

# **Lancaster City Council**

## **Contract Procedure Rules**

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## Introduction

These Contract Procedure Rules (CPRs) are intended to promote good procurement practice, public accountability and to deter corruption. The CPR's are mandatory for all Officers. Following them is the best defence against allegations that a purchase has been made unfairly, incorrectly or fraudulently. Officers responsible for purchasing must comply with these CPRs. They lay down minimum requirements. These Contract Procedure Rules have been written to allow social value, community wealth-building and environmental benefits to be included in procurement decisions.

Social Value for the purpose of these contract procedure rules is taken to include Community Wealth-Building, Environmental and Economic benefits.

Further advice on the CPRs can be sort by contacting procurement in the first instance. You may also need to contact Legal.

All procurement approaches, whether established and traditional or modern and innovative must comply with all elements of these CPR's.

All values referred to in these CPR's are exclusive of VAT

## Section 1: Scope of the Contract Procedure Rules

### 1.0 Basic Principles

#### 1.1 All purchasing procedures must:

- Comply with the Treaty of Rome principles of equality, transparency, non-discrimination, Equal Treatment, Mutual Recognition and proportionality
- Achieve value for money for all public money spent
- Be consistent with the highest standards of integrity
- Ensure fairness and transparency in allocating public contracts
- Comply with UK & EU law and all legal requirements
- Ensure that non-commercial considerations (except those allowed for in the Social Value Act) do not influence any contracting decision
- Comply with the Council's various Codes of Practice and the Council's aims and policies
- Seek to incorporate social value, community wealth-building and environmental benefits.

### 2.0 Officer Responsibilities

#### 2.1 Officers responsible for purchasing must comply with these Contract Procedure Rules, the Council's Financial Regulations, the Staff Code of Conduct, the Council's Anti-Bribery policy, arrangements for declaring conflicts of interest and Council's Scheme of Delegation and with all UK and European Union binding legal requirements. Officers must ensure that any agents, consultants and contractual partners acting on their behalf also comply. Officers must:

- Have proper regard for all necessary legal, financial and professional advice
- Declare any personal financial interest in a contract. Corruption is a criminal offence
- Report any offers of bribes or inducements
- Conduct any relevant value for money review
- Ensure that there is adequate budget provision for the procurement being undertaken
- Check whether there is an existing contract that can be used before undergoing a competitive process
- Allow sufficient time for the submission of bids
- Keep all supplier bids confidential
- Keep records of all dealings with suppliers
- The project manager should ensure the safe keeping of contract documentation in line with Lancaster's document retention policy.
- Obtain all required approvals and complete a written contract (and sealed, as required) before placing an order or raising a purchase order for any supplies, services or works
- Where appropriate, not award a contract until the standstill period is over
- Enter all purchase order information onto the Oracle financial system
- Based on the Scheme of Delegation, identify a senior manager who is the designated contract owner responsible for the relationship with the supplier. In addition, a contract manager with responsibility for day to day issues and ensuring the contract delivers as intended may also be appointed
- Ensure that contracts are legally, financially and technically capable of delivery to the Council

- 2.2 When any employee either of the Council or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment - TUPE) issues are considered.
- 2.3 Unless otherwise delegated, Directors should:
- Keep records of all purchases and contracts valued below £100,000
  - Ensure that all signed and sealed contracts valued at £100,000 and greater are scanned and entered onto the Contract Register
  - Ensure that all Waivers are recorded under Rule 17

### 3.0 Grants

- 3.1 For the purposes of these Contract Procedure Rules, a grant refers to grant-in-aid and is the provision of funding to cover, in whole or, more likely, in part, the running costs of an organisation whose work complements that of the Council. The recipient will have discretion over the spending of that funding within the general framework of controls agreed between the Council and the recipient of the grant.
- 3.2 The terms of a grant are likely to require the other organisation to use the money only for a particular project or service and might require the recipient to pay back the grant, or part of it, in some circumstances. The Council would still, of course, monitor the achievement of the proposed outcomes and any giving of a grant should be subject of a formal contract.
- 3.3 The Council should determine on a case by case basis whether funding is to be considered as a grant or a Relevant Contract by reference to the decision making tool published by the National Audit Office at <http://www.nao.org.uk/decision-support-toolkit/>. A Relevant Contract is any arrangement made by, or on behalf of the Council the carrying out of works or for the supply of goods, materials or services.

