

Section 6 - Contracts procedure rules

Contract procedure rules 2016

4.6.1. Introduction

4.6.1.1. These are the Council's procedure rules for buying supplies, services and works from outside the Council. They apply to any contract that results in a payment being made by the Council (in cash or kind); 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.

4.6.1.2. The purpose of these Rules is to ensure that the Council's procurement procedures comply with current UK and EU procurement legislature, EC Treaty principles of fair competition, transparency and equality and have regard to Public Services (Social Value) Act 2012.

4.6.1.3. The Rules are part of the Council's Constitution.

4.6.1.4. All purchases from outside the Council, disposal of surplus goods and concession contracts must comply with the Rules unless exempted under Rule 3.

4.6.1.5. No contract shall be made unless the appropriate Chief Officer is satisfied there is adequate budget provision and the consents to the expenditure have been obtained.

4.6.1.6. All Council employees and third parties employed by the Council to supervise procurement of its contracts shall conform to these Rules and to the Council's Financial Procedure Rules.

4.6.1.7. Schools governing bodies are recommended to follow these Rules as a model of good practice.

4.6.1.8. These Rules do not apply to:

1. the purchase of land and buildings,
2. the purchase of supplies, services and works by the Council from Six Town Housing Limited,
3. the purchase of services from Persona Care and Support Limited,
4. grants which the Council may receive or make (unless the Council apply the grant to buy supplies, services or works from outside the Council).

4.6.1.9. Guidance to these Rules will be issued by the Council. The Procurement Guidance shall be reviewed and varied from time to time.

Although the Procurement Guidance is not part of these Rules it does represent good procurement practice and should therefore be followed.

4.6.1.10. Officers have responsibility to demonstrate best value in all procurement activities and failure to comply with these Rules and to cause the Council to enter into a contract could be a disciplinary offence.

4.6.1.11. In these Rules any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted.

Definitions	
Term	Definition
Best Value	The Council's duty under Part 1 of the Local Government Act 1999 to secure continuous improvement in the way in which functions are carried out, having regard to economy, efficiency and effectiveness
Call-off Contracts	A purchase order with a supplier under a framework arrangement
Chief Officer	Those officers designated by the Council as such (currently the Chief Executive and Executive Directors of Communities and Wellbeing; Children, Young People and Culture and Resources and Regulation)
Conflict of Interests	An actual conflict, or a potential conflict, between the pecuniary or personal interests of an officer and the duties that the officer owes to the Council
Consortium Arrangement	A framework arrangement set up by a consortium which is available to the Council
Contract Value	The total estimated value of a contract for the full contract period (not annual value) including any possible extended period and in case of a Rolling Contract, the period of 48 months
Dynamic Purchasing System	A wholly electronic system set up to procure works, services and goods commonly available

Definitions	
Term	Definition
	on the market which provides for a mechanism for new suppliers to join
EC Treaty	The treaty establishing the European Union signed at Rome on 25 March 1957
EU Tender Procedure	Procedures for the procurement of contracts in accordance with the Public Contracts Regulations 2015
EU Thresholds	The contract values at which the Public Contracts Regulations 2015 apply - see the Procurement Guidance for current EU Threshold values
Framework Arrangement	Agreements with suppliers on agreed terms for a specific period for estimated quantities against which orders may be placed if and when required during the contract period
Most Economically Advantageous Tender (MEAT)	The evaluation or scoring of tenders using objective criteria where the resulting contract is awarded to the tender that achieves the highest score in that assessment
OJEU	The supplement to the official Journal of the European Union
Procurement Guidance	Guidance to these Rule and good procurement practice issued from time to time by the Council and published on the Council's intranet system
Public Contracts Regulations 2015	Regulations that govern public procurement procedures for contracts with a value over the current EU Thresholds
Rolling Contract	A contract that continues until an agreed period of notice is issued to bring it to an end

Definitions	
Term	Definition
Services Contract	The engagement of a person to provide services
Social Value	The concept of seeking to maximize the additional benefit that can be created by procuring or commissioning goods and services, above and beyond the benefit of merely the goods and services themselves
Supplies Contract	The purchase or hire of goods or materials
The Chest	The Council's electronic procurement portal for the advertisement, receipt of tenders and conducting the Council's procurement process

4.6.2. Exemptions from the Rules

4.6.2.1. The procurement of every contract shall comply with these Rules except:

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1. by direction of the Chief Executive.
2. contracts for emergency construction works at Council premises in accordance with procedures contained in Annex 1 to these Rules.

