

Broxtowe Borough Council Constitution

Chapter 4 – Part 2

Financial Regulations (Contracts)

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Chapter 4 Part 2: Financial Regulations (Contracts)

GLOSSARY

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| Bid | A potential or received submission from a Bidder in response to a procurement process. |
| Bidder | The organisation who will potentially or has submitted a Bid in response to a procurement process. |
| Competitive Tendering Process | A procurement process that has been openly advertised to all potential Bidders. |
| Concession Contracts | An agreement where an organisation is given the right to exploit works or services provided for their own gain and at their own risk. |
| Contract Manager | Officer responsible for the management of the contract on a day to day basis. |
| Contract Value | Annual value of the contract multiplied by the number of years of the contract, including any potential extension periods. It is the value of the contract to the Bidder/s. |
| HoLS | Head of Legal Services and Deputy Monitoring Officer (or delegated officer). |
| PCO | Procurement and Contracts Officer |
| Procuring Officer | Lead officer for the service area (may also be the Contract Manager). |
| Senior Officer | Officers comprising of the Senior Management Team (including those reporting directly to a Chief Officer) as listed at paragraph 7.3/7.4 in the Officer Scheme of Delegation. |
| UK Procurement Law | Means the Procurement Contracts Regulations 2015 and Concession Contracts Regulations 2016 as amended or any future enacted UK procurement legislation. |
| UK Procurement Threshold | Point where the Contract Value requires the full requirements of the UK Procurement Law to be complied with. UK Procurement Thresholds change every two years and are recalculated on 31 December every other year. |

CONTRACT PROCEDURE RULES

The rules below have been approved by the Council relating to contracts and are incorporated into the Council's Financial Procedure Rules (Financial Regulations) accordingly. These rules should be read alongside the Council's Procurement and Commissioning Strategy; the latest guidance on the Council's Intranet; and any other advice received from the Council's Procurement and Contracts Officer.

1. COMPLIANCE

- 1.1. All contracts (see *Rule 4*) must comply with these rules and procedures. A 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. A concession contract is also subject to these rules.
- 1.2. 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 bidder accreditation, budget checks etc. being carried out or agreed. For this reason, all requirements must be communicated to Bidders 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.
- 1.3. Users of Council purchase cards should consider which terms and conditions apply, insurances, health and safety requirements, Bidder accreditation and budget for all purchases.
- 1.4. Every Officer involved in buying goods, services or works must be aware of these rules and comply with them. In case of doubt, advice must be sought from the PCO before proceeding.
- 1.5. Officers involved in any aspect of procurement are to have completed the Procurement E-Learning Module within three months of notification of requirement to complete.
- 1.6. No exception from any of the following provisions of these rules shall be made otherwise than by the direction of the Council or by Cabinet (as appropriate) or via *Rule 48* (Waivers).

2. GUIDANCE

- 2.1. Further information and guidance on procurement is on the Intranet Procurement pages.
- 2.2. In addition, advice on specific procurement issues and how to apply these rules can be obtained by contacting the PCO.

3. PURPOSE

3.1. The purpose of the rules is to:

- achieve value for money (value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price);
- be consistent with the highest standards of integrity;
- ensure transparency and fairness in allocating public contracts;
- comply with all legal requirements and legislative principles;
- ensure appropriate approvals for budgets and contract awards;
- support the Council's vision, values and priorities; and
- prevent fraud and corruption.

4. WHEN THESE RULES APPLY

4.1. These rules apply to the following types of procurement on behalf of the Council:

- purchasing any goods or materials, including information communication technology;
- purchasing of any services, including consultancy services;
- hiring, renting or leasing of any goods or equipment;
- ordering the carrying out of building or engineering works;
- Concession Contracts;

4.2. Partnership and Collaborative Arrangements: These rules will apply where the Council is part of a partnership and it is the lead or accountable body. Also see Rule 9.

4.3. Any agent or consultant appointed to act for the Council in a procurement exercise must be required to comply with these rules. A consultant is someone employed 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.

5. EXEMPTIONS / NON-APPLICABLE EXPENDITURE

5.1. The rules do **NOT** apply to:

- contracts of employment with individual employees;
- land transactions (sales, purchases, leases, licences, easements etc. although certain development agreements are covered);
- performing artist contracts;
- giving of grant funding (but contracts with voluntary organisations for the supply of services, goods and works are covered by the rules);

- 5.2. Nothing in these rules and procedures shall require competitive bids to be invited in any of the following circumstances:

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- 5.2.1. The works 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 bidders.
- 5.2.2. The renewal of existing ICT software license and maintenance services, where the ICT Software has been purchased, and the value of the renewal is less than the UK Procurement Threshold. General Management Team (GMT) are to agree the way forward and obtain procurement advice as appropriate (see *Rule 36*).
- 5.2.3. Utility/energy supplies to empty housing or buildings that are or will be available for occupation.
- 5.2.4. 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.
- 5.2.5. Where the Council chooses to deliver services itself (in-house).
- 5.2.6. Where the Council uses one of its subsidiary companies to deliver services.
- 5.2.7. Where co-operating with another public sector body. For this to apply the public sectors bodies are required to ensure that public services they have to perform are provided with a view to achieving objectives they have in common and that the cooperation is governed solely by considerations relating to the public interests. Further procurement and legal advice is to be sought.

6. INTERPRETATION

- 6.1. The PCO will advise on the implementation and interpretation of the rules and will seek the views of the Deputy Chief Executive and the Monitoring Officer, if required. The Monitoring Officer's view will be binding.

7. COMPETITION REQUIREMENTS

- 7.1. The nature of the procurement process to be undertaken will depend on the estimated **total contract value** of the contract. See '*Appendix A – Contract Values and Procurement Process*' for further information.
- 7.2. Where it is considered appropriate, the Council can choose to go out for quotes or Competitive Tender Process in order to ensure value for money even if this is not required by these rules.

