

# **Bury Council Contract Procedure Rules 2022**

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## Definitions

<b>Term</b>	<b>Definition</b>
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
Bidder	means any Economic Operator that submits a Quote.
Call-Off Contract	means an order placed or a contract awarded in accordance with an established Framework Agreement or DPS
Concession Contracts	Where the consideration consists either solely in the right to exploit the work or service, or in this right to exploit together with payment.
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
Contract	An agreement between two or more parties relating to supplies, services, utilities or the execution of works for payment or otherwise by an agreement intended to bind those parties.
Contracts Register	A database of all Council Contracts maintained by the Strategic Procurement Team
Dynamic Purchasing System	An agreement or other arrangement which establishes the terms under which the Provider will enter into one or more Contracts with the council or other Public body during the period in which the Dynamic Purchasing System applies
e-tendering system	The council's electronic procurement portal for the advertisement, receipt of tenders and conducting the Council's procurement process
Find a Tender Service	Means the e-procurement portal by which above Regulation Threshold tenders are advertised.
Framework Agreement	An agreement or other arrangement which establishes the terms under which the Provider will enter into one or more

	Contracts with the council or other Public body during the period in which the Framework Agreement applies
MAT (Most Advantageous Tender)	The evaluation or scoring of tenders using objective criteria covering price and quality, where the resulting Contract is awarded to the tender that achieves the highest score in that assessment
Notice	An advert giving details of the Contract being procured. The issue of the Public Procurement Notice starts the above Regulation Threshold tender process
Threshold	The Threshold pertaining to the values of Supplies, Services or Works derived from Regulations
Procuring Officer	The service team Officer who is responsible for the procurement process. This also includes third parties who are procuring on behalf of the Council.
Strategic Procurement	The member of the Strategic Procurement Team who has been assigned to the procurement exercise
Procurement Guide	Contains further detailed practical guidance and information on procurement requirements and process steps which Procuring Officers must refer to when undertaking procurement activities
Provider	An organisation that supplies goods to, provides services to or undertakes works for the Council.
Regulations	Regulations that govern public procurement procedures for Contracts with a value over specific Thresholds
Revenue earning Contract or Concession Contract	A Contract where either part of the consideration is a share for the Council of any income generated by the Provider or where the Council is acting as a Provider to another party.
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
Specification	means the outputs, outcomes and the scope and nature of Goods, Services,

	execution of Works or Concessions Contract required by the Council from a procurement activity.
SQ – Supplier Questionnaire	The national standard questionnaire produced by Cabinet Office for use in shortlisting suppliers when using a two-stage procedure, or for confirming supplier credentials in a single stage procedure

## 1 Introduction

- 1.1 These Contract Procedure Rules (CPRs) are made under the provisions of Section 135 of the Local Government Act 1972 and govern the making of Contracts for and on behalf of the Council.
- 1.2 The CPRs form part of the Council’s Constitution and will be reviewed annually.
- 1.3 Compliance with the CPRs and observance of all relevant legislation from which they emanate in particular, but not limited to: the Public Procurement (Amendments, Repeals and Revocations) Regulations 2016; the Public Contracts Regulations 2015; Concession Contracts Regulations 2016; Equality Act 2010; Public Services (Social Value) Act 2012; the Local Government (Transparency Requirements) (England) Regulations 2015 (As amended from time to time); and the associated principles relating to fairness, non-discrimination, equal treatment and transparency, is mandatory for all Officers and Members.
- 1.4 These rules also apply to any third party, such as a consultant, who may be undertaking procurement on behalf of the Council. The responsibility for ensuring the rules are followed rests with the relevant Procuring Officer. Advice should be sought from the Strategic Procurement Team if in any doubt.
- 1.5 Procurements above the Regulation Threshold must comply with all relevant public procurement legislation. Where there is any conflict between legislation and these CPRs, the legislation will always prevail.
- 1.6 Value for money is fundamental to the procurement activity carried out by the Council. The Council has a best value duty under Section 3 of the Local Government Act 1999 having regard to a combination of economy, efficiency and effectiveness. This should be achieved through competition, unless there are compelling reasons to the contrary.
- 1.7 In all situations where the Council is the lead authority or the contracting body, procurement will be subject to these CPRs. Exemptions to the rules will be permitted only in the specific circumstances referred to in these CPRs.
- 1.8 These CPRs should be read in conjunction with the Councils Financial Procedure Rules and any advice, guidance and policies issued by Strategic Procurement ([link to Procurement Guide](#)).
- 1.9 Breaches of these CPRs will be investigated and may result in disciplinary action.
- 1.10 The CPRs do not apply to:

