

## Part 12 C: Contracts Procedure Rules

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# 1. Introduction

- 1.1 These rules are the Council's procedure rules for buying goods, works and services for the Council ("the Rules"). They do not apply to internal purchases or service provision, only where officers need to buy something from outside the Council.
- 1.2 They are the rules by which we spend money on the supplies, services and works we need to deliver our services. The Rules are part of the Council's Constitution and have been produced as part of our approach to the way we buy things
- 1.3 Advice on the difference between supplies, works and services is available from the Council's procurement unit.
- 1.4 The Rules apply to any contract that results in a payment being made by the Council as well as to some types of contracts where a service is being provided for the Council which results in some income being generated for the Council.
- 1.5 The Rules also apply to the disposal of surplus goods and to concession contracts.
- 1.6 The Rules do not cover grants which the Council may receive or make (unless the grant is part of a contract for services).
- 1.7 The Rules do not apply to the purchasing of property.
- 1.8 If you are in any doubt about whether the Rules apply, you must always check with the Assistant Director (Improvement)/Assistant Director - Legal and Democratic Services.
- 1.9 The Council's duty to secure value for money is very important. It means that we must always consider how each procurement is consistent with the Council's duty to secure continuous improvement in what we do having regard to economy, efficiency and effectiveness. We therefore need to question whether we should be buying anything at all and if we do, whether we can do it best ourselves, or jointly, or rely on someone else to get better value. Every procurement decision must be considered in the context of efficiency.
- 1.10 Government and EU public procurement legislation and policy require that the Council must permit, and be seen to be permitting, freedom of opportunity to trade with the Council and to be open and transparent about how we do things.
- 1.11 If we fail in this duty, a supplier or contractor may have cause for a complaint against us and in the worse case may be able to claim damages.

1.12 The most important principles are transparency, openness and fair competition. Whenever we are buying for the Council officers must always act to promote competition.

1.13 Our Rules have three main purposes:

- to comply with the obligations and legislation that govern the spending of public money, including the EU procurement Directives;
- to ensure procurement activities generate efficiency savings, facilitate improvements in service delivery, measured both by sustainable outcomes and value for money, and deliver quality services and supplies which are tailored to local needs.
- to ensure probity.

1.14 The Rules are:

- written in plain English; and
- reflect the fact that the great majority of our spending is carried out by front-line services so the Rules help decisions to be made by the right people at the right level in the Council.

This document contains rules and refers to guidance. Procurement Guidance is available from the Strategic and Commercial Procurement Unit.

## 2. Context and Requirements

2.1 The Monitoring Officer is responsible for agreeing exemptions.

2.2 The European Union sets down (through a Treaty) obligations on us at the Council when we are buying things. The key principle is to ensure that everyone in the marketplace who could provide the goods, supplies, works or services to the Council is able to access the opportunity to do so if they so wish.

2.3 Our Rules also need to be flexible for the future. When procuring all officers should consider, for example, the use of electronic procurement tools including e – auctions and e - tendering, Dynamic Purchasing Systems or setting up a framework. Increasingly Councils are collaborating through joint procurements (i.e. buying the things we need with another department or another Council or Councils and sometimes other public bodies). Advice on such factors should be sought from Strategic and Commercial Procurement.

2.4 If you are buying larger or costly goods, works or services, the Rules for higher value orders and contracts are more rigorous than for those of lower value. This is so that the benefits of a more thorough, complex process are not outweighed by cost relative to the value of the supplies, services or works in question.

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- 2.5 At the highest end of the value scale, the Council **must** follow full EU Public Procurement Directives, requiring us to observe certain prescribed procedures. In these cases you **must** consult with the Assistant Director (Improvement) before you start buying what you need.
- 2.6 Every contract, including strategic partnerships, whether made by the Council or by a committee or a chief officer to whom the power of making contracts shall have been delegated, shall comply with these Rules, and no exceptions from any of the following provisions of these Rules shall be made, except with the concurrence of the Monitoring Officer. These rules also apply to outsourced services which arrange contracts on behalf of the County Council. It is the responsibility of the chief officer concerned to seek such concurrence.
- 2.7 The Section 151 Officer shall keep a register of all departures from the Contacts Procedure Rules, which may be inspected by any Member of Council.
- 2.8 All procurement must be undertaken in a professional ethical manner ensuring the highest standards of openness, integrity, transparency, probity and accountability.
- 2.9 The Rules requiring tenders for the supply of goods and services shall not apply to:
- 2.9.1 Contracts for the placement of individuals in private or voluntary sector residential or nursing homes where the appropriate Corporate Director considers such a contract to be in the best interests of an individual.
  - 2.9.2 Contracts for care services to be provided to an individual or household where the appropriate Corporate Director considers such a contract to be in the best interests of an individual.
  - 2.9.3 Contracts for educational or social care or educational and social care placements for individuals where the appropriate Corporate Director considers such a contract to be in the best interests of an individual.
  - 2.9.4 Contracts with a third party where sections 184 or 278 of the Highways Act 1980 apply.
  - 2.9.5 Contracts for the instruction of Counsel or any external legal advisors may only be entered into by the Monitoring Officer.
  - 2.9.6 Contracts for expert witnesses and advisers instructed in connection with litigation (possible or actual) or public inquiries of whatever nature.
- 2.10 Where contracts are exempt from contract procedure rules, full documentation of procurement procedures and post tender negotiations should be maintained.
- 2.11 All contracts must demonstrate compliance with

