement of high value (>£50,000) contracts with Procurement;
- Ensure procurement is undertaken with appropriate delegated authority limits and approved budget in place;
- Plan early;
- Declare any personal interest in a contract and withdraw from taking part in it. Corruption and/ or bribery is a criminal offence;
- Keep bids confidential;
- Complete a written contract and/or order before the supply or works begin in conjunction with Legal Services using the council's standard supply contract;
- For high value contracts identify a contract manager with responsibility for ensuring the contract delivers as intended;
- Where any proposed procurement may have strategic implications, or impact upon a service area other than that of the Lead Officer, (for example the purchase of vehicles), the appropriate Head of Service must be consulted beforehand;
- Keep records of all dealings with suppliers;
- Ensure that where there is a requirement for communication to be in writing, this includes e-mail as well as hardcopy;
- Assess contract performance to ascertain whether it met the purchasing need and value for money requirements.

## **6 Officer responsibilities**

6.1 Heads of Service and service managers will ensure that:

- Lead officers comply with the contract procedure rules, the Council's Financial Regulations and codes of conduct and with all UK and European binding legal requirements.
- Details of new contracts are passed to Procurement for inclusion in the contracts register;
- An appropriate lead officer is nominated to undertake the procurement process, in conjunction with the Procurement team where appropriate

- The use of exemptions (see rule 8) are approved by the Deputy Chief Executive and reported to committee as appropriate.

#### 6.2 Lead officers must:

- Consider Council guidance on best practice in purchasing;
- Check whether a suitable corporate or national contract or framework agreement exists before advertising a procurement opportunity. If a suitable contract or framework agreement exists, this should be used unless there is an auditable reason not to;
- Keep the required records (see rule 22);
- Take all necessary legal, financial, audit, procurement and other professional advice;
- Where the value of the contract exceeds £50,000, agree the procurement process, timetable and documentation with the Procurement team.

### **APPLICATION OF THE RULES**

#### **7 Scope of the rules**

- 7.1 These rules apply to all contracts for the provision of goods, services and works to the Council unless indicated in rule 8 below. This includes single and recurrent purchases, as well as contracts awarded by the council, by any person, firm or body on the Council's behalf regardless of the source of funding for the contract.
- 7.2 The rules are part of the Council's Constitution and must be complied with, in conjunction with the Council's Financial Regulations. They take precedence over the delegated powers of Members and officers. Non-compliance may result in disciplinary action.
- 7.3 Where joint procurement arrangements exist, they must comply with relevant UK and EU regulations and the Council's Contract Procedure Rules where applicable.

#### **8 Application of the rules and exemptions**

- 8.1 These rules do not apply to:
- a. contracts of employment, contracts for the purchase or sale of land or securities, or contracts for the taking or granting of any interest in land, unless such contracts also involve the procurement of works, services or supplies.
  - b. Low value purchases which can be made from petty cash or procurement cards as long as they are in accordance with any operational instructions and financial limits issued by the s151 Officer.
- 8.2 Competitive quotes or tenders are not required for Call-off Contracts where the relevant Framework Agreement has been identified in accordance with rule 11 below.
- 8.3 The following circumstances may be exempt from the requirement to undertake a procurement exercise:

a. There is no competitive market. Where there is no genuine competition, written quotes must be obtained from the contractor and where appropriate negotiations to ensure best value for the council must take place prior to contract award. For example:

- i. The goods or materials are proprietary articles, and any acceptable substitutes for which, are obtainable only from one supplier;
- ii. The goods or service are a specialised nature with no acceptable substitutes that can only be supplied or carried out by one supplier;
- iii. The goods or materials are sold at fixed prices or prices controlled by trade organisations or government order;
- iv. Purchases are to be made at auctions or public fairs, with the authorisation of the Deputy Chief Executive;
- v. It can be demonstrated that no genuine competition can be obtained in respect of the purchase of particular goods, services or executive of works.

b. An emergency situation arises. The Deputy Chief Executive can authorise expenditure where:

- i. The emergency has arisen due to events that were not reasonably foreseeable or attributable in any way to the Council;
- ii. There is immediate risk to individuals, property or serious disruption to services;
- iii. The value is below Public Contract Rules thresholds and the goods, services or works are required urgently (e.g. the repair/ replacement of essential equipment, damage to property).

c. The exemption is prescribed by legislation, i.e. certain other arrangements contained in European or domestic legislation may permit an exemption.

d. Advantage can be taken at short notice of special offers, which produce savings or benefits to the Council, and where the item is clearly required and such savings or benefits are clearly demonstrated, with the authorisation of the Deputy Chief Executive.

e. The purchase is part of a serial programme, where the price and terms were negotiated as a part of a contract awarded through a competitive procurement exercise.

f. The appropriate service manager and the Deputy Chief Executive agree that financial loss may be incurred if the letting of the contract is delayed.

g. External/ partner funding arrangements require other procedures to be followed.

h. The contract is awarded in accordance with another local authority's contract procedure rules, a local authority consortium or other joint procurement arrangement, provided the council has the legal power to participate in such a contract. Where there is any doubt the Legal Services Manager will make the final decision.

- i. A form of competitive dialogue or negotiation process is used in the award of complex contracts, where the council needs to discuss all aspects of a proposed contract with tenderers. In this case consideration must be given to relevant guidance from the Government Procurement Service and the Public Contract Regulations 2015.

## **PROCUREMENT PROCESSES AND PROCEDURES**

### **9. Assessing the requirement**

#### **9.1. Authority to carry out procurement**

- 9.1.1. Before any procurement starts, officers must ensure that any requirements for committee approval defined in the Constitution and Financial Regulations have been adhered to and that there is adequate financial provision within the relevant budget.