- Contracts of employment for the appointment of individual members of staff.
- Grant funding agreements – for grant agreements the appropriate guidance must be followed
- Contracts where the Council is the supplier of Works, Goods and/or Services to third party organisations. However, the Monitoring Officer and the S151 Officer must be consulted in situations where the council is contemplating acting as a supplier.
- Contracts procured in collaboration with other local authorities where the council is not the lead authority (subject to the necessary approvals having been obtained from the appropriate decision maker at the council). The CPRs of the lead authority shall apply. Assurance should be sought that the lead authority is in compliance with its own Contract Procedure Rules and Regulations.
- Contracts procured through frameworks let by other Contracting Authorities in compliance with Public Procurement legislation.
- Public to public Contracts e.g. between Bury Council and another local authority, which meet the provisions of Regulation 12 of the Public Contracts Regulations 2015. The Monitoring Officer and the Head of Strategic Procurement must be consulted where the Council is contemplating this route.
- Works, Supplies and Services procured from in-house companies which meet the criteria for the Teckal exemption e.g. Six Town Housing, Persona
- Contracts relating solely to the disposal or acquisition of securities;
- Contracts for the acquisition of an interest in land and property;
- Contracts for the appointment of Counsel or the appointment of experts for the purpose of legal, or potential legal proceedings by the SRO for Legal Services; and
- Any Contracts specifically excluded by relevant legislation

## **2. General Rules**

- 2.1 Prior to commencing a procurement process, approval for the expenditure must be obtained from the relevant budget holder/officer in accordance with Financial Procedure Rules: Scheme of Delegation – Financial Limits
- 2.2 Procuring Officers should not agree to verbal offers from Suppliers as this can create a binding Contract.
- 2.3 Adequate records of the procurement process must be retained. This includes records of any discussions held with stakeholders and/or potential Bidders prior to the issue of an advert or Contract Notice as part of soft market testing activity, any evaluation documentation including presentations or interviews held with Bidders and Contract award and unsuccessful notifications. Electronic copies of Contracts shall be kept of each procurement process for a minimum period in accordance with the Council's Records Management Policy and public procurement legislation.

### 3. Conflicts of Interest and Anti-Bribery and Corruption

- 3.1 The Council's reputation with regards to procurement activity is important and should be safeguarded from any imputation of dishonesty or corruption. Advice should be sought from Strategic Procurement prior to any discussions to ensure that any conflicts of interest are recorded, and mitigation measures put in place.
- 3.2 No gifts or hospitality should be accepted from any Bidders or Tenderers involved in procurement activity except in accordance with the Council's Codes of Conduct.
- 3.3 Every Officer (including temporary, agency and interim staff) or Councillor involved in any decision in respect of the award of a Contract in which they, or any immediate member of their family, or close associate has a Pecuniary Interest shall immediately notify the lead Procurement Officer who shall make a record in the contract file and forward to the Monitoring Officer for inclusion in the register kept for the purpose under s.117 Local Government Act 1972 (Disclosure by officers of interest in contracts)
- 3.4 In the event of any doubt or uncertainty as to whether a Pecuniary Interest will occur, advice should be sought from the Head of Strategic Procurement who will consult with the Head of Audit and Monitoring Officer.

### 4 The Procurement Process

- 4.1 The table that follows sets out how a procurement process must be undertaken based on the total value of the Contract over its full period, including extensions, where applicable.

Anticipated Contract value (exc VAT)	Procurement Route	Advertising	Evaluation	Approval	Authority to Sign Contract
Below £10,000	Obtain at least one written Quotation  Where the value is less than £1,000 this can be evidenced by price list or website information  Process conducted and managed by Service team including written Specification or	Not required.  Bury suppliers to be invited where available.	Lowest price.	In accordance with the Financial Procedure Rules: Scheme of Delegation – Financial Limits	Use Purchasing Card or raise a Purchase order  No requirement for a signed Contract