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- the Contracts Procedure Rules
  - EU Procurement Directives
  - The principles of procurement best practice and value for money
  - The requirement to identify and secure appropriate funding
  - Appropriate and robust risk management and contract monitoring arrangements
- 2.12 Prior to the commencement of any tendering for any contract or arrangement with a total value of £100,000 or more, the Assistant Director (Improvement) must be consulted and their comments obtained. This also applies where there is expenditure with any one supplier in excess of £100,000. This requirement is to enable the County Council to collect appropriate data required by the EU and the Department for Communities and Local Government, to support the production and continuous maintenance of a Contracts Register and to facilitate identification of strategic sourcing opportunities and optimum use of resources.
- 2.13 All contracts and arrangements with a total value in excess of £50,000 will be placed on a Contracts Register. Such a register is to be held within Strategic and Commercial Procurement, updated on an annual basis and to be made public.
- 2.14 The Council recognises the benefits to be gained from the use of emerging technology and e-procurement and welcomes the use of a portal and electronic tendering system, electronic auctions, purchasing cards, electronic marketplaces and the e-procurement module of the e5 financial system. For the purposes of these Rules the term 'contract' refers to both paper/hard copy documents and processes and their replication by electronic media.

### 3. **Financial Values and Thresholds**

#### **Contract Value**

- 3.1 The value of a contract is to be calculated by reference to its contractually committed estimated total amount, whether to be supplied or executed at any one time or during a specific period. The value of a contract means the estimated total monetary value over its full duration, including any extension options (**not the annual value**).
- 3.2 Where the duration of a contract is indeterminate, this should be taken to be the estimated value of the contract over a period of four years. Contracts must not be artificially split to avoid the values.
- 3.3 The appropriate Chief Officer shall prepare an estimate of the cost of any work, goods, materials or services where the cost is likely to exceed £250,000. Contracts with a value in excess of £250,000 must be reported to Cabinet for approval as per Rule 10.6.

## Financial Thresholds

3.4 All tendering and contracting will be subject to the following procedures:

<b>Estimated Value / Amount</b>	<b>Invitation Method</b>	<b>Who may issue invitation</b>	<b>Who may accept</b>	<b>Method of acceptance</b>
£0 - £50,000	2 written quotations	Appropriate Chief Officer/Assistant Director/Budget holder	Appropriate Chief Officer /Assistant Director who shall keep a record off all invitations issued and received for a period of 3 years	Written acceptance and purchase order
£50,000 - £100,000	Minimum of 3 written quotations	Appropriate Chief Officer/Assistant Director	Appropriate Chief Officer /Assistant Director who shall keep a record off all invitations issued and received for a period of 3 years	Written acceptance and purchase order
Exceeding £100,000 but less than EU Threshold	Formal written tender	Appropriate Chief Officer/ Assistant Director	Appropriate Chief Officer /Assistant Director who shall keep a record off all invitations issued and received for a period of 6 years	Written acceptance, Articles of Agreement, contract and purchase order
Above EU Threshold	Formal written tender	Appropriate Chief Officer/Assistant Director plus Lead Member	Appropriate Chief Officer /Assistant Director plus Lead Member who shall keep a record off all invitations issued and received for a period of 6 years	Written acceptance, Articles of Agreement, contract and purchase order
Over £250,000	Formal written tender	Appropriate Chief	Requires Cabinet approval	Written acceptance,

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		Officer/Assistant Director plus Lead Member	as per Rule 10.6	Articles of Agreement, contract and purchase order
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It should be noted that the County Council may act as an accountable body and financial thresholds as stipulated by the funding body may vary than those mentioned above. Guidance in such cases should be sought from the Assistant Director (Improvement) and the Assistant Director - Legal and Democratic Services.

### **Exemptions from the Rules**

- 3.5 Exemptions from these Rules **must** be obtained in advance in accordance with the following procedure and will only be granted in exceptional circumstances. Lack of forward planning will not constitute a reason for an exemption
- 3.6 The Rules shall not apply in cases of genuine emergency such as unforeseen events likely to cause immediate danger to life or property. In such circumstances Corporate Directors are required to take appropriate action and report such action, and expenditure occurred, to Cabinet.
- 3.7 Tenders and quotations which are provided by suppliers on an existing County Council or otherwise approved supplier list or framework contract which otherwise meets the requirements of, and has been procured in accordance with, these Contract Procedure Rules can be accepted, evaluated and awarded in accordance with the Scheme of Delegation.