#### **9.2. Appraisal**

- 9.2.1. Before any procurement starts the lead officer must undertake an appraisal of the proposed purchase and route to market, considering the following:
  - a. The need for the expenditure and its priority;
  - b. Value for money;
  - c. The objectives of the purchase;
  - d. Identification of any associated risks and their mitigation;
  - e. The market;
  - f. TUPE and pension arrangements;
  - g. Most appropriate procurement method;
  - h. Existing and compliant framework agreements or other arrangements;
  - i. Consultation with users about the proposed procurement, including performance and satisfaction monitoring;
  - j. Any potential changes to standard terms and conditions (input will be required from Legal Services if that is the case);
  - k. Establish the total value of the contract (all costs the Council is likely to incur over the life of the contract);
  - m. Establish any third party contributions where relevant;
  - n. The impact of Community Right to Challenge and Public Services (Social Value) Act 2012.

- 9.2.2. Where a contract award may result in the transfer of employees to a new employer under TUPE regulations, HR and Legal Services should be consulted before any procurement activity starts.

### **10. Estimating the total value of a contract or framework agreement**

- 10.1. The Council must not split contracts or framework agreements to avoid public procurement rules or calculate the value of contracts in such a way as to deliberately avoid exceeding the Regulation thresholds or any threshold identified in these rules.



- 10.2. For 'one-off' purchases, the estimated value is the order value;
- 10.3. For recurrent purchases of the same type, the estimated value will depend on the length of the agreement – if there is no fixed time period then it will be the annual cost;
- 10.4. Any procurement exceeding £50,000 must be led by the Procurement team, regardless of the type of exercise;
- 10.5. Any procurement expected to be near the EU threshold must be led by the Procurement team and will be done in an EU compliant manner.
- 10.6. The table below outlines the financial thresholds and procurement activity required for each.

<b>Total value*</b>	<b>Award Procedure</b>	<b>Procurement involvement</b>
Up to £2,999	Select supplier – 1 verbal quotation minimum	None required
£3,000 to £9,999	Must seek a minimum of 2 quotes (use framework if appropriate)	None required
£10,000 to £49,999	Must seek 3 written quotes or framework agreement	Make procurement aware
£50,000 to EU threshold**	Invitation to tender by advertisement or framework agreement	Procurement to lead
Above EU threshold**	EU procedure or if not applicable invitation to tender as above or framework agreement mini competition	Procurement to lead

\* All values are exclusive of VAT

\*\*EU threshold updated every 2 years on 1<sup>st</sup> January. From 1<sup>st</sup> January 2018 the threshold for supplies and services contracts is £181,302 , £615,278 for social and other specific services (light touch regime) and £4,551,413m for works contracts.

## **11. Framework agreements**

- 11.1. If an options appraisal identifies a suitable framework agreement, the lead officer must ensure that:
- a. Any call-off contract is entered into in accordance with the terms of the relevant framework;
  - b. Where applicable, a mini-competition is held in accordance with the rules of the framework agreement.
- 11.2. A framework agreement is considered suitable where it has either been entered into by the Council in compliance with these rules or another local authority, local authority purchasing consortium or Central Government has tendered and

awarded in compliance with EU public procurement legislation and the Council is identified as a contracting authority.

- 11.3. Where a Framework Agreement has been set up following an EU tender, there must be full compliance with EU rules when awarding call-off contracts under it.

## **12. Select Lists**

### **Quotations and Tendering by reference to a Select List of Contractors**

- 12.1. Select lists cannot be used where the *EU procedure* applies.
- 12.2. Select lists of contractors now exist for general, non-specialist work. These are available on the Council's intranet.
- 12.3. Any works not covered by these lists should be referred to the procurement or legal teams for written confirmation that it is specialist work and that the following procedures do not apply, prior to quotations being obtained.
- 12.4. Specialist work is different from Emergency Works which are covered in 3.1.1 (v).
- 12.5. Contracting procedures outlined in this document continue to apply when an Authorised Officer has determined that the work to be carried out is covered by a select list, but invitations to quote or tender for a contract are to be limited to those contractors whose names are included in the relevant select list.
- 12.6. Invitations to quote or tender will be sent in line with the thresholds set out in the table at 10.6 to contractors on the relevant select list.
- 12.7. The basis of contractor selection when 3 or more quotations/ tenders are required will be as follows:-
- One contractor based on previous competitiveness
  - One contractor based on past performance
  - One or more contractors based on rotation within the relevant select list
- 12.8. It is important that fair competition is achieved therefore rotation of contractors must be undertaken when obtaining quotations or all tenders, including those of low value. In addition, effort should be made to ensure that receipt and opening of competitive quotations is managed to demonstrate fairness in award of contracts and that names of contractors invited to quote or tender should not be divulged to other parties involved in the same process.
- 12.9. The Select list will be reviewed annually and re-advertised at least every five years. On re-advertisement, a copy of the advertisement will be sent to each person on the list, inviting them to reapply. Review means:

- contractors on the select list will be requested to provide evidence of both financial and insurance compliance on an annual basis ;
- the deletion of those persons no longer qualifying, with a written record kept justifying the deletion.

### **13. Pre-procurement market research and consultation**

- 13.1. The lead officer and Procurement team may consult potential bidders or tenderers in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, prior to any request for a quote or an invitation to tender (ITT), provided this does not prejudice any potential bidders or tenderers.
- 13.2. Lead officers must not seek or accept technical advice on the preparation of a request for a quote or an ITT from anyone who may have a commercial interest in the tender, as this may prejudice the equal treatment of all potential bidders and tenderers or distort competition.
- 13.3. Before any consultation takes place, lead officers should liaise with Procurement.

