



# **LANCASTER CITY COUNCIL**

## **CONTRACT PROCEDURE RULES FOR WORKS, GOODS AND SERVICES**

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## INTRODUCTION

These Contract Procedure Rules are intended to promote good purchasing practice, public accountability and to deter corruption.

The Rules are mandatory for all Officers. Following them is the best defence against any allegations that purchases have been made incorrectly or fraudulently. They lay down the minimum requirements for procurement; each Contract should be considered on its own merits and more thorough procedures adopted where appropriate..

All procurement approaches, whether established and traditional or modern and innovative (for example e-procurement tools such as e-tendering) must comply with all elements of these Rules.

All values referred to in these Rules are exclusive of VAT.

Under these Rules, where there is a requirement for correspondence to be in writing, generally e-mail and fax transmissions are acceptable as well as hard copy, except where specific communication methods are specified, for example covering the return of tenders, estimates or quotations.

Any dispute regarding interpretation of these Rules shall initially be referred to the Procurement Manager for resolution.

Terms shown in italics are explained in the DEFINITIONS section.

# SCOPE AND KEY PRINCIPLES

## 1 BASIC PRINCIPLES

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- 1.1 All purchasing and supporting procedures must:
- be cost-effective and represent value for money;
  - be consistent with the highest standards of integrity;
  - ensure fairness and transparency in awarding public *Contracts*;
  - comply with all legal requirements;
  - ensure that *Non-Commercial Considerations* do not influence any *Contracting Decisions*;
  - support the Council's corporate and service aims and activities; and
  - comply with the Council's Constitution, Financial Regulations and Procurement Strategy, as well as these Regulations.

## 2 OFFICER RESPONSIBILITIES

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2.1 Where the Contract Procedure Rules nominate an Officer of the Council, this will be deemed to mean either that individual or any formally delegated representative identified within the Council's Scheme of Delegation.

### 2.2 **Officers**

2.2.1 **Officers** responsible for purchasing must ensure that any **Agent, Consultant** or **Contractor** acting on their behalf or under their supervision also complies with:

- these Rules;
- the *Financial Regulations*;
- the *Officer Code of Conduct*;
- all UK and European binding legal requirements;
- any guidance issued by Financial or Governance Services.

### 2.2.2 In summary the *Officer* must:

- follow these Rules if purchasing goods or services or instructing building works;
- establish that there is a genuine need prior to embarking on any purchase;
- Check whether, in the case of works and services that are already provided directly by the Council, there is actually a need to seek to let a contract
- ensure that all necessary permissions and authorities have been obtained and that the necessary budgetary provision has been approved and is available;
- conduct an options appraisal for the purchase need where relevant;
- notify the Procurement Section in advance of all procurements over an *Estimated Contract Value* of £10,000;
- take all necessary legal, financial and professional advice;
- declare any relevant personal financial interests associated with any procurement or *Contract as per the Officer Code of Conduct*
- check on the Intranet or by consulting the Procurement Manager whether a *Corporate Contract* or *Central Purchasing Body* contract exists before seeking to let another *Contract*;
- use such a suitable *Corporate Contract* or *Central Purchasing Body* where one exists;
- maintain and keep appropriate records that are readily accessible and understandable by other parties (see rule 0);
- ensure that sufficient time (normally at least 4 weeks) is allowed for the preparation and submission of bids;
- ensure appropriate confidentiality in the conduct of tendering exercises;
- ensure that an appropriate agreement is established with the supplier/contractor (e.g. a written *Contract* and/or a Council purchase order) before the services, supply or works begin;

- identify a *Contract Manager* with responsibility for ensuring that the *Contract* delivers as intended;
- keep records of all dealings with suppliers;
- assess each *Contract* on completion to see how well it met the purchasing need and *Value for Money* requirements

## 2.3 Chief Officers

### 2.3.1 *Chief Officers* must:

- ensure that they comply with these Rules and lead by example;
- ensure that their staff comply with these Rules and take appropriate action should this not be the case, or where it is in doubt.

2.4 When any employee, either of the Council or of a service provider, may be affected by any potential transfer arrangement, *Officers* must ensure that the Transfer of Undertakings (Protection of Employment) (TUPE) issues are considered and legal advice obtained before proceeding with any procurement.

2.5 If a procurement requires the consideration of a shared service arrangement or other collaborative venture with another authority or public body, all necessary advice must be sought covering (but not limited to) legal, finance and human resource implications.

## 3 RELEVANT CONTRACTS

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3.1 All *Relevant Contracts* must comply with these Rules. A *Relevant Contract* is any arrangement made by or on behalf of the Council for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

- the supply of goods;
- the hire, rental or lease of goods or equipment;
- the delivery of services including, but not limited to, those relating to:
  - the recruitment of staff e.g. recruitment consultants and agency staffing,
  - land and property transactions e.g. estate and land agents,
  - consultancy services more generally;
- the letting of concession contracts;



- contracts or agreements where the provider is employed on a no win/no fee basis.

3.2 *Relevant Contracts* do not include:

- delivery of works and services by an in-house provider, including, for example: construction, engineering, maintenance, professional services, etc.
- contracts of employment which make an individual a direct employee of the Council; or
- agreements regarding the acquisition, disposal or transfer of land;
- arrangements that can properly be regarded as *grants* or *Service Level Agreements*.

3.3 If there is any doubt over whether a contract is relevant or not, the Procurement Manager should be consulted initially and if doubt still remains, the matter will be determined by the Head of Governance.

#### 4 FINANCIAL THRESHOLDS

4.1 All *Relevant Contracts* are subject to Rule 8 (Steps prior to purchase) and must be subject to competition unless there is an exception under Rule 5. The *Responsible Spending Officer* must be satisfied that the actions taken to facilitate the purchase are cost-effective and reflect the complexity and value of the purchase. The minimum competition requirements are as follows:

<b>Up to £10,000</b>	One oral <i>Quotation</i> confirmed in writing (a catalogue or published price or an e-mail is acceptable for the purposes of this requirement only).
<b>Over £10,000, up to £100,000</b>	Three written <i>Quotations</i> responding to an appropriate <i>Specification</i> .
<b>Over £100,000 up to EU Threshold</b>	A formal <i>Invitation to Tender</i> including a <i>Specification</i> and conditions of <i>Contract</i> to at least four <i>Candidates</i> after <i>Advertisement</i> .
<b>EU Threshold and above</b>	In accordance with the relevant <i>EU Procedure</i> .
<b>No Win /No Fee</b>	Formal procurement processes

will be carried out appropriate to the estimated fee/income, in order to determine which candidate offers the most advantageous service for the Council. It is probable that the evaluation will be carried out on a quality only basis.

- 4.2 Current *EU Thresholds* are displayed on the intranet and will be maintained by the Procurement Manager.