	Statement of Requirements  Advice available from Strategic Procurement				
£10,001 to £50,000	<p><b>Request for Quotation (RFQ)</b></p> <p>Obtain at least three written quotations</p> <p>Process conducted and managed by Service team including written Specification or Statement of Requirements</p> <p>Advice must be sought from Strategic Procurement unless otherwise agreed by Head of Strategic Procurement</p>	<p>Not required</p> <p>(If three Providers cannot be identified, openly advertise. If openly advertised then contact Strategic Procurement to advertise on <b>e-tendering system</b> and on <b>Contracts Finder</b> website (if above £25k)</p> <p>Bury suppliers to be invited where available.</p>	<p>Lowest price or most advantageous based on criteria published with the request for quotation.</p>	<p>Complete <b>Award Report</b> and attach copies of the quotations.</p> <p>then</p> <p>If this is a new Supplier request a <b>New Supplier Set up form</b> is completed and submitted to <b>Accounts Payable</b>.</p> <p>Retain Award Report with quotes.</p> <p>Approval in accordance with Scheme of Delegation as detailed in Financial Procedure Rules: Scheme of Delegation – Financial Limits</p>	<p>Purchase Order and</p> <p>If the <b>Council's Standard Contract</b> terms used (or if procured via a valid framework, the relevant Call-off Contract is used, or an industry standard Contract is used for a works Contract) then an Officer in accordance with the Financial Procedure Rules: Scheme of Delegation – Financial Limits</p> <p>or</p> <p>If a bespoke Contract then Legal Services Authorised Signatory</p> <p>If openly advertised and above £25k issue Contract Award Notice on Contracts Finder</p>
£50k to Regulation Threshold	<p><b>Invitation to Tender (ITT)</b></p> <p>Obtain a minimum of 3 tenders</p> <p>Advice must be sought from Strategic Procurement</p>	<p>If openly advertised use <b>e-tendering system</b> and <b>Contracts Finder</b></p>	<p>Most Advantageous Tender</p>	<p>An <b>Award Report</b> must be completed.</p> <p>If this is a new Supplier request a <b>New Supplier Set up form</b> is completed and submitted to</p>	<p>Purchase Order and</p> <p>If the Contract value is less than £100,000 and the Council's relevant Standard Conditions of</p>



	<p>before commencing and a <b>“Starting a Procurement”</b> form completed.</p> <p>Tender process using <b>e-tendering system</b>.</p> <p>A single stage ITT must be used for all Contracts up to the Works, Goods and Services Threshold.</p> <p>Managed by Strategic Procurement, unless otherwise agreed by Head of Strategic Procurement</p>	<p>If not openly advertised, Bury suppliers to be invited where available.</p>		<p>Accounts Payable. Confirm Award Report in place. Retain Award Report with quotes</p> <p>Approval in accordance with Financial Procedure Rules: Scheme of Delegation – Financial Limits</p>	<p>Contract is used (or framework terms if applicable) then an Officer in accordance with Financial Procedure Rules: Scheme of Delegation – Financial Limits</p> <p>or if the Contract value is more than £100,000 or</p> <p>if a bespoke Contract is used then Legal Services Authorised Signatory</p> <p>Legal proforma – instruction to award to be completed</p> <p>If openly advertised issue Contract Award Notice on <b>Contracts Finder</b></p>
Over Regulation Threshold	<p>Advice must be sought from Strategic Procurement before commencing and a <b>“Starting a Procurement” form</b> completed.</p> <p>Tender process using the Council’s e-tendering system</p> <p>An Open procedure single stage ITT to be used or by exception an</p>	<p>Council’s e-tendering system</p> <p>Contracts Finder Website</p> <p>and</p> <p>Find a Tender Service</p>	Most advantageous Tender	<p>Contracts below £500k in value that are non-key decisions can be approved by the relevant Executive Director.</p> <p>Contracts above £500k and are key decisions and delegated authority should be sought from Cabinet to award the Contract when the evaluation is completed.</p> <p>Award Report to be completed.</p>	<p><b>Legal proforma</b> – instruction to award to be completed</p> <p>Purchase Order</p> <p>Issue Contract Award Notice on Contracts Finder and Find a Tender Service</p>

	<p>alternative procedure as stated in the Public Contracts Regulations with a justification approved by the Head of Strategic Procurement</p> <p>Managed by Strategic Procurement.</p>				
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## 4.2 Starting a Procurement

- 4.2.1 Where the Council has an existing Contract in place that is suitable to source the services, supplies or works required this should be used. Approval for not using an existing Contract must be sought in advance from the relevant Strategic Procurement Officer and the technical or economic reasoning for not using the existing Contract should be recorded in the 'Starting a Procurement' form.
- 4.2.2 Where the Procuring Officer wishes to use a Framework Agreement, it is the duty of that individual to ensure that the agreement has been procured in a legally compliant manner and that the Council is legally able to access the agreement. The Procuring Officer should also ensure requirements in any access agreement, guidance notes or instructions are followed to ensure the procurement is compliant with Regulations. Failure to do this will make any Contract awarded from the framework (and potentially the whole framework) invalid. The Procuring Officer should seek guidance from Strategic Procurement where required.
- 4.2.3 If the value of a Contract is forecast to be less than £50,000 advice should be sought from Strategic Procurement prior to commencement but the procurement will be led by the Procuring Officer. Procuring Officers must adhere to the requirements outlined in the table above and award in accordance with authorisations set out in the Financial Procedure Rules: Scheme of Delegation – Financial Limits. The Procurement Guide provides advice and guidance on the processes and best practice.
- 4.2.4 If the value of a Contract is forecast to be £50,000 or greater, a 'Starting a Procurement' form must be completed and submitted to Strategic Procurement prior to the commencement of a procurement process.
- 4.2.5 If there is agreement between the Head of Strategic Procurement and a service team that a Procuring Officer within the service team will lead a procurement above £50,000, the Procuring Officer shall complete a 'Starting a Procurement form' and record this agreement within the form.

