

Chapter 4 Part 2 : Financial Regulations (Contracts)

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BROXTOWE BOROUGH COUNCIL

CONTRACT PROCEDURE RULES

The Procedure Rules below have been approved by the Council relating to contracts and are incorporated into the Council's Procedure Rules accordingly. These Procedure Rules should be read alongside the Procurement and Commissioning Strategy.

1. Basic principles and compliance with Procedure Rules

- 1.1. All purchasing and disposals procedures must:
 - a) aim to achieve value for money (VfM)
 - b) ensure the health, safety and wellbeing of staff and the general public
 - c) be consistent with the highest standards of integrity
 - d) ensure transparency and fairness at all times in allocating public contracts
 - e) have the required technical assessment and approval
 - f) comply with all legal requirements
 - g) have budgetary approval
 - h) ensure that non-commercial considerations do not influence any contracting decision except where specifically referred to in these Procedure Rules
 - i) support the Council's vision and priorities around sustainable procurement, economic growth, Corporate Social Values and environmental issues
 - j) comply with the Council's Procurement and Commissioning Strategy.
- 1.2. Every contract and the procedures relating to the selection of tenderers and the obtaining, opening and evaluation of tenders or quotations shall comply with these Procedure Rules and no exception from any of the following provisions of these Procedure Rules shall be made otherwise than by the direction of the Council or by Cabinet or by the Chief Executive or duly nominated substitute.
- 1.3. A record of any exception from any of the provisions of these procedure rules, together with the reasons therefore, shall be included in the minutes of the full Council or Cabinet by which the exception was made, as the case may be.
- 1.4. In these Contract Procedure Rules, reference to the Procurement Officer shall mean the current Procurement and Contracts Officer or such other Officer as shall be providing oversight and strategic advice on the Council's procurement functions.
- 1.5. Procurement Exercises must comply with the Public Contracts Regulations 2015 (PCR 2015).

2. Procurement options

2.1. Officers should consider what procurement method is most likely to achieve the purchasing objectives with the preference being for use of a suitable Framework Agreement, or an open tender process to be used wherever possible. Regardless of the procurement options chosen, all UK and EU legislation and directives should be complied with.

2.2. Collaborative procurement

- a) In order to secure value for money the Council may decide to enter into collaborative procurement arrangements. All purchases made via a local authority procurement consortium are deemed to comply with the Council's contract procedures and no exemption is required.
- b) Purchases above the EU threshold must be let under the EU procedure unless the consortium concerned has satisfied this requirement already by letting their contract in accordance with the EU procedure on behalf of the Council and other consortium Members.
- c) Any contract entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed which complies with the contract procedure rules of the leading organisation, will be deemed to comply with these Procedure Rules and no exemption is required.

2.3 Framework Agreements

Framework agreements must only be used where the Council is either a named participant or where the Council is a recognisable class of contracting Council under the terms of the framework agreement.

Contracts based on framework agreements may be awarded by either:

- a) applying the terms laid down in the framework agreement (where such terms are sufficiently precise) without reopening competition (direct award), or
- b) where the terms laid down in the Framework Agreement are not precise enough or it may be possible to obtain improved value for money, by holding a mini competition amongst all the organisations included within the Agreement.

2.4. Multiple contracts

Where the aggregated value across all departments within the Council on a number of individual contracts for similar Goods, Services or Works (as defined by the main category Common Procurement Vocabulary Code) within a period of 48 months is likely to exceed the threshold values as laid down in these Procedure Rules, then Officers shall seek guidance from Procurement. Procurement will consolidate all requirements and manage the procurement exercise, ensuring compliance with (PCR 2015).

2.5. Public Auctions

The appropriate Senior Officer in consultation with the Deputy Chief Executive or the Chief Executive may resolve whether the acquisition or disposal of goods or

materials by the Council up to an anticipated value of £150,000 should be by way of public auction. Purchases and sales of goods or materials of an anticipated value in excess of £150,000 shall only be conducted at auction with the approval of Cabinet.

2.6. Electronic Reverse Auctions

Reverse auctions to procure Works, Goods or Services should be conducted through the Council's e-Tendering portal. Reverse auctions will be run by the Procurement Officer.