Grounds for an exemption by the Chief Executive

4.6.2.3. An exemption may be agreed by the Chief Executive if he/she is satisfied after considering a written report by the Head of Strategic Procurement that the exemption is justified because the nature of the market for the works to be carried out or the goods or services to be supplied has been investigated and is demonstrated to be such that:

1. there is only one person who is available or capable of carrying out the works or providing the goods or services, or
2. there are other circumstances which are so genuinely exceptional that the EC Treaty principles of fair competition, transparency and equality are not applicable.

Reporting an exemption

4.6.2.4. A record of the decision by the Chief Executive to approve an exemption and the reasons for it must be kept by the Head of Strategic Procurement.

EU Procedure

4.6.2.5. No exemption can be used for a contract where the EU Procedure applies.

4.6.3. Consortium and Framework Arrangements

4.6.3.1. The Council may be a party to a consortium purchasing arrangement or a framework agreement established by another local authority or a public sector purchasing organisation may be available to the Council.

4.6.3.2. Such a consortium or framework arrangement may be used where:

1. they provide Best Value for the Council compared with other available options.
2. if there is an option to hold a "Mini-competition" with suppliers on the framework the Council has investigated whether a mini - competition may provide better value for the Council.
3. the consortium or framework provider has its own contract procurement rules or standing orders which do not contravene EC Treaty principles and has procured the framework in accordance with those rules or orders.
4. the Council has verified that the framework documentation and terms for Call-off contracts are appropriate for use by the Council.

4.6.3.3. These Rules will not apply to contracts that comply with Rule 4.2 above.

4.6.3.4. If there is no suitable consortium or framework available to use the Council may set up a framework if it would provide better value. Such a framework must be procured in accordance with these Rules and where appropriate in accordance with the Public Contracts Regulations 2015.

4.6.4. Tendering Procedures

4.6.4.1. The table below sets out, for different contract values, the procurement procedure that must be followed to procure contracts, the minimum number of tenders that must be invited and how invitations to tender must be publicised.

Procedures applying to different contract values

Contract value (from)	Contract value (to)	Competition Procedure	Procurement Procedure
£0	£999	An agreed price	The Chest if appropriate or as described in the Procurement Guidance. No publication of contract notice required
£1,000	£4,999	Minimum of three prices	The Chest if appropriate or as described in the Procurement Guidance. Price to be obtained may be oral, written or via suppliers website. No publication of contract notice required
£5,000	£49,999	Competitive written quotations based upon a request to quote. Minimum of three quotations. At least one Bury supplier to be included in the RFQ	The Chest. No publication of contract notice required
£50,000	Up to EU Threshold	Procedure that is proportionate, appropriate and compliant with these Rules and the Public Contracts Regulations 2015	Publication of contract notice on The Chest, Contract Finder and Specialist publication if appropriate
EU Threshold	above	Appropriate EU Tender Procedure	Publication of contract notice on The Chest, Contract Finder, OJEU , and Specialist publication if appropriate

4.6.5. Dynamic Purchasing System

4.6.5.1. A Dynamic Purchasing System may be set up using appropriate competition procedure.

4.6.6. Minimum number of tenders

4.6.6.1. The minimum number of quotations/tenders that should be invited is shown in the table at Rule 4.1. The number may be reduced where fewer contractors than the minimum have applied and are considered suitable, then all shall be invited to tender.

4.6.7. Tender and Contract Documentation

4.6.7.1. The tender and contract documents that must be issued to each contractor and the documents to be maintained to record the terms of the contract must be in the form set out in the Procurement Guidance.