### **Single Action Tendering**

- 3.8 This Rule shall apply where the Council, Cabinet or Corporate Director has decided that there is only one possible contractor or supplier suitable for a given contract. Where this is the case, a Corporate Director may invite and accept a tender from a single person or body subject to consultation with the Monitoring Officer and the Assistant Director (Improvement).
- 3.9 Single action tendering shall not take place prior to written approval of the Monitoring Officer. Such approval to be held on record.

### **Use of central government, local government or appropriate public sector purchasing arrangements or purchasing consortia and frameworks**

- 3.10 This Rule shall apply where the Council, Cabinet, Corporate Director or Assistant Director (Improvement) has decided that the most appropriate method of appointing a contractor or supplier is to utilise an existing and properly procured central, local government or other public sector purchasing arrangement such as those arranged by the Office of Government Commerce (OGC). The Council must satisfy itself that such arrangements are compliant with the requirements of the EU Consolidated Procurement directive.

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- 3.11 The use of such arrangements must not be undertaken without prior written approval of the Monitoring Officer and consultation with the Assistant Director (Improvement). Such approval to be held on record.
- 3.12 Where tendering rules are being applied on behalf of another party then agreement on procedures should be obtained from the Assistant Director (Improvement) before continuing. On this basis an exemption from Tendering Rules may be provided where grant funding is required to be used within a deadline which could not be met under normal tendering procedures and where a funding organisation is in agreement and has applied an open, transparent and auditable procurement procedure. Such approval is subject to consultation with the Monitoring Officer and the Assistant Director (Improvement). Single action tendering shall not take place prior to written approval of the Monitoring Officer. Such approval to be held on record.

### **Who can buy goods, works and services on behalf of the Council?**

- 3.13 Officers authorised to buy goods, works and services in accordance with the above thresholds are stipulated in the Scheme of Delegation (SoD) for each Directorate. The SoD will be applied to all purchases and procurement and be reflected and supported through the Council purchase to pay system (the e-procurement module of e5.)
- 3.14 Before starting a procurement process, officer must ensure that we have carefully identified the need and fully assessed the options for satisfying it. Before starting any procurement process officers must consider:
- what is important to the Council in this procurement? Do you just need the supplies, works or services? Or are there other things you want to bring about (for example, improved environmental performance or job creation). In certain cases the procurement framework could help achieve these objectives but you must consult with the Assistant Director (Improvement);
  - is there is an existing framework arrangement or contract which could be used. This framework or contract could be one already set up by the Council, another Council, a joint purchasing body or run centrally by Government (such as OGC) or a via a purchasing consortia
- 3.15 If following consideration of alternative buying solutions, a joint procurement or other form of collaborative procurement is to be used with another Council, the conduct of the procurement should be on terms no less rigorous than the requirements of these Rules for any Council procurement. The Chief Legal Officer/Head of Procurement of the lead authority must certify in writing to all participating Councils and organisations that no less rigorous a process has been undertaken, prior to the contract start date.

### **Defining the Need**

- 3.16 As a minimum, officers **must** clearly and carefully specify the supplies, services or works to be supplied, the agreed programme for delivery and the terms for payment together with all other terms and conditions that are agreed. Officers also need to ensure that there are funds in the budget to pay for them. This means officers **must** decide in advance of the competitive process the size, scope, and specification of the supplies, service or works required.

### **Contract Strategy**

- 3.17 Once the need is determined, officers **must** determine a contract strategy by which the supplies, works or services will be acquired. This means taking a step back from the traditional procurement process and assessing the options particularly to the provision of services.

## **4. Invitation to Tender**

- 4.1 Every contract up to the value of £50,000 in value shall:
- be in writing via an exchange of letters or
  - be signed by a duly authorised officer, or made under seal;
  - specify the goods, works or services (including consultancy) to be executed, the price to be paid, together with a statement of any discounts or deductions, the period within which the contract is to be performed and such other terms and conditions agreed by the parties.
- 4.2 The Council may also require a contractor to give sufficient security for the due performance of any contract. Officers of the Council should consider whether it is prudent to require a contractor to provide such security for the due performance of any contract.
- 4.3 Every written or electronic contract shall contain a clause empowering the Council to cancel the contract and to recover from the contractor any loss resulting from such cancellation, if the contractor or any person employed by him or acting on his behalf shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation the obtaining or executing of the contract or of any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council, or if the contractor, or any person employed by him or acting on his behalf has committed an offence under the Prevention of Corruption Acts 1889 to 1916

or given any fee or reward the receipt of which is an offence under the Local Government Act 1972.

- 4.4 In every written or electronic contract due consideration must be given to ensure the inclusion of relevant and appropriate clauses to support the Council's policy commitment to Equality and Diversity. Advice must be taken from the Assistant Director (Improvement) and the County's Equality and Diversity Officer. Clauses covering the Data protection Act 1998, and Freedom of Information Act 2000 must also be included where appropriate.