8. ALTERNATIVE PROCUREMENT METHODS: GENERAL

8.1. Before approaching the market for any goods, services or works the Procuring Officer undertaking the procurement must first establish if there are any of the following they could use:

- a Corporate Contract
- an existing Framework Agreement
- an existing Dynamic Purchasing System.
- contract extensions (*See Rule 31*)

8.1.1. Corporate Contract: Where an existing corporate contract exists, this should be considered as the default option.

8.1.2. Framework Agreement: These 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:

- (i) applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise) without reopening competition (direct award), or
- (ii) 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.

8.1.3. Dynamic Purchasing System (DPS)

- (i) A DPS 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 DPS.
- (ii) Contracts based on a DPS may only be awarded by holding a mini competition amongst all the organisations included within the Agreement.

9. PARTNERSHIP AND COLLABORATIVE PROCUREMENT

9.1. In order to secure value for money the Council may decide to enter into collaborative procurement arrangements. All purchases made/contracts awarded via a local authority procurement consortium or another Local Authority, who have followed their own rules, are deemed to comply with these rules and no exemption is required.

9.2. Purchases above the UK Procurement Threshold must be let under UK Procurement Law unless the consortium concerned has satisfied this

requirement already by letting their contract in accordance with UK Procurement Law on behalf of the Council and other consortium Members.

10. UK PROCUREMENT THRESHOLDS

- 10.1. UK Procurement Law specifies financial thresholds, which determine how goods, services and works should be procured. Contracts for the supply of goods or services or works which are estimated to be over the UK Procurement Thresholds must be tendered in accordance with UK Procurement Law and the PCO must be consulted and their advice taken on how to comply with this legislation.
- 10.2. The current UK Procurement Thresholds can be found on the Procurement pages on the intranet.
- 10.3. The UK Procurement Thresholds relate to the estimated total value of the contract including VAT (including any potential extension periods), not the annual value.
- 10.4. Where it applies, the UK Procurement Legislation imposes requirements on such matters as:
 - conduct of each stage of the procurement process;
 - preliminary market consultation, including consideration of the Public Services (Social Value) Act 2012.
 - where the notices relating to advertising and awarding of bids must be placed and their contents;
 - minimum bid periods;
 - selection and award criteria and procedures;
 - reporting requirements and documentation.

11. CONTRACT VALUE, FUNDING AND PRE-PROCUREMENT APPROVALS

Estimated Contract Value

- 11.1. The Procuring Officer must estimate the total Contract Value, (including any extension periods). This estimate will determine what competition requirements apply under these rules (*see Appendix A - Contract Values and Procurement Process*).
- 11.2. Contracts must not be artificially divided to reduce the Contract Value and avoid the application of the requirements under these rules but should be packaged to ensure value for money.
- 11.3. The Contract Value or estimated Contract Value (in money or equivalent value) for a contract is calculated as follows:
 - 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;

- where the purchase involves recurrent transactions for the same type of item: by aggregating the value of those transactions in the coming 12 months;
- where the contract is for an uncertain duration: by multiplying the monthly payment by 48;
- for feasibility studies: the value of the scheme or contracts which may be awarded as a result;

Contracts Across the Council

- 11.4. Where the aggregated value across all departments for similar goods, services or works Council on a number of individual contracts for is likely to exceed the UK Procurement Thresholds as laid down in these rules, then Officers shall seek guidance from the PCO. The department with the highest proportion of total expenditure is appointed as the lead service area.

Budget/Funding

- 11.5. A Procuring Officer must not place an order or start a process for letting a contract unless they are satisfied that expenditure for it has been included in an approved capital budget, revenue budget or grant.

Pre-Procurement Approval

- 11.6. Where the Contract Value is above £25,000 or when procurement involvement is required, a Procurement Approval Form is to be completed by the Procuring Officer and signed by the relevant Senior Officer. This is to be sent to the PCO.
- 11.7. Once the Procurement Approval Form has been received, the Procuring Officer will receive a 'Broxtowe Procurement' (BP) reference number that should be used in all communications, to uniquely identify the procurement project.

PROCUREMENT PROCESS

12. PROCURING OFFICER RESPONSIBILITIES IN PROCUREMENT

- 12.1. The Procuring Officer is to be integral to the procurement process and they are to fulfil the requirements in *Appendix C - Contract Manager Responsibilities*.

13. SOFT MARKET TESTING/PRE-PROCUREMENT ENGAGEMENT

- 13.1. UK Procurement Legislation encourage pre-bid market engagement in order to ensure that specifications are as accurate as possible. The Procuring Officer, when preparing a complex specification, should consult potential Bidders about the detailed requirements of the specification but before doing so, the Officer should seek the advice of the PCO.

- 13.2. When carrying out soft market testing the Procuring Officer must:

- make it clear to participating organisations that they will receive no preferential treatment in the Bid process;
- not draw up the specification wholly by reference to one specific Bidder or if they do, that organisation must be excluded from the subsequent bid process.
- keep a written record of all enquiries, responses and related meetings on the contract file.

13.3. The PCO provides advice and can facilitate the conduct of desktop soft marketing testing exercises.

14. THE PUBLIC SERVICES (SOCIAL VALUE) ACT 2012

14.1. For all contracts for services which exceed the UK Procurement Thresholds, Procuring Officers must consider the various matters prescribed by the Public Services (Social Value) Act 2012.

14.2. Procuring Officers must therefore before the formal procurement process starts consider:

14.2.1. how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area; and

14.2.2. how, in conducting the process of procurement, the Council might act with the aim of securing that improvement.