2.7. Extensions

- a) Contracts may be extended where the Work to be executed or, Goods or Services to be provided constitute an extension of time, or an increase in value of an existing contract, provided that such an extension or increase has been reflected in any contract documents or the value of such an extension is less than 10% of the original contract value.
- b) Contracts may not be extended unless the option to do so was included when first advertised.
- c) In exceptional circumstances, existing arrangements may need to be continued to allow sufficient time to conduct a robust procurement exercise. This must not be used to mitigate poor planning.

3. Exemptions

- 3.1 Where a proposed contract is likely to exceed the OJEU threshold all actions must be in accordance with PCR 2015. Procurement advice should be sought.
- 3.2 Where an exemption is necessary because of unforeseeable emergency involving immediate risk to persons, property or serious disruption to council services, approval must be sought from the Chief Executive, or in their absence the Deputy Chief Executive. Where this situation arises, a report must be sent to the next appropriate Cabinet detailing the action taken.
- 3.3 Nothing in these Procedure Rules and procedures shall require competitive tenders to be invited in any of the following circumstances:
 - a) The work to be executed or the goods or materials to be supplied consist of repairs to or the supply of compatible parts to existing proprietary machinery or plant by the manufacturers or their agents which cannot be cost effectively provided by other suppliers.
 - b) The estimated expenditure is less than £25,000, provided that the appropriate Senior Officer shall take reasonable steps to secure the order at the most competitive price
 - c) The sale or purchase is by or at public auction.

4. Relevant contracts

- 4.1 All relevant contracts must comply with these Procedure Rules and procedures. A relevant contract is any arrangement made by or on behalf of the Council for the supply of goods or services, or for the carrying out of works.

- 4.2 Relevant contracts may include verbal instructions to provide goods or services or to carry out works. This can commit the Council without any appropriate terms and conditions, insurance, health and safety requirements supplier accreditation, budget checks etc. being carried out or agreed. For this reason, all requirements must be communicated to suppliers by a signed Contract or an official Purchase Order with appropriate authorisation, prior to the commencement of any works or supply of any goods or services.
- 4.3 Users of Council Purchase Cards should consider which terms and conditions apply, insurances, health and safety requirements, supplier accreditation and budget for all purchases.
- 4.4 Relevant contracts do not include:
- (a) contracts of employment which make an individual a direct employee of the Council.
 - (b) treasury management deals for borrowing or investment which fall to be dealt with in accordance with the treasury management and investment strategies.

5 Purchases - competition requirements

- 5.1 The process to be followed in conducting the purchasing of goods, materials or services is:

Classification	Value	Actions	Decision
Very Low Value	Below £1,000	Ensure Value for Money	Senior Officer
Low Value	From £1,000 to £25,000	Obtain three quotations (<i>Note</i>)	Senior Officer
Medium Value	From £25,000 to OJEU threshold	Conduct Tender exercise (Procurement)	Deputy Chief Executive
Above Threshold	Over OJEU threshold	Conduct Tender exercise (Procurement)	Deputy Chief Executive

Note: The relevant Senior Officer (as defined in the Scheme of Delegation) can decide if quotations are needed and/or are appropriate in order to demonstrate Value for Money.

- 5.2 Where it is considered appropriate the Council can choose to go out to tender in order to ensure Value for Money even if this is not required by these Procedure Rules and procedures.
- 5.3 For purchases over £25,000 in value, where, despite being advertised in accordance with clause 7 fewer than three tenders are received, the Senior Officer shall report details of the quotations received, with reasons for the limited response to the Deputy Chief Executive. The contract shall be awarded to the Most Economically Advantageous Tender (MEAT) received.

6 E-Communication

- 6.1 All Open Procurement Exercises over £25,000 must be conducted by e-communication via dedicated e-Tendering portal with an electronic post-box and a secure vault to hold tenders until due. ensuring robust auditable processes

Note: In this context emails do not count as e-communication.

7 Advertising

- 7.1 All 'Open' Procurement Exercises over £25,000 must be advertised on the Governments 'Contracts Finder' portal, with a link to the opportunity on the Council's e-Tendering portal. It is recommended that opportunities are also advertised on the 'Source Nottinghamshire' portal and in any relevant 'trade' journals.
- 7.2 Links to advertisements of Procurement Exercises should be sent to incumbent suppliers and any other suppliers who have expressed an interest in supplying the Council. This will allow them to register and obtain relevant documents.
- 7.3 Advertisements should allow at least 30 days from publication for suppliers to obtain documentation and respond with their bid.
- 7.4 'Restricted' Procurement Exercises", using suppliers from an existing Framework Agreement should not be advertised. All suppliers on the Framework Agreement must be invited to join the Procurement Exercise. Suppliers not on the Framework Agreement may not join the Procurement Exercise.