### 4.0 Collaboration

- 4.1 In order to secure value for money, the Council may enter into a procurement arrangement with a Central Purchasing Body (CPB). The terms and conditions of the CPB must be fully complied with, including any requirement to undertake competition between providers. In order to secure value for money, the Council may enter into collaborative procurement arrangements with another local authority, government department, primary care trust, statutory undertaker or other contracting authority.
- 4.2 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). In such circumstances, the council may wish to take advantage of a partner's procurement arrangements, expertise and agreements (e.g. frameworks).

### 5.0 Relevant Contracts

- 5.1 All Relevant Contracts must comply with these Contract Procedure Rules. These include arrangements made by or on behalf of the Council for the carrying out of works or the supply of goods, materials or services, for:
- The supply of goods, services and works
  - The hire, rental or lease of goods or equipment
  - Concession contracts for the supply of services and works
  - Contracts or agreements where the provider is employed on a no win/no fee basis.

5.2 Relevant Contracts do not include:

- Contracts of employment which make an individual a direct employee of the Council
- Grants – see rule 3
- Fines
- Payment of taxes
- Agreements regarding the acquisition, disposal, or transfer of land (for which Financial Regulations shall apply)
- Delivery of works and services by an in-house provider, including for example: construction, engineering, maintenance, professional services, etc
- Contracts for the provision of any product or service that has been manufactured or delivered by an illegal means

## Section 2: Common Requirements

### 6.0 Steps Prior to Purchase

- 6.1 Officers should take the following steps before beginning a procurement exercise:
- a. Determine the service, product or works output taking into account the requirements from any relevant value for money review and the Council's commissioning outcomes
  - b. Appraise the need for the expenditure and its priority
  - c. Define the objectives of the purchase
  - d. Assess the risks associated with the purchase and how to manage them
  - e. Officers involved in the evaluation of tenders must complete the declarations of interest form prior to the evaluation criteria being developed and agreed and prior to the start of the evaluation process
- 6.2 Officers should also consider what procurement method is most likely to achieve the purchasing objectives, including packaging strategies, internal or external sourcing, shared services, concession arrangements, partnering arrangements and collaborative procurement arrangements with other local authorities and government departments. Officers should also consider working with Primary Care Trusts, statutory undertakers, members of the Lancaster and South Cumbria Joint Committee and Central Purchasing Bodies.
- 6.3 Officers should ensure that all procurements including method, contract standards and performance and user satisfaction monitoring and including any collaborative arrangements, are carried out using the Council's principles of co-production and co-delivery. Officers should also use the Council's standard terms and conditions of contract where possible.
- 6.4 The officer must confirm that they have the authority to spend, have obtained the required approval(s) for the expenditure and the purchase accords with the Scheme of Delegation. If the purchase is valued at £250,000 and greater, an entry onto the Council's Forward Plan has been made. If the purchase is valued at £50,000 and greater, the relevant Cabinet Member has been consulted.

### 7.0 Procurement Records

- 7.1 Where the total value is less than £100,000, the relevant officer must ensure that the following records are kept:
- Invitations to quote and quotations
  - A record of any waivers to the procurement process and the reasons for them
  - Written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced
  - Copies of the quotes received must be appended to the relevant requisition
- 7.2 Where the total value exceeds £100,000, the relevant Head of Service must ensure that the following records are kept:
- The method for obtaining bids
  - The calculation of the estimated value
  - The reason for entering into a contract
  - Any waiver under Rule 17 together with the reasons for it
  - The award criteria in descending order of importance
  - Tender documents sent to and received from tenderers
  - Pre-tender research, benchmarking and consultation information

- All tender evaluation documentation. To include the scoring assessment sheet for each of the tender evaluators. Any post-tender clarification information, to include minutes of meetings
- The contract documents
- Contract due diligence checks, implementation and evaluation plan and any monitoring and management information
- Communications with all tenderers throughout the tendering exercise and with the successful supplier(s) throughout the period of the contract
- Record of Social Value offering that is to be measured and delivered through out the contract.

