

# The Contract Procedure Rules

## Information to reader:

The Local Government Act 2000 (Constitutions) requires the Constitution to include rules, regulations and procedures relating to the Authority's procurement process. The rules are contained within this document. There is also a considerable amount of guidance and templates that underpin and facilitate these rules. Links to this guidance are shown as [underlined blue narrative](#)

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## Guidance Documents

- A. [Guidance to the Contract Procedure Rules](#)
- B. [Procurement Flow Chart](#)
- C. [Guidance for Health and wellbeing, care, education and Support](#)
- D. [Additional procurement guidance for Construction](#)
- E. [Grant Decision Guide](#)
- F. [Social Value Guide](#)

## **1. Purpose**

1.1 The aims of the Contract Procedure Rules [the Rules] are to:

- achieve value for money
- ensure compliance with all legal requirements
- ensure transparency, openness, non discrimination and fair competition
- support the Council's corporate aims, values and priorities
- protect our officers
- demonstrate probity, consistency, accountability and integrity
- assist in time management and planning for procurement

1.1 The Rules are supported by Guidance. Officers should have due regards to this Guidance when planning and carrying out procurement

## **2. Scope**

2.1 The Rules apply to all contracts with outside organisations, or people, including agreements with or on behalf of other public sector organisations & partner agencies, where there is an agreement to supply goods, works or services, in return for money or payments in kind, whether that agreement is formal or informal. This includes:

- purchasing of all goods and services or works
- loan or leasing arrangements
- instruction of outside experts or consultants under contracts for services
- tenders for sub-contracts
- grants and external funding arrangements
- Sale of services, goods and assets

2.2 These Contract Procedure Rules do not apply to contracts of employment or contracts relating to interests in land.

## **3. Legal and Statutory Requirements**

3.1 The Council is obliged by virtue of section 135 of the Local Government Act 1972 to make contract procedure rules to ensure competition and regulate the procurement process

3.2 Every contract above the relevant [EU Thresholds](#) whether made by, or on behalf of, the Council must comply with the relevant statutory requirements (known as the 'EU Procurement Rules')

3.3 Contracts must also comply with the Council's Financial Regulations and protect the Councils' interests fully

3.4 The risks of non compliance with the Regulations are significant and include awards of damages, a fine for the authority and contracts being cancelled. A breach of these contract procedure rules is a disciplinary matter.

3.5 Where there is a conflict between these Contract Rules and EU Regulations, then EU Regulations will apply.

#### 4. Responsibilities

4.1 Every officer and member of the Council has a responsibility to declare any links or personal interests which they may have with purchasers or suppliers and/or contractors if they are engaged in contractual or purchasing decisions on behalf of the Council. Officers should complete a [Declaration of Interest Form](#) and submit this to the Assistant Director or relevant Director as soon as they become aware of such an interest. Members are responsible for amending their own entries in the Register of Interests held by Member Services as soon as they become aware of such an interest.

Designation	Responsibilities
<b>Assistant Directors</b>	<ul style="list-style-type: none"> <li>• Ensure that their teams comply with these Contract Rules.</li> <li>• Ensure that key strategic procurement projects are properly resourced and have legal, financial, procurement and where necessary HR input at the outset.</li> <li>• Ensure that schemes of delegation are obtained as required</li> </ul>
<b>Service Delivery Managers</b>	<ul style="list-style-type: none"> <li>• Ensure that officers with sufficient training, experience and knowledge of the Rules carry out procurement.</li> <li>• Ensure that resources are available to allow compliance with the Rules</li> <li>• Ensure contracts are signed at the appropriate level in accordance with the <a href="#">Finance Regulations</a> and the Rules</li> <li>• Appoint a Procurement Champion for their Service Delivery Area</li> <li>• Attend Auctions to bid for items providing that funding is in accordance with approved budgetary estimates.</li> <li>• Enter into leasing arrangements on behalf of the Council</li> </ul>
<b>Officers</b>	<ul style="list-style-type: none"> <li>• Comply with these Contract Rules, Financial Regulations, and the Code of Conduct for employees and with all UK and European Union legislation.</li> <li>• Ensure they and any team members they are responsible for are suitably trained before they procure.</li> <li>• Ensure that any agents, consultants and contractual partners acting on their behalf also comply with the Rules</li> <li>• Maintain an audit trail of all authorities given and decisions made to show how the Rules have been complied with in a fair and transparent process</li> <li>• Involve Procurement and Legal Services at the earliest opportunity and at all necessary stages of the procurement</li> <li>• Store all documents in electronic form, including any correspondence in a restricted shared drive or eTeam site.</li> </ul>
<b>Third Parties</b>	<ul style="list-style-type: none"> <li>• Must comply with the Rules and Officers instructing third parties to procure contracts must supply them with a copy</li> <li>• Officers and third parties must ensure that any Conflict of Interest is avoided in the first instance or declared to the appropriate Assistant Director using the <a href="#">Declaration of Interest Form</a>. Legal advice must be obtained by Officers where any conflict has the potential to impact on a contractual relationship</li> </ul>