- 4.2.6 In the event where a Contract has no specific end date, such as ongoing support or maintenance Contracts, then for the purposes of these rules the Contract Value should be considered over four years.
- 4.2.7 If the value of any Contract (including for works or social services) is forecast to be greater than £500k then delegated authority to commence the procurement process must be sought from the Cabinet.
- 4.2.8 A Conflict of Interest declaration form must be completed by all parties involved in a procurement process at the appropriate stage. This applies to Officers (including temporary, agency and interim staff) and Elected Members.
- 4.2.9 In the event of a Conflict of Interest the Head of Strategic Procurement, following consultation with the Monitoring Officer and Audit, shall determine the appropriate course of action to be taken based on the facts of the particular situation.
- 4.3 Publishing Contract Notices (Advertising Contracts)
- 4.3.1 All procurement documentation must be completed prior to publishing the Contract Notice. This, as a minimum must include the Specification, Contract terms, pricing model and other evaluation criteria and background documentation.
- 4.4 Selection Questionnaires (SQ)
- 4.4.1 The standard Selection Questionnaire (SQ) is the document used by the Council to screen potential tenderers in accordance with Regulations. For Works Contracts, the PAS91 questionnaire can be used in place of the standard SQ.
- 4.4.2 A pre-qualification stage must not be used in any procurement below the Regulation Thresholds for supplies and services. A completed SQ must however, be obtained from the winning Bidder prior to award of any Contract over £50k.
- 4.5 Contents of a Request for a Quotation (RFQ) or an Invitation to Tender (ITT)**
- 4.5.1 A **Request for a Quotation (RFQ)** is used for procurements with a value less than £50,000. Evaluation and award of Contract will normally be based on the lowest price, or the most advantageous tender based on criteria published with the RFQ.
- 4.5.2 An **Invitation to Tender (ITT)** is used for procurements with a value greater than £50,000 or by exception for complex and high-risk procurements of any value. Evaluation and award will be determined by the most advantageous tender based on criteria published with the ITT.
- 4.5.3 The standard template for a RFQ or an ITT must be used and include all the information set out in the template. Templates are maintained and updated by Strategic Procurement.
- 4.5.4 The **Specification** must describe the Council's requirements in sufficient detail to enable the submission of competitive offers and follow the Procurement Guide. A risk analysis of the scope and Specification of the Contract should be undertaken and included as additional Contract conditions if required.

4.5.5 **Evaluation criteria** must comply with the information in the table at 4.1 above in relation to relevant Contracts values. All evaluation criteria and sub criteria, any financial models and a clear scoring matrix must be included in the RFQ, or ITT documentation and full details disclosed to potential Bidders. The evaluation process must follow the published criteria without deviation.

4.5.6 The methodology for **evaluating price** should be clearly set out in the RFQ or ITT.

- Where appropriate, the whole life cycle cost, including cost of operation, maintenance and end of life, should be considered.
- Where appropriate the implementation costs, including training, process redesign and system integration, should be considered.

4.5.7 **Conditions of Contract**

- In most circumstances the Council's standard forms of Contract should be used for supplies and services. The relevant Contract conditions must be issued with the RFQ/ITT.
- Where procurement is via an existing Framework Agreement, the conditions of contract will be those governing the framework and Call-off Contracts.
- For works contracts (other than those for minor works where the Council's standard services Contract may be appropriate) standard industry forms must be used, for example, JCT, NEC.
- Where there is a need to deviate from the Council's standard forms of Contract or amendments are required to works standard industry forms (due to the risk imposed by the nature of the procurement or where the standard Contract is deemed to be unsuitable), Contract terms must be drafted by Legal Services prior to the RFQ or ITT being advertised.
- Contracts on supplier's conditions will only be entered into by exception and must be approved in advance by Legal Services for Contracts over £10k.

## 4.6 Advertising Durations

4.6.1 A RFQ should be advertised for a period of time appropriate to the complexity of the procurement and to ensure there are sufficient quotes received to demonstrate that a proper competition has taken place. As a minimum this should be 7 days, unless otherwise agreed by Strategic Procurement.

