

BURY MBC CONTRACT PROCEDURE RULES 2024

A. WHY WE HAVE PROCUREMENT RULES

1. Section 135 of the Local Government Act 1972 requires all local authorities to have them.
2. They are part of our Constitution and must be followed by all employees of the Council, its suppliers, contractors and consultants
3. They ensure that there is fair competition and value for money when we buy goods and equipment or commission services or works. They set out the procedure to be followed.
4. They apply to a wide range of contracts we award as a local authority, including our schools. They don't apply to staff contracts, purchases of land or financial investments by the Council.

B. LEGISLATION AND REGULATION

1. The Procurement Act 2023 and Regulations made under it, the Local Government Act 1999 and the Public Services (Social Value) Act 2012 govern how the award of our contracts must be conducted.
2. The Local Government Transparency Code 2015 requires us to make available to the public details of our contracts and expenditure on them. We are required to maintain a publicly accessible Contracts Register with details of all contracts over £5K and publish monthly details of all payments made over £500.

C. WHAT WE GAIN THROUGH HAVING THESE RULES

1. They make sure that we get the benefits of competition and act in a proper manner.
2. They help us get best value. That is a statutory obligation under the Local Government Act 1999. We must ensure economy, efficiency and effectiveness in all our transactions,
3. They require us to show fairness, transparency, equality and integrity in all our dealings. These are not nice to haves - they are enforceable legal obligations. If bidders are not happy with how they are treated they can take legal action against us.

D. SOCIAL VALUE

1. We must follow the Public Services (Social Value) Act 2012.

2. That means that when we embark on a procurement exercise the procurement lead must consider how it might improve the economic, social and environmental well-being of the inhabitants of Bury.

3. We have a Social Value Strategy which those undertaking procurement and managing contracts must adhere to.

E. WHAT WE MUST AVOID

1. Whilst it is desirable to have productive relationships with suppliers, contractors or consultants, it is important to be fair and objective. We can't appoint them just because they are recommended to us or because we have used them before.

2. We can't re-appoint them simply because we think they have "done a good job." We must test the market. The incumbent provider will obviously have a major advantage. If they don't win a re-appointment, there must be a quality or cost concern.

F. THE INITIAL STAGES OF PROCUREMENT

1. Pipeline programme

- Under the Procurement Act 2023, but also as best practice, we must have an ongoing programme of identified contract activity.

- We must publish an 18-month forward plan of all contracts over £2M on our website at the start of each financial year. It is good practice to publish those over £10K.

2. Authority to Procure

- The lead officer's first step for all procurements is to obtain authority under our Scheme of Delegations. This will be at officer level unless the estimated value is over £500K. In that case Cabinet approval is needed.

- The expenditure approvals thresholds are set out in Table 1.

3. Estimating Value

- The lead officer must make an informed estimate of the value of the contract and be aware of the threshold values under the Procurement Act. These dictate which rules apply.

- This must be genuine and not a way to get round the prescribed thresholds. For example we cannot divide up contracts or orders without a valid reason.

- They must calculate the value that the person winning the contract will get over the expected life of the contract, including any extensions provided for. This must also include any sums we get from third parties such as Central Government.

4. Getting Best Value

-Everything we do has to be designed to ensure best value for the Council. The definition we use is the combination of whole life costs and benefits to meet the Council's needs.

-Before starting any procurement or awarding any contract the lead officer must understand those needs and check whether they could be met instead from an existing contract.

-The lead officer also must check that there is finance available from a Council revenue or capital budget.

5. Proper Briefs and Specifications

-Every procurement must have a brief or specification setting out clearly and precisely what the Council needs.

-Without one there is no legal comeback if things go wrong and we don't get what we expected and have paid for.

- We do not allow the tender to be advertised until the brief or specification is ready.

-The brief or specification cannot include material that is discriminatory, distorts competition or is non-commercial. This applies to any quality standards we specify.

-We only name specific products, sources or process if these are essential for our needs. When we do so we also allow equivalent items to be used.

-All our briefs and specifications must include conditions requiring compliance with our statutory obligations and Council policies. We also require minimum levels of insurance cover.

G. UNDERTAKING A COMPETITIVE PROCESS

1. We Use Public Sector Portals

-All procurements over £30K must be advertised on the Government Central Digital Platform.

-Lead officers must use the Chest, the North West's Local Authority Procurement Portal for all competitive procurements over £10K.

2. We Use Frameworks

- We support the use of national, regional and local frameworks as they produce significant savings in time, effort and cost for the Council.

- Frameworks can only last 4 years.

-Call-off contracts are awarded in most cases through a mini-competition between pre-qualified suppliers on the framework agreement.