## 5. General Requirements

### 5.1 The Public Services (Social Value) Act 2012

The Act requires public bodies in England and Wales to consider:

- how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
- how, in conducting the process of procurement, it might act with a view to securing that improvement

**The Act must be considered at the pre – procurement stage of all contracts for services.**

For further information please refer to the [Social Value Guide](#) guidance

### 5.2. Equalities

5.2.1 The general equality duty, set out in the Equality Act 2010, requires Councils to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the act
- advance equality of opportunity between people who share a [Protected Characteristic](#) and those who do not and
- foster good relations between people who share a protected characteristic and those who do not.

5.2.2 The Council must consider the impact the procurement outcome may have on the people who live and work in their area, with regard to their age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

5.2.3 If the procurement:

- may have a high negative impact,
- had a previous impact assessment that identified a high negative impact,
- impacts on a large number of people, or,
- deals with particularly sensitive issues

5.2.4 You may need to carry out a Community Impact Assessment at the planning stage of your procurement. Further guidance can be found on the [Assessing Impact](#) page of the Council's intranet.

## 6 Key Decisions

6.1 Officers must consider whether the decision to procure is a [Key decision](#) and if so ensure that details are entered onto the [Notice of Key Decision](#) in good time.

6.2 Where the procurement is a key decision, the Officer must obtain evidence of the key decision being approved such as the minutes from the relevant cabinet meeting, and store this for completeness with the tender and contract documentation.

## 7 Contract Classification and Forms of Contract

- 7.1 Officers should consider which type of contract they are procuring:-
- A contract for works, including [construction and engineering](#)
  - A contract for services or
  - A contract for goods
- 7.2 If the procurement is for a “mixed” contract then the predominant purpose will prevail. The appropriate terms and conditions for that type of contract must be used as detailed below.
- 7.3 The Council’s [Terms and Conditions](#) must be used for all tenders and contracts and the Council must avoid entering into contracts under provider’s/contractor’s terms and conditions.
- 7.4 On occasion, there may be a requirement for a specialised service which brings with it a need for non standard Terms and Conditions. In this case the Terms and Condition must always be discussed with Procurement Team in advance and approved prior to any tender issue and contract award.
- 7.5 Officers should ensure that any Terms and Conditions indicated by use of a regional or national framework do not differ significantly the Council’s own Terms and Conditions and if in doubt should have these reviewed by the Legal team.
- 7.6 Officers must consider the total value of the contract at the outset (see [guidance to contract procedure rules](#)) and follow the prescribed route below using the [Procurement flow chart](#) for guidance.

Total Value	Action
Under £10,000	Achieve best value through informal quotes
Between £10,001 and <a href="#">EU Threshold</a> Limits	Three Written Quotes obtained through the eTendering system
Over <a href="#">EU Threshold</a> limits	Formal Tender Using eTendering system

- 7.7 For all construction procurement, the following will apply

Total Value	Action
Under £5,000	Direct contract or single quotation with supplier from supplier list – can compete if further Value for Money (VFM) is likely to be achieved
Between £5,000 and £50,000	Three Written Quotes obtained from the supplier list.
Between £50,000 and <a href="#">EU Threshold</a>	Formal Tender required from at least 4 suppliers for traditional contracts and at least 3 suppliers for Design and Build.