14.3. The PCO can provide advice and facilitate the conduct of a desktop social value consultation exercise.

15. CHOICE OF TENDERING PROCEDURE

15.1. Where there is a requirement in the rules for a contract to be subject to UK Procurement Legislation, the tendering procedures available can be obtained from the PCO.

16. ADVERTISING CONTRACTS (where Alternative procurement method are not an option – Rule 8)

16.1. Required advertising requirements of contract opportunities is detailed in *Appendix A – Contract Values and Procurement Process*.

16.2. Where the contract opportunity is to be advertised, the PCO must facilitate this process to ensure UK Procurement Legislation is complied with.

17. SPECIFICATION

17.1. Specifications can be performance based, with a focus on the result required, rather than how it is achieved and detail the minimum standards and accreditations a Bidder is required to meet. This will vary dependent on the requirement.

- 17.2. The Procuring Officer must make sure the specification provides details of the type and quality of goods or nature and standard of service or works to be supplied.
- 17.3. The length and detail of the specification will vary depending on the size, complexity and nature of the proposed contract requirements but it should be clear and include all the material details that the Bidder will be required to comply with and deliver.
- 17.4. Technical specifications must be defined by reference to relevant UK or EU Standards. Where a standard is quoted the words “*or equivalent*” must be added.
- 17.5. The specification must not refer to a particular make or brand names unless it is identified as a permissible exemption under UK Procurement Legislation and the PCO has provided specific advice.
- 17.6. The specification should not be designed to favour any particular Bidder.

18. INSTRUCTIONS TO BIDDERS

(required where a quote or Competitive Tendering Process is undertaken)

18.1. All procurement documents must include Instructions to Bidders as well as:

- specification of the goods, services or works required; and
- contract conditions.

18.2. All Instructions to Bidders must include:

- the award criteria and, where applicable, the weightings applicable to each of those criteria;
- the last time and date for receipt of Bids;
- the address to which Bids must be delivered/submitted
- a requirement that Bids must be kept open for acceptance for no less than 60 days;
- full details of the time, date and method by which Bids can be submitted through the Council’s e-tendering system (if a Competitive Tendering Process);
- a statement that the Council is not bound to accept the lowest or any Bid;
- a statement that the Council will not be liable for the Bidders expense in preparing their Bid;
- a statement that no Bid received after the closing date and time will be accepted, except as detailed in *Rule 23.1*

19. CLARIFICATION PROCEDURES (PRE-SUBMISSION DEADLINE)

- 19.1. Providing clarification for an invitation to bid to potential or actual Bidders involved or seeking clarification of a Bid, is permitted. These matters shall take place in such a way as to not disadvantage or show favour towards any Bidder involved.
- 19.2. Where a Competitive Tendering Process is undertaken All questions, in non-attributable form, together with the Council's responses, will be posted on the e-tendering portal, for all Bidders to see.
- 19.3. Exceptionally, Bidders may request information is not published if it could damage their commercial advantage or disclose their innovative ideas. The PCO will determine whether such information can be withheld from all other Bidders.
- 19.4. Where a meeting or a site visit is required, all Bidders 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 Bidders, including those not attending, have the same information.

20. SELECTION AND AWARD CRITERIA

- 20.1. Before placing an advert requesting Bids or issuing the procurement documents, the Procuring Officer, alongside the PCO where a Competitive Tendering Process is required, must define the selection and award criteria for the contract which is best suited to the procurement exercise and is designed to secure value for money.

21. SELECTION OF BIDDERS

- 21.1. UK Procurement Legislation and Cabinet Office guidance set out clear rules on the use of Pre-Qualification Questionnaires (PQQ) / Selection Questionnaire (SQ)

Selection Criteria

- 21.2. Selection (often referred to as pre-qualification stage) criteria involves an examination of the suitability and capability of the potential bidders to perform the contract. Selection criteria could include:
 - eligibility for public contracts in regard to the grounds specified in UK Procurement Law;
 - economic and financial standing;
 - suitable professional ability/qualifications/accreditations;
 - technical and professional ability including references.

Award Criteria

- 21.3. Award criteria should be designed to ensure Bidders demonstrate how well they can meet the Council's requirements and encourage competition and value for money.
- 21.4. All Bids must detail the award criteria and assessment methodology which will be used. The options are:
- (i) 'quality/price' ratio, (preferred option), where considerations other than price also apply, or
 - (ii) 'lowest price', where payment is to be made by the Council, or
 - (iii) 'highest price', where payment is to be received by the Council.
- 21.5. When 'quality' criteria are used, it must be fully defined in the procurement documentation supplied to Bidders, detailing assessment criteria which must be wholly relevant to the procurement. These may include service delivery process, quality of goods, previous experience (in limited circumstances), delivery date, relevant environmental features, technical performance, functional characteristics, 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.
- 21.6. The weighting of non-financial criteria must;
- reflect their importance to the Council,
 - ensure equal treatment of all potential Bidders,
 - not preclude or give undue preference to any Bidder
 - ensure that all dealings with Bidders are undertaken on a fair, equitable and transparent basis
 - be designed to give the Council the best possible outcome
- 21.7. All evaluations for procurement process above the UK Procurement Threshold must comply with UK Procurement Legislation and have regard to the financial and technical standards relevant to the contract and the award criteria.
- 21.8. Wherever possible a breakdown of costs should be requested, to allow clear understanding of the pricing structure and to allow minor adjustment of scope to meet changing circumstances.

22. PERIOD FOR SUBMISSION OF BIDS

- 22.1. Bidders must be given a reasonable period in which to prepare and submit a Bid having regard to the amount of detail that they have to prepare and the complexity of the contract requirements. UK Procurement Law lays down specific minimum time periods for contracts with a value in excess of UK Procurement Thresholds.

23. SUBMISSION, RECEIPT AND OPENING OF BIDS

Quote Process

- 23.1. Any quotation received for procurement exercises below £100,000, 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.
- 23.2. Under no circumstances can any late quotation be considered after the other quotations have been opened.