## 5 EXCEPTIONS

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- 5.1 No exception can be claimed if the EU Procedures apply.
- 5.2 For procurements below the key decision threshold (as specified in Article 13 of Part 2 of the Constitution), exceptions may be approved by the relevant Service Head in agreement with the Procurement Manager. In the event of any dispute, and for procurements above the key decision threshold, exceptions shall be referred for approval by the Head of Resources and/or the Head of Governance.
- 5.3 All exceptions made and the reasons for them must be recorded and reported to Procurement in the manner determined by the Procurement Manager.
- 5.4 The Procurement Manager will ensure that every exception made on behalf of the Council is identified in Corporate Financial Monitoring Reports, specifying the reason(s) that justified the exception being made.
- 5.5 An exception to these Contract Procedure Rules may be considered where the procurement:
- (a) involves tenders or quotations which have been invited by or on behalf of any consortium, collaboration or similar body, with which the Council enters into an agreement, in accordance with any method adopted by such a body. *The Responsible Spending Officer* must formally request an exception to the contract procedure rules where the purchase is to be made using standing arrangements with another local authority, Government department, statutory undertaker or public service purchasing consortium. Provided that, where tenders or quotations are invited by an officer of the Council as lead organisation in a collaboration, the delivery, opening and acceptance of tenders shall comply with the provisions of these procedure rules, or any overriding national or European Union legislation
  - (b) is for the supply of goods, materials or equipment that are *Proprietary Articles* or are sold or supplied only at

a fixed price and no reasonably satisfactory alternative is available. However it should be noted that value added elements might be a consideration when evaluating tenders.

- (c) the work to be executed or the goods or services to be supplied are controlled by a statutory body
- (d) is an extension of an existing Contract that has been let in accordance with these Rules (or the former Contract Procedure Rules) and the total period of this and any previous extension will not together exceed 2 years.
- (e) relates to supplies, services or works which are available only from a limited number of firms or individuals (resulting in a failure to comply with the required number of requests for Tender or Quotation, in which case a reasonable number of these shall be invited to Tender or Quote) or from only one specialist firm or individual
- (f) relates to the hiring of performance artists
- (g) relates to the engagement of barristers or specialist legal or technical advisers; this type of exception will only be approved by the Head of Governance.
- (h) relates to goods, services or works which are necessary to enable a Council Service to carry out work which it has won through competitive tender to an external customer, and where the customer has nominated specific sub-contractors or items/materials. The exception may be made provided that the price payable under the proposed Contract is within the relevant budget available.
- (i) the contract is for the execution of work or the supply of goods or services certified by the appropriate Service Head to be required so urgently as to preclude normal competition requirements.

## **6 COLLABORATIVE PROCUREMENT**

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- 6.1 In order to secure *Value for Money* and fulfil its general duty of *Best Value*, the Council may enter into a variety of collaborative procurement arrangements. The Officer must consult the Procurement Manager where a purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or Central Purchasing Body.
- 6.2 In the case of purchases from Central Purchasing Bodies, such as the Eastern Shires Purchasing Organisation (ESPO), or the Yorkshire Purchasing Organisation (YPO), or where officers propose to use consortia to renew contracts, a

*Market Review* should be undertaken to ensure that the consortia offer the best value to the Council. Officers must confirm that, for purchases above the EU Thresholds, the relevant Central Purchasing Body has satisfied the requirements of the EU Procedures by letting their Contracts in accordance with such procedures on behalf of the Council and other purchasing local authorities.

- 6.3 In some areas, the Council may enter into a collaborative service delivery arrangement with one or more other “partner” organisations (whether local authorities, other public bodies or private sector organisations). This currently includes arrangements such as the Revenues and Benefits Shared Service with Preston City Council and the Property Services collaborative arrangement with Lancashire County Council. In such circumstances, the Council may wish to take advantage of a partner’s procurement arrangements, expertise and agreements (e.g. frameworks).
- 6.4 Any Contracts entered into through such collaborative arrangements, where a competitive process has been followed which complies with the equivalent Rules of the partner organisation (but does not necessarily comply with these Rules) should be reported as an exception to these rules.
- 6.5 Officers should be aware that collaborative procurement arrangements are subject to all UK and EU procurement legislation. Advice must be sought from the Procurement Manager prior to participation in any collaborative exercise and if necessary the Head of Governance will be consulted.

## **7 FRAMEWORK AGREEMENTS**

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- 7.1 The Council may establish a *framework agreement* where the terms and conditions governing the contracts or orders to be awarded during a given period with regard to price and quality have been predetermined and acknowledged by both parties. A framework agreement will not, in itself, bind the council to any specific transactions or expenditure.
- 7.2 The length of a Framework Agreement shall not exceed 4 years without the agreement of Procurement.
- 7.3 A Framework Agreement may be awarded with a single supplier or a number of organisations.
- 7.4 Contracts based on Framework Agreements may be awarded either:
- By application of the terms laid down in the Framework Agreement without reopening competition; or
  - Where the terms laid down in the Framework Agreement are not precise enough or complete for the

particular call-off, by holding a mini-competition in accordance with the procedure laid out in § 7.5 below.

7.5 Any mini-competitions entered into must be carried out as follows:

- inviting the organisations within the Framework Agreement that are capable of executing the subject of the Contract to submit written Quotations/Tenders
- fixing a time limit which is sufficiently long to allow Quotations/Tenders for each specific Contract to be submitted;
- awarding each Contract to the tenderer who has submitted the best Quotation/Tender on the basis of the Award Criteria set out in the Framework Agreement.

# COMMON REQUIREMENTS

## 8 STEPS PRIOR TO PURCHASE

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- 8.1 The *Officer* must appraise any decision to make a purchase in a way that matches its complexity and value by:
- taking into account the requirements from any relevant consultation;
  - appraising the need for the expenditure and the priority of the purchase;
  - defining the objectives of the purchase (having first consulted users) and relating it to the achievement of the Council's Objectives as set out in the Corporate Plan;
  - assessing the risks associated with the purchase and how to manage them;
  - considering what procurement method is most likely to achieve the purchasing objective, including internal or external sourcing, partnering, collaboration or use of a purchasing consortium.

## 9 CALCULATING THE ESTIMATED CONTRACT VALUE

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- 9.1 To meet EU procurement requirements, the *Officer* must calculate the *Estimated Contract Value* for a single purchase as follows:
- a) where the proposed *Contract* is for a one-off purchase or task, by taking the estimated price for the purchase of those items, or the completion of that task;
  - b) where the proposed *Contract* is for a fixed period, by taking the total price (excluding VAT) to be paid or which might be paid (or received if a *Concession Contract*) **during the whole period**;
  - c) where a *Contract* for the provision of services is of an uncertain duration (e.g. a "rolling" *Contract*) by multiplying the estimated monthly payment by 48;
  - d) where the contract is for the purchase of goods or materials, involving recurring transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;
  - e) for feasibility studies, the value of the scheme or *Contracts* which may be awarded as a result to the same supplier;
- 9.2 Where a commitment has been made with a supplier without a formal tendering process taking place and the expenditure

exceeds the tendering threshold as mentioned in § 4.1 then the breach should be formally reported to the Procurement Manager for inclusion in the next Corporate Financial Monitoring report.