Over <a href="#">EU Threshold</a>	A minimum of five suppliers must be invited to tender for traditional contracts and at least 4 suppliers for Design and Build (unless fewer suitable candidates have met the selection criteria and these are sufficient to ensure genuine competition).
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## **8. In House Provision and Corporate Contracts**

- 8.1 Officers must check if there is an option to access current in-house Services for example Facilities Management, Cleaning Services, Catering Services, Professional Services and Maintenance for Building and Construction, Communications, Energy Management, Training. Use of an in house resource should offer better overall value.
- 8.2 Officers must also check if there is an option to access an existing [Corporate Contract](#) Where a suitable Corporate Contract exists this must be used unless there is a justifiable reason not to. A list of corporate contracts can be found on the Procurement Intranet page.

## **9. Frameworks**

- 9.1 Officers must ensure that they follow the rules in the framework which set out how individual contracts can be called off. This may be direct award if prices are provided but more often this will involve a further procurement activity, referred to as a mini or further competition. Officers must ensure that the cost quality evaluation criteria used as part of the initial framework award is used to select suppliers through further competition but relevant extra sub criteria can be added. Officers must also check that all terms and conditions of the framework comply with and compliment the Council's own values and priorities.
- 9.2 Authority to establish a new framework agreement (as opposed to ordering from a framework) must be agreed by the relevant Assistant Director.

See [guidance to contract procedure rules](#) for further information

## **10. Joint and Collaborative Procurement and Schemes financed partly or wholly by another Public Sector Organisation,**

- 10.1 Where the Council acts as a Lead Authority to let contracts on behalf of a consortium of public sector bodies, these Contract Procedure Rules must be complied with and all records kept by the Council's nominated officer.
- 10.2 Officers leading or participating in multi-agency schemes where the key decision process applies must obtain approval from the Chief Finance Officer prior to committing the Council to participate in the scheme.
- 10.3 Officers leading multi-agency schemes must ensure that partnership working agreements are in place before procurement activity for the scheme begins or the contract is let.
- 10.4 European Regional Development Funding (ERDF) requires specific procurement rules

to be followed in addition to these rules.

See [guidance to contract procedure rules](#) for further information

**11. Appointing Experts and Consultants,**

11.1 A [Use of Consultants](#) Business Case must be completed for any procurement of a consultant or expert where the total value of their services will exceed £500.

11.2 Specific Council [Consultant terms and conditions](#) must be used for the appointment of a consultant. It is essential that an appointed Consultant has suitable Professional Indemnity Insurance and certificates should be checked before any contract commences and on an ongoing basis until all advice is completed.

See [guidance to contract procedure rules](#) for further information

**12. eProcurement,**

12.1 The Council's eTendering system must be used for all procurement activity over £10,000. This will ensure a robust audit trail and is a cost saving to both the Council and potential suppliers. Full details on how this can be used are available via the Procurement intranet page.

12.2 Prior approval from the must be obtained from the Assistant Director of Law Democracy and Public Protection if you wish to procure without using the Council's eTendering system.

See [guidance to contract procedure rules](#) for further information

**13. Supporting the Economy and advertising,**

13.1 All requirements over £5,000 must be advertised through competition of an [Advert Form](#). Officers can advertise requirements below £5,000 if they feel that it may be of benefit, both for the Borough and the Council.

13.2 The Procurement Team will manage advertising of the requirement through social media and the Council's internet page.

See [guidance to contract procedure rules](#) for further information

**14. ICT Facilities & Services,**

14.1 Regardless of value, all purchases of ICT hardware, software, licenses, systems, services, or works must be through, or with the agreement of, the ICT team for the purposes of system integration, monitoring compliance with corporate standards and obtaining of Best Value. The ICT team should be consulted at the earliest stage when considering any IT related project or solution.

14.2 The Requirement must initially be logged with the ICT Service Desk by the Service Area that requires it. The ICT Service Desk will then take appropriate action to make the purchase or provide stakeholder input to an [ICT Project Mandate](#), the specification and project plan.

14.3 ICT will also support negotiations regarding annual maintenance charges and system upgrades.

**15. Leasing Arrangements,**

15.1 Leasing is a method of financing the acquisition of certain types of capital assets and allows the cost to be spread over several financial years through annual rentals. It is a specialised area of finance with complex legal and financial agreements. Leasing arrangements may only therefore, be entered into by the Assistant Director or his designated officer.

15.2 Please see the [Financial Regulations](#) for further information.

**16. Transfer of Undertakings (Protection of Employment) Regulations 2006,**

16.1 Where a contract is to be re-procured and TUPE may apply, the contract manager must write to the existing supplier and request TUPE information to be supplied via a [TUPE template](#) well in advance of the tendering exercise commencing.