Competitive Tendering Process

- 23.3. Bids must be issued and received electronically through the Council's e-tendering system, except for *Rule 23.7*.
- 23.4. For Bids above the UK Procurement Threshold, submissions must be managed electronically via the e-tendering portal unless there are justified reasons.
- 23.5. Bids remain within the e-Tendering portal's secure vault until the closing date and time. The vault shall be unlocked, releasing all bids simultaneously, by the Deputy Chief Executive, or an officer of the Council designated by them.

NOTE: All Bid documents 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 bid opening or record any data.

- 23.6. Bids cannot be uploaded to the e-tendering portal after the closing date and time.

Use of Frameworks/DPS

- 23.7. Where use of a framework or DPS requires the use of an alternative e-tendering portal run by the framework/DPS provider then this will be deemed as complying with *Rule 23*.

24. POST BID SUBMISSION CLARIFICATION PROCEDURES

- 24.1. Where an error is discovered in a Bid during scrutiny by the Council's Officers, clarification should be sought. Material clarifications obtained must be detailed in the Bid evaluation report (where a report is required), with a recommendation to accept or reject any required corrections. Bidders shall have the opportunity to withdraw their bid if they have made an error.

- 24.2. No Bidder will be permitted to alter its Bid after it has been received by the Council except with the PCO's consent to correct an arithmetical or typographical error or omission made in the Bid.
- 24.3. Should the contract have been awarded before the error or omission is identified, then it can only remain so if in the opinion of the Deputy Chief Executive or in their absence Head of Finance Services, it is still the most favourable to the Council following the correction.

25. ABNORMAL TENDER: CLARIFICATION

If the Procuring Officer considers the lowest or most economically advantageous Bid to offer an unusually low price or excessive benefits ("abnormal") given the nature of the contract, the estimated Contract Value, and value for other bids he/she must ask the Bidder to clarify in writing its Bid or parts of it. The Procuring Officer with the PCO must take such explanation into account in deciding whether to consider the abnormal bid as part of the evaluation. Where the procurement process is governed by UK Procurement Law, this sets out grounds on which abnormal bids can be excluded from procurement process.

26. POST BID NEGOTIATIONS

- 26.1. Discussions with Bidders after submission of a Bid and before the award of a contract may only occur where UK Procurement Law permits it.
- 26.2. Where negotiations are permitted by the procurement procedure being followed:
- negotiations must be conducted by at least two officers, one of whom must be a Senior Officer grade or above, or alternatively one Senior Officer if a quotation process;
 - during negotiations tendered rates and prices must only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the bid documents;
 - negotiation meetings should be minuted;
 - any change in specification or price arising from post bid negotiations must be recorded in writing and signed by the Bidder;
- and
- where post-Bid negotiation result in a fundamental change to the specification (or contract terms) the contract must not be awarded but a new procurement process needs to be run, so as not to risk distorting competition or causing discrimination.
- 26.3. Where post bid negotiations relate to procurement process governed by UK Procurement Law then the PCO's advice should be sought.

27. EVALUATION OF TENDERS

- 27.1. Bids must be evaluated in accordance with the stated award criteria and where the criteria are other than the lowest price, a written record must be kept of the evaluation with scores for each Bidder on each of the stated award criteria.
- 27.2. Interviews may be conducted with some or all of the Bidders as part of the evaluation process but only to clarify matters relating to the award criteria and where part of the published award criteria includes an interview/presentation evaluation.

Due Diligence

- 27.3. If there is any doubt about the sustainability or capability of the Bidder, due diligence must be carried out prior to award. Due diligence may include financial checks, obtaining references (preferably from other public sector bodies), visiting other works which have been completed and ensuring the Bidder has sufficient available capacity with suitably experienced and qualified staff. Any potential due diligence checks should be clearly stated in the procurement documents at the start of the procurement process.

28. AWARD PROCEDURE AND INTERNAL APPROVAL

Award Procedure

- 28.1. Contracts must be awarded in accordance with the stated award criteria and UK Procurement Law (where the Contract Value is above the UK Procurement Threshold).

Internal Approvals below £100,000

- 28.2. For contracts values below £100,000 and within the stated budget, the Head of Service approval, in conjunction with the Chief Officer, is required and should be in writing and kept as evidence of approval, unless it has previously been decided that Cabinet approval is required.
- 28.3. Rule 28.4 must be followed if a Competitive Tendering Process has been used, regardless of contract value.

Internal Approvals in excess of £100,000

- 28.4. For contracts values in excess of £100,000 and within the stated budget, an evaluation report with a recommendation as to the Bid that should be accepted and the basis for such a recommendation, should be prepared by the appropriate Procuring Officer and the PCO and presented to the Deputy Chief Executive for approval, unless it has previously been decided that Cabinet approval is required.

- 28.5. Deputy Chief Executive approval is required in writing and kept as evidence of approval.

Internal Approvals by Cabinet

- 28.6. Where it has been decided before the procurement process that Cabinet approval is required, the Procuring Officer in conjunction with the PCO shall submit the report to Cabinet as to the bid that should be accepted and the basis for such a recommendation.
- 28.7. Where the value of the expenditure/income is greater than £250,000, then the Procuring Officer will also need to meet the deadlines required for the Key Decision process.

Internal Approvals in excess of approved budget

- 28.8. Where the Bid recommended for acceptance is for an amount in excess of the approved budgetary provision, then the appropriate Procuring Officer may:
- 28.8.1. apply to Cabinet for approval to a revised budget for the scheme, or
 - 28.8.2. in limited circumstances recommend post-Bid negotiations with the lowest Bidder, in accordance with *Rule 26*, to reduce the bid 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.
 - 28.8.3. declare the procurement exercise void, produce a new and fundamentally different specification which will ensure lower costs and commence a new procurement exercise.