8 Specifications

- 8.1 Specifications must be performance based, with a focus on the result required, rather than how it is achieved.
- 8.2 Options for alternative solutions should be allowed. Wherever possible, Suppliers should be encouraged to use their expertise to develop innovative ideas which could provide improved performance, service levels and reduced costs
- 8.3 Specifications must not include details of manufacturer or model, unless new equipment is specifically required to integrate with legacy equipment, in which case details of existing equipment should be provided to ensure compatibility.

9 Award criteria

- 9.1 Award criteria should be designed to encourage innovation and creative responses.
- 9.2 All invitations to tender must detail the award criteria and assessment methodology which will be used. The exercise must be designed to secure an outcome giving demonstrable value for money for the Council. The options are:
- a) 'most economically advantageous', (preferred option), where considerations other than price also apply, or
 - b) 'lowest price', where payment is to be made by the Council, or
 - c) 'highest price', where payment is to be received by the Council.

- 9.3 When 'most economically advantageous' is adopted, it must be fully defined in the documentation supplied to tenderers, detailing assessment criteria which must be wholly relevant to the procurement. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental features, technical performance, functional characteristics, safety, after sales service, technical assistance, social value added and any other relevant matters. The extent and weighting of these criteria must be declared and documented when sending out any details.
- 9.4 The weighting of non-financial criteria within a proposed contract must;
- a) reflect their importance to the Council,
 - b) ensure equal treatment of all potential suppliers,
 - c) not preclude or give undue preference to any supplier
 - d) ensure that all dealings with suppliers are undertaken on a fair, equitable and transparent basis
 - e) be designed to give the Council the best possible outcome
- 9.5 All evaluations must comply with PCR 2015 and have regard to the financial and technical standards relevant to the contract and the award criteria.
- 9.6 Wherever possible a breakdown of costs should be requested, to allow minor adjustment of scope to meet changing circumstances.

10 Transparency

- 10.1 In line with the Local Government Transparency Code, the Council will publish on its website on a quarterly basis details (as prescribed in the code), of all procurement exercises and contracts entered into with a value exceeding £5,000.

11 Submission, receipt and opening of tenders/quotations

- 11.1 Prospective suppliers must be given an adequate period in which to prepare and submit a proper quotation or tender consistent with the complexity of the contract requirement and any EU procedures. PCR 2015 requires a minimum of 30 days for the Open Procedure, unless a Prior Information Notice has been published.
- 11.2 Electronic submission of quotations and tenders is required by PCR 2015. This is conducted through the Council's preferred e-Tendering portal. Tenders remain within the portal's secure vault until the closing date and time. The vault shall be unlocked, releasing all tenders simultaneously, by the Deputy Chief Executive, or an officer of the Council designated by him.

NOTE: All Tender documents, including pricing information are securely retained in the vault within the e-Tendering portal. This information is not visible until the vault is un-locked and cannot be changed once opened. All actions conducted within the portal are recorded and are fully auditable. There is therefore no requirement to witness the tender opening or record any data.

12 Late tenders and quotations

- 12.1 Tenders cannot be uploaded to the e-Tendering portal after the closing date and time.
- 12.2 Any quotation received for procurement exercises below £25,000, after the specified date and time where the e-Tendering portal has not been used, shall not be considered unless the appropriate Senior Officer, with the approval of the Deputy Chief Executive, consider that exceptional circumstances warrant it. Appropriate supporting documentation must be maintained to substantiate the decision taken.
- 12.3 Under no circumstances can any late quotation be considered after the other quotations have been opened.