#### **Full Tender Procedures (not over the EU thresholds)**

- 4.5 Where tenders are to be invited for a higher value contract (those between £100,000 but not over EU procurement thresholds) the procedure to be followed **must** be determined prior to advertising and **must** be one of the following:

4.5.1 open tender (all interested contractors submit a tender in response to an advertisement);

4.5.2 restricted procedure (expressions of interest from interested contractors in response to an advertisement, with a selection of those contractors being invited to submit a tender);

4.5.3 negotiated procedure (expressions of interest from interested contractors in response to an advertisement, with a selection of those contractors being invited to negotiate); or

4.5.4 where a Framework arrangement (including approved lists) exists in respect of the subject matter, tenders shall be invited using the Framework arrangement from capable contractors having regard to the County Council's policy and budgetary framework, policies and priorities including the Sustainable Procurement Strategy and Anti-Poverty Strategy. (NB Framework arrangements are, essentially, call-off contracts that have been arranged by the Council or another public body, such as the Office of Government Commerce or another Council, that have been procured in compliance with public sector procurement legislation and are open for use by the County Council – see section 4.14).

- 4.6 Unless otherwise authorised by the Assistant Director (Improvement), all such tenders will be operated through the Council's electronic tendering system ([www.thechest@nwce.gov.uk](mailto:www.thechest@nwce.gov.uk))

#### **Low and Intermediate-value transactions**

- 4.7 For transactions valued up to £50,000 at least two written quotations **must** be invited before a purchase order or contract is issued, specifying the supplies,

services or works and setting out prices, terms and conditions of contract and terms of payment.

- 4.8 Emailed quotations are acceptable in these cases but copies **must** be retained on the relevant file.
- 4.9 If only one quotation is received officers **must** seek some more quotations or obtain an **exemption** from the Rules. Receipt of two comparable quotations will be sufficient.
- 4.10 For transactions valued between £50,000 and £100,000 at least three written quotations **must** be invited before a purchase order or contract is issued, specifying the supplies, services or works and setting out prices, terms and conditions of contract and terms of payment.
- 4.11 Emailed quotations are acceptable in these cases but copies **must** be retained on the relevant file.
- 4.12 Purchase orders **must** contain the standard form of terms and conditions of contract between the Council and the supplier. A quotation and a purchase order will create a legally binding contract. The purchase order is used to formalise the terms of the contract.
- 4.13 Emailed quotations are acceptable in these cases but copies **must** be retained on the relevant file.

#### **Framework agreements**

- 4.14 Framework agreements are agreements with suppliers for the provision of supplies, works or services on agreed terms for a specific period for estimated quantities against which orders may be placed if and when required during the contract period. They offer benefits of bulk-buying, improved service and reduced administration costs over the period of the arrangement.
- 4.15 EU legislation require that frameworks procedure under the scope of the EU Procurement Directives have a maximum term of four years.
- 4.16 A framework agreement may have the option for you to hold a “mini - competition” with all of the suppliers on the framework when you come to buy for the Council.
- 4.17 Officers **must** investigate whether call-off contracts or frameworks are relevant and could get better value for the Council by using an existing framework (and if relevant the central Government agreements) and that you can properly use them.
- 4.18 Countywide arrangements for routine supplies and services and department-specific contracts, e.g. “block contracts” placed with care providers, housing

maintenance (such as gas servicing) and “term tenders” for highways maintenance would fall into this definition.

- 4.19 From time to time the Council shall determine financial limits for rules relating to contracts and tenders:

## 5. The EU Directives

### Additional requirements for transactions valued over EU thresholds

- 5.1 All goods and many services with a contract value in excess of two hundred thousand Euros, and all works contracts in excess of five million Euros are covered by the EU Consolidated Procurement Directive, as enforced by the Public Contract Regulations (2006), which lays down a strict process for advertising, timetabling and contractor selection. These rules take precedence over all County Council and UK national regulations and carry potentially heavy penalties for non-compliance. **Officers must comply with the detail and principle of the Directives at all times.**
- 5.2 All contracts must be advertised in the Office Journal of the European Union (OJEU) and transmitted to their Luxembourg office electronically. All such contracts should be referred to the Strategic and Commercial Procurement Unit who will provide advice and/or assistance and arrange for despatch of the advertisement. Additional local and/or national advertising is allowed AFTER despatch to OJEU which must contain no more information than the OJEU version.
- 5.3 Contract values above which procedures governed by the EU Directives apply are currently (from January 2010):

For supplies and services (including goods and consultancy services):	£156,442
For works:	£3,927,260

Please note that these thresholds are amended bi-annually in January. Advice on current thresholds is available from Strategic and Commercial Procurement.

- 5.4 If your contract has a value over this threshold you **must** consider whether you **must** procure under the Public Contracts Regulations 2006. If so your contract **must** be tendered under the Open, Restricted, Competitive Dialogue (for particularly complex contracts) or, in exceptional circumstances, the Negotiated procedure.
- 5.5 The EU Directives and UK Regulations are very long and only the principal requirements can be given here. If in doubt, refer to the Guidelines and advice should be sought from the Assistant Director (Improvement).