29. INFORMING BIDDERS OF CONTRACT AWARD

Contracts awarded via Quote Process

- 29.1. The Procuring Officer must as soon as possible, following the identification of the successful Bidder, notify all Bidders simultaneously of the award of contract telling them the name of the successful Bidder and the reason for their selection.

Contracts awarded via a Competitive Tendering Process

- 29.2. Once a preferred Bidder has been identified, the PCO will, as soon as reasonably possible notify all Bidders simultaneously of the intention to award the contract to the preferred Bidder, providing the information to all Bidders as required by UK Procurement Law.

Challenge to the Contract Award

- 29.3. If the contract award decision is challenged by an unsuccessful Bidder, the Procuring Officer must not award the contract but must instead immediately seek the advice of the PCO, who in conjunction with the Head of Legal Services, shall advise further.

CONTRACTS

30. CONTRACT APPROVAL AND SIGNING

Also see summary *Appendix B – Contracts and Signing*

- 30.1. Every contract which is less than £25,000 (except purchase orders) shall be in writing and be signed by the appropriate Senior Officer after the Head of Legal Services has approved the terms and conditions. The Senior Officer is responsible for ensuring there is sufficient budget available.
- 30.2. All contract documents for relevant contracts which exceed £25,000 shall be subject to scrutiny by and approval of the Head of Legal Services, in consultation with the Chief Officer, prior to commencing any procurement exercise.
- 30.3. 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 the Head of Legal Services.
- 30.4. Where a contract to be signed under seal; The common seal shall be kept in legal services. The contract shall be signed by the Head of Legal Services identified as the proper officer for these purposes and such signature shall be witnessed by an officer or Member of the Council.
- 30.5. Bidders terms and conditions for services and works above the value of £25,000 shall be subject to scrutiny by and approval of the HoLS.,

30.6. Every contract in writing shall specify:

- the goods, services or works, to be provided,
- the location, that the goods, services or works, are to be provided
- the prices to be paid, including details of how any staged payments will be managed and a statement of discounts or other deductions and,
- the time or times within which the contract is to be performed.
- the Terms and Conditions which apply.

30.7. Each contract for the execution of works in excess of £100,000 shall contain a clause specifying the percentage deduction to be made from instalment payments to the bidder to provide a retention sum, and the period and conditions for holding and releasing such retention sum. For contracts values below this sum, the Procuring Officer is to consider whether such as clause is required.

30.8. The Procuring Officer, and if the Contract Value is above £25,000 Head of Legal Services, should also consider the following requirements in each contract, based on the nature and risk in the contract:

30.8.1. liquidated damages to be paid by the bidder in case the terms of the contract are not duly performed. Costs for liquidated damages should be pre-agreed and detailed in the Contract wherever possible.

30.8.2. additional security including performance bonds for the due performance of contract for the execution of works.

30.8.3. the provision of a parent company guarantee.

30.9. Contracts should be signed prior to commencement of services, works or delivery of goods.

31. CONTRACT EXTENSIONS

Exercising Options to Extend

31.1. Where a contract has been advertised with an option to extend beyond the initial contract period and the contract includes such an option it may only be exercised if:

- the Procuring Officer or Contract Manager is satisfied that such an extension is in the best interests of the Council in the light of the contractor's performance;
- there is sufficient budget provision

No Option to Extend

31.2. Contracts, awarded with a value below the UK Procurement Thresholds, which do not contain any option to extend, (or a further option to extend) in the original contract, cannot be continued, unless a 'new' contract is awarded accordance

with these rules. Advice from the PCO should be obtained.

31.3. Contracts, awarded with a value above the UK Procurement Thresholds, which do not contain any option to extend in the original contract cannot be extended, unless it is in accordance with these rules and UK Procurement Law. Advice from the PCO should be obtained.

31.4. *Rules 31.2 and Rule 31.3* will also have to meet the following requirements:

- there is sufficient budget provision
- there are no material changes to the scope of the contract, and
- the Procuring Officer or Contract Manager is satisfied that such an extension is in the best interests of the Council in the light of the contractor's performance;

REFERENCE

- 31.5. Where unforeseen circumstances have delayed the delivery of the specified scope/volume of the contract, an extension may be granted after discussions with the PCO, as long as there are no material specification or contract value changes to the contract.

CONTRACT REGISTERS, RECORD KEEPING, CONTRACT MANAGEMENT AND FUTURE PROCUREMENT

32. CENTRAL RECORDS

Publication Requirements

- 32.1. In line with the Governments transparency requirements, the Council will publish on its website, on a quarterly basis, details, of all procurement exercises and contracts entered into with a value exceeding £5,000.
- 32.2. To facilitate this, the Senior Officer will ensure that the PCO receives all requested details of all contract awards above £5,000, in a form and within the time limits stated by the PCO.
- 32.3. This process will also ensure the Council is compliant with the requirement to publish a contract register and advertise all relevant contract awards as per UK Procurement Law.
- 32.4. The details contract details required *Rule 32.1* must include:
- title of contract
 - brief details of the nature of the contract
 - the name of the successful bidder
 - status of the successful bidder (Small, Medium Enterprise, Voluntary and Community (SME) etc.)
 - brief details of the nature of the contract
 - the annual value of the contract
 - the total value of the contract including extension periods
 - contract start date
 - contract end date (not including extension period)
 - duration of potential extension period (if any)
 - the process used to award the contract
 - any contract notice period for termination

33. RETENTION OF CONTRACTS AND TENDERS

- 33.1. Procurement records and contracts must be kept in accordance with the Council 'Document Retention Scheme'. An accessible electronic copy stored on the Council's systems for the stated period will satisfy this requirement, unless a contract is signed under seal, where a hard copy must be kept by Legal Services.