7.3 All contracts must be entered onto the Council's Contract Register held on the supplier portal. The manager responsible for procuring the contract should ensure the safe keeping of contract documentation in line with Lancaster's document retention policy.

## Section 3: Purchasing Rules

### 8.0 Competition Requirements for Purchases, Partnership Arrangements Frameworks and Concession contracts

8.1 Officers must calculate the total aggregate value of any contract or purchase. If in doubt, Officers should seek the advice of their procurement team.

8.2 The following table shows the procedures and approval process for the Council's tendering activities:

	Total Aggregate Value	Procedure	Internal Approval	Other Essential Requirements
A	£0.00 up to & including £10,000	One Written Quote	RSO	<ul style="list-style-type: none"> <li>The quote must represent value for money</li> </ul>
B	Greater than £10,000 & up to £100,000*	One of: <ul style="list-style-type: none"> <li>A framework or dynamic purchasing system (DPS)</li> <li>Three Written Quotes</li> </ul>	RSO	<ul style="list-style-type: none"> <li>Unless a framework is used, 3 written quotes to be secured under sealed bid, of which, at least one quote from a local Lancaster supplier*.</li> <li>opportunities valued at or greater than £25,000 which are being openly advertised must, in addition to the supplier portal be advertised on the Contracts Finder</li> <li>Above £50,000 relevant cabinet member to be consulted.</li> </ul> <p>*it should be noted that for procurements below EU Thresholds a restricted process can be permitted with all suppliers from the local area, subject to a waiver under Rule 17.</p>
C	£100,000* & up to and including £150,000*	Formal Tendering through one of the following: <ul style="list-style-type: none"> <li>A Framework or DPS</li> <li>Tender including advertisement</li> </ul>	Director	<ul style="list-style-type: none"> <li>Pre-qualification Questionnaires may not be used to restrict providers below Public Services Contract Threshold. However Suitability questions are permitted.</li> </ul>

		<ul style="list-style-type: none"> <li>on Lancaster's supplier portal, Contracts Finder,</li> <li>• Relevant cabinet member to be consulted.</li> </ul>		<ul style="list-style-type: none"> <li>• Details on Contract Register</li> <li>• Contract placed under seal if advised by Legal</li> </ul>
D	Greater than £150,000 and up to and including £200,000	<ul style="list-style-type: none"> <li>• Formal tendering</li> <li>• Refer to EU rules and requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Chief Executive</li> </ul>	<ul style="list-style-type: none"> <li>• As C, above,</li> <li>• Above EU threshold pre-qualification allowed.</li> </ul>
E	Greater than £200,000	<ul style="list-style-type: none"> <li>• Formal tendering</li> </ul>	<ul style="list-style-type: none"> <li>• Chief Executive with delegated authority</li> </ul>	<ul style="list-style-type: none"> <li>• As D, above</li> <li>• Above £250,000 published on the Councils Forward Plan of decisions.</li> </ul>

### 8.3

- a. Where a contract is valued between public services contract threshold and any higher applicable public contract threshold, it is possible to use a restricted tendering (two stage) process.
- b. Where a contract is valued between the Lancaster tendering threshold and the public services contract threshold, a single stage process shall be used.
- c. **Framework Contracts** – An agreement between one or more contracting authorities and one or more economic operators. The term of a framework shall, save duly, justified and exceptional circumstances not exceed 4 years. Frameworks cannot be used in an improper manner that may hinder, restrict or distort competition. All terms and conditions of contract must set out how call-offs from the framework will be made and must be followed.
- d. **Dynamic Purchasing System (DPS)** – A completely electronic system used to purchase commonly used goods, services or works. Unlike a traditional framework the process shall be open throughout the contract term allowing new suppliers to join at any time. A DPS must follow the rules of restricted procedure.
- e. **Concession Contracts** – To grant to the provider the sole and exclusive right to deliver the contract and to make money from the contact. A Concession contract must follow the requirement of the Concession Contract Regulation and can follow a single or restricted procedure.

Where two-stage process is allowed, the tender advertisement must show the number of suitably qualified tenderers who will be invited to submit bids.