- 5.6 For each contract a Contract Notice **must** be published in the Supplement to the Official Journal of the European Union (OJEU). Advertisements published additional to this:
- 5.6.1 **must** not appear in any form before a Contract Notice is transmitted to OJEU; and
- 5.6.2 **must** not contain any information additional to that contained in the Contract Notice in OJEU.
- 5.7 Minimum timescales relating to tender procedures governed by the EU Directives **must** always be followed.

#### **Use of the Competitive Dialogue Procedure governed by EU Directives**

- 5.8 Advice **must** be sought from the Assistant Director (Improvement) at the earliest opportunity before commencing a tender process governed by EU Directives particularly when using either the Competitive Dialogue or the Negotiated Procedure.
- 5.9 Under EU Directives, the Competitive Dialogue Procedure may be used for contracts valued at or over EU thresholds in certain circumstances where:
- 5.9.1 we wish to award a particularly complex contract and think that the use of the open or restricted procedures will not allow the award of that contract; or
- 5.9.2 the contract is for a service and the precise nature of the service required cannot be clearly specified or accurately priced (e.g. some PFI or PPP contracts, bespoke software applications, intellectual and artistic services).
- 5.10 The Negotiated Procedure should not now be used (except in very specific circumstances) for the procurement of particularly complex projects.

## **6. Advertising Requirements**

- 6.1 Council recognises its role as a major purchaser of good, works and services and will strive to ensure fair competition. Tenders will therefore, wherever practicable, be widely advertised and be accessible. There will be an equality of opportunity for potential tenders to compete if they so wish. In addition the Council recognises the value and role of small and medium sized enterprises, locally based suppliers, social enterprises and the third sector and will strive to ensure our procurement procedures are accessible, fair and proportional to the size and complexity of the goods, works and services being procured. All procurement decisions must reflect the Sustainable Procurement Strategy.
- 6.2 Tenders will be advertised in accordance with the following:

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<b>Value</b>	<b>Media</b>
£0k – 100k	CCC Website Portal if appropriate (www.thechest.nwce.gov.uk)
£100k	CCC website Local newspaper Portal (www.thechest.nwce.gov.uk) Specialist press (if appropriate)
£EU threshold	CCC website Local newspaper OJEU Portal (www.thechest.nwce.gov.uk) Specialist press (if appropriate)

- 6.3 Tender notices must describe the nature of the proposed contract, relevant dates, return address and deadline and contact details of an appropriate officer. The notice, or tender documents must state that the Council is not bound to accept the lowest, or any, tender.

## 7. Electronic Procurement

- 7.1 Electronic procurement (or “e-procurement”) systems should be used wherever possible including the Council’s purchase to pay system (the e-procurement module of e5). Failure to do so could lead to disciplinary action.
- 7.2 Where practicable, secure and appropriate, the tendering process should be undertaken via the use of the Council’s electronic tendering system and portal ([www.thechest.nwce.gov.uk](http://www.thechest.nwce.gov.uk)). Such use is subject to the written approval of the Assistant Director (Improvement).

## 8. Receiving and Opening Tenders

- 8.1 The Council is not obliged to accept the lowest, or any tender, but will generally seek to award on the basis of the most economically advantageous, wherever practicable care should be taken to evaluate the whole life cost of the goods, works or services rather than unit price and where appropriate, and relevant to the contract, include relevant social clauses to demonstrate community, economic and environmental benefits.

- 8.2 The lowest tender for the supply of goods, works or services can be accepted by the Corporate Director or where it is judged to be the most appropriate against a pre-determined evaluation model.
- 8.3 A tender not deemed to meet 8.2 can only be accepted by a Corporate Director following consultation with the Monitoring Officer and Lead member where it is in the interest of the Council and within its budgetary framework.
- 8.4 Every response to an invitation to tender for a transaction valued over £100,000 should be delivered:
- (i) Either electronically via the Council's tendering system or via hard copy no later than the time specified for submission of tenders in the invitation to tender and addressed to the person at the place specified in the invitation to tender);
  - (ii) with no labelling or other markings that identifies the tenderer. No tender will be considered unless it is returned in plain sealed packaging which bears the word 'tender' followed by the contract name.
- 8.5 The opened tenders **must** be recorded on a list of tenders invited.
- 8.6 Late tenders shall not be considered unless, following a request and proof of a legitimate reason, written approval is provided by the Assistant Director - Legal and Democratic Services and Assistant Director (Improvement).
- 8.7 Tenders shall be kept secure and unopened until formal opening by two members of staff consisting of a representative of Procurement and a representative of the Client Directorate.
- 8.8 Persons tendering shall not be allowed to alter their tenders after the date fixed for receipt but arithmetical errors should be corrected, unless such a tender has been accepted and the alterations would increase the amount thereof.