### **14. ICT Procurement**

- 14.1. All ICT related procurement should follow the rules outlined in this document. In addition the requirements outlined below also need to be adhered to:
  - The purchase must be approved by the South Worcestershire ICT Shared Service (SWICTSS);
  - Any purchase must then be made through or in conjunction with the Procurement team.
- 14.2. Any extension or additional modules to software can be procured without a tendering process if:
  - The original system was purchased following a full tendering exercise;
  - The contracts for the system and any support and maintenance are still within their contract term;
  - The cost of the additional modules is/ are less than 25% of the original purchase price;
  - The total cumulative price does not exceed to OJEU threshold;
  - The proposed purchase has had technical sign off from SWICTSS and the Procurement team.

### **15. Preparation of quotation/ tender documentation**

Lead officers must use the standard template quotation and tender documentation available from the Procurement team and on the procurement pages on the Intranet as the basis for all documentation.

- 15.1. Where the total contract value is below the OJEU threshold (see rule 10.6), the procurement process must not include a pre-qualification stage, or a stage in the process where the Council can assess the suitability of potential bidders in order to reduce the number bidders proceeding to a later stage of the process.

- 15.2. Suitability questions may be included within a procurement where they are:
- Relevant to the subject matter of the procurement;
  - Proportionate.

Responses must be considered as part of the wider overall quality evaluation.

- 15.4 It is the lead officer's responsibility to ensure that:
- Documents and information provided are clear and not contradictory;
  - Any locally prepared variations to standard documentation are clear and use generally accepted terms;
  - Contract conditions and specifications are in the best interests of the Council in respect of quality, cost and performance;
  - Independent scrutiny of tender documentation occurs at this stage, as errors may prove costly;
  - Contracts are sufficiently clear and robust to enable the Council to enforce to their fulfilment;
  - Potential bidders understand the implications of Freedom of Information legislation and, in particular, that commercial confidentiality cannot be guaranteed.

#### 15.5. **Requests for quotes**

- 15.5.1. All quotes above £2,499, including those in mini-competitions under framework agreements, must be confirmed in writing before a decision to award can be made and all quotes must be retained by the lead officer for audit purposes.
- 15.5.2. When requesting a quote, an appropriate description of the goods, services or execution of works setting out the Council's requirements in sufficient detail must be provided to prospective bidders to enable the submission of competitive quotes.
- 15.5.3. The request for a quote shall also make reference to or include the following as a minimum
- a. the terms and conditions of the contract that will apply (the Council's standard terms and conditions modified as necessary);
  - b. notification that quotes are submitted to the Council at the bidder's expense;
  - c. a description of the award criteria as appropriate;
  - d. the closing date and time for the submission of quotes;
  - e. notification that the Council is not bound to accept any quotes submitted.
- 15.5.4. The proposed form of contract must comply with rules 25 and 26 and where possible the Council's standard terms and conditions must be used. All contracts should be reviewed by the Legal Services team prior to completion and signature.

- 15.5.5. Where requests for quotes are sought from more than one bidder, the request should be sent to each bidder at the same time and contain the same information. Any supplementary information or clarification responses should be given on the same basis.
- 15.5.6. The Council's E-Procurement Portal will be used to advertise and manage the procurement process. Please contact the Procurement Team for further information.

## **15.6. Invitation to Tender**

- 15.6.1. Tender documentation will normally consist of the following within the invitation to tender:
- Instructions to tender;
  - Mandatory requirements;
  - Form of tender;
  - Pricing schedule;
  - Specification (including technical drawings/ diagrams if appropriate);
  - Sample contract (discussed with Legal Services if there are any amendments to be made to the standard contract);
  - Evaluation criteria;
  - Certificate of non canvassing/ non collusion.

**Please see the procurement pages on the Intranet for further information on A Guide to Specification Writing.**

- 15.6.2. The above list is not necessarily exhaustive, any further requirements relevant to the procurement should be discussed with the Procurement team and other advisors before documentation is finalised and issued. For example, workforce information will be required if there is a TUPE requirement.
- 15.6.3. The Council's E-Procurement Portal will be used to advertise and manage the procurement process. Please contact the Procurement Team for further information.

## **16. Community Right to Challenge**

- 16.1. The Community Right to Challenge under Part 5 of the Localism Act allows certain relevant bodies to submit expressions of interest to deliver council services. The Act requires the council to consider expressions of interest in respect of relevant services from relevant bodies which include:
- Voluntary/ community bodies;
  - Charities;
  - Parish councils;
  - Two or more employees of the relevant authority.

16.2. Details of the Statutory Guidance on Community Right to Challenge along with other background information can be found at:

<http://www.communities.gov.uk/documents/localgovernment/pdf/2168126.pdf>

- 16.3. In order to meet the requirements of the Localism Act, the council will:
- accept informal approaches from all Relevant Bodies;
  - acknowledge all Expressions of Interest;
  - evaluate the EOI in accordance with the statutory guidance;
  - run a procurement exercise under normal procurement rules if the EOI is accepted.

## **17. Construction, Design and Management Regulations**

17.1 It is a requirement that all applicable contracts let by the council comply with Construction, Design and Management (CDM) Regulations.

## **18. Public Services (Social Value) Act 2012**

18.1. The Public Services (Social Value) Act 2012, requires contracting authorities to consider at the pre-procurement stage of any services contract and services framework agreement (including goods and works contracts procured in combination with services) to which the Public Contracts Regulation 2006 (SI 2006/5) apply:

- How the proposed procurement may improve the economic, social and environmental well-being of their areas;
- How the authority may act with a view to securing that improvement in conducting the process of procurement;
- In addition, the contracting authority is required to consider whether to undertake any community consultation on the above matters.

18.2. Lead officers should liaise with Procurement if undertaking a procurement which falls within the Act.

## **19. Procurement Process**

### **19.1. Contracts valued up to £9,999**

- 19.1.1. As outlined in rule 10.6 above, there is no requirement to involve Procurement. However any procurement activity must comply with the Council's procurement principles and be open and non-discriminatory.
- 19.1.2. For all contracts below £9,999, the lead officer must retain on file a note outlining the process undertaken and justification for the decision to award work to a given contractor/ supplier. For orders of £2,500 or above written quotes should be obtained.
- 19.1.3. In order to comply with the Transparency Code, any contracts with total value of £5,000 or more must be reported to Procurement for inclusion in the Contracts Register.