- 33.2. Procuring Officers must send all original signed contracts to the Head of Legal Services/Legal Services.
- 33.3. The Head of Legal Services/Legal Services will send the PCO an electronic copy of the all fully signed contracts awarded under these rules that they receive.

34. CONTRACT MANAGEMENT

- 34.1. Every contract awarded by the Council should have a named contract manager, responsible for the day to day management of the contract. Depending on the risk and complexity of the contract, the Contract Manager's responsibilities may include:
 - 34.1.1. scheduling regular meetings with the contractor, alongside annual review meetings to include performance review and financial monitoring;
 - 34.1.2. obtaining, recording and monitoring, management information and KPI data, to assist discussions regarding performance and finance monitoring;
 - 34.1.3. undertaking financial monitoring to ensure expenditure is in line with that expected under the contract. The Contract Manager is to confirm to the PCO, on an annual basis, that expenditure is (or is not) in line with the contract;
 - 34.1.4. seeking advice from the PCO, before amendments are made to the contract or framework, for example to vary the scope and / or price.
 - 34.1.5. should the contractor fail to meet requirements, notifying the contractor of the issues, giving reasonable time for these to be addressed and rectified. If a contractor continually fails to meet the contract requirements, the process for managing non-compliance detailed within the terms and conditions of the contract must be followed.
 - 34.1.6. follow any Council approved Contract Management Strategy.
- 34.2. The Contract Manager is to keep written records of the above,

35. FUTURE PROCUREMENT

- 35.1. Where a Procuring Officer/Contract Manager is aware of any future required procurement activity (including the re-tendering of an existing contract), they will inform the PCO in a timely manner.
- 35.2. To ensure the PCO can plan future procurement activity, the Procuring Officer/Contract Manager should usually give the PCO at least six months'

notice before the contract is to start. Additional notice is required with complex procurement projects.

- 35.3. The PCO will publish future procurement activity requirements in compliance with UK Procurement Law.

SPECIAL CASES

36. INFORMATION COMMUNICATIONS TECHNOLOGY

New or Replacement Software / Hardware Procurement

- 36.1. The purchase of any new ICT hardware or software, whatever the value, must follow these rules.
- 36.2. All procurements of computer hardware or software should follow any advice on technical standards issued by the ICT and Business Transformation Manager or nominated representative.
- 36.3. In addition to *Rule 30* contracts should also be reviewed by the ICT and Business Transformation Manager or nominated representative before signing.

Existing Software

- 36.4. Decisions on existing software licensing and maintenance contracts due to expire are to follow the process below:
- A system review is to be carried by ICT at least 12-24 months before the expiry of the current software contract.
 - The system review is to be present to GMT with a recommendation of either 'maintain', 'enhance' or 'replace'.
 - If the GMT decision is to 'maintain' or 'enhance', the Council (ICT representative) shall seek proposals from the software provider to achieve this.
 - These proposals should be presented to the Executive Director and Deputy Chief Executive for consideration and further action.
 - Where any extension to software licensing and maintenance to existing software exceeds the UK Procurement Threshold, a compliant route to extending the software licensing and maintenance and internal approvals are to be sought.
 - It is the Council's preference that these contracts are of a fixed duration and not left allowed to expire or be subject to annual renewals.
 - Where the decision is 'replace', then *Rule 36.1* is to be followed.

37. CONCESSION CONTRACTS

- 37.1. The procurement of Concession Contracts must follow these rules.
- 37.2. Depending on the contract value, Concession Contracts may also be subject to UK Procurement Law. Procuring Officers must obtain further advice from the PCO.
- 37.3. The value of a Concession Contract, is the estimated total turnover that the supplier can generate in consideration for the works, goods and services over the duration of the contract, net of value added tax, as estimated by the Council.

38. OUTSOURCING AND TRANSFERRING SERVICE CONTRACTS (TUPE)

- 38.1. Where the proposed contract is to outsource work currently done “in house” the Procuring Officer must as soon as possible consult the Head of Legal Services, Human Resources and Deputy Chief Executive regarding Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) implications before any procurement process and in particular:
- the need to compile and send out with the procurement documents detailed information about the current workforce (Workforce Information);
 - issues relating to pension requirements;
 - the need to include specific reference to the possible TUPE transfer in the procurement documents; and
 - the need to include TUPE clauses in the contract conditions.
- 38.2. Where the proposed contract may involve the transfer of a service contract from one provider/contractor to another the Procuring Officer must:
- request detailed TUPE information about the current workforce (Workforce Information);
 - sense check the information provided by the current contractor to ensure it reflects the current delivery of the contract;
 - include specific reference to the possible TUPE transfer in the ITT; and
 - include TUPE clauses in the contract conditions.

39. FINANCE OPERATING LEASES

No operating/finance lease including those for equipment and vehicles must be entered into without the prior written consent of the Deputy Chief Executive.

40. EXTERNALLY FUNDED PROJECTS

- 40.1. Any procurement process using externally funded money should follow these rules in addition the following requirements in *Rule 40*:

Officers

40.2. The Procuring Officer has responsibility to:

- 40.2.1. adhere strictly to the requirements set within the funding/grant conditions which may be more stringent than these rules, to avoid any reclaiming of monies;
- 40.2.2. when seeking advice from the PCO make it clear that the funding for the project is coming from an external source;
- 40.2.3. keep accurate records throughout any procurement process which can be accessed for external audits to check compliance.

Competition Requirements

- 40.3. If the funding/grant conditions are less stringent than these rules, these rules take precedent.
- 40.4. If using a Framework, due diligence must be done to check the eligibility to access Frameworks and to ensure that they have been procured compliantly in accordance with the UK Procurement Law.

41. 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.