- 9.3 An *Officer* must not enter into separate *Contracts* nor select a method of calculating the *Estimated Contract Value* in order to circumvent the application of these Rules.

## **10 GETTING APPROVAL PRIOR TO COMMENCEMENT OF A PROCUREMENT EXERCISE**

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- 10.1 The *Officer* must confirm in advance of the procurement that:
- there is recorded approval for the expenditure; and
  - if the decision to purchase is a Key Decision, all appropriate steps have been taken to comply with the requirements of Rule 10.3.
- 10.2 The *Officer* must ensure that budgetary provision is available and in place to cover the *Estimated Contract Value*.
- 10.3 If the *Estimated Contract Value* is over £100,000, or the Contract will be on a 'No Win/No Fee' basis and the contract has the potential to exceed this value, the proposal must be published in the Notice of Forthcoming Key Decisions.

## **11 DECIDING ON PROCUREMENT ROUTE**

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- 11.1 There are a number of different sourcing options that can be taken to ensure a successful procurement outcome for the Council. Officers must consider the availability and suitability of the following options:
- In-house Provider. Subject to it being confirmed and agreed that the Service in question has the capacity and capability to deliver the required works, goods or services to required standards, an in-house provider should be regarded as the first choice. The Procurement Manager is able to advise on the range of in-house services available.
  - Determine if the acquisition of the goods or service is necessary and consider if there are any opportunities to borrow what is required from another service, local authority or partner.
  - Corporate Contract – a contract may already be in place within the council which could be utilised without the need for new a tender process
  - Contract or Framework let by a Central Purchasing body – for example, Yorkshire Purchasing Organisation (YPO), Government Procurement Service (GPS), North East Purchasing Organisation (NEPO). These organisations and others have contracts and

frameworks that are available for public sector bodies to use.

- Collaboration – a number of authorities or public bodies who have a common requirement combine their spending power to achieve better value. It is common practice for one body to take the lead on such procurements; with other organisations giving advice and support where necessary.
- Partnership – this is a type of contract and is common where there is to be a long term relationship or the provision of a strategic item.
- Competitive Procurement Exercise – if the officer decides that a new competitive exercise is the best solution to fulfil the requirement then the procedures laid out in CONDUCTING PURCHASES should be followed.

## 12 RECORD KEEPING

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- 12.1 Where the *Estimated Contract Value* is up to £100,000, the *Officer* must keep the following records, as a minimum:
- the rationale to support the purchasing decision
  - any exemptions or waivers and the reasons for them
  - the reason or reasons if the lowest price is not accepted
  - copies of any communications with the successful Contractor or unsuccessful Candidates.
  - details of all those Candidates requested to provide a Quotation; a copy of the Request for Quotation; and all Quotations received;
  - the checks carried out to confirm the financial viability (for the value of the Contract) of any potential Candidates; and
  - the reasons why those Candidates were selected to provide a Quotation; and
  - the basis on which a particular Quotation was accepted i.e. the most economically advantageous offer to the Council or the lowest price.
- 12.2 Where the *Estimated Contract Value* is over £100,000 the *Officer* must record, as a minimum:
- Copies of any approvals or consents (including Executive Member decisions)
  - Details of approved budgetary provision
  - The method used for obtaining the tenders;



- Written records of any communications with Candidates
- Authorisation to proceed with Post Tender negotiations
- Detail in full the information that has led to any Contracting Decision and the reasons for it
- Any exemption or waiver and the reasons for.
- The Award Criteria and the scoring and weightings applied.
- Tender documents sent to and received from Candidates
- Evaluation of tenders
- Clarifications and any post-tender negotiation including minutes of any meetings and all correspondence;
- The Contract Documents – ensuring that the originally signed contract is placed with Governance Services
- Post-Contract monitoring
- Written records of communications with the successful Contractor throughout the period of the Contract.

12.3 Records required by rules 12.1 and 12.2 must be kept in an organised and retrievable manner to support efficient recovery by any officer that might require this information.

12.4 Records required by these rules must be kept for six years after the end of the Contract or twelve years for Contracts under seal. See Rule 27.3 for sealing requirements.

12.5 *Officers* must arrange for the original copy of all signed contracts to be lodged with Governance Services (Legal), as soon as the contract has been awarded.

## 13 ADVERTISING AND APPROVED LISTS

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### 13.1 Identifying and Assessing Potential *Candidates*

13.1.1 Officers shall ensure that where proposed Contracts (irrespective of value) might be of interest to potential Candidates located in other member states of the EU, a sufficiently accessible Advertisement is published. Generally the greater the interest to potential Candidates the wider the coverage of the Advertisement should be. Advertisements may be placed in/on:

- The Council's website (mandatory for all *Contracts* of a total *Estimated Contract Value* of over £10,000)
- The Official Journal of the European Union (mandatory for all Contracts to which the EU Procedures apply).
- Portal websites specifically created for Contracts including as a minimum the Council's supplier portal.
- National journals (the cost of these adverts are sometimes prohibitive and thought should be given to the cost-effectiveness of any such advertising)

13.1.2 *Officers* are responsible for ensuring that all *Candidates* for a *Relevant Contract* are suitably assessed. The assessment process shall seek to establish that the potential *Candidates* possess:

- Sound economic and financial standing, through a financial check for contracts of over £100,000 (or lower when the supplier is new to the market or where payment is requested in advance). This assessment should be undertaken in consultation with Financial Services.
- The necessary technical ability and capacity to fulfil the specified requirements of the Council.

13.1.3 Due consideration should be given to involving/consulting other Council Services when making these assessments.

13.1.4 The assessment process referred to in § 13.1.2 above shall be fulfilled in respect of proposed *Contracts* by selecting firms appropriate to the financial thresholds set out in Rule 4 from:

- The Approved List of providers, maintained by Constructionline; or

- Shortlists prepared following an assessment of the expressions of interest in a particular Contract which have been submitted in response to a public Advertisement.

13.1.5 Public *Advertisements* issued in respect of Rule 13.1.4 above shall reflect the potential degree of interest from *Candidates* located within other member states of the EU.

## 13.2 **Approved Lists**

13.2.1 An Approved List may not be used for any *Contract* where any *EU Procedure* applies

13.2.2 Subject to § 13.2.1 above, an Approved List should only be used where recurrent transactions of a similar type are likely, but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise.

13.2.3 The Procurement Manager shall be made aware of any Approved List.

13.2.4 The drawing up of an Approved List must be based on the outcome of an Advertisement inviting applications for inclusion on the List. The Advertisement must be placed to ensure wide publicity among relevant suppliers. Persons may be entered on the List between the creation of the initial list and any re-advertisement, provided that the requirements of rule 13.2.5 are met.