- 8.4 An Officer must not enter into separate contracts nor select a method of calculating the total value in order to minimise the application of these contract procedure rules or to avoid the requirements of the EU.
- 8.5 Where extensions of time or variations in price (or both together) are made to an existing contract, Officers must adhere to the extension and/or variation provisions in the terms and conditions. Officers must compute the amount of the variation and seek approval in accordance with the Council's Scheme of Delegation.
- 8.6 Where a contract is to be terminated before its contracted termination date, this must be approved by the relevant Director.
- 8.7 Legal must be consulted where contracts to work for organisations other than the Council are contemplated.

## 9.0 Pre-Tender Stage

- 9.1 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. Or give an unfair advantage to a potential candidate. Officers are strongly advised to engage with suppliers during the tender process.
- 9.2 The responsible officer must consider Responsible Procurement at this stage. Contracts tendered must not only achieve value for money on a whole life costing basis for the organisation but also for society, the economy and the environment. Steps must be taken to incorporate social value, community wealth-building and environmental benefits.

For Contracts or orders over £50,000 Officers are required to engage with their Cabinet Member before the approval of tender has been given. Discussions should include the contract's outcomes and outputs and opportunities for social value, community wealth-building and environmental benefits.

## 10.0 Advertising and Prequalification

- 10.1 Officers should ensure that, where proposed contracts, irrespective of their total aggregate value, might be of interest to potential suppliers located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Advertisements for tenders should be placed as below:
  - a. For procurements valued between £0.00 and up to £100,000, officers are not obliged to formally advertise the purchase but may do so using the Council's supplier portal
  - b. For contracts above £25,000 and that are being openly procured, Officers must advertise the opportunity on Contracts Finder.
  - c. Where the value exceeds the current EU thresholds for supply, service and works contracts, tender advertisement rules must be followed in accordance with the current EU Public Procurement Directive
  - d. For procurement activity of any value officers may use additional advertisements in national official journals, specialist trade papers or websites, if relevant and if affordable.

## 11.0 Standards & Award Criteria

- 11.1 The Officer must ascertain the relevant EU, UK, European or international standards which apply to the subject matter of the contract. The Officer must include those standards which are necessary properly to describe the required quality. Legal Services team must be consulted if it is proposed to use standards other than European standards.
- 11.2 The Officer must define award criteria that are appropriate to the purchase and designed to secure an outcome giving Value for Money for the Council. The basic criteria shall be:
  - a. "Most Economically Advantageous", where price and quality elements are considered. All elements to be fully identified (including sub-criterion) in the Invitation to Tender (ITT) documentation. Quality elements should include delivery of Social Value.
  - b. "Highest Price" if payment is to be received for sale or disposal
- 11.3 Award criteria must not include non-commercial considerations except those set out in the Public Services (Social Value) Act 2012, the Procurement Strategy or matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement and must reflect the subject matter of the contract.
- 11.4 Social Value outputs will be included in any contract award criteria, where the contract value is above £100,000. For contracts below £100,000 officers should include Social Value output wherever possible.

## 12.0 Invitations to Tender & Quotations

- 12.1 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.
- 12.2 All Requests for Quotes or Invitation to Tenders valued at £10,000 and greater must be conducted online through the Supplier Portal. Officers and suppliers will be provided with guidance and support on how the system works and where they can get help.
- 12.3 All Invitations to tender to include the following:
  - a. The requirement that all Tenders and their responses for contracts valued at £100,000 and greater must be completed online
  - b. A specification that describes the Council's requirements. A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose)
  - c. A requirement for tenderers 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 prepared at the tenderer's expense
  - e. A description of the award procedure and, a definition of the award criteria in objective terms and if possible, in descending order of importance
  - f. 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
- 12.4 All Invitations to tender or quotations must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 16).
- 12.5 Tenders that are returned without a requested signed Form of Tender will be considered as non-compliant.
- 12.6 All candidates invited to tender, or quote 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.

### 13.0 Shortlisting

- 13.1 Any shortlisting must have regard to the financial standing, technical capacity and capability relevant to the contract and the award criteria.
- 13.2 Where the contract value relates to the EU thresholds, Officers must adhere to specific shortlisting rules that apply in respect of the EU Directives.