## 9. Evaluating Tenders

- 9.1 For contracts valued over £100,000 and for all contracts governed by EU Directives, a more complex tender evaluation procedure based on the identification of the Most Economically Advantageous Tender ("MEAT") should be used. There are some situations, however, where MEAT will not be an appropriate method of evaluation - usually where the only discerning factor between products and/or solutions will be that of price (e.g. where you are buying stationery or other standard items). It is unlikely that providers for Services or Works could be selected on price alone as these will often require more subjective evaluation techniques. While criteria for evaluation is at the

discretion of the Council care needs to be taken that using a lowest price method of evaluation rather than using MEAT is appropriate for the procurement. However, as stated in Section 8.1, the Council is not obliged to accept any or the lowest tender and care should be taken to evaluate the whole life cost of the goods, works or services rather than unit price and where appropriate, and relevant to the contract, include relevant social clauses to demonstrate community, economic and environmental benefits.

9.2 Evaluation involves scoring tenders objectively by a panel of experienced and appropriate officers and/or independent experts using criteria which **must**:

9.2.1 be pre-determined and listed in the invitation to tender documentation including any sub-criteria and any weighting to be used;

9.2.2 be strictly observed at all times throughout the tender process;

9.2.3 reflect value for money considerations;

9.2.4 include price;

9.2.5 consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal should be taken into account;

9.2.6 be capable of objective assessment;

9.2.7 include due regard to, where applicable, current legislation regarding the Transfer of Undertakings (Protection of Employment) Regulations and pension arrangements;

9.2.8 avoid discrimination or perceived discrimination on the basis of nationality, or other cause contrary to any of the Council's policies.

9.3 Where this evaluation methodology is used, any resulting contract **must** be awarded to the tenderer which submits the most economically advantageous tender, i.e. the tender that achieves the highest score in the objective assessment.

#### **Non-Commercial Interests**

9.4 While recognising the effect of procurement on the local economy due regard must be taken of the use of non-commercial issues in the contracting process. Tenders can only be evaluated on criteria which have a direct impact of the goods, works or services being purchased and all tenders must seek to secure optimum value for money. However, consideration must be given, where appropriate, to the social, economic, environmental outcomes arising from a contract. Evaluation must therefore encompass an assessment of financial and sustainability factors.

- 9.5 Tendering and contracting activity must be undertaken in compliance with the principles laid down in the Sustainable Procurement Strategy and Anti-Poverty Strategy.

## 10. Awarding Contracts

- 10.1 The results of the tender evaluation process **must** be recorded in writing.
- 10.2 A contract **must** only be awarded and signed by an officer authorised to do so, who **must** ensure that the appropriate budget holder has the funds in place to sustain the contract prior to award.

Proper records of all procurement activity must be retained in accordance with the Council's Document Retention Policy in either electronic or hard-copy format as appropriate:

- 10.3 Minimum period for document retention

	<b>In Excess of £250,000</b>	<b>In Excess of £100,000</b>	<b>Below £100,000</b>
Tenders Successful	12 years	6 years	3 years
Tenders unsuccessful	12 years	6 years	3 years

- 10.4 A complete set of original documents must also be retained including contract conditions, specification, pricing schedule, evaluation model, correspondence and award letter.
- 10.5 For all transactions valued at or over £50,000, brief details **must** be included in the Contracts Register.
- 10.6 With the exception of any project included within a capital programme approved by the County Council, the Cabinet or a Local Committee, and those relating to markets in which a decision must be made in a narrow defined period of time (for example electricity and gas contracts tendered via an e-auction) all contracts with a value in excess of £250,000 should be reported to Cabinet for approval to include
- Cost and budgetary provision
  - Details of numbers of tenders received
  - Tendering process used
  - Evaluation criteria
  - Risk assessment
  - TUPE implications
  - Recommendation of award
  - Detailed contract monitoring and management arrangements

## 10.7 Standstill Period

For all contracts tendered under EU Directives, a ten-day 'standstill period' **must** be observed between the decision to award and contract conclusion. Once the decision to award a contract is made, each tenderer **must** be notified in writing on the outcome of the tender process. This notification **must** include:

- (i) details of the contract award criteria;
- (ii) where practicable the score the tenderer obtained against those award criteria;
- (iii) where practicable the score the winning tenderer obtained; and
- (iv) the name of the winning tenderer.

There **must** be a minimum of 15 calendar days between the despatch of this notification and the conclusion of the contract. Special rules apply where a tenderer requests a debrief on the tender process. Even if a tenderer asks for a debrief outside of the standstill period we are still obliged to provide this.

In this instance, advice **must** be sought from the Assistant Director (Improvement)] at the earliest opportunity.

## 10.8 Contract Award Notice

All contracts awarded under EU Directives **must** be announced by means of a Contract Award Notice in OJEU transmitted no later than 48 calendar days after the date of award.

# 11. Execution of Contract

11.1 Every contract is to be in writing specifying the nature of the goods, works or services, the price and the time in which it is to be performed.

11.2 Every contract with a value in excess of £50,000 but less than £250,000 shall either

11.2.1 be in writing and signed by two duly authorised officers. or

11.2.2 be made under seal.