4.6.2 An ITT should be advertised for a period of time appropriate to the complexity of the procurement, as a minimum this should be 14 days, unless otherwise agreed by Strategic Procurement

4.6.3 If a Framework is being used, the timescales set out in the Framework should be followed.

4.6.4 Where the Contract value is above the Regulation Thresholds then the appropriate minimum time periods in accordance with Regulations must be followed.

4.6.5 If a reduced timescale is required due to genuine urgent need, then this must be recorded and approved by Strategic Procurement prior to the procurement commencing.

#### **4.7 Contract value and duration**

- 4.7.1 Prior to a procurement being undertaken an estimate of the total Contract value over its full duration, including any extension options must be established. A record of how this forecast was calculated should be retained in the 'Starting a Procurement' form.
- 4.7.2 The value of the Contract must not be split to avoid the application of the CPRs and Regulations.
- 4.7.3 The appropriate length of individual Contracts should be considered pre-procurement taking account of Regulations, commercial factors such as market conditions and required investment, and internal considerations such as implementation costs and cost of change.

#### **4.8 Transfer of Undertakings Protection of Employment (TUPE) and Pensions**

- 4.8.1 Where a service is already being provided and is being retendered or tendered for the first time, the TUPE regulations need to be considered and if applicable, incorporated within the ITT. Where appropriate, information will need to be requested from current contractors.
- 4.8.2 Advice from Legal Services should be sought at the earliest point that the Procuring Officer becomes aware that a staff transfer may form part of the procurement. The relevant HR Business Partner must also be consulted if Council staff may be affected.
- 4.8.3 Where a transfer of staff will occur, Pensions liabilities and the arrangements for these need to be considered, and specialist advice sought from Strategic Procurement, Legal Services, HR and Finance.

#### **4.9 Appointment of Temporary, Agency, Interim Resources & Consultants**

- 4.9.1 Advice must be sought from the relevant HR Officer prior to commencing the appointment of any temporary, agency and interim staff and the guidance on procurement of external expertise must be followed.
- 4.9.2 The appointment of temporary, agency and interim staff must be in accordance with these CPRs, with the addition of an HR business case being approved. The appropriate guidance on procurement of external expertise must also be followed.
- 4.9.3 The appointment of temporary, agency and interim staff with an equivalent day rate of £500 or more must be approved by the Head of HR and the Cabinet Member for Corporate Affairs and HR prior to commencing the appointment.
- 4.9.4 The appointment of temporary, agency and interim staff with an equivalent day rate of £499 or less must be approved by the relevant HR Business Partner and Finance Advisor prior to commencing the appointment.
- 4.9.5 A copy of the completed Executive Team approval must be retained on the contract file.

- 4.9.6 In the event that temporary, agency or interim staff are proposed to transfer employment to become permanent employees, then it is likely that transfer, finders or similar fees will be charged by the agency. Approval must be obtained in advance from the relevant HR Business Partner prior to any transfer of employment and payment of relevant fees.
- 4.9.7 Contracts for consultancy services shall be procured in accordance with the Contract Procedure Rules and the guidance on procurement of external expertise.

#### **4.10 Communications with tenderers during the procurement process**

- 4.10.1 All communications with tenderers after the RFQ or ITT has been issued must be conducted via the secure messaging service which forms part of the e-tendering system, or via email for those RFQs below £50k that have been issued by email.
- 4.10.2 Questions from Bidders must be submitted electronically, for RFQs by e-mail or through the e-tendering system where this has been used. Responses to questions must be shared with all Bidders unless there is an overriding commercial or confidential reason not to. Advice should be sought from Strategic Procurement if there is any uncertainty.
- 4.10.3 During the procurement process, verbal communication should not be entered into except to provide instruction on using the e-tendering system or in exceptional circumstances following advice from Strategic Procurement.

#### **4.11 Quotation and Tender opening and late submissions**

- 4.11.1 All responses to SQs or ITTs must be submitted electronically through the Council's e-tendering system where they will remain locked until the closing time and date.
- 4.11.2 For RFQs which have not used the Council's e-tendering system, responses should be returned by email to the Procuring Officer. Evaluation of quotations should not take place until all quotations have been received or the closing date and time has passed, whichever is soonest.
- 4.11.3 Late submissions will only be accepted in exceptional circumstances e.g. if the other quotations/tenders have not been opened and/or there has been a failure of the e-tendering or email system, or if the failure to comply is the fault of the Council.
- 4.11.4 The final decision on whether a tender will be accepted is at the discretion of the Head of Strategic Procurement.
- 4.11.5 The date for receipt of tenders may only be extended in exceptional circumstances. This must be approved by Strategic Procurement and the reasons documented.