### 14.0 Submission, Receipt & Opening of Tenders & Quotations

- 14.1 Tenders of £100,000 or greater must be returned directly using the Council's supplier portal. Further information on the e-tendering system is available from the procurement team. Tenders must be submitted directly to the portal.
- 14.2 An electronic reverse auction should only be used following discussion with the Procurement Manager. The procedure enables suppliers/providers to adjust their tender price in the light of information from the tender prices submitted by competing suppliers/providers, then alterations will be accepted as permitted by the auction process.
- 14.3 All submitted tenders must be opened at the same time when the period for submission has ended and not before the date of submission.
- 14.4 Suppliers who have expressed interest or have been invited to participate in a tender must be given adequate period in which to prepare and submit a proper quotation or tender, consistent with the complexity of the contract requirement. The EU Directive on public procurement includes specific tendering time periods.
- 14.5 Any tender that does not comply with the Council's requirement as set out in the tender invitation should normally be excluded from consideration, with the circumstances recorded. Officers may, however, seek the agreement of the Head of Legal and procurement to relax these requirements in appropriate circumstances.

### 15.0 Clarification Procedures and Post Tender Negotiation

- 15.1 Providing clarification of an invitation to tender to potential or actual candidates or seeking clarification of a tender, in writing, is permitted. Discussions with tenderers after submission of a tender and before the award of a contract (post tender clarification) with a view to clarifying mistakes or errors in the tender submitted, operational provisions or terms and conditions of contract are permitted. Where post tender clarification discussions are to take place with a supplier, all tenderers involved in the respective exercise must be notified and all information must be documented by the Officers conducting the clarification.
- 15.2 However, discussions with tenderers after submission of a tender and before the award of a contract with a view to obtaining adjustments in scope, price, delivery or content (i.e. post-tender negotiations) must be subject to the current EU/UK Public Procurement Directives.
- 15.3 The officer may negotiate the terms of a Tender form one or all Candidates in writing or at a meeting, provided that:
- The Director 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 kept as a record.
  - 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 the 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.

- 15.4 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 Director.
- 15.5 Where post-tender clarification results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

#### 16.0 Evaluation, Award of Contract & Debriefing of Candidates

- 16.1 Apart from the debriefing required or permitted by these CPRs, the confidentiality of quotations, tenders and the identity of candidates must be preserved at all times and information about one candidate's tender submission must not be given to another candidate.
- 16.2 In accordance with Regulation 24 you must "take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators". Contracts must be evaluated and awarded in accordance with the award criteria and agreed evaluation methodology.
- 16.3 Any evaluations that are undertaken independently should have scores determined, if necessary, by a tender evaluation panel during a moderation meeting. All documentation pertaining to the evaluation and decision including minutes, individual scores and notes are to be retained.
- 16.4 If arithmetical errors are found in a tender or the tender submission is deemed to be "abnormally low" they should be clarified with the tenderer. If the rates in the tender, rather than the overall price, were stated within the tender invitation as being dominant, an amended tender price may be requested to accord with the rates given by the tenderer.
- 16.5 Officers may accept quotations and tenders received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these contract procedure rules and in respect of the Scheme of Delegation.
- 16.6 Where the total value is at £100,000 and greater, both the successful and unsuccessful tenderers should be notified as soon after the decision as possible.
- 16.7 If the contract falls within the PCR's 2015 then the appropriate Regulations should be followed. The standstill period will commence from the date the final letter is sent. The letters must
- a. Follow the Alcatel period as specified under Regulation 87 of the PCR 2015.
  - b. In accordance with Regulation 86(2) the notice must provide the unsuccessful tenderers feedback to their total score, the reasons for the decision, including a narrative explanation of the characteristics and relative advantages of the winning tender.
  - c. Officers must provide unsuccessful candidates with a period of at least ten calendar days in which to challenge the decision before the Officer awards the contract. If the decision is challenged by an unsuccessful candidate, then the Officer shall not award the contract and should immediately seek the advice of the Lancaster Legal team.
  - d. If during the alcatel period a candidate requests in writing the reasons for a contracting decision, the Officer must give the reasons in writing within 15 days of the request.