4.6.8. Framework Call-off orders

4.6.8.1. Call-off contracts must comply with the procedure set out in the Framework Agreement and where appropriate the Public Contracts Regulations 2015.

4.6.9. Tendering Procedures above EU Thresholds

4.6.9.1. Where a contract or a framework that is to be procured by the Council has a value above an EU Threshold the contract and framework must be procured in accordance with the Public Contracts Regulations 2015.

4.6.10. Submission, Receipt and Opening of tenders

4.6.10.1. Tenders or quotations must be procured electronically via the Chest and must be opened by the appropriate Chief Officer where tenders have an estimated value under £75,000 and over that amount by the Assistant Director - Legal and Democratic Services or in each case by their nominated representative with details of each tender received being recorded on the portal.

4.6.10.2. Where the circumstances so warrant, the relevant procurement officer in consultation with the Head of Strategic Procurement may postpone for a reasonable period of time the closing date for the receipt of tenders, provided that all persons from whom tenders have been invited are notified by the same method and that no tenders have been opened.

4.6.11. Evaluating tenders

4.6.11.1. Evaluation criteria must be determined prior to commencing the procurement process and these criteria must form the basis for award of

contract. Weighting of criteria to indicate relative importance should also be identified at this stage and made known to the bidders.

4.6.11.2. Where the only discerning factor between products or solutions will be that of price (e.g. buying standard items) then price will be the most important criteria to award a contract.

4.6.11.3. In all other cases contracts must be awarded on the basis of the Most Economically Advantageous Tender, which balances price and quality considerations.

4.6.12. Alteration to tenders

4.6.12.1. There must be no alterations to a tender received after the specified time and closing date for tenders except:

1. if arithmetical errors are found in an otherwise successful tender, the tenderer should be notified that the error exists and should be requested to confirm or withdraw their tender in writing.
2. if the rates in the tender, rather than the overall price, were stated within the tender invitation as being dominant, an amended tender price may be requested to accord with the rates given by the tenderer.
3. Post-tender clarifications and negotiations must comply with the Public Contracts Regulations 2015.

4.6.13. Awarding contracts

4.6.13.1. Provided that the appropriate Chief Officer is satisfied there is adequate budget provision and consents to expenditure have been obtained for a contract:

1. the Chief Officer concerned may accept quotations and tenders up to a value of £74,999. The acceptance must be recorded on an Operational Decision form, sent to the Head of Strategic Procurement and Democratic Services (for uploading onto the website);
2. tenders with a value above £75,000 shall only be accepted by the Assistant Director- Legal and Democratic Services or their nominated representative;
3. before any contract is awarded, an Operational Decision form must be completed and signed by the relevant Chief Officer and a copy sent to Legal and Democratic Services. On notification of the award of contract, the procuring officer shall ensure the publication of such award on Contract Finder in accordance with Public Contracts Regulations 2015;
4. the acceptance of quotations and tenders must be in writing;
5. for contracts above £25,000 each tenderer must be notified in writing of the outcome of the tender process

6. proper records of all procurement activity and sufficient documentation to justify decisions made at all stages of the procurement process are to be retained in electronic or hard copy format;
7. where the award of a contract is based upon MEAT the retained records and Operational Decision form must include details of the evaluation criteria used and the scoring of each tender in the objective assessment.

4.6.14. Conditions of contract

4.6.14.1. All written quotations and tenders with an estimated value over £5,000 shall use an appropriate model form of contract determined by the Assistant Director - Legal and Democratic Services.

4.6.14.2. Contracts with a value above £75,000 must be entered into formally in writing and shall either be sealed by the Council and attested by the Assistant Director - Legal and Democratic Services or their nominated representative or shall be signed as a deed by two officers nominated by the Assistant Director - Legal and Democratic Services;

4.6.14.3. The Assistant Director - Legal and Democratic Services shall keep a record of all model sets of conditions of contract to be used under these Rules with a copy on the Council's intranet.