13.2.5 No person / Company may be entered on an Approved List until there has been adequate investigation into both their financial and technical ability.

13.2.6 Approved Lists must be re-advertised at least every four years. On re-advertisement, a copy of the Advertisement must be sent to people on the list, inviting them to reapply.

13.2.7 Any Approved List shall be maintained in an open, fair and transparent manner and shall be open to public inspection.

13.2.8 Constructionline will be deemed to be an Approved List for the purpose of these Rules.

# CONDUCTING PURCHASES

## 14 COMPETITION REQUIREMENTS FOR PURCHASING AND PARTNERSHIP ARRANGEMENTS

### 14.1 Purchasing – Competition Requirements

14.1.1 Where no approved alternative procurement method is appropriate (i.e. purchasing from a *Central Purchasing Body* or from a *Corporate Contract*) then the following procedures must be followed as determined by the *Estimated Contract Value*.

Contract Type	<i>Estimated Contract Value</i>	Competition Requirements
<b>All small/medium contracts</b>	£0 to £10,000	One oral <i>Quotation</i> confirmed in writing
	Over £10,000 and up to £100,000	Three <i>Quotations</i> in writing, submitted under <i>sealed bid Candidates</i> – selected from an <i>Approved List</i> or by <i>Advertisement</i>
<b>Large Contracts</b>	Over £100,000 and up to <i>EU Threshold</i>	<i>Invitation to Tender</i> to at least four <i>Candidates</i> following <i>Advertisement</i>
	<i>EU Threshold and above</i>	<i>EU Procedure</i>

14.1.2 Where the *EU Procedure* applies the *Officer* must consult the Procurement Manager to determine the most appropriate method of conducting the purchase.

14.1.3 Where it can be demonstrated that there are insufficient suitably qualified *Candidates* to meet the competition requirements, all suitably qualified *Candidates* must be invited. This does not remove the need to advertise in the EU Journal if above the EU Threshold.

## 14.2 Partnership Arrangements (Partnering Contracts)

14.2.1 Partnership arrangements are subject to all UK and EU procurement legislation and must follow these Rules. If in doubt, *Officers* must seek advice from the Head of Governance and the Procurement Manager.

## 15 PRE-TENDER MARKET RESEARCH AND CONSULTATION

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15.1 The *Officer* responsible for the purchase:

- May consult potential suppliers prior to the issue of the *Invitation to Tender* in **general terms** about the nature, level and standard of the supply, *Contract* packaging and other relevant matters **provided** this does not prejudice any potential *Candidate*; but
- **Must not** seek or accept technical advice about the preparation of a *Specification*, an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them if this may prejudice the equal treatment of all potential *Candidates* or distort competition; and
- Should seek advice from the Procurement Manager when necessary.

## 16 STANDARDS AND AWARD CRITERIA

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16.1 The *Officer* responsible for the purchase must require all *Candidates* to ascertain and comply with the relevant British, European or international standards that apply to the subject matter of the *Contract*.

16.2 The *Officer* must define *Award Criteria* that are appropriate to the purchase and designed to secure equality of treatment and an outcome giving Value for Money for the Council. The basic criteria shall be:

- “most economically advantageous offer”, where considerations other than price, e.g. “quality” also apply, or
- “lowest price” where payment is to be made by the Council; or
- “highest price” if payment is to be received by the Council (e.g. for a disposal).

16.3 If the first criterion is used, it must be further defined by reference to sub-criteria, which may only refer to considerations relevant to the subject matter of the *Contract*. All *award criteria* must be identified to candidates, together with the value and weighting that will be applied. **Under NO**

**circumstances** can the criteria, value or weightings be changed once published to candidates. Award criteria may include:

- Price – including Whole Life Costing.
- service standards (including equality issues where appropriate)
- quality of goods
- operating costs
- technical merit
- previous experience of supplier
- delivery date
- cost effectiveness
- environmental considerations where directly relevant to the subject matter of the Contract
- aesthetic and functional characteristics
- safety
- after-sales services
- technical assistance
- disposal requirements and costs
- any other relevant matters.

16.4 *Award Criteria* must **not** include

- *Non-commercial considerations*
- matters which discriminate against suppliers from the *European Economic Area* or signatories to the *Government Procurement Agreement*.

## **17 OBTAINING QUOTATIONS**

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17.1 A *Request for a Quotation* must contain enough detailed information about the Council's requirements to enable a competitive price to be obtained. This will usually be in the form of a *Specification*.

17.2 The Request for a Quotation must state that the Council is not bound to accept any Quotation.

17.3 The relevant *Responsible Spending Officer* shall, in each case, keep a record as referred to in § 12.1.

17.4 All organisations invited to submit a *Quotation* must be issued with the same information at the same time and

subject to the same conditions. Any supplementary information must be given on the same basis.

- 17.5 All Requests for *Quotations* where the contract value is up to £100,000 shall be subject to the *Council's Standard Terms and Conditions* unless other terms and conditions have been approved by the relevant Head of Service or Legal Services. The terms and conditions as determined above must be included with all *Requests for Quotations* and the final *Contract* shall be subject to those terms and conditions. All Requests for *Quotations* where the contract value is over £10,000 must include a set of *Contract* conditions.

## 18 INVITATIONS TO TENDER

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- 18.1 The *Invitation to Tender* shall state that no *Tender* will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*. No *Tender* submitted in contravention of this clause shall be considered.
- 18.2 All *Invitations to Tender* shall include the following:
- a) A *Specification* that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
  - b) A requirement for Candidates to declare that the *Tender* content, price or any other figure or particulars concerning the *Tender* have not been disclosed by the Candidate to any other party (except where such a disclosure is made in confidence for a necessary purpose).
  - c) A requirement for Candidates to complete fully and sign all *Tender* documents including a form of *Tender* and certificates relating to canvassing and non-collusion.
  - d) Notification that *Tenders* are submitted to the Council on the basis that they are compiled at the Candidate's expense.
  - e) A description of the Award Procedure and a definition of the Award Criteria in objective terms and any weightings to be applied.
  - f) A notification that no *Tender* will be considered unless it is submitted in the manner described in the Guide to *Quotations* and *tenders*.
  - g) The method by which any arithmetical errors discovered in the submitted *Tenders* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender* or vice versa.

- 18.3 All Invitations to Tender must specify the goods, services or works that are required, together with the terms and conditions of *Contract* that will apply.
- 18.4 The *Invitation to Tender* must state that the Council is not bound to accept the lowest or any Tender.
- 18.5 All *Candidates* invited to Tender must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

## 19 SHORT LISTING

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- 19.1 Any short listing must have regard to the financial and technical standards relevant to the *Contract* and the *Award Criteria*. Special rules apply in respect of the *EU Procedure*; in such cases advice should be sought from the Procurement Manager.
- 19.2 Where an *Approved List* is used, short listing may be done by the *Officer* in accordance with the short listing criteria drawn up when the list of *Candidates* from the *Approved List* was compiled. However, where the *EU Procedure* applies, an *Approved List* may **not** be used.