13 Sale of Council Assets

- 13.1 All disposals of land, property or equipment (excluding Council housing) estimated to be below £25,000 in value shall only be disposed of with the prior approval of the appropriate Senior Officer acting in accordance with the agreed policy governing the disposal of land and property owned by the Council and any other policy agreed from time to time by full Council and/or Cabinet.
- 13.2 All disposals of land, property or equipment (excluding Council housing) estimated to be between £25,000 and £100,000 in value shall only be disposed of with the prior approval of the appropriate Chief Officer acting in accordance with the agreed policy governing the disposal of land and property owned by the Council and any other policy agreed from time to time by full Council and/or Cabinet.
- 13.3 All disposals of land, property or equipment (excluding Council housing) estimated to exceed £100,000 in value shall only be disposed of with the prior approval of Cabinet. In such cases Cabinet will decide upon the details of disposal having regard to the approved policy governing disposal of land and property owned by the Council and any other policy agreed from time to time by a full Council and/or Cabinet.
- 13.4 Wherever possible sale of assets by tender will be conducted electronically using the Council's preferred e-Tendering portal.
- 13.5 Tenders shall remain in the custody of the Deputy Chief Executive or an Officer of the Council designated by them until they are opened. Where tenders are not electronic, they shall be opened at one time, by the appropriate Senior Officer, in the presence of the Deputy Chief Executive or his/her representative. Commercial details within the tenders shall be immediately initialled and dated by those present at the opening. The names of the tenderers and the amounts of the tenders shall be immediately recorded in a register kept by the Deputy Chief Executive and the persons present at the opening of such tenders shall record their presence in the said register.
- 13.6 The appropriate Senior Officer shall accept the highest offer received subject to scrutiny and shall report the acceptance to Cabinet.

14 Clarification procedures

- 14.1 Providing clarification for an invitation to tender or invitation to quote to potential or actual organisations involved or seeking clarification of a tender/quotation, is permitted. However, these matters shall take place in such a way as to not disadvantage or show favour towards any individual organisation involved. All

questions, in non-attributable form, together with the Council's responses, will be posted on the e-Tendering portal, for all tenderers to see.

- 14.2 Exceptionally, tenderers may request information is not published if it could damage their commercial advantage or disclose their innovative ideas. The Deputy Chief Executive or his/her representative will determine whether such information can be withheld from all other tenderers.
- 14.3 Where a meeting or a site visit is required all tenderers should be invited to attend a single meeting so all are given the same information and have opportunities to ask questions and hear responses. Minutes should be taken of any meetings and published on the e-Tendering portal to ensure all tenderers, including those not attending, have the same information.
- 14.4 Where an error is discovered in a tender during scrutiny by the Council's Officers, clarification should be sought. Clarifications obtained must be detailed in the tender evaluation report, with a recommendation to accept or reject any required corrections. Suppliers shall have the opportunity to withdraw their tender if they have made an error.

15 Post tender negotiations

- 15.1 Post tender negotiations may be required, when prices tendered exceed the available budget, to confirm financial commitments or other terms contained in the tender, or to ensure the Council obtains Value for Money. Approval should be obtained from the Deputy Chief Executive or Cabinet, following a recommendation from the Procurement Officer or appropriate Senior Officer. Post tender negotiations will be led by the Procurement Officer.
- 15.2 Post tender negotiations should be carried out after tenders have been received and evaluated, with the tenderer identified as having submitted the tender presenting the best price-quality scores in accordance with the published award criteria, provided this:
 - a) does not have the effect of materially modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, and
 - b) does not risk distorting competition or causing discrimination.

16 Acceptance of tenders and quotations

- 16.1 Tenders and quotations must be evaluated and contracts awarded strictly in accordance with the published evaluation criteria stated within them. The evaluation criteria should (where possible) include both price and quality elements.

17 Reports on tenders

- 17.1 For contract values in excess of £25,000 a tender evaluation report should be prepared by the appropriate Senior Officer and presented to the Deputy Chief Executive, or Cabinet where the amount is in excess of budgetary provision, with a recommendation as to the tender that should be accepted and the basis for such a recommendation.

17.2 Where the tender recommended for acceptance is for an amount in excess of the approved budgetary provision, then the appropriate Senior Officer if below £25,000 or Deputy Chief Executive if in excess of £25,000 may:

- a) apply to Cabinet for approval to a revised budget for the scheme, or
- b) recommend post tender negotiations with the lowest tenderer, in accordance with 15.1 and 15.2, to reduce the tendered amount by value engineering to bring the cost of the work within the approved budget. The effect of such revision and negotiation shall be reported to Cabinet.
- c) declare the procurement exercise void, produce a new and fundamentally different specification which will ensure lower costs and commence a new procurement exercise.