- 19.1.4. The Council's E-Procurement Portal will be used to advertise and manage the procurement process. Please contact the Procurement Team for further information.

## **19.2. Contracts valued from £10,000 to £49,999**

- 19.2.1. As outlined in rule 10.6, Procurement should be made aware of the procurement. A competitive quotation process is required, with a minimum three written quotes being obtained or a framework agreement being used.
- 19.2.2. Lead officers must choose a minimum of three contractors/ supplier based on previous knowledge, experience or research, to invite to submit a quote through the E-Procurement portal.
- 19.2.3. All quotes must be received through the Council's E-Procurement portal.
- 19.2.4. Lead officers can also undertake an open process if it is felt this would achieve the procurement objectives. If this approach is considered the lead officer should liaise with Procurement and the contract opportunity advertised on the Council's website, finditinworcestershireshire and Contracts Finder. Again all quotes must be received through the Council's E-Procurement portal.

## **19.3. Contracts valued from £50,000 to £172,513**

- 19.3.1. Contracts valued between £50,000 and £172,513 are required to be let on a competitive basis with the Council undertaking a tender exercise advertised on the open market through the Council's website, portal, Contracts Finder and finditinworcestershireshire or via a mini-competition under a framework agreement.
- 19.3.2. There is no minimum time limit for which procurement processes within this threshold need to be advertised. However, sufficient time to allow bidders to fully respond should be allowed. The time limit needs to be set on a case by case basis, dependent upon prior market engagement, the complexities of the specification and the level of detail required in the response.

**Please see the procurement pages on the Intranet for further information on timescales guidance**

- 19.3.3. Procurement must lead the procurement of contracts falling within this threshold.

#### **19.4. Light touch regime contracts**

- 19.4.1. For services in the Regulations as being subject to the light touch regime (as per Schedule 3 Public Contracts Regulations 2015), alternative procurement procedures may be undertaken.
- 19.4.2. Procurement of such contracts must be let on a competitive basis, advertised to the open market through the channels outlined in rule 19.3.
- 19.4.3. In accordance with rule 10.6, Procurement must lead on all light touch regime contracts, with advice from Legal Services as appropriate.
- 19.4.4. The choice of procurement procedure selected must be recorded, along with the justification for that choice.

#### **19.5. All contracts above EU thresholds**

- 19.5.1. Where the value of the proposed contract is above the EU thresholds it must be tendered in accordance with the Public Contracts Regulations 2015. The procurement must be led by Procurement.
- 19.5.2. The regulations allow a range of different procedures to be used:
- Open tender;
  - Restricted tender;
  - Competitive procedure with negotiation;
  - Competitive dialogue;
  - Innovation partnership.
- 19.5.3. The open and restricted procedures are the most widely used, however they are not always the most appropriate, particularly for large service procurements. The choice of procedure must be recorded, along with the justification for that choice.
- 19.5.4. In compliance with Financial Regulations and the Council's Constitution, where relevant, Committee or Council approval must be obtained before any procurement process can begin.
- 19.5.5. Where a restricted tender procedure is proposed, a minimum of 5 contractors should be short-listed to invite to tender (where at least 5 suitable contractors express an interest).
- 19.5.6. All tenders above the EU threshold must be advertised in the Official Journal of the European Union (OJEU) using the portal.
- 19.5.7. OJEU notices must be prepared by Procurement with advice from Legal Services, and all entries in the OJEU must be compliant with requirements.



- 19.5.8. Publication of the tender documents at a national level must not occur until 48 hours after the despatch of the OJEU notice.
- 19.5.9. For contracts above OJEU thresholds, there are minimum timescales to be adhered to, for which bidders are given the opportunity to express interest, complete and return the tender documentation. The timescales stipulated are dependent upon the type of notice issued to act as a call for competition and should be treated as minimum timescales.
- 19.5.10. When determining the time limits for the return of pre-qualification questionnaires and tenders, the Council must be fair proportionate and fair to the market and take into consideration the complexity of the specification and tender submission requirements, along with any previous market consultation undertaken. The justifications for the time limits set should be recorded.

## **20. Appointment of consultants**

- 20.1. Consultants will only be used if in the opinion of the appropriate Service Manager in consultation with the Deputy Chief Executive the work cannot be handled by Council employees for regular flows of work (e.g. surveyors, engineers)
- 20.1.1. If the consultant is to be appointed to support a project, a note should be placed on the project file stating:
- (i) why it was necessary to use an external consultant;
  - (ii) the brief for the project;
  - (iii) the brief for selecting the consultant and how this was met;
  - (iv) the names of the members and officers involved in the selection process.
- 20.1.2. Consultants shall be selected in accordance with the value and thresholds shown at C on page 4 of the CPR.
- 20.1.3. 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. The appropriate *Service Manager* will ensure that the requirements of 11.5.5 below are written into the contract and are verified.
- 20.1.4. Any *consultant* working on behalf of the Council will:
- (i) comply in all respects with the Council's Contract Procedure Rules and Financial Regulations;
  - (ii) hold, where appropriate, an adequate level of professional indemnity insurance to cover any loss that may arise;
  - (iii) produce all records relating to the contract on request during the currency of the contract;

- (iv) pass all relevant records to the *Service Manager* on completion of the contract, to be maintained in accordance with Rule 6.