42. ELECTRONIC REVERSE AUCTIONS

Reverse auctions to procure goods, services or works should be conducted through the Council's e-tendering portal., where system functionality allows. Reverse auctions will be run by the Senior Officer or PCO.

AVOIDANCE OF CORRUPTION

43. CONFLICTS OF INTEREST

Conflicts of interest can lead to allegations of corruption. Therefore, when a Member or Officer is directly involved in the award or management of a contract to a particular organisation they must, whenever possible avoid any personal dealings with that organisation. Where that is not possible the Officer must act in accordance with *Rule 44*.

44. DECLARATIONS OF INTEREST BY OFFICER

Any Officer or Member who has a material interest, financial or otherwise, which may affect the procurement process at any stage must immediately they become aware of it declare it in writing the Monitoring Officer and take no further part in the procurement process unless the Monitoring Officer gives their written approval to the Officer's continued involvement in the procurement exercise.

45. GIFTS AND REWARDS

No Member or officer must accept any gift, fee or other material reward from any organisation in return for giving them more favourable treatment in a procurement exercise.

46. FAILURE TO COMPLY

A failure to comply with *Rules 44, 45 or 46* could be a criminal offence as well as being a disciplinary matter and breach the relevant Code of Conduct..

VARIATIONS TO THE RULES AND WAIVERS

47. VARIATIONS TO THE RULES

- 47.1. The Monitoring Officer has power to make a minor amendment to these rules but must subsequently report them to the Council.
- 47.2. Any significant amendment to these rules must be approved by Council first.
- 47.3. Anyone with suggested amendments to these rules should contact the Monitoring Officer.

48. WAIVER TO THE RULES

- 48.1. Officers must in the first instance comply with the requirements of these rules. Waivers are not to be seen as an alternative to a compliant procurement process.
- 48.2. Considering a waiver must be risk based and always a last resort after all other options have been considered.
- 48.3. A waiver cannot be given where the contract value exceeds the UK Procurement Threshold unless the PCO in conjunction with the HoLS and Deputy Chief Executive has confirmed in writing that an exemption is available under the UK Procurement Law.

- 48.4. Officers must not enter into contracts under waiver until confirmation of Waiver approval has been received.
- 48.5. Waivers may be considered in, but not limited to, the following circumstances:
- 48.5.1. where the purchase of supplies or the execution of works or services involve specialist or unique skills, **character** or knowledge, **or are patented which cannot be obtained from other providers in spite of advertising;**
 - 48.5.2. where the Council require upgrades to existing software packages or require repairs to, or parts for, existing machinery or equipment that are specific to that machinery or equipment;
 - 48.5.3. if the Council has already engaged in a **contract** with an organisation for a similar and related procurement, provided that the Council will not be exposed to unacceptable risk, **the original contract was procured through a best value exercise, allows an extension,** and there is significant benefit to extending the scope of the contract to cover this additional requirement;
 - 48.5.4. where, after advertising in accordance with these rules, it has not been possible to obtain competitive prices for works, supplies or services;
 - 48.5.5. where a **suitably qualified expert has provided an independent opinion as to the proposed course of action being value for money** ~~an external body,~~ and where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this;
 - 48.5.6. if works, supplies or services are urgently needed for the immediate protection of life or property or to maintain the immediate functioning of a public service that the Council is responsible for, on the basis of an unforeseeable emergency.
 - 48.5.7. **for the purchase of a work of art or museum specimen, or to meet the specific requirements of an arts or cultural event which cannot be procured competitively due to the nature of the requirement.**
 - 48.5.8. any other exceptional circumstances.
- 48.6. In such circumstances, waivers to these rules may be granted by:
- 48.6.1. Deputy Chief Executive (Directorate Waiver), if Contract Value is below £100,000 See Rules 48.7 and 48.8;
 - 48.6.2. Cabinet (Cabinet Waiver) if Contract Value is above £100,000. See Rules 48.9 to 48.11; or
 - 48.6.3. Chief Executive or duly nominated representative (Urgency Power

Waiver), if Contract Value is above £100,000, in cases of urgency. See Rules 48.12 to 48.15.

REFERENCE

Directorate Waiver

- 48.7. After consultation with the PCO, a Directorate Waiver form is to be completed by the Procuring Officer and signed by the Director of Service and approved by the Deputy Chief Executive.
- 48.8. All approved Directorate Waivers are to be sent to the PCO within two weeks of approval, by the Procuring Officer.

Cabinet Waiver

- 48.9. Any request for a Cabinet Waiver must, after consultation with relevant Chief Officer and the Chief Executive, be submitted by the Procuring Officer. The Chief Officer will report the circumstances of the waiver to the next Cabinet meeting.
- 48.10. As a minimum, the report to Cabinet shall include:
- the reasons why the waiver is being requested;
 - the reasons why these rules cannot be followed;
 - confirmation that there is an approved budget or it includes a request to approve any new or additional budget;
 - the details of the organisation due to benefit from the waiver;
 - the value of the waiver;
 - the duration/term that the waiver relates to;
 - the specific rules the waiver wishes exemption to;
 - confirmation approval of the waiver complies with UK Procurement Law, confirming consultation with the PCO and the HoLS.
- 48.11. All approved Cabinet Waivers are to be reported to the PCO within two weeks of approval, by the Procuring Officer.

Urgency Power Waiver

An Urgency Power Waiver form, shall be completed by the Procuring Officer after consultation with the PCO and Director of Service and, is to be considered by the Chief Executive as to whether their use of Urgency Powers should be used.

- 48.12. The Chief Executive, after consultation with the Leader and Leader of the Opposition (if available) can exercise use of their Urgency Powers, if appropriate, to approve an Urgency Power Waiver to them to approve.
- 48.13. The Chief Executive will retrospectively report the circumstances of the Urgency Power Waiver to Cabinet and the report shall contain the information detailed in *Rule 48.9*.
- 48.14. All approved Urgency Power Waivers are to be reported to the PCO within two weeks of approval, by the Procuring Officer.