## **5 Evaluation**

- 5.1 Evaluation of SQ responses, quotations and tenders must be in accordance with the criteria and scoring published with the SQ, RFQ or ITT. In the event no criteria have been published in the RFQ or ITT then the evaluation will be based on lowest price.
- 5.2 No information about SQ responses, quotations and tenders should be shared with competing organisations during the tender period.
- 5.3 Clarifications of SQ responses, quotations and tenders may be requested from Bidders and must be made in writing using the e-tendering system or via email for RFQs issued by email.
- 5.4 Negotiations with tenderers are only permitted in limited instances with approval of Strategic Procurement.
- 5.5 Once a SQ, RFQ or ITT has been evaluated and the successful organisation selected, only minor refinements that do not substantially change the tenderer's proposal or the commercial position, can be made. Advice should be sought from Strategic Procurement in advance.
- 5.6 Evaluation should involve a minimum of two officers and should follow Procurement Guide.
- 5.7 Evaluators must come to a consensus on scores awarded, scores must not be averaged.
- 5.8 Justification and reasons for the scores awarded must be recorded and retained in accordance with Regulations. This information is to be used for providing feedback to Bidders.

## **6. Awarding a Contract**

- 6.1 Approval to award the Contract must be obtained prior to the award being carried out in accordance with the table in Section 3.
- 6.2 A 10-day standstill period between notification of the Contract award and the Contract Award must be included for relevant Contracts with a value above the Regulation Threshold.
- 6.3 Officers must not issue letters of intent, memorandums of understanding or similar communications without the prior approval of Legal Services.
- 6.4 Contracts should be signed in accordance with the table in Section 3 of these Rules. Contracts should only be signed after the correct approval to award has been granted.
- 6.5 Certain categories of Contracts must be executed as deeds and are to be sealed by the council by affixing the common seal or appropriate electronic alternative. This means that in the event of a dispute, the council can make a claim under the Contract for up to 12 years. The following Contracts must be sealed:
  - Contracts above the value of £75K;
  - New Framework Agreements;
  - Where there is no consideration (i.e. money or money's worth) by one party (e.g. grant agreements, where the council is paying a voluntary sum to an organisation but the organisation is not giving anything in return); and,
  - Other high risk Contracts (as advised by Legal Services) where a longer limitation period of 12 years is required.

- 6.6 Before a Contract can be awarded by Legal Services, a signed copy of the relevant Award Report must be provided by the designated decision maker. The signing or sealing of the Contract by Legal Services is simply affixing the common seal and does not indicate that legal advice has been sought or that Legal Services approve the Contract. A scanned copy of the signed Contract must be sent to Strategic Procurement to allow for inclusion in the Contracts Register
- 6.6 Contract Award Notices must be placed in Contracts Finder and Find a Tender Service in accordance with Regulations. The publication of Notices will be undertaken by Strategic Procurement.
- 6.7 All Bidders should be informed of the outcome of a procurement process as soon as possible and at the same time. Unsuccessful Bidders should be provided with feedback on their submission. In a two-stage process they should be informed when they are eliminated from the process and advised of the reasons why they did not meet the standard to be shortlisted.
- 6.8 For ITTs above Regulation Threshold, where the evaluation criteria is most advantageous tender, then unsuccessful Bidders should be advised of their score against each criteria and weighted marks, the relative strengths and weaknesses of their proposal and the total score and price of the winning Bidder, in accordance with Regulations.
- 6.9 Information on the successful Bidder's proposal including the method of undertaking the work or a breakdown of the price should not be provided to unsuccessful Bidders. If there is any doubt advice should be sought from Strategic Procurement.

## **7 Supplier Questionnaire (SQ)**

- 7.1 For Contracts above £50k, before awarding a Contract, the Procuring Officer needs to ascertain whether any of the mandatory or discretionary exclusions, as set out in the SQ apply. A Contract must not be awarded to a Provider if a mandatory exclusion applies. For Contracts below £50k, only the leading Bidder should be required to complete a SQ prior to Contract award. Any concerns relating to mandatory or discretionary exclusion criteria should be referred to Strategic Procurement.
- 7.3 In the event that a discretionary exclusion applies, then the Provider should be requested to submit an explanation which details actions taken to rectify the situation. The Head of Strategic Procurement will assess the Provider's explanation and determine whether the Provider should be excluded.

## **8 Exemptions**

- 8.1 The CPRs ensure that the Council complies with its legal requirements and is fair and transparent with respect to how public money is spent. Only in exceptional circumstances will approval be granted to do something different. Where this is needed an Exemption will be submitted by the Head of Service, reviewed by the Head of Strategic Procurement in consultation with Legal Services and approved in line with the Scheme of Delegation.
- 8.2 If the value of the Contract is greater than the Threshold for Works, Services and Supplies then approval must be sought from the Monitoring Officer, in consultation with



the Head of Procurement and the Section 151 officer, to confirm that one of the exceptions within Regulations applies.