20.1.5. There may be instances when the use of these Contract Procedure Rules to appoint a consultant would be inappropriate, for example when engaging a barrister or other consultant where quality of performance is more important than the lowest tender. In such instances, consultants will be engaged subject to the following estimated values:

- (i) up to £10,000: at the discretion of a *Service Manager*;
- (ii) £10,001 - £50,000: at the discretion of the *Service Unit Manager* in consultation with the *Deputy Chief Executive*;
- (iii) over £50,000: subject to selection by a panel including the *Service Manager*, *Deputy Chief Executive* and one appropriate elected Member.

20.1.6. For all types of *consultants*, the appropriate *Service Manager* will:

- (i) ensure that consultancies can be properly funded, within an approved budget and expenditure code;
- (ii) consider the type of contract and how payments will be made;
- (iii) draw up a written contract with any *consultants* engaged;
- (iv) appoint a project manager to manage and monitor each consultancy project;
- (v) ensure that all documentation relating to a proposed consultancy is collated by an experienced officer in consultation with the Legal Services Manager if appropriate.

20.1.7. When grants are awarded to outside bodies to fund *consultants* (for example to carry out feasibility studies) the organisation concerned will be responsible for appointing and monitoring the *consultants*.

20.1.8. Before any consultant is engaged, the *Service Manager* must undertake an IR35 assessment to determine whether the council should deduct income tax from payments during the engagement. *Service Managers* should consult the Finance Manager with any concerns.

## **21. Receipt and opening of tenders**

21.1. Where paper tenders are obtained, they should be returned to Democratic Services in the blue envelope provided or with the blue envelope attached to the front of the submission.

21.2. All tenders received, including those in mini-competitions under framework agreements, must remain unopened and are kept secured until the specified closing date and time for receipt of tenders has passed.

- 21.3. Electronic bids submitted through the Council's E-Procurement portal must be held until the specified closing date and time for receipt of tenders has passed.
- 21.4. Democratic Services must ensure that all tenders, however they are submitted, are opened at the same designated time when the submission deadline has passed.
- 21.5. Lead officers must not disclose the names of potential bidders to any staff involved in the receipt, custody or opening of tenders.
- 21.6. All tenders must be opened and recorded in the presence of 2 authorised officers. 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 or tampering;
  - Recorded immediately on receipt in the tender register (name of bidder, price and any other relevant information);
  - Signed by the officers present as witness to the recording of the tender.
- 21.7. Late tenders will only be accepted where there is conclusive proof of posting in time for delivery by the submission deadline and the other tenders have not been opened. Where the tender is not accepted, it will be opened in the presence of Democratic Services to ascertain the name of the tenderer so that the tender can be promptly returned.
- 21.8. Tenderers must complete all tender documentation. Any omissions may render a tender null and void, with no further consideration given.

## **22. Clarification procedures and post-tender negotiation**

- 22.1. Providing clarification of an ITT to potential bidders, or seeking clarification of a tender submission either in a meeting or in writing is allowed. However, discussions with tenderers after tender submission but before contract award with a view to altering the price, delivery or content of the tender (i.e. post tender negotiations) must only be undertaken in exceptional circumstances. Such negotiations must not be conducted in an EU procedure where this might distort competition, especially with regard to price.
- 22.2. If post-tender negotiations are necessary, they can only be undertaken with the tenderer(s) who submitted the highest scoring tender(s). During the negotiations tendered rates and prices can only be adjusted to reflect adjustments in the scope or quality included within the tender documents. Lead officers involved in the negotiations should ensure that there are recorded minutes of all negotiation meetings and both parties agree the actions in writing.
- 22.3. Whenever post-tender negotiations are proposed, advice must be sought from the procurement team and Legal Services. At least two officers must be involved in negotiations.

- 22.4. If post-tender negotiations result in a fundamental change to the specification or contract terms, the contract cannot be awarded, it must be re-tendered.

### **23. Tender Evaluation, award of contract and de-briefing tenderers**

- 23.1. Apart from debriefing permitted or required by these contract procedure rules, the confidentiality of all quotations, tenders and identity of tenderers must be preserved at all times. In particular information regarding one tender(er) must not be given to another.
- 23.2. Compliant tenders must be checked for arithmetic accuracy, including the correct extension and summation of rates where applicable. If any errors are found the tenderer should be notified and asked to confirm or withdraw their tender. Alternatively, if the rates in the tender rather than the overall price were stated within the ITT as being dominant, an amended tender price which agrees with the rates given by the tenderer can be requested.
- 23.3. No amendments to tender rates after submission of tenders will be permitted. If a tenderer withdraws or the revised tender is no longer competitive, the next most competitive tender should be evaluated in the same way.
- 23.4. Tenders must be evaluated impartially in accordance with the award criteria. At least the most competitive tender received must be evaluated, giving particular attention to rates and prices, percentage adjustments, balancing items, ambiguities, qualifications and alternative offers as well as any quality criteria used. The following must also be included in the evaluation:
- Comparison of the tendered prices to the pre-tender estimates and resolution of any discrepancies;
  - Overall value for money assessment;
  - Quality of performance on any previous council contracts;
  - Previous experience;
  - Views of referees;
  - Financial standing;
  - Capability of EU compliance;
  - Proposals for health and safety, equality and diversity and complaints handling;
  - Any significant environmental features of goods and services such as life expectancy, energy efficiency, recyclability.
  - Contribution to delivering the Council's priorities.
- 23.5. When evaluating the tenders, officers should complete an evaluation matrix, adapted from the standard evaluation template, scoring each individual criterion and giving a weighted average score. Where there is more than one officer evaluating the tender, a moderated score should be agreed by the evaluators and only one evaluation matrix should be completed to simplify the feedback process.