#### 17.0 Waivers (Single Tender Action – Direct Award Contracts)

- 17.1 For Contracts above the PCR's 2015 thresholds it is recognised that, under exceptional circumstances, only one provider may be able to fulfil the needs of the Council. The Public

Contracts Regulations do not provide a single term to cover such arrangements and consequently they may be referred to by various names. These will include Single Tender Action, Direct Awards, Single Sourcing, Waivers etc. All must be treated in the same manner.

A Single Tender Action is the award of a contract to a single or a limited group of Suppliers, Service Providers or Contractors without undertaking a competitive tendering exercise. Such action is permitted under the EU Procurement Directives in the following, exceptional circumstances:

- a. **Technical Reason** – Only one enterprise has the expertise to do the work
- b. **Exclusive Rights** - only one party can perform the contract due to intellectual/industrial property rights e.g. patents/trademarks or copyright
- c. **Artistic Rights** - engaging an artist or performer
- d. **Consultancy Services** - follow up work to complete the assignment previously awarded on a competitive tendering exercise.

17.2 For Contracts below the PCR's 2015 threshold The Council and its Cabinet may waive any requirements within these CPRs for specific projects. However, consideration must be given to the risk of legal challenge should a decision not to advertise the requirement and proceed to award the contract or framework without competition be made. The Council may delegate that authority in line with section 8.2 of these Standing Orders and the Head of Legal. Normally the circumstances under which a waiver can be agreed include those listed in 17.1 and:

- a. **Demonstrable Best Interest:** it can be demonstrated that it is in the Council's best interest and this is clearly demonstrated in the comments section in the waiver report
- b. **Emergency:** There is a clear need to provide a service or product immediately in the instance of a sudden unforeseen crisis; the immediate risk is to health, life, property or environment. Normal competitive processes are not feasible
- c. **Changing an Existing Contract:** making significant improvements and/or changes to an existing contract. This will usually be captured in a contract variation waiver
- d. **Urgency:** there exists an unforeseen situation calling for prompt action in order to provide a product or service that fulfils a specific statutory obligation, e.g. health and safety requirements. Competitive processes may not be feasible
- e. **Exigencies of a Service:** there are demonstrable circumstances that are genuinely exceptional
- f. **Extension as Waiver:** where a contract extension is being sought which was not duly authorised in the original Officer Delegated Decision

Single Tender Actions **will not** be permitted in the following circumstances:

- time constraints through poor project planning
- previous relationships with suppliers
- to avoid a competitive tendering exercise.

17.3 All waivers, the reasons and the justification for them and the period for which the waiver is valid must be recorded and signed off by the relevant officer and manager in accordance with the Council's Scheme of Delegation.

A single tender still requires a set of Invitation to Tender documents including terms and conditions and scope of works to be drafted and issued, and a written formal response to be made by the supplier through the Council's e-tendering portal.

17.4 The decision-making route for waivers is as follows: Waiver

Value	Decision Maker
£0.00 up to £150,000	<ul style="list-style-type: none"><li>• Director</li></ul>
£150,000 and greater	<ul style="list-style-type: none"><li>• Monitoring Officer or Section 151 officer</li></ul>

## Section 4: Contract Documents & Other Formalities

### 18.0 Contract Documents

- 18.1 All relevant contracts should be in writing and should set out the parties' obligations, rights and risk allocations.
- 18.2 All relevant contracts, irrespective of value, should clearly specify:
- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done)
  - The provisions for payment (i.e. the price to be paid and when)
  - The time, or times, within which the contract is to be performed
  - The provisions for the Council to terminate the contract
  - The terms and conditions to be applied to the contract
- 18.3 The Council's terms and conditions of contract should be used wherever possible rather than the suppliers. If you intend to use the supplier's terms advice must be sought from the Legal team.
- 18.4 If the Council's standard terms and conditions are not used, every relevant contract of purchase over £100,000 must also state clearly as a minimum:
- That the contractor may not assign or sub-contract without prior written consent
  - How the contractor would indemnify the Council against any negligent act or omission
  - Any insurance requirements
  - How the contract may be ended because of non-performance or otherwise
  - How intellectual property is dealt with
  - How services may be varied
  - That the contractor should pay the living wage
  - Important performance indicators
  - Health and safety requirements
  - Ombudsman requirements, if relevant
  - Data protection requirements (GDPR), if relevant
  - That charter standards are to be met if relevant
  - Race relations requirements
  - Requirements under the Equalities Act 2010
  - Anti-fraud, Corruption and Modern Slavery
  - Freedom of Information Act requirements
  - Where Agents are used to let contracts, that Agents must comply with the Council's contract procedure rules
  - A right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant
  - Special conditions relating to Responsible Procurement
  - Where required Special Conditions relating to Works Contracts
- 18.5 The formal advice of the Legal team must be sought for the following contracts:
- Where it is proposed to use a supplier's own terms
  - Those that involve insourcing or outsourcing
- 18.6 In addition to Legal advice the advice of the Procurement Manager should be sought for contracts:
- Where the total value exceeds £100,000
  - Those involving leasing arrangements
  - That are complex in any other way.
- 18.7 Officers must arrange for the original copy of all signed contracts to be lodged with Legal Services, as soon as the contract has been awarded.