11.3 Contracts with a value in excess of £250,000 should be made under seal.

## 11.4 Prohibition

Every written contract for the supply of goods or materials, or for the execution of work or the provision of services, whether to be supplied or executed at any one time during a specified period, shall contain a clause prohibiting the contractor from transferring or assigning, directly or indirectly,

to any person or persons whatsoever, any portion of his/her contract without the permission of the council, or from sub-letting any portion of his/her contract other than which may be customary in the trade or profession concerned.

### **Failure to Execute Contract**

- 11.5 In every written contract which exceeds £20,000 for the execution of work, or the supply of goods or materials, a clause shall be inserted to secure that, should the contractor fail to execute the work, or deliver the goods or materials, or execute or deliver any portion thereof within the time or times specified in the contract, the Council, without prejudice to any other remedy for breach of contract, either wholly or in part, or to the extent of such default, and to provide for the execution of the works by other means, or to purchase other goods or materials, as the case may be to make good:
- such default; or
  - in the event of the contracts being wholly determined, the unexecuted work or the goods or materials remaining to be delivered.
- 11.6 The clause shall further secure that the amount by which the cost of providing for the execution of the work by other means, or the purchasing of other goods or materials, exceeds the amount which would have been payable to the contractor had he executed the contract, or portion thereof, within the time or times specified therein, shall be payable by the contractor.

## **12. Conditions of Contract**

- 12.1 All transactions **must** use an appropriate model form of contract approved by the Assistant Director - Legal and Democratic Services.
- 12.2 For all contracts for services estimated at a value over £100,000 or where the services are of an unusual or complex nature, including PFIs or PPPs, the Assistant Director - Legal and Democratic Services be consulted to produce a suitable set of conditions of contract (with external advisors if necessary) before inviting tenders.
- 12.3 Where a contract is considered to be of a strategically important or politically sensitive nature the contract **must** be in writing and executed under seal.

### **Financial Appraisal and Bonds**

- 12.4 Suppliers bidding for any contract where the value exceeds £100,000 must be subject to a full current financial appraisal, including appropriate financial checks and reports and a risk analysis. Advice on such an appraisal is available from the Assistant Director - Finance.

Updated by Council on 17 February 2011

- 12.5 Except to the extent that, in any particular case or class of cases where the appropriate chief officer, in consultation with the Monitoring Officer and the Section 151 Officer, may decide to the contrary, it shall not be necessary to require a contractor to produce a bond or sureties for the due performance of his contract.
- 12.6 The amount of any bond or sureties which may be required under the exception to paragraph 12.5 of this Rule shall be either the amount, if any, fixed by a Government Department for contracts of a similar nature, or such amount as may be fixed by the appropriate chief officer in consultation as aforesaid for the particular contract.

## 13. Disposing of Surplus Goods

- 13.1 Budget Holders are responsible for the disposal of their own surplus goods.
- 13.2 The same competitive process for buying supplies, services and works **must** also be applied to the disposal of surplus goods.
- 13.3 In principle:
- competitive bids need not be invited if the goods are valued at or below £5,000 but you can do so if you wish;
  - if the estimated value of the goods is greater than £5,000 and at or below £20,000 then a minimum of three bids **\*must\*** be invited; and
  - if the estimated value of the goods is greater than £20,000 then a minimum of four sealed bids **must** be invited.
- 13.4 If you are in any doubt, professional advice **must** be sought from the Assistant Director – Strategic Investments and Property when making valuations.
- 13.5 For higher value items, you can consider sale by auction instead of sealed bids, but care should be taken to evaluate the full cost of the process and the commission payable.
- 13.6 The highest value unconditional bid received should usually be accepted unless, in the view of the Assistant Director – Strategic Investments and Property a conditional bid offers better value to the Council.

## 14. **Prevention of Corruption and Conflicts of Interest**

- 14.1 All officers and members involved in procurement must behave in a professional manner with due regard to matters of probity. Any pecuniary interests must be declared and the relevant codes of conduct be complied with at these times.
- 14.2 No gifts or hospitality should be accepted from any tenderers to any contract being let by the Council and to do so is a disciplinary offence. You **must** inform the Assistant Director (Improvement) if you are dealing with a contract for the Council and have been offered such a gift or hospitality.

## 15. **Contract Extensions and Variations**

- 15.1 Contracts must adhere to the original terms and conditions, financial value, nature of goods or services being provided and timescale. However, in exceptional circumstances Corporate Directors can seek to lengthen or vary contracts in consultation with the Monitoring Officer and the Assistant Director (Improvement). However any extension period can only relate to the period allowed in the terms and conditions of the original contract and cannot cause a material alteration to the scope or value of the contract. Such decisions must be recorded and form part of the Contracts Register. It should be noted however that EU Directives include timescales which cannot be extended outside the original terms of EU notices

## 16. **Nominated Sub Contractors and Suppliers**

- 16.1 Where a Sub-Contractor or supplier is to be nominated to a main contractor, the following provisions shall have effect:

16.1.1 the chief officer concerned shall invite tenders for the nomination in accordance with Section 4 (Invitation to Tender). The terms of the invitation shall require an undertaking by the tenderer that, if he is selected, he will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his own obligations under the main contract in relation to the work or goods included in the sub-contract;