- 23.6. Lead officers can accept and award tenders and quotations following evaluation, providing they are within the approved estimate and have been sought and evaluated fully in accordance with these contract procedure rules. In respect of high value and EU contracts, the approval of the relevant Portfolio Holder will be obtained and if applicable so will the approval of the Executive Committee.
- 23.7. For EU contracts, the lead officer must notify all tenderers simultaneously and as soon as possible of the intention to award the contract to the successful tenderer. The lead officer must provide unsuccessful tenderers with a period of at least ten calendar days (Standstill period) in which to challenge the decision before awarding the contract. If the decision is challenged by an unsuccessful tenderer, then the contract should not be awarded and the advice of Procurement and Legal Services should be sought immediately.
- 23.8. Once the contract has been let, all unsuccessful candidates will be notified of the results and may be informed of the successful price on request. The letter of acceptance will not seek to qualify the terms and amounts previously tendered by the contractor/ supplier.
- 23.9. If an unsuccessful tenderer requests, in writing, the reasons for a contracting decision, the lead officer must give the reasons in writing within a reasonable time frame of the request.
- 23.10. Standard templates for notifying unsuccessful candidates and providing feedback are available from Procurement.

## **24. Records**

- 24.1. If the total value is less than £50,000, the following records must be kept:
- Invitations to quote and quotations received;
  - A record of:
    - Any exemptions and the reasons for them;
    - The reason why if the lowest price is not accepted.
  - Written records of communication with the successful contractor or an electronic record if a written record of the transaction would not normally be produced.
- 24.2. Where the total value exceeds £50,000, the procurement team will record:
- The method for obtaining bids;
  - Any contracting decision and the reason for it;
  - Any exemptions under section 2 and the reasons for them;
  - The award criteria in descending order of importance;
  - Tender documents sent to and received from tenderers;
  - Signed tender opening documents;
  - Pre-tender market research;
  - Clarification and post-tender negotiation (to include minutes of meetings);
  - Post-contract evaluation and monitoring;
  - Formal communications with tenderers and with the successful contractor.

- 24.3. Original documentation relating to the tenders must be kept for six years or the contract period (whichever is longer). Other documentation can be stored electronically in accordance with document retention schedules.
- 24.4. Service managers and other budget holders are responsible for maintaining adequate records in order to produce a register or list of all current contracts, to include the name of the contractor, description of the contract, the annual and total values, start and end dates and timescales for renewal.

## **CONTRACT AND OTHER FORMALITIES**

### **25. Relevant Contracts**

- 25.1. All relevant contracts that exceed the high value threshold must be made in writing.
- 25.2. The council has a standard contract of supply which should be used as the basis for any procurement contract. Any departures from this contract must be reviewed by Legal Services prior to signing.
- 25.3. Where the standard contract is not being used, the following should be included:
- What is to be supplied (i.e. the work, goods, materials or services to be delivered);
  - The contract must specify that the Contractor will comply with the provisions of the EU Regulation 2016/679 (GDPR) or any re-enactment of that Regulation insofar as any personal data supplied by the Council or obtained on behalf of the Council is kept secure and is not disclosed to any other party except in accordance with the contract. The contract shall define the data controller and processor responsibilities sufficient to comply with the Regulation.
  - A defined quality of provision, requiring where appropriate that all works carried out or goods supplied will conform to current relevant standards and codes of practice;
  - The provisions for payment (i.e. the price to be paid and when, including details of deductions or discounts, and where appropriate a method of defining price adjustments for any subsequent amendment of requirements);
  - The time or times within which the contract is to be performed, and any other terms and conditions agreed between the parties, including performance criteria if appropriate;
  - The provisions for termination of the contract.
- 25.4. The Council's ordering and contract approval procedures as documented in the Financial Regulations must be followed. Exceptions must be approved by the Deputy Chief Executive.
- 25.5. The formal advice of Legal Services must be sought where:
- The total value of the contract exceeds £50,000;
  - The contract involves leasing arrangements;

- It is proposed to use a supplier's own terms and conditions;
  - The arrangements/ contract are complex in any way.
- 25.6. Every relevant contract over the High Value threshold must, where applicable, also clearly state:
- Insurance requirements. This will include, where appropriate, Professional Indemnity insurance, which will protect the Council's interests and cover any potential losses. An adequate level of insurance will be determined in consultation with the Council's insurance;
  - Health and safety requirements;
  - Performance and complaints monitoring requirements;
  - Data protection requirements, if relevant;
  - Any professional, quality or EU standards that must be met;
  - Any council expectations regarding environmentally sustainable working practices;
  - Equality and diversity requirements;
  - Freedom of information requirements;
  - That when consultants or agents are used to let contracts, they must comply with the Council's Contract Procedure Rules;
  - A right of access to relevant documentation and records of the contract for monitoring and audit purposes if applicable;
  - That the contractor may not assign or sub-contract without prior written consent from the council's authorised officer.

## 26. Contract formalities

- 26.1. All contracts must comply with all of the following:
- EU law;
  - English law (including the Council's statutory duties and powers including the Council's fiduciary duty to safeguard public funds);
  - These rules and Financial Regulations and Standing Orders.
- 26.2. Agreements shall be completed by the following as a minimum

<b>Total value</b>	<b>Method of completion</b>	<b>By</b>
Low value (up to £9,999)	Signature	Service manager
Medium value (£10,000 to £49,999)	Signature	Head of service
High value (£50,000 upwards)	Signature/ sealing	See rule 25.1.1

- 26.3. The contract letting process must give enough time for the legal documentation to be completed prior to the start of the contract. All contracts should be concluded in writing before the supply, service or construction work begins, except in exceptional circumstances where it is essential that the contract starts before formal contract signing. In such cases reasons will be clearly noted on the contract file.

- 26.4. The officer responsible for securing signature of the contract must ensure that:
- Both parties sign all relevant parts of the agreement;
  - The person signing for the other contracting party has authority to bind it;
  - The signed contract has not been amended or altered without agreement by both parties.
  - A copy of the signed contract is sent to Procurement.