## 20 SUBMISSION, RECEIPT AND OPENING OF TENDERS

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- 20.1 *Candidates* must be given adequate time in which to prepare and submit a proper *Tender* or *Quotation* consistent with the urgency and complexity of the requirement. It is recommended that at least 20 *Working Days* must be allowed for submission of a *Tender*. The *EU Procedure* lays down specific time periods for each stage of a tendering procedure which must be complied with.
- 20.2 All Tenders must be returned using the preferred method as detailed in the Guide to Quotations and Tenders.
- 20.3 All returned tenders must be opened at the same time when the period for submission has ended and not before the date of submission.
- 20.4 If there is an error in a *Tender* or supporting information the *Candidate* must be invited to confirm or withdraw the bid as it stands. **However**, where the error relates to the tendered total as calculated from the tendered rates and variable quantities, an amended *Tender* price may be requested to accord with the rates given by the *Candidate*.



## 21 CLARIFICATION PROCEDURES AND POST TENDER NEGOTIATION

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- 21.1 Post tender negotiations must not be used in any *EU Procedure* except for the Negotiated Procedure.
- 21.2 The *Officer* is permitted to provide clarification of an *Invitation to Tender* to potential or actual *Candidates* so long as that clarification is provided to all *Candidates* at the same time.
- 21.3 The *Officer* may seek clarification of a Tender from one or all *Candidates* in writing or at a meeting so long as notes of that meeting are taken and agreed with all parties.
- 21.4 Where post-tender negotiations result in a fundamental change to the *Specification* or *Contract* terms the *Contract* may not be awarded but must be re-tendered. Where necessary, the *Officer* should consult the Procurement Manager as to whether changes may be construed as being fundamental.
- 21.5 The *Officer* may negotiate the terms of a Tender from one or all *Candidates* in writing or at a meeting, providing that:
- the Service Head is satisfied that the officer carrying out the negotiation has the skill and competency commensurate with the complexity and value of the contract and has authorised such action. Confirmation of authorisation is to be recorded as per Rule 12.2.
  - the Procurement Manager should be made aware of any Post Tender negotiations that are taking place
  - notes of that meeting are taken and agreed with all parties
  - the officer seeks advice and support from the Procurement Manager
  - the officer has regard and follows the Council's Code of Conduct for Employees at all times.
- 21.6 Officers may seek authorisation to carry out negotiations on contracts that are currently being delivered; this may be with regard to price or quality. Authorisation will be granted by the Service Head.

## 22 EVALUATION OF THE CONTRACT

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- 22.1 Apart from the de-briefing of *Candidates* referred to in Regulation 23 below, confidentiality of *Quotations*, *Tenders* and the identity of *Candidates* must be preserved at all times

and information about one *Candidate's* response must not be given to another *Candidate*.

- 22.2 If a Freedom of Information Request is received asking for information about a current tendering process, the Information Management Officer must be consulted.
- 22.3 Tenders must be evaluated in accordance with the published Evaluation/Award Criteria.
- 22.4 Where the *Contract Value* is over £100,000, the *Officer* must provide unsuccessful *Candidates* with a period of at least 10 days in which to challenge the decision before the *Officer* awards the *Contract*.
- 22.5 The *Officer* must consider the full implications, including resources, that any agreement or contract will have on other services.

### 23 APPROVAL FOR THE AWARD OF A CONTRACT

- 23.1 The contract award arrangements for the various categories of contract are:

Contract Type	Estimated Contract Value	Award Requirements
<b>Small Contracts</b>	£0 to £10,000	<ul style="list-style-type: none"> <li>• RSO.</li> <li>• Officer with delegated authority from RSO.</li> </ul>
<b>Medium contracts</b>	Over £10,000 up to £100,000	<ul style="list-style-type: none"> <li>• RSO with financial authority.</li> <li>• Service Head.</li> </ul>
<b>Large Contracts</b>	Over £100,000 up to <i>EU Threshold</i>	<ul style="list-style-type: none"> <li>• Acceptance of tender to be granted by the Chief Executive, or in his absence, the Head of Resources or Head of Governance.</li> </ul>
	<i>EU Threshold and above</i>	
<b>No Win/No Fee Contracts/Agreements</b>	Unknown	<ul style="list-style-type: none"> <li>• Service Head, on the advice of the Procurement Manager.</li> </ul>

- 23.2 Sufficient budgetary provision must be in place before a tender can be presented for acceptance and Financial Services (Accountancy) must provide written confirmation that this is the case. In the event that the budgetary provision is insufficient, the relevant responsible Spending

Officer must consult with the Financial Services Manager for advice on how to proceed.

- 23.3 A tender for acceptance will be presented in the first instance to the Procurement Manager who will ensure that sufficient information is appended prior to it being forwarded to the Chief Executive for acceptance. If there are any areas of doubt, the Procurement Manager will obtain comments from the Head of Resources and Head of Governance prior to forwarding the acceptance to the Chief Executive.
- 23.4 As set out in Article 13 of the Constitution, the Key Decision financial thresholds apply to the acceptance of tenders (as award of contracts) and as such, the appropriate decision-making, publication and call-in arrangements apply, as set out in the Constitution.
- 23.5 In the case of a *Concession Contract* where the tender received is less than the *Estimated Contract Value* by 15% or more, the approval of the Head of Resources must be obtained prior to submitting the tender for acceptance.

## **24 DEBRIEFING OF CANDIDATES**

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- 24.1 If the decision is challenged by an unsuccessful *Candidate* then the *Officer* shall not award the *Contract* and shall immediately seek the advice of the Head of Governance and the Procurement Manager.
- 24.2 If a *Candidate* requests reasons for a *Contracting Decision*, the *Officer* must comply with the Council's corporate response standard and in any event must give the reason in writing within 15 days of the request. *Debriefings* should be carried out in writing to reduce the risk of challenge.
- 24.3 The *Officer* may also give the *debriefing* information to *Candidates* who were not selected in a pre-tender short listing process if so requested.

## 25 VARIATION OR EXTENSION TO CONTRACTS

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- 25.1 If a contract requires a *variation*, this deviation from the original tender specification must be recorded within the contract file, even where there is no change in contract price. All variations must be agreed and signed by the *contractor*.
- 25.2 Where the variation is significantly different to the original specification a new quotation or tender process must be carried out. A contract clause should be used in all contracts reserving the Council's right to seek alternative quotations or tenders, appoint others or use its own resources to carry out any additional works.
- 25.3 Extending the term of a contract should only be performed when the ability to extend was expressed in the tender document and it was made clear to the prospective suppliers at the tendering stage that the contract may be extended. The duration of any extensions must also be published. Under these circumstances, an extension may be granted by an officer with delegated responsibility from their Service Head for managing the contract in question.
- 25.4 Contracts which fail to provide for an extension may be allowed to extend to term should there be unforeseen delays beyond the control of the contractor and/or officer. In this instance an exception to the contract procedure rules must be requested as provided for in section 5.