-In certain limited circumstances direct awards can be made under frameworks. For example where suppliers are ranked. Advice from Corporate Procurement must always be obtained in such cases.

3. Market Engagement

-Lead officers must seek to obtain an understanding of the supply market to increase the likelihood of a successful procurement.

-Seeking expressions of interest and running market engagement events are appropriate steps to take in this connection.

H. THRESHOLDS FOR COMPETITION

1. Adherence to the Thresholds

-The thresholds are critically important and must be adhered to.

- They are summarised in Table 1.

2. UNDER £10K

-Competition is not required. The lead officer should obtain one quotation. Although for more technical requirements it is considered good practice to obtain more than one to ensure that the Council is achieving best value.

-There must be a written brief and a written proposal received from the supplier, contractor or consultant in all cases.

3.£10K TO £50K

- A Request for Quotation (RFQ) must be issued through the Chest portal.

-There must be a minimum of three quotations, five or six if possible. In certain circumstances there may not be that number in the market. If so, advice must be sought from Corporate Procurement before proceeding.

-If the lead officer knows of suitable local suppliers or contractors, it is permissible to invite them to quote.

-There must be a written specification in all cases with a minimum of three appropriate key performance indicators.

4.ABOVE £50K

-A detailed Invitation to Tender (ITT) must be issued through the Chest portal.

-This must follow the standardised format prescribed by Corporate Procurement with clear criteria and weightings set out.

-There must be a written specification in all cases with a minimum of three appropriate key performance indicators.

-Advice should always be sought from Corporate Procurement. They will arrange for the Invitation to Tender to be issued on the Chest when the documentation is finalised.

I. CHOOSING THE RIGHT PROCUREMENT PROCEDURE

1.The Procurement Act 2023 Procedures

-The procedures have been reduced to two. These are:

= Open Procedure

= Competitive Flexible Procedure

2.The Open Procedure

-As its name implies, there can be no restriction on the number of bidders who can apply. It is a single stage process.

-The tender documentation must set out the criteria and weightings that will be used in decision making.

-All compliant bids must be considered at the selection stage

3.The Competitive Flexible Procedure

- This new procedure provides the Council with considerable flexibility.

-It allows the procurement exercise to be carried out in the manner we consider most appropriate. For example with a multi-stage process.

- We must make clear in the procurement documents how the process will work and how selection will operate, particularly if it is to be multi-stage.

-We must also set out the criteria and weightings that will be used in decision making.

4.Core Principles of Public Procurement

-These must be followed in all cases:

= Transparency: absolute clarity on what is required and what will happen.

= Equal Treatment: all interested parties and bidders must be treated the same.

= Proportionality: we must act fairly and proportionately throughout the process

J. BID RECEIPT

1. Use of the Chest portal

-Competitive bids can only be submitted through the Chest portal. Bids submitted by any other means such as by post or email cannot be accepted in any circumstances.

2. Late Bids

-Bid deadlines must be adhered to by bidders. Late bids cannot be accepted save in wholly exceptional circumstances.

-Wholly exceptional circumstances are restricted to situations entirely outside the control of the bidder where the bidder attempted to submit the bid in good time but was prevented by problems relating to the Chest portal itself. In such a case the Council has a discretion as to whether to accept a late bid. Advice should always be taken from Corporate Procurement before accepting a late bid.

K. EVALUATION OF BIDS

1.The Panel

-Lead officers should use a panel made up of staff from their department (ideally three but no more than five).

-Where necessary a moderator can be supplied by Corporate Procurement.

2.The Test

-The test applied is called MAT - Most Advantageous Tender. That means an assessment of price and quality to ensure we get proper value. The ratio of price to quality will depend on the subject matter of the contract.

3.Price-Only

-We don't ever use a price-only test, as there is always a quality need even if it's for something basic like pencils.

4 Quality Criteria

-These must be set out in the tender documentation in all cases.

-They should cover technical merit, functionality, competence and organisation of staffing, key milestones and social value

-They must be accompanied with appropriate percentage weightings.

5. Alterations

- Bids cannot be altered during the evaluation, except where there are obvious arithmetical errors that would affect the value of the bid. If that happens the lead officer can make an appropriate correction. A record must be kept of any corrections.
- Substantive amendments or submission of additional documents of any kind cannot be accepted in any circumstances.

6. Clarifications

- In extremely restricted circumstances requests for clarification can be made to resolve any obvious ambiguity. However the opportunity cannot be used by the bidder to amend the wording of the bid or re-negotiate any aspect of it.