## **27. Sealing**

- 27.1. Where it is appropriate for contract documents to be sealed by the Council, this will be done in accordance with the Council's Constitution.
- 27.2. Copies of all contracts entered should be stored with Legal Services and Procurement.
- 27.3. Details of all contracts should be added to and maintained on the Contracts Register maintained by the procurement team.

## **28. BONDS, PARENT COMPANY GUARANTEES AND LIQUIDATED DAMAGES**

- 28.1. Lead officers must consult the Deputy Chief Executive about whether a parent company guarantee is necessary when it is proposed to appoint a contractor who is a subsidiary of a parent company and:
- The total value of the proposed contract exceeds £1million; or
  - Award is based on evaluation of the parent company; or
  - There is concern about the stability of the contractor.
- 28.2. Lead officers must consult the Deputy Chief Executive about whether a bond is needed:
- Where the total value of the proposed contract exceeds £1m; 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 contractor.
- 28.3. If a bond is deemed necessary, the amount will be at least 10% of the contract sum (or its annual value where the contract relates to continuing service). Any decision not to require a bond will be recorded on the appropriate file.
- 28.4. Provision should be made for liquidated damages to be paid by the contractor if the contract is not completed within the specified. This will normally be the case for contracts over £500,000 but may also be appropriate for lesser value contracts. The amount of liquidated damages will be determined by the appropriate service manager in consultation with the Deputy Chief Executive.
- 28.5. In certain circumstances, both a parent company guarantee and a bond may be required.



## **ANTI BRIBERY AND CORRUPTION**

### **29. Prevention of corruption**

29.1. Council officers and members must not invite or accept any gift or reward or performance of any contract. High standards of conduct are compulsory. Corrupt behaviour will lead to dismissal in the case of officers and referral to the Standards Committee in the case of members. Where appropriate the matter will be referred to the Police.

29.2. The following clause must be included 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:

- i. Offers, gives or agrees to give 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
- ii. Commits an offence the Prevention of Corruption Acts 1889 to 1916 or section 117(2) of the Local Government Act 1972; or
- iii. Commits 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.’

### **30. Bribery Act 2010**

30.1. The Bribery Act 2010 sets out a number of prohibited activities which carry criminal sanctions. Specifically, the council is covered by the offences in the following sections of the Act:

- Section 1: the offence of bribing another person;
- Section 2: the offences relating to being bribed;
- Section 6: the offence of bribing a foreign public official.

30.2. Government guidance highlights as the main example of how an employee of a public authority may commit an offence under the Act as the employee accepting a payment in return for manipulating the process or outcome of a public procurement in favour of a particular bidder.

30.3. The council has an overriding duty to prevent and eliminate bribery not only in the way that it affects employees, but also ensuring that contractors have not been involved in any bribery offences. The Government has confirmed that a conviction for an offence under the Act will trigger discretionary not mandatory exclusion from competing public contracts under regulation 23 of the Public Contracts Regulation 2006 (SI 2006/05).

- 30.4. If you have any concerns in respect of bribery by another officer and/ or a contractor/ tenderer then please inform the Deputy Chief Executive or the Head of Policy and Governance immediately. Failure to do so could result in criminal proceedings against you personally.

### **31. Declarations of interest**

- 31.1. Officers and members must comply with their relevant codes of conduct.
- 31.2. Officers must notify their line manager of any interests which could bring about conflict with the council's interests.
- 31.3. Members must disclose all relevant interests on their register of interest forms, which must be kept up to date, and at any meetings they attend.

## **CONTRACT MANAGEMENT**

### **32. Managing contracts**

- 32.1. All contracts must have a named council contract manager for the full contract term. This will normally be the appropriate service manager or a named deputy.
- 32.2. All contract managers must comply with these Contract Procedure Rules and other relevant council policies and guidance.

### **33. Contract management, evaluation and review**

- 33.1. During the contract period, the contract manager must monitor the contract in respect of:
- Performance;
  - Risk management;
  - Compliance with specification and contract;
  - Cost;
  - Any value for money requirements;
  - User satisfaction.
- 33.2. For high value contracts, finance will support the contract manager in monitoring the budget and the Finance Manager will report any areas for concern to SMT.

### **34. Risk assessment and contingency planning**

- 34.1. A business case must be prepared for all procurements with a potential value over £50,000, outlining the cost and benefits including pay back period. The business case should include identification of resources for management of the contract over its term.
- 34.2. For all high value contracts, contract managers must:
- Maintain a risk register during the contract period;
  - Undertake appropriate risk assessments and review over the duration of the contract as appropriate;

- For identified risks, ensure consistency measures are in place;
- Undertake and record such checks as are necessary to ensure that the contractor's insurance policies remain in force for the duration of the contract.

## **APPENDIX                      KEY DEFINITIONS**

### **Agent**

A person or organisation acting on behalf of the Council or on behalf of another organisation.

### **Award criteria**

The criteria used to decide which quotation or tender will be selected.

### **Award procedure**

The procedure for awarding a contract as specified in rules 14, 18 and 22.

### **Best value**

See value for money.

### **Bond**

An insurance policy to protect the council against costs arising from the contractor's failure. If a contractor does not fulfil their contractual obligations, the council can claim the sum of money specified in the bond (often 10% of the contract value).

### **Call-off contract**

A framework agreement setting out standard terms and conditions for goods and services which the Council can use to place orders.

### **Code of conduct**

The codes regulating conduct of officers and members.

### **Committee**

A committee which has power to make decisions for the Council, for example a Joint Committee with a local authority, Planning Committee or Executive Committee.

### **Competitive Dialogue procedure**

A procedure that can be used in the award of complex contracts where dialogue is allowed with selected suppliers to identify and define solutions to meet the council's needs and requirements.

### **Competitive procedure with negotiation**

Similar to the competitive dialogue procedure above except that tenders are submitted to begin with, then negotiation takes place and final tenders are then submitted.