4.6.15. Variations and extensions

4.6.15.1. Where the contract terms specifically allow for a variation or an extension a contract may only be varied or extended in accordance with the contract terms;

4.6.15.2. In any other circumstances a Chief Officer may vary or extend a contract after consulting the Head of Strategic Procurement and complying with the provisions of the Council's Financial Regulations;

4.6.15.3. A contract procured under the Public Contracts Regulations 2015 shall not be extended or varied without consulting the Head of Strategic Procurement.

4.6.16. Sale of land

4.6.16.1. Where land or premises are to be disposed of by competitive tender the procedure for receipt and opening tenders shall be in accordance with these Contract Procedure Rules.

4.6.16.2. Tenders must contain a declaration as to whether the person submitting the tender is a Member or Officer of the Council or whether so related.

4.6.16.3. A tender may be accepted by the appropriate Chief Officer after consulting with the appropriate Cabinet Member subject to the following conditions being met:

1. highest tender to be accepted except where the evaluation criteria are based upon MEAT in which case the tender that achieves the highest score in the assessment must be accepted;
2. where the evaluation criteria is based upon the highest tender the price represents the best price that could be reasonably obtained;
3. the tender accords with the "particulars/conditions of sale"; and
4. where the evaluation criteria are not based upon MEAT the tender does not include any non-financial considerations.

4.6.16.4. If any of the conditions in Rule 13.3 are not met or if the tender to be accepted is from a Member or Officer or a relative of such person the sale shall be determined by the Cabinet.

4.6.17. Sale of surplus goods

4.6.17.1. Surplus goods should be disposed of on a competitive basis as follows;

1. A minimum of 3 competitive bids must be invited if the goods have an estimated value greater than £5,000 and up to £25,000;
2. A minimum of 4 sealed bids must be invited if the goods have an estimated value greater than £25,000 or a sale by auction should be considered after consultation with the Head of Strategic Procurement;
3. The highest value unconditional bid received should be accepted unless in the view of the Head of Strategic Procurement a conditional bid offers better value to the Council.

4.6.18. Conflict of Interests

4.6.18.1. Every officer entitled to take part in the procurement of supplies, services or works who has a conflict of interest with any such procurement shall before the commencement of that procurement process make a written declaration of interests to the Head of Strategic Procurement.

4.6.18.2. The Head of Strategic Procurement may certify that such interests are acceptable otherwise the officer must not take any part in the procurement process and award of contract.

4.6.19. Concession contracts

4.6.19.1. Any procurement of a concession contract should be carried out in accordance with these Rules.

4.6.20. Consultants

4.6.20.1. Contracts for consultancy services shall be procured in accordance with these Rules;

4.6.20.2. Where the consultancy services require a consultant to supervise the procurement of a contract on behalf of the Council the consultant shall be required to comply with these Rules as though they were the appropriate Chief Officer concerned with the matter.

Annex 1

Procedure for arranging construction work of an emergency nature at Council premises

All procurement works are to be implemented in accordance with the Council's Contracts Procedure Rules and Financial Regulations.

Work of an emergency nature at a site up to the value of £2,000 may be awarded directly to a contractor at the discretion of the responsible officer (Surveyor/Engineer or their Line Manager).

Work of an emergency nature at a site, that after investigation, is deemed to be of a value or between £2,000 and £3,000 can also be awarded directly to a contractor at the discretion of the responsible officer (Surveyor/Engineer or their Line Manager) but only following consultation with the Service Manager or equivalent.

Works of an emergency nature include the following:

- Works which if not done pose an immediate risk to Health and Safety Work required to keep the building operational
- Urgent maintenance works (i.e. where further deterioration resulting in additional repair costs would occur if immediate action is not taken)
- Work required immediately following an act of vandalism or arson to make the premises secure

For works with an estimated value between £3,000 and £25,000 written quotations from a minimum of three contractors will be required. In situations where this will result in disruption and further delay, formal approval to award directly to a contractor will be obtained from the appropriate Chief Officer.

Works with an estimated value which exceeds £25,000 will require formal tenders.

All procedures relating to the placing of orders and subsequent payment of works will be in accordance with standard procedures.

All other works requiring formal tenders are to be carried out in accordance with the Contracts Procedure Rules and in accordance with standard procedures.