L. MAKING THE CONTRACT AWARD

1. Evaluation Report

- Once the preferred bidder has been identified an evaluation report must be prepared and sent to Corporate Procurement.

2. Expenditure Approval

- The lead officer must obtain a written expenditure approval for the proposed award. This will be at officer level in accordance with the thresholds in Table 1, provided the contract sum is under £500K. A written record must be retained.
- Any proposed award above £100K must be published on the internet by Democratic Services in accordance with the Local Government Transparency Code 2015.
- If the contract sum is above £500K a report must be submitted to Cabinet for approval as an executive decision in accordance with our Constitution.
- If there is exceptional need for an early decision in the best interests of the Council the Urgent Decision route can be employed.

3. Standstill Letters

- Where required for certain high value transactions, these will be issued by Corporate Procurement.
- Contract award cannot take place until the prescribed time-period for objections has elapsed.

4. Issue of Contracts

- If the value is over £75K the contract will be drafted by Legal Services.
- If below £75K, it can be drafted in the lead officer's department with help from Corporate Procurement as required.

5. Contracts Register

-All contracts of value over £5K must be published on the publicly accessible Council Contracts Register.

-The Contracts Register to be regularly updated and is a mandatory requirement under the Local Government Transparency Code 2015.

M. EXEMPTIONS TO PERMIT DIRECT AWARDS

1.Approvals

-The written approval of the Head of Corporate Procurement and the Director of Law and Democratic Services is required to establish the availability of a permitted exemption.

-Financial approval must then be obtained by the lead officer from the appropriate officer in accordance with the thresholds set out in Table 1.

-If the sum involved exceeds £500K Cabinet approval must be obtained.

2.Publication

-Direct awards over £5M must be published by the Council in accordance with the Procurement Act 2023. This affords suppliers or contractors the opportunity to object.

3.Permitted Grounds

(a) *Direct award to protect life* -to protect human, animal or plant life or health, or protect public order or safety.

(b) *Prototypes and Development* - to research the suitability of novel goods or services

(c) *Single Supplier* - in the absence of competition and no reasonable alternative

(d) *Additional goods, works or services* - where change in supplier would result in disproportionate technical difficulties in operation or maintenance

(e) *Commodities* - purchase of goods on a commodity market

(f) *Insolvency* – where advantageous terms for the Council for a contractor to take over the obligations of the insolvent provider

(g) *Extreme and Unavoidable Urgency* - if unforeseeable and not the fault of the Council. Act of God situations such as Covid, RAAC, fire or flood.

(h) *User Choice Contracts* -social care field where the view of the individual or their carer is paramount

N. PERMITTED VARIATIONS

1.Approvals

-The written approval of the Head of Corporate Procurement and the Director of Law and Democratic Services is required to establish the availability of a permitted variation.

-Financial approval must then be obtained by the lead officer from the appropriate officer in accordance with the thresholds as set out in Table 1.

-If the sum involved exceeds £500K Cabinet approval must be obtained.

2.Publication

-Substantial variations must be published by the Council in accordance with the Procurement Act 2023. This affords suppliers or contractors the opportunity to object.

3. Permitted Grounds

(a) The variation is provided for in the original contract.

(b) A minor variation:

-not increasing or/decreasing the contract value by more than 10% for goods and services or 15% for works:

-not increasing or decreasing the duration of the contract by more than 10%

(c) Protection of life - to protect human, animal or plant life or health or protect public order or safety

(d) Extreme and Unavoidable urgency - if unforeseeable and not the fault of the Council, provided doesn't increase the costs of the contract by more than 50%

(e) Materialisation of Known Risk - provided doesn't increase the costs of the contract by more than 50%

(f) Additional goods, works or services - change in supplier would result in disproportionate technical difficulties in operation or maintenance and substantial duplication of costs for the authority, provided doesn't increase the costs of the contract by more than 50%

(g) Transfer on Corporate re-structuring - to novate the contract to a new provider who takes on the obligations of the original contractor.

TABLE 1

EXPENDITURE APPROVALS AND PROCUREMENT REQUIREMENTS

| Maximum Approval Limit | Expenditure Approval | Procurement Requirements |
|----------------------------------|-----------------------------|---|
| Exceeds £500,000 or key decision | Cabinet. | ITT Competitive tender or mini competition on the Chest |
| £250,001 to £500,000 | Chief Executive | |
| £100,001 to £250,000 | Executive Director | |
| £50,001 to £100,000 | Assistant Director | ITT Competitive tender or mini competition on the Chest |
| £10,001 to £50,000 | Head of Service | RFQ Minimum of 3 quotations on the Chest |
| Up to £10,000 | Service Lead | Minimum of 1 quotation |