18 Due diligence

18.1 If there is any doubt about the sustainability or capability of the Supplier or of the Contract, due diligence must be carried out prior to award. It is in nobody's interest to place a Contract which subsequently fails. Due diligence may include independent financial checks (i.e. Dunn and Bradstreet), obtaining references (preferably from other Public Sector bodies), visiting other works which have been completed and ensuring the supplier has sufficient available capacity with suitably experienced and qualified staff.

19 Form of contracts

19.1 All contract documents and Terms and Conditions for relevant contracts which exceed £25,000, including any correspondence, shall be subject to scrutiny by and approval of the Head of Legal Services and Deputy Monitoring Officer or in their absence by a designated Officer prior to commencing any Procurement Exercise.

19.2 The Head of Legal Services and Deputy Monitoring Officer shall determine when it is appropriate for a separate relevant contract to be produced and should be consulted by Officers where there is any doubt as to this requirement.

19.3 Every relevant contract which is less than £25,000 shall be in writing and be signed by the appropriate Senior Officer after consultation with the Procurement Officer and Head of Legal Services and Deputy Monitoring Officer. The Senior Officer is responsible for ensuring there is sufficient budget available.

19.4 Every relevant contract which exceeds £25,000 shall be in writing, and unless under seal, shall be signed by the Deputy Chief Executive or in their absence by a designated Officer, after consultation with Procurement and the Head of Legal Services and Deputy Monitoring Officer.

19.5 Contract under seal – the common seal shall be kept in legal services. It shall be signed by the Head of Legal Services and Deputy Monitoring Officer or the appropriate Officer identified as the proper Officer for these purposes and such signature shall be witnessed by an Officer or Member of the Council.

19.6 Every contract in writing shall specify:

- a) the Works, Goods or Services, to be provided,

- b) the location, that the Works, Goods or Services, are to be provided
 - c) the prices to be paid, including details of how any staged payments will be managed and a statement of discounts or other deductions and,
 - d) the time or times within which the contract is to be performed.
 - e) the Terms and Conditions which apply.
- 19.7 Every relevant contract which exceeds £25,000 shall provide for liquidated damages to be paid by the supplier in case the terms of the contract are not duly performed unless the Deputy Chief Executive, in consultation with the appropriate Senior Officer, considers it to be unnecessary. Costs for liquidated damages should be pre-agreed and detailed in the Contract wherever possible.
- 19.8 After consultation with the appropriate Senior Officer and the Procurement Officer the Head of Legal Services and Deputy Monitoring Officer shall, where they consider it necessary, take on behalf of the Council sufficient security including Performance Bonds for the due performance of every contract for the execution of works which exceed £25,000.
- 19.9 Each contract for the execution of Works in excess of £25,000 shall contain a clause specifying the percentage deduction to be made from instalment payments to the supplier to provide a retention sum, and the period and conditions for holding and releasing such retention sum.
- 19.10 In every written contract for the supply of goods, materials or services which exceeds £25,000 in value, a clause may, where appropriate, be inserted to secure that, should the supplier fail to deliver the goods, materials or services or any portion of them within the time or times specified in the contract, the Head of Legal Services and Deputy Monitoring Officer or Cabinet, without prejudice to any other remedy for breach of contract, shall be at liberty to determine the contract either wholly or to the extent of such default and to purchase other goods, materials or services, as the case may be, of the same or similar description to make good (a) such default or (b), in the event of the contract being wholly determined, the goods, materials or services remaining to be delivered. The clause shall further secure that, the amount by which the cost of so purchasing other goods, materials or services exceeds the amount which would have been delivered in accordance with the contract, shall be recoverable from the supplier.
- 20 Prevention of corruption and collusion
- 20.1 The Council may cancel the contract and recover from the supplier the amount of any loss resulting from such cancellation if the supplier shall have committed an offence under the Bribery Act 2010 or the Local Government Act 2000, together with any amendment thereto.
- 21 Declaration of interests
- 21.1 If it comes to the knowledge of a Member or Officer of the Council that a contract in which they (or partner or close member of the family) has a personal interest or pecuniary/non-pecuniary interest has been or is proposed to be entered into by the Council, they shall immediately notify the Monitoring Officer.