### **Constitution**

The constitutional document approved by the council which:

- Allocates powers and responsibility within the council and between it and others;
- Delegates authority to the Executive Committee, Portfolio Holders and Officers;
- Regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

**Consultant**

Someone engaged 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 named council officer, usually a service manager or budget holder, who is responsible for sponsoring a contract from inception to completion.

**Contracting decision**

Any of the following decisions:

- Composition of list of potential bidders;
- 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 to benefit all sections of the council, to support the council's aim of achieving value for money.

**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. The values are reviewed every two years.

**European Economic Area**

The 17 members of the European Union and Norway, Iceland and Liechtenstein.

**Executive Committee**

The council's Executive Committee as defined in the constitution.

**Financial Regulations**

The financial regulations outlining Officer responsibilities for financial matters issued by the Deputy Chief Executive (s151 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.

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.

### **High profile**

A high-profile purchase is one that could have an impact on functions integral to the council service delivery should it fail or go wrong (e.g. IT servers).

### **High risk**

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

### **High Value contract**

Where the value exceeds the threshold as stated in the summary of essential requirements in the introduction to these contract procedure rules. Formal written tenders are required. See also EU threshold.

### **Innovation partnership**

Introduced by Public Contracts Regulations 2015, this is a new procedure, providing for situations where contracting authorities wish to work together with economic operators to produce an innovative product and then use the end result.

### **Invitation to tender (ITT)**

Documents sent out to potential bidders to allow them to submit tenders in the form required by these contract procedure rules.

### **IR35**

IR35 is tax legislation that is designed to combat tax avoidance by workers supplying their services to clients via an intermediary, such as a limited company, but who would be an employee if the intermediary was not used. Such workers are called 'disguised employees' by Her Majesty's Revenue and Customs (HMRC).

### **Key decision**

Decisions that are defined as key decisions in the constitution.

### **Light touch regime**

The new light-touch regime (LTR) is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health and education services, defined by Common Procurement Vocabulary (CPV) codes. The list of services to which the Light-Touch Regime applies is set out in Schedule 3 of the Public Contracts Regulations 2015 (Annex A).

### **Line manager**

An officer's immediate superior or the officer designated by the Head of Service to exercise the role reserved to the line manager by these contract procedure rules.

### **Low value contract**

As defined in the summary of essential requirements in the introduction to these contract procedure rules.

### **MEAT**

Most Economically Advantageous Tender. This is not necessarily the cheapest tender, but the one that gives the Council the most benefit.

### **Medium Value Contract**

As defined in the summary of essential requirements in the introduction to this document. Written quotations are required.

### **Nominated suppliers and sub-contractors**

Those persons specified in a main contract for the discharge of any part of that contract.

### **Non-commercial considerations**

1. The terms and conditions of employment used by contractors for their employees and other workforce policies and matters (e.g. training, promotion);
2. How contractors make contracts with their sub-contractors – do they treat as self employed or employed;
3. Any involvement of the business activities or interests of contractors with irrelevant fields of government policy;
4. 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 parties.
5. The country or territory of the business activities or interests of contractors;
6. Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;
7. Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support;
8. Use or non-use by contractors of technical or professional services provided by the council under the Building Act 1984.

Workforce matters and industrial disputes as referred to in 1 & 4. above will be deemed commercial considerations where they affect best value/ value for money or where there is a transfer of staff under Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE).

### **Open tender procedure**

A bidding process that is open to all qualified bidders.

### **Parent company guarantee**

A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails in its contractual obligations, the council can require the parent company to rectify the situation.

### **Portfolio Holder**

A member of the Executive Committee to whom responsibility is allocated in respect of specified functions.

### **Potential Tenderer/ Bidder**

Any person who asks or is invited to submit a quotation or tender.

### **Priority Services**

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

### **Procurement strategy**

The document setting out the council's approach to procurement and key priorities for the next few years.

### **Public Contracts Regulations 2015**

The legislative rules governing public sector procurement in the UK, effective from 26<sup>th</sup> February 2015.

### **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 (rule 19).

### **Restricted tender procedure**

Restricted tendering is a procurement method that limits the request for tenders to a select number of suppliers, contractors or service providers. A basic characteristic of this method is that competition is confined to a certain number of firms either because only a few firms are qualified to fulfil the specific type of requirement, or certain conditions warrant the use of a limited number of firms in order to reduce the time and cost of the selection process.

### **Shortlisting**

The process of selecting potential suppliers or contractors who are to be invited to quote or bid or to proceed to final evaluation.

### **Statutory basis**

The Local Government Act 1972 (section 135) requires councils to introduce and implement standing orders (procedure rules) for contracts made 'by them or on their behalf for the supply of goods and materials or for the execution of works'. The Local Government Act 1988 (Part II) lays down general rules as to contracting practice. All contracts let by the council will comply with these rules. The Local Government Act 1999 NS associated guidance requires councils to make arrangements to secure best value and continuous improvement in exercising current functions and also when considering procurement options for future service delivery.

### **Tender**

A formal proposal submitted in response to an invitation to tender.

### **Tenderer**

Any person who submits a formal quotation or tender in response to an invitation to tender.



**Tender register**

The register kept by Democratic Services to record details of tenders.

**Total value**

The whole value or estimated value of a single purchase calculated as follows:

1. 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 (e.g. IT system purchase with 5 year maintenance agreement – purchase price plus 5 years annual maintenance charges is total cost);
2. Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;
3. Where the contract is for an uncertain duration, multiplying the monthly payment by 48 or the annual payment by 4;
4. For feasibility studies, the value of the scheme or contracts which may be awarded as a result;
5. 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, council 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 to the new business.

**Value for Money**

Value for money is not just the lowest price – it combines goods or services that fully meet your needs, with the level of quality required, delivered at the required time and at an appropriate price.