## 26 PROCUREMENT CARDS

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- 26.1 Procurement cards are used as a method of payment and do not remove or lessen the requirement to follow these contract procedure rules.
- 26.2 Procurement cards will only be issued to officers where a request has been made by the Service Head and the Procurement Manager deems it appropriate.
- 26.3 Officers to be issued with a Procurement Card must attend a formal training session delivered by the Procurement Manager and sign the Employee Agreement for the Procurement Card Holder.
- 26.4 Officers who are issued with a Procurement Card must comply with the Employee Agreement for the Procurement Card holder and the Purchasing Card User Guide.

# CONTRACT AND OTHER FORMALITIES

## 27 CONTRACT DOCUMENTS

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### 27.1 Contract Conditions

27.1.1 Details of the systems to be used for the ordering and paying for work, goods and services are covered in section D (Financial Systems and Procedures) of the Council's Financial Procedures.

27.1.2 For all contracts, *Officers* must ensure that all necessary financial, legal and human resources advice is sought in determining contract conditions.

27.1.3 All *Contracts* over £100,000 shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be provided);
- What is to be paid and when;
- The time or times within which the *Contract* is to be performed/delivered;
- The provisions for the Council to terminate the *Contract*;
- That they are subject to the Council's Standard Terms and Conditions unless the Head of Governance approves an alternative.
- That the Contract is subject to the law as to the prevention of corruption (Rule 28);
- That the Contractor may not assign or sub-Contract without the Council's prior written consent
- Appropriate insurance requirements
- Appropriate health and safety requirements;
- The statutory data protection requirements;
- The Council's non-discrimination requirements;
- Appropriate environmental requirements
- The statutory Freedom of Information Act requirements;
- Audit access and monitoring requirements;
- The requirement to cooperate with internal and external (including Ombudsman) enquiries or investigations;

- 27.1.4 The advice of Financial Services must always be sought for any *Contract* involving leasing arrangements
- 27.1.5 The advice of Legal Services must always be sought for the following *Contracts*:
- Where it is proposed to use the *Candidate's* own terms and conditions;  
NB. This will not apply where purchases are made online using a procurement card.
  - Those potentially involving the transfer of staff into or out of the Council or between external *Contractors* (in which case HR advice must also be sought);
- 27.1.6 The advice of the Procurement Manager must be sought for the following *Contracts*:
- Where the *Estimated Contract Value* is more than £100,000;
  - Those that are complex in any other way.

## 27.2 **Contract Completion**

- 27.2.1 *Contracts* shall be completed in accordance with article 14 of the Constitution.
- 27.2.2 All *Contracts* must be concluded formally in writing before the supply, service or works begin except in exceptional circumstances and then only with the written consent of the Head of Governance.
- 27.2.3 If any payment is to be made in advance of performance of the *Contract*, the relevant *Contract* must be concluded before any such payment is made.
- 27.2.4 A letter of intent shall not be used instead of a *Contract* unless in a form approved by the Head of Governance.
- 27.2.5 The *Officer* responsible for securing the signature of any *Contract* is responsible for getting written confirmation that the person signing for the other Contracting party is authorised so to do and can bind the Contracting party.

## 27.3 **Sealing**

- 27.3.1 Use of the Common Seal of the Council is covered by article 14.05 of the Constitution and the seal is to be affixed to those documents which, in the opinion of the Head of Governance, should be sealed.

27.3.2 Where each side adds their formal seal to complete a *Contract*, the affixing of the Council's seal must be attested by the Chief Executive or any Service Head.

27.3.3 The seal must not be affixed without proper authority.

27.3.4 The opinion of the Head of Governance regarding use of the Common Seal must be sought where:

- There is a prospect that the Council may wish to sue on the Contract more than six years after it ends or where there is no cash payment made; or
- The price paid or received under the Contract is a nominal price and does not reflect the value of the goods or services; or
- Where there is any doubt about the authority of the person signing for the other Contracting party.

#### 27.4 **Bonds and Parent Company Guarantees**

27.4.1 A *Parent Company Guarantee* is required where the *Candidate* is a subsidiary of a parent company and:

- award is based on the evaluation of the Parent Company; or
- there is some concern about the stability of the Candidate.

27.4.2 A *Bond* is required:

- where it is proposed to make stage or other payments in advance of receiving the whole of the deliverable under the Contract and there is some concern about the stability of the Candidate. This may be necessary when awarding to a new entrant to the market.

### 28 **PREVENTION OF CORRUPTION**

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28.1 The *Officer* must comply with the *Officer Code of Conduct* (as included in the Council's *Constitution*).

28.2 As provided for in the *Officer Code of Conduct*, the *Officer* must not invite or accept any gift or reward in respect of the award or performance of any *Contract*. It will be for the *Officer* to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal.

28.3 The following clause must be put into every written Council *Contract*:

“The Council may terminate this *Contract* and recover all of its loss if the *Contractor*, its employees or anyone acting on the *Contractor’s* behalf do any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council *Contract* (even if the *Contractor* does not know that this has been done); or
- (b) commits an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or
- (c) commits any fraud in connection with this or any other Council *Contract* whether alone or in conjunction with Council members, *Contractors* or employees.

Any clause limiting the *Contractor’s* liability shall not apply to this clause.”

## **29 TERMINATION OF CONTRACT**

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29.1 For any contract over £100,000, early termination of the contract (for whatever reason) shall be subject to the Chief Executive’s approval and the reason(s) for this action being taken is to be subsequently reported to Cabinet. Contracts of a lesser value may be terminated early by mutual agreement prior to the expiry date or in accordance with the termination provisions set out in the contract. The advice of the Head of Governance should be sought in these circumstances.

## **30 FAILURE OF A CONTRACTOR**

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30.1 When an existing *contractor* or supplier to the Council goes into receivership, liquidation or ceases trading in some other way, the officer responsible must immediately report the issue to the Procurement Manager. The Procurement Manager will then liaise with all relevant parties including but not limited to *Officers* of the Council, the administrators and the companies’ staff.



## 31 DECLARATION OF INTERESTS

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- 31.1 Officers must comply with the requirements on declaring personal interests included in the *Officers' Code of Conduct*. Elected Members must comply with those requirements included in the Members' Code of Conduct (both as incorporated in Part 7 of the Council's *Constitution*).
- 31.2 If it comes to the knowledge of a Member or an *Officer* of the Council that a Contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Head of Governance. Such written notice is required irrespective of whether the pecuniary interest is direct or indirect.
- 31.3 A shareholding in a body not exceeding a total nominal value of £1000 or 1% of the nominal value of the issued share capital (whichever is less) is not a pecuniary interest for the purpose of this Rule.

# CONTRACT MANAGEMENT

## 32 MANAGING CONTRACTS

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- 32.1 The relevant Head of Service must name a *Contract Manager* for all *Contracts* over £100,000. All such *Contracts* must have a named *Contract Manager* for the entirety of the *Contract*.