- 16.1.2 the tenders shall be opened one at a time, and only in the presence of the chief officer concerned, or an officer designated by him; the chief officer concerned shall maintain a record of all such tenders received;
- 16.1.3 the chief officer concerned, or an officer designated by him/her, shall nominate to the main contractor the person whose tender is, in his/her opinion, the most satisfactory one.
- 16.2 Provided that, where the nominated tender is other than the lowest received, the circumstances shall be reported to the Section 151 Officer.
- 16.3 Where the estimated amount of the sub-contract, or the estimated value of goods to be supplied by a nominated supplier, exceeds £100,000, then, if the Section 151 Officer concurs:
- 16.3.1 tenders for the nomination shall be invited in accordance with Rule 5 or 6 as the case may be, and Rule 7 shall apply as if the tender were for a contract with the Council. The terms of the invitation shall require an undertaking by the tenderer that, if he is selected, he will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his own obligations under the main contract in relation to the work or goods included in the sub-contract;
- 16.3.2 tenders shall be kept secure and unopened until formal opening by two members of staff consisting of a representative of Democratic Services and a representative of Client Directorate. All tenders received and opened are to be recorded;
- 16.3.3 the chief officer concerned, or an officer designated by him/her, shall nominate to the main contractor the person whose tender is, in his opinion, the most satisfactory.
- 16.4 It shall be a condition of the employment by the Council of any person (not being an officer of the Council) to supervise a contract that, in relation to such contract, he shall comply with the requirements of paragraphs 16.1 and 16.2 of this Rule as if he were a chief officer of the Council.
- 16.5 Subject to this Rule, the provisions of the Rules relating to invitations to tender shall apply to the nomination of sub-contractors or suppliers where the context so permits.

## 17. **Contracts Register**

- 17.1 Council has a responsibility to maintain a central register of contracts which should be available for scrutiny by officers, members and, via our website, members of the public. The Strategic and Commercial Procurement Unit will hold and maintain such a register and must be informed of the nature, value and timescales of every contract with a value in excess of £50,000. All Directorates are therefore required to inform the Assistant Director (Improvement) of any contracts exceeding this value.

## 18. **TUPE**

- 18.1 Advice must be sought where a contract is likely to involve changes to staffing or work conditions, redundancy, relocation or transfer of employment or any other aspects relating to the Transfer of Undertaking of Protected Employment Regulations. TUPE issues should be included in evaluation and tender reports. Due regard must be taken of all regulations concerning TUPE and workforce matters including appropriate consultation with staff and trades unions and due care must be taken to ensure the validity and accuracy of all TUPE information. Pension entitlements must also be considered, and as far as possible, protected within this process.

## 19. **Appointment of Consultants**

- 19.1 The Rules set out for tendering and contracts apply to the appointment of consultants and consultancy organisations.
- 19.2 A consultant appointed to advise on a project, to design work or to advise on an evaluation or similar exercise must not be permitted to bid for any subsequent stage of the work or project.
- 19.3 In some cases consultants may be defined as employees where they are working in a general capacity rather than on a project. The Corporate Director – Organisational Development should be consulted to confirm the status of such an employee.
- 19.4 The Corporate Director – Organisational Development should confirm the appointment of any consultant employed as an Assistant Director or Corporate Director.

## 20. **Partnerships**

- 20.1 When engaged in a partnership, the Council should ensure that governance arrangements include tendering.

- 20.2 Where the Council is the Lead Authority, as a minimum, the Council Procedures Rules should be followed. It is possible that a small partnership may want tighter rules on procurement so in agreement with the partner these should be followed.
- 20.3 Before entering into contracts, written agreements should be made with the partners that they are willing to provide the appropriate funding.
- 20.4 Where the Council is not the lead partner, the partnership tendering rules should be followed.

## 21. **Accountable Body Status – European, Government, Lottery Monies, Etc**

- 21.1 All the above funding arrangements are likely to be subject to inspection by Government audits and final claims by the Audit Commission.
- 21.2 The inspection will cover tendering arrangements and it is essential that not only the County Council, but also partners appointed, conform with tendering rules. Many of the above bodies have their own tendering arrangements which are often tighter than the Council's arrangements.
- 21.3 Failure to follow the Funding Body's tendering rule is likely to result in funds being clawed back, leading to a budget deficit to be financed.

## 22. **Risk Analysis**

- 22.1 All contracts with a value in excess of £250,000 must include a robust Risk Analysis with appropriate arrangements for on-going risk management throughout the lifetime of the contract which must be approved by the Corporate Director. (See the Council's Rough Guide to Risk Management for further information). In addition, there should be a written plan for monitoring the contract, which will be approved by members. The Senior Manager - Audit may be able to provide advice on this Plan.
- 22.2 Risks must be proactively monitored throughout lifetime of the contract and any areas of concern be reported to the Corporate Director. Any suspicion of Fraud should be reported to the Senior Manager - Audit.

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