16.2 Officers must ensure that sufficient time is built into the procurement so that the costs and implications can be shared with potential bidders through standard TUPE provision within the tender documents.

16.3 The contract terms and conditions for any new service contract must contain an up to date TUPE clause to ensure that future TUPE details are shared well before any subsequent retendering.

See [guidance to contract procedure rules](#) for further information

**17. Grants**

17.1 Grants must be approved for use by the Assistant Director and Finance Manager. They must be recorded on the Grant register held on the Procurement eTeam site.

17.2 You must adhere to the approvals limits as detailed in section 5.4 of the Financial Regulations and use the [Grant Conditions](#) document when issuing a grant

See [guidance to contract procedure rules](#) for further information

**18. Memorandum of Understanding (MOU) and Service Level Agreements (SLA),**

18.1 SLAs and MOUs can only be used following agreement with Legal services

18.2 All Assistant Directors have authority to sign a MOU or a SLA provided that legal approval has been given.

See [guidance to contract procedure rules](#) for further information

**19. Parent Company Guarantee and Bonds,**

19.1 A performance bond or adequate security will be required where:

the nature and length of the contract is such that the risk of failure is sufficiently high; or

- the estimated cost of re-establishing a service if the contract fails is relatively high; or
- the financial and technical standing of the contractor is such that the risk of the failure is sufficiently high.

19.2 The amount of the bond will be 10% of the total contract value unless otherwise agreed by the Assistant Director of Finance.

## 20. Keeping Records,

20.1 Each Service Area **must keep proper electronic records** of:

- the different stages of the tendering process including all the quotes and letters received, and notes of phone calls and meetings about selecting suppliers in addition to all information already held on the eTendering system
- the awarding of the contract.
- any information provided to tenderers or contractors.
- any decisions made, together with the reasons for those decisions.
- any exemptions granted to the number of quotes/tenders sought.
- Officers must keep all procurement documents for specific periods of time as laid down in the [Council's Corporate Retention and Disposal Scheme \(CRDS\)](#).
- all contracts over EU Threshold are to be passed to the Procurement Team who will record the contract on the Legal Services Deeds Database and pass to legal to arrange scanning
- original Sealed contracts must be stored in Legal Service's deeds room

20.2 A [Procurement Report](#) must be completed for Procurement over EU thresholds to meet EU Directives. This report must be held in a shared drive as can subject to Freedom of Information Disclosure.

## 21. Signing Contracts

All contracts must be signed by an authorised officer as set out below:

Contract Value	Acceptance by
Up to EU Threshold	Appropriate Assistant Director or designated Officer <ul style="list-style-type: none"> <li>• One signature is required</li> </ul>
EU Threshold to £500,000	Appropriate Assistant Director or Service Delivery Manager <ul style="list-style-type: none"> <li>• Two signatures required (At least one of whom must be the Assistant Director or Service Delivery Manager. The second signatory can be an officer of any seniority designated by the Assistant Director or Service Delivery Manager)</li> </ul>
In excess of £500,000	<b>KEY DECISION</b>

Contract Value	Acceptance by
	Appropriate Assistant Director and Service Delivery Manager <ul style="list-style-type: none"> <li>• Contracts must be sealed by the Assistant Director Law Democracy and Public Protection instead of being signed and the contracts are enforceable for a period of 12 years</li> </ul>

## 22. Contract management

22.1 Once awarded, all contracts over £10,000 must be recorded on the Council's [Contract Monitoring Document](#). This document provides the data source for the Council's externally published Contracts Register

22.2 The Contract must then be managed in accordance with the Council's [Contract Management Toolkit](#)

22.3 The Contract Monitoring Document must be updated after each contract monitoring meeting and any savings resulting from the meetings reported through to the Procurement team for recording.

See [guidance to contract procedure rules](#) for further information

## 23. Contract Variations or Amendments

23.1 Officers can enter into extensions or variations provided;

- there is provision within the contract to extend (and this has not already been utilised to its full extent)
- the provision is within scope and does not constitute a material change
- the budget has been confirmed in writing and the variation is no more than 10% of the original value of contract for goods and services or 15% for works and does not exceed the value quoted in the initial EU Notice if applicable.

23.2 Standard [contract variation documentation](#) is to be used to enact the changes of the extension or variation. If the contract to be varied was sealed then a [deed of variation](#) notice is required.