## 19.0 Contract Formalities

- 19.1 All contracts should be concluded formally in writing before the supply, service or construction work begins.
- 19.2 The Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.
- 19.3 Subject to any exceptions as provided elsewhere in the Scheme of Delegation, all contracts to be made under seal (other than contracts for the sale and acquisition of land at auction, electronic e-auctions and insurance contracts) will be determined by the Head of Legal.
- 19.4 Where contracts are completed by each side adding their formal seal, such contracts shall be attested by the Chief Executive or Director. The seal must not be affixed without the proper authority. A contract must be sealed where in the opinion of the Head of Legal:
  - a. The Council wishes to enforce the contract more than six years after its end
  - b. The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services
  - c. There is any doubt about the authority of the person signing for the other contracting party

## 20.0 Bonds & Parent Company Guarantees

- 20.1 The Officer must consult the appropriate Director to determine whether a Parent Company Guarantee is necessary and at what level when a Candidate is a subsidiary of a parent company and:
  - a. Award is based on evaluation of the parent company, or
  - b. There is some concern about the stability of the candidate
- 20.2 The Officer must consult the appropriate Director about whether a Bond is needed, where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the candidate

## 21.0 Prevention of Corruption

- 21.1 The Officer must comply with the Officer Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. High standards of conduct are obligatory. Findings of corrupt behaviour in Council officers may lead to dismissal.

## 22.0 Declaration of Interest

- 22.1 If it comes to the knowledge of a member or an employee 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 Legal
- 22.2 Such written notice is required irrespective of whether the pecuniary (financial) interest is direct or indirect. An indirect pecuniary interest is distinct from a direct pecuniary interest in as much as it is not a contract to which the member or employee is directly a party.
- 22.3 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not a pecuniary interest for the purposes of this standing order.
- 22.4 A record of all declarations of interests notified by Officers will be maintained

## Section 5: Contract Management

### 23.0 Managing Contracts

- 23.1 Heads of Service are to name contract managers for all new contracts. All contracts should have a named Council contract owner and contract manager for the entirety of the contract.
- 23.2 Contract managers must follow the procedures set out in the Council's Contract Procedure Rules.

### 24.0 Risk Assessment & Contingency Planning

- 24.1 Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
- 24.2 For all contracts with a value of £100,000 and greater, the contract manager must:
  - a. Maintain a risk register during the contract period
  - b. Undertake appropriate risk assessments and for identified risks
  - c. Ensure contingency measures and business continuity plans are in place

### 25.0 Contract Monitoring, Evaluation & Review

- 25.1 All contracts valued at £100,000 and greater are to be subject to regular formal reviews with the contractor. An initial review should be done at the first 3 months of a contract start date and on-going reviews should then be conducted on a regular schedule.
- 25.2 A formal review process must be applied to all contracts deemed to be High Risk, High Value, or High Profile. This process must be applied at key stages of major procurements.
- 25.3 During the life of the contract, the Officer must monitor a contract in respect of:
  - a. Performance and compliance with specification and contract
  - b. Cost and any value for money requirements
  - c. User satisfaction and risk management
  - d. Equality Assessment Progress Report (including Living Wage)
  - e. Supplier Financial Health Check
  - f. Relevant Due Diligence clarifications including Modern Slavery