## 33 RISK ASSESSMENT AND CONTINGENCY PLANNING

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- 33.1 For all *Contracts* over £100,000, the *Contract Manager* must:
- Ensure that arrangements are made to identify, assess and record any key risks associated with the procurement that could impact on the relevant service's objectives;
  - For identified risks, ensure that appropriate mitigation and/or contingency measures are documented and in place;
  - Ensure that critical support, maintenance and business continuity requirements are documented in the *Specification* in order to avoid costly *Post-Tender Negotiations*.

## 34 CONTRACT MONITORING, EVALUATION AND REVIEW

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- 34.1 All *Contracts* where the *Estimated Contract Value* is the same as or exceeds the *EU Threshold*, or which are deemed to involve high levels of risk, are to be subject to a formal and documented quarterly review with the *Contractor*.
- 34.2 During the life of the *Contract* the *Contract Manager* must monitor the *Contractor* in respect of:
- Performance
  - Compliance with the *Contract Documents*;
  - Cost;
  - Any Value for Money requirements;
  - User satisfaction and risk management.

The monitoring must be carried out in a way that matches the complexity and value of the *Contract*.

- 34.3 If the Contract is to be re-let, the *Contract Manager* must evaluate the extent to which the contract has met the purchasing need and the contract objectives as set out in the original project appraisal or business case. The evaluation should be available in sufficient time to inform the approach to re-letting any subsequent Contract.

## DEFINITIONS

**“Advertisement”**

A notice giving details of the procurement published on the Council’s website; a trade journal as required; a non-mandatory notice in the Official Journal of the European Union (OJEU) if desired for below threshold *Contracts* and in OJEU if over the *EU Thresholds*;

**“Approved List”**

a list of suppliers or contractors who have been through a prequalification exercise to determine if they have the suitable experience and qualification to do business with the Council. This list will be used to request quotations or tenders.

**“Award Criteria”**

The criteria by which the successful *Quotation* or Tender is to be selected.

**“Award Procedure”**

The procedure for awarding a contract as specified in Rules 14 and 16 to 24.

**“Best Value”**

The most advantageous balance of price, quality, and performance achieved through competitive procurement methods in accordance with stated selection criteria.

**“Bond”**

An insurance policy: if the *Contractor* does not do what it has promised to do under a *Contract* with the Council, the Council can claim from the insurer the sum of money specified in the *Bond* (often 10% of the *Contract Value*). A *Bond* is intended to protect the Council against costs arising from the *Contractor’s* failure.

**“Candidate”**

Any person or organisation who asks or is invited to submit a *Pre-qualification questionnaire*, a *Quotation* or a Tender.

**“Central Purchasing Body”**

Another local authority or Contracting Authority (such as ESPO, YPO or the Office of Government Commerce) which acquires supplies and/or services or awards public Contracts or concludes Framework Agreements intended for other local authorities.

**“Chief Officers”**

The term Chief Officers describes the collective name given to Management Team and consists of the following officers: the Chief Executive, Head of Community Engagement, Head of Environmental Services, Head of Resources, Head of Governance, Head of Health and Housing services, Head of Regeneration and Planning, Section 151 Officer and Monitoring Officer.

**“Concession Contract”**

A *Contract* where the payment or part of the payment for the services or works relates to the granting by the Council of the right for the *Contractor* to exploit the works or services to be carried out.

**“Constitution”**

The constitutional document approved by the Council which:

- (a) Allocates powers and responsibilities within the Council and between it and others;
- (b) Delegates authority to act to Members and *Officers*
- (c) Regulates the behaviour of individuals and groups through rules of procedure, codes and protocols of which these *Contract Procedure Rules* are a part.

**“Contract”**

An agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a consideration (usually monetary).

<b>“Contract Documents”</b>	Documents which are a part of the agreement between the Council and the <i>Contractor</i> . Most Contracts will define what the <i>Contract Documents</i> are.
<b>“Contracting Decision”</b>	Any of the following decisions: <ul style="list-style-type: none"> <li>• Composition of an <i>Approved List</i></li> <li>• Withdrawal of an <i>Invitation to Tender</i></li> <li>• Who to invite to submit a <i>Quotation</i> or Tender</li> <li>• Shortlisting</li> <li>• Award of <i>Contract</i></li> <li>• Any decision to terminate a <i>Contract</i>.</li> </ul>
<b>“Contract Manager”</b>	The <i>Officer</i> with responsibility for ensuring that the Council obtains the benefit of the <i>Contract</i> .
<b>“Contracts Register”</b>	A central register of the <i>Contracts</i> entered into by the Council, which is maintained by Procurement.
<b>“Contractor”</b>	An organisation appointed by the Council to provide it with goods, services or works.
<b>“Corporate Contract”</b>	A <i>Contract</i> let by the Council that is intended for, and should be used by all Officers within the Council.
<b>“Council’s Standard Terms and Conditions”</b>	The Council’s Standard Terms and Conditions of Contracts for orders and low value contracts, which can be found on the Intranet.
<b>“Debrief”</b>	To provide unsuccessful <i>Candidates</i> with information about their performance in a completed procurement process.
<b>“Delegations”</b>	Any power, duty or authority delegated to an Officer by the Council, the Leader or a Committee, as set out in the <i>Constitution</i>

<b>“Estimated Contract Value”</b>	The value of the <i>Contract</i> estimated in accordance with the provisions of Rule 9.
<b>“EU Procedure”</b>	The procedure required by the European Union (EU) where the <i>Estimated Contract Value</i> exceeds the relevant <i>EU Threshold</i> .
<b>“EU Threshold”</b>	The <i>Contract</i> value at which the EU public procurement directives and Public Contract Rules must be applied.
<b>“European Economic Area”</b>	The European Economic Area (EEA) comprises the countries of the European Union (EU), plus Iceland, Liechtenstein and Norway. It was established on 1 January 1994 following an agreement between the member states of the European Free Trade Association (EFTA) and the European Community (which became the EU). It allows Iceland, Liechtenstein and Norway to participate in the EU's Internal Market without being members of the EU.
<b>“Exception to the contract procedure rules Form”</b>	The form to be used when registering use of an exception under Rule 5.5 of these Procedure Rules.
<b>“Financial Regulations”</b>	Rules relating to financial management as set out in the Council's <i>Constitution</i> .
<b>“Forthcoming Key Decisions”</b>	The formal published list of all <i>Key Decisions</i> that are to be considered by <i>Councillors</i> over the following four months.
<b>“Framework Agreement”</b>	An agreement between one or more Contracting organisations and one or more <i>Contractors</i> which establishes the terms governing Contracts to be awarded during a set period in particular with regard to price and, if appropriate, quantities.