23.3 Once signed or sealed, a copy of the variation should be sent to the Procurement team for scanning and filing on the deeds system linked to the original contract to enable change control

23.4 Legal advice must be sought if proposed changes amount to a significant or material change such as the new requirement not being related to any part of the original advertisement or a value change in excess of the percentages stated in 23.1 but it is unlikely this will be permissible.

## 24. Exemptions and Exceptions to the Contract Procedure Rules

24.1 Contracts that may be exempt from the application of the regulations and the Rules are:

- Contracts relating solely to the acquisition or disposal of an interest in

land and buildings

- Call-offs under framework agreements, providing procedures broadly equivalent to the Rules and compliant with national and EU legislation
- transactions conducted by the Assistant Director of Finance in respect of dealing in the money market
- in the cases of Social Care contracts for an individual, there is immediate risk to an Individual's health or wellbeing
- In the case of Social Care contracts where a change to a provider is not in the interests or needs of an Individual and such change would be detrimental to the Individual's outcomes
- In the case of Social Care contracts where an out of Borough placement is required to facilitate personal choice.
- where goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative from a weak market
- In the case of circumstances beyond the Council's control requiring emergency Works, Supplies or Services when the best value for money option to remedy will apply as a temporary solution.

24.2 Exceptions to the rules may be:

- by the direction of the Council or (in relation to Cabinet functions) the Cabinet. The report to Council/Cabinet must clearly state the reasons why the exception is requested and the alternative contract letting method to be used to ensure best value.
- there is a case for urgent decisions outside the budget or policy framework ;
- compatibility issues such that procurement from another source would be uneconomic given the investment in previous infrastructure;
- a waiver of the rules would be in the interests of the efficient management of the service;
- where there is a legal requirement to contract with a particular supplier.
- where tendering has resulted in insufficient competition (i.e. only 1 supplier) after two attempts at open competitive tender.

24.3 Where an Officer seeks an exemption or exception to the rules they must complete a [Waiver Request Form](#) and this will be reviewed by the Assistant Director of Law Democracy and Public Protection.

24.4 Waivers will not be granted where poor time management and planning have resulted in insufficient time to carry out a complaint process.

24.5 No waivers can be granted for requirements over the EU Threshold.

24.6 Agreed waivers will be recorded by the Procurement Team on the Council's waiver register.

24.7 All exemption decisions must be kept by the originating officer along with the contract/quotation documents in accordance with the Council's Retention and Disposal Policy.

## **25. Sale of Services, Asset Disposal and Trading**

25.1 When selling Council goods or assets Officers must comply with the aims

of the Rules specifically the need to achieve best value, ensure transparency, openness, non-discrimination, probity and accountability.

- 25.2 Surplus goods and materials belonging to the Council may be sold by agreement of the appropriate Service Delivery Manager or Assistant Director subject to compliance with Financial Procedure Rules.
- 25.3 Where sales are proposed the procedures set out in these Rules for the purchase of goods shall be followed, but “highest” shall be substituted for “lowest” in respect of best bids.
- 25.4 Officers can make use of the Council’s eBay account to sell lower value items. More information can be obtained via the Procurement Intranet page
- 25.5 Officers undertaking selling goods must be aware of product safety regulations and take reasonable steps to ensure equipment is fit for purpose and safe to use. If electrical, equipment it must bear a current valid electrical testing sticker. If there is any suggestion the product may be unsafe it should not be sold. Advice on product safety regulations is available from the Trading Standards section.
- 25.6 No IT related equipment or materials may be sold / disposed of by Officers. The Council’s disposal policy specifies that all such equipment must be returned to ICT who will arrange disposal in accordance with EU Directives and the principles of Best Value. The principle should always apply that it should never cost more to dispose of an asset than its residual worth, except where this is governed by legislation. Officers should obtain a minimum of three offers for items up to £50,000 and obtain Legal Advice for sales of over £50,000.
- 25.8 Local authority services trading is a complex area. It is service dependent, some services being prevented by statute from charging/trading. Consideration must also be given to whether the service is a discretionary service or whether there are specific charging or trading powers, and whether there is an intention to either just recover costs or to make a profit. When supplying a service to a private sector body, there is a requirement for them to accept the additional liabilities that can apply as FOI. Should an Officer consider trading services advice must be sought from Legal Services in the first instance.