REFERENCE

Appendix A – Contract Values and Procurement Process

| Requirement | Category | Total Contract Value (£) (see Rule 11) | Procurement Process | Advertising Requirements | Form of Contract |
|---------------------------------------|----------------|---|---|---|--|
| Goods, Services and Works | Very Low Value | Below £25,000 | Senior Officer decides if quotes needed. | None | Standard Council Contract or Purchase Order Standard Form of Contract Bidders Terms and Conditions |
| Goods, Services and Works | Low Value | £25,000 to £100,000 | 3 quotes minimum to be requested Completion of procurement approval form and sent to PCO. | None | Standard Council Contract Standard Form of Contract |
| Goods, Services and Works | Medium Value | £100,001 to UK Procurement Threshold | Competitive Tendering Process Completion of procurement approval form and sent to PCO. | as dictated by UK Procurement Legislation | Standard Council Contract Standard Form of Contract |
| Goods, Services and Works | High Value | Above UK Procurement Threshold | Competitive Tendering Process as dictated by UK Procurement Legislation Completion of procurement approval form and sent to PCO. | as dictated by UK Procurement Legislation | Standard Council Contract Standard Form of Contract |
| IT Software licensing and maintenance | NA | Below UK Procurement Threshold | Completion of procurement approval form. Direct Award if not tendering out. | None | Standard Council Contract Standard Form of Contract Bidders Terms and Conditions |

Appendix B – Contracts and Signing

| | Total Contract Value (£) <i>(see Rule 10)</i> | Contract Terms Approval Required before start of procurement process. | Contract Terms Approval Required before start contract. | Who can sign the contract? | Acceptable Signing Method |
|----|---|--|--|---|---|
| 1. | Below £25,000 (unless under seal) | None | Head of Legal Services | Senior Officer | Wet signature Electronic Signature Signature via e-signing system |
| 2. | Above £25,000 (unless under seal) | Head of Legal Services | Head of Legal Services | Deputy Chief Executive or in their absence the Head of Legal Services | Wet signature Electronic Signature Signature via e-signing system |
| 3. | Contracts under seal (any value) | As per rows 1 and 2 depending on value. | Head of Legal Services | Head of Legal Services | Wet signature and seal |
| 4. | ICT Contracts | As per rows 1, 2 and 3 depending on value, with ICT approval too. | ICT in conjunction with Head of Legal Services. | As per row 1, 2 and 3 depending on value. | As per row 1, 2 and 3 depending on value. |

Appendix C – Procuring Officer / Contract Manager Responsibilities

The Procuring Officer / Contract Manager for any particular contract entered into by the Council holds a number of key responsibilities with regard to Procurement and subsequent contract management. This document is a brief outline of the relevant specific requirements. These requirements may change dependent on the nature, risk and/or value of the contract.

It is important to note that although specific tasks may be delegated, the Procuring Officer / Contract Manager retains ultimate responsibility for ensuring these requirements are met.

The Procurement and Contracts Officer ('PCO') will provide guidance and assistance during the whole procurement process.

1. Pre-Advert Requirements

Procurement Approval Form – Completion, in conjunction with the PCO, and Senior Officer sign-off of the Procurement Approval Form ('PAF').

Data Protection Impact Assessment – Assess to see if a Data Protection Impact Assessment ('DPIA') is required. If so, complete a DPIA. If required a draft Data Sharing or Data Processing Agreement is to be completed as part of the bid document pack.

IR35 – If payroll status is not clear, an IR35 assessment is to be completed and sent to the Procurement and Contracts Officer. Further information available at <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>.

Equalities Impact Assessment – Review to see if an Equalities Impact Assessment ('EIA') is required. If so, complete an EIA. This should then feed into the specification requirements.

TUPE – Confirm with the current incumbent whether they think TUPE is applicable. If so, obtain and check TUPE data using the templates available from the PCO.

Climate Change Implications – Completion (in conjunction with the PCO) and sign-off of any Climate Change documentation/requirements.

Documents – Alongside the PCO, **draft, finalise and approve:**

- Suitability Questions
- Quality Questions
- Specification
- Pricing Schedule
- Evaluation Criteria
- Contract
- Any other relevant documents

Contract – Identify any special terms and conditions required.

Evaluation Guidance Document – Determine what is expected from the responses to the tender. This should inform the specification. Managed by the PCO.

Evaluators – Confirm who the evaluators are and what questions they are evaluating. Minimum of two evaluators per question. Evaluators must be available for moderation meetings if the evaluation process require this. Managed by the PCO.

2. **Bidding Stage Requirements**

Clarifications – Respond to bidder clarification queries in a timely manner. Managed by the PCO.

3. **Evaluation Stage Requirements**

Evaluators – Ensure evaluators are available and follow the evaluation rules and requirements.

Moderation – Ensure evaluators are available for moderation meetings if applicable and follow the moderation rules and requirements.

Approval – Approve the final bid result.

4. **Post-Award Stage Requirements (Contract Management)**

The following is a (non-exhaustive) summary of ongoing matters relating to Contract Management:

- Review need for a DPIA.
- Review IR35 status.
- Review risk assessments.
- Arrange and manage initial contract meetings/mobilisation.
- Ensure legislation, standards and contract requirements are being met.
- Arrange frequent meetings with the provider/contractor at the start of the contract. These are to be minuted and shared with the bidder.
- Assist the PCO in confirming the annual expenditure on the contract.
- Arrange annual reviews with bidder. These are to be minuted, shared with the provider/contractor and provided to the PCO on request.
- Document contract performance issues and ensure these are raised with the provider/contractor. Notify the PCO of any significant performance issues.

Do not agree to contract changes without consulting the PCO and Legal Services.