- 8.3 All Exemptions from these rules must be recorded using the Exemption Form and approved before entering into a Contract with a supplier.
- 8.4 Circumstances where time is lost through inadequate forward planning or any unnecessary delays will not constitute a reason to issue an Exemption and Procuring Officers should make adequate preparation in advance of commencing the procurement exercise.
- 8.5 An Exemption will only be approved if it is for one of the following reasons;
  - 8.5.1 Where there is an existing corporate Contract, and a service decides they do not wish to use the corporate Contract, a business case to justify this must be demonstrated. This should be included in the Exemption Request.
  - 8.5.2 Where there is only one supplier within the market. Evidence that this is the case and what investigation has been done to try and find other suppliers must be demonstrated. This should be included in the Exemption Request.
  - 8.5.3 Where the procurement activity is grant funded or the Council is matching grant funding and the original grant has been given conditionally on the use of a named supplier, group of suppliers or particular framework. A copy of the grant agreement or other evidence should be attached to the Exemption.
  - 8.5.4 Where services need to be procured as a matter of extreme urgency - e.g. in response to an emergency situation - and there is insufficient time to advertise. Justification should be included in the Exemption.
  - 8.5.5 Where software is being procured that must be compatible with an existing ICT system, or where ongoing licencing and maintenance Contract is only available from one ICT supplier, and the cost of change is uneconomic. A business case justifying this should be included in the Exemption.
  - 8.5.6 Where it would be in the interests of the efficient management of the service and represent best value to the council. A business case justifying this should be attached to the exemption.
- 8.7 If an Exemption is not approved then a change to what is being proposed will be required to comply with the CPRs. If it is impossible to do this then a non-compliance will be recorded by Strategic Procurement and notified to the Audit team. An action plan to avoid a repeat occurrence will be required.
- 8.8 Where there are repeated non-compliances in a service team, the relevant Budget Holder will produce a plan to assess the situation and propose remedial action to be taken. This plan will be provided to Audit Committee.
- 8.9 A list of both approved Exemptions and any non-compliances will be reported to Audit Committee annually.

## **9 Contract Management, Variations and Extensions**

- 9.1 As part of the pre-procurement activity, the officer who will be responsible for managing the Contract must be identified, known as the Contract Manager.

- 9.2 Reporting and monitoring processes appropriate to the size and nature of the Contract must be put in place to ensure that all obligations are fulfilled by the contracted parties. This includes the delivery of agreed Social Value targets.
- 9.3 All Contracts must be included and published on the Contracts Register maintained by Strategic Procurement in line with the Local Government Transparency Code 2014. This is a mandatory requirement and it is the responsibility of each Service to ensure that they have informed Strategic Procurement of the Contracts they are responsible for and provided them with the information necessary to update the Contracts Register accordingly.
- 9.4 Contracts may only be varied to implement minor changes which may include either increasing or decreasing the service or for services of a similar nature. Advice must be sought from Strategic Procurement and Legal Services.
- 9.5 Contracts can only be extended if options for extensions were included in the original Contract.
- 9.6 Contract variations and extensions must follow the same authorisation process as though they were new procurements. The relevant Thresholds for supplies, services, works and for the light touch regime, as defined in Regulations, apply.
- 9.7 If the value of the original Contract plus the sum of any extension or variation exceeds the Thresholds within these CPRs with the result that a different procurement process should have been used then an Exemption will need to be requested.

## **10 Social Care Contracts**

- 10.1 It is recognised that either because of service user choice or the nature of the market for specialist placements, and the requirements of the Care Act 2014, that for some types of social care Contracts, competitive procurement processes cannot be undertaken. Only Contracts for the following have specific exclusions from these CPRs;

### **10.2 Residential Care**

- 10.2.1 Residential Care placements are exempt from the full requirements of the CPRs. Sections 1,2,3,7 and 9 apply.
- 10.2.2 The Council will Contract with Residential Care Providers using a standard Contract. The Contract will set out a breakdown of the price that is set each year via the Council fee setting process. Any deviations from this standard Contract must be approved in advance by the relevant Integrated Commissioning Strategic Lead officer who will consult with Legal and Strategic Procurement and liaise with the appropriate Executive Director.
- 10.2.3 If a weekly fee for an in-borough placement is higher than the standard fee then approval must be gained from the appropriate funding panel and/or relevant Team Manager, where they have delegated responsibility from the appropriate Executive Director, who will consult with the Integrated Commissioning Strategic Lead prior to agreeing the placement with the Provider.
- 10.2.4 For out of area placements for older people the fee per week must be the standard rate for the relevant local authority area. For placements where the

fee per week is above this, approval must be gained from the appropriate funding panel and/or relevant Team Manager (where they have delegated responsibility from the appropriate Executive Director) who will consult with the Integrated Commissioning Strategic Lead prior to agreeing the placement with the Provider.