<b>“Government Procurement Agreement”</b>	(GPA). The successor agreement to the General Agreement on Trade and Tariffs. The main signatories, other than those in the EU, are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Lichtenstein and Singapore.
<b>“Grants”</b>	A voluntary, often “one-off”, transfer of money to an organisation, usually intended to support the delivery of specific objectives or activities but without detailed conditions attached.  (See also “ <i>Service Level Agreement</i> ”).
<b>“Invitation to Tender”</b>	The document containing the invitation to Candidates to tender for a particular <i>Contract</i> .
<b>“Key Decision”</b>	A decision made in the exercise of an executive function by any person (including <i>Officers</i> ) or body which meets one or more of the conditions set out in Article 13.03 of Part 2 of the Council’s <i>Constitution</i> .
<b>Market Review</b>	Study or investigation to determine the dynamics of a business sector to determine if there is sufficient activity to successfully complete a tender exercise and achieve a satisfactory result in delivering the Councils requirements
<b>“Nominated Suppliers and Sub-Contractors”</b>	Those persons specified in a main <i>contract</i> who are to be engaged to supply specific materials, goods or services in discharging part of that <i>contract</i> .
<b>“Non Commercial Considerations”</b>	Under section 17 of the Local Government Act 1988, the following are defined as non-commercial matters which must not be referenced in contracting decisions:



- (a) the terms and conditions of employment by *Contractors* of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces (“workforce matters”);
- (b) whether the terms on which *Contractors Contract* with their sub-contractors constitute, in the case of *Contracts* with individuals, *Contracts* for the provision by them as self-employed persons of their services only;
- (c) any involvement of the business activities or interests of *Contractors* with irrelevant fields of Government policy (an example of this would be refusing to do business with *Contractors* who have worked on military nuclear installations in opposition to the government’s defence policy in the area of nuclear armaments);
- (d) the conduct of *Contractors* or workers in industrial disputes between them or any involvement of the business activities of *Contractors* in industrial disputes between other persons (“industrial disputes”);
- (e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of *Contractors*;

- (f) any political, industrial or sectarian affiliations or interests of *Contractors* or their *Directors*, partners or employees;
- (g) financial support or lack of financial support by *Contractors* for any institution to or from which the authority gives or withholds support;
- (h) use or non-use by *Contractors* of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.

**Exception:** Workforce matters and industrial disputes, as defined in paragraphs (a) and (d) above, may now be considered in contracting decisions to the extent that this is necessary or expedient to comply with Part 1 of the Local Government Act 1999 (*Best Value*); or where there is a transfer of staff to which the Transfer of Undertakings (Protection of Employment) Rules 2006 (“*TUPE*”) may apply.

**“Officer”**

The *Officer* designated by the Head of Service to deal with the *Contract* in question.

**“Officer Code of Conduct”**

The Code of Conduct for Council officers as set out in the *Constitution*.

**“Parent Company Guarantee”**

A *Contract* that binds the parent of a subsidiary company to act in accordance with the provisions of the guaranteed *Contract* in the event that the subsidiary company fails to do what it has promised under the guaranteed *Contract*.

**“Post Tender Negotiation”**

Negotiations with a Candidate after submission of a Tender and before award of the *Contract* with a view to obtaining a change to the price, delivery or content submitted.

**“Pre qualification questionnaire”**

A questionnaire sent to Candidates which have expressed an interest in tendering for a Contract. Sometimes referred to as an application form.

**“Procurement Strategy”**

The Strategy approved by the Council setting out the Council’s approach to procurement and key priorities for the next *few years*.

**“Proprietary Articles”**

Goods or services that can only be sourced from one supplier. The supplier will hold the copyright and/or patent for the goods or service and will control the distribution of such.

**“Quotation”**

A formal statement (submitted usually in response to a request for quotation) by a potential supplier to supply goods or services required by a buyer, specifying prices and the validity of the prices for specified period. A quotation may also contain terms and conditions and any warranties.

**“Relevant Contracts”**

*Contracts* to which these Rules apply, as defined in section 3.

**“Request for Quotation”**

A formal written Request to a supplier or suppliers for a price for the delivery of defined services, works or supplies in accordance with the Council’s Standard Terms and Conditions.

**“Responsible Spending Officer”**

Officers who are accountable for the management and control of budgets. This includes incurring spend against, and monitoring and reporting on the use of those budgets.

**“Revenue”**

Day to day running expenses.

**“Seal”**

The legal term seal arises from the wax seal used throughout history for authentication (among other purposes). A seal is affixed to a contract or other legal document as validation of the Councils commitment to the agreement.

**“Sealed Bid”**

Documents submitted in response to an invitation to tender/quote either in a sealed envelope or electronically into a secure repository. All submissions to be opened/released at the same time and place.

**“Service Level Agreement”**

A form of contract between a service provider and customer/stakeholder which typically details the nature, quality and scope of the service to be provided and the nature, level and frequency of consideration (usually monetary) to be made in return.

In the local government context this generally refers to the provision of funding to a third party (e.g. charitable or voluntary sector organisation) to assist in its delivery to the public of specific services, activities or outcomes which help meet the Council’s wider social and economic objectives for the area.

See also “Grants”

**“Shared Service”**

The provision of a service by one part of an organisation or group where that service had previously been found in more than one part of the organization or group. The funding and resourcing of the service is shared and the providing department effectively becomes an internal service provider to its members.

<b>“Specification”</b>	A clear description of the requirements under the <i>Contract</i> . The amount of detail will vary according to the value and complexity of the purchase.
<b>“Tender”</b>	A Candidate’s proposal submitted in response to an <i>Invitation to Tender</i>
<b>“TUPE”</b>	Transfer of Undertakings (Protection of Employment) Rules 2006. Rules introduced to ensure the protection of employees where, for example, a business is taken over by another employer. Broadly <i>TUPE</i> ensures that the rights of the employees are transferred with the <b>business</b> .
<b>“Value for Money”</b>	A term generally used to describe an explicit commitment to ensuring the best results possible are obtained from the money spent. Use of this term reflects a concern for more transparency and accountability in spending public funds, and for obtaining the maximum benefit from the resources available.
<b>“Variation”</b>	A change, alteration or deletion from the original specification as tendered for by the <i>contractor</i> .
<b>“Whole Life Costing”</b>	Whole-Life Cost (WLC), or Life-Cycle Cost (LCC), refers to the total cost of ownership over the life of an asset. This will include the initial purchase (or lease) price, the cost of maintaining and operating an asset, the cost of any consumables and its disposal.

***“Workforce Matters”***

The Council cannot consider matters classed as “non-commercial” considerations as part of the procurement process. However, authorities may consider the following matters **to the extent that they are relevant to the delivery of Best Value** or for the purposes of a *TUPE* transfer:

- How employers treat their staff as regards terms and conditions of employment, arrangements for promotion, transfer or training or other opportunities afforded to their workforce.
- The conduct of suppliers or workers in industrial disputes between them.

***“Working Day”***

A complete day other than a Saturday, Sunday, or Bank Holiday.