10.2.5 Where there is an emergency need and approval cannot practically be requested in advance (including by any on-call arrangements), then this should be notified to the relevant Team Manager and Integrated Commissioning Strategic Lead/ Contract & Commissioning Manager (Children's) as soon as possible and in all cases within 72 hours of the placement commencing.

10.2.6 In the event of the above occurring then the relevant Integrated Commissioning Strategic Lead/Contracts & Commissioning Manager should be advised as soon as practical.

### **10.3 Social Care Frameworks**

10.3.1 Where a framework, Dynamic Purchasing System or alternative Flexible Purchasing System relating to Social Care is in place, e.g. foster care placements, children's residential care, learning disability and mental health packages, then the following will apply.

10.3.2 Where placements are made outside of the Framework Agreements, approval must be gained from the relevant Team Manager (where they have delegated responsibility from the appropriate Executive Director), who will consult with the Integrated Commissioning Strategic Lead/Contracts & Commissioning Manager prior to agreeing the placement with the Provider.

10.3.3 Prior to making an outside of Framework placement a breakdown of the price must be obtained from the Provider and value for money demonstrated. Advice should be sought from the relevant Integrated Commissioning Strategic Lead/Contracts & Commissioning Manager where the costs are more than the typical expected costs.

### **10.4 Educational Placements**

10.4.1 Where the Council is required to pay for Education Placements these are generally required to be paid in advance and are not subject to competitive tendering. Prior to making a placement a breakdown of the price must be obtained from the Provider and value for money demonstrated.

10.4.2 Advice should be sought from the relevant Contracts & Commissioning Manager where the costs are significantly more than the typical expected costs.

## **11 Finance Leases excluding Land and Property**

11.1 Where a Contract requires the Council to enter into a finance or lease agreement then advice should be sought from the relevant Finance Officer in advance.

11.2 In addition to the Contract Award approvals required as set out in the table in Section 3, finance and lease agreements must be approved by the Section 151 officer prior to signing.

## **12 Concessions and Revenue Earning Contracts**

- 12.1 Any procurement of a Concession Contract should be carried out in accordance with these Rules
- 12.2 Prior to the Council awarding a Concession or entering into a revenue earning Contract, whether in its own right or with a commercial partner, approval of the commercial arrangements and Contract terms and conditions must be obtained from the Section 151 officer and from Legal Services.
- 12.3 Where the Concession or revenue has a value greater than the Threshold or has a significant risk profile (as assessed by the Section 151 officer and Legal Services) then approval is required from Cabinet prior to entering into the agreement.
- 12.4 Where the Council is a Bidder and submitting a proposal or tender in response to a contract opportunity then approval must be obtained from the relevant Executive Director and the Section 151 officer. Where the Contract has a value greater than the Threshold for Services and Supplies or has a significant risk profile (as assessed by the Section 151 officer and Legal Services) then approval is required from Cabinet prior to submitting the proposal or tender.
- 12.5 Advice from Legal Services must be sought prior to commencing any work on compiling a proposal or tender to determine if the Council has the power to enter into the Contract.

## **13 Disposal of Assets excluding Land and Property**

- 13.1 The disposal of assets excluding land and property must comply with the following
  - 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.
  - A minimum of 4 sealed bids must be invited if the goods have an estimated value greater than £25,000. Alternatively, disposal can be by sale by auction. The Section 151 officer should be consulted in advance of the decision on disposal route.
  - The highest value unconditional bid received should be accepted unless in the view of the Section 151 officer a conditional bid offers better value to the Council

## **14 Disposal of Land and Property**

- 14.1 Where land or premises are to be disposed of by competitive tender the procedure for receipt and opening tenders shall be as determined by the Executive Director of Place.
- 14.2 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.
- 14.3 A tender may be accepted by the Executive Director of Place after consulting with the appropriate Cabinet Member subject to the following conditions being met:
  - highest tender to be accepted except where the evaluation criteria are based upon Most Advantageous Tender in which case the tender that achieves the highest score in the assessment must be accepted;

- where the evaluation criteria is based upon the highest tender the price represents the best price that could be reasonably obtained;
- the tender accords with the "particulars/conditions of sale";
- where the evaluation criteria are not based upon Most Advantageous Tender the tender does not include any non-financial considerations.

14.4 If any of the conditions in Rule 14.3 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.