

CONTRACTS PROCEDURE RULES

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SECTION 1 – SCOPE OF CONTRACTS PROCEDURE RULES

1. Introduction

- 1.1 The Calderdale Council Contracts Procedure Rules outline the policy and procedures for the procurement action required for the purchase, commissioning, hire, rental and disposal of goods (supplies), works and services, by and on behalf of the Council.
- 1.2 Failure to comply with these Contracts Procedure Rules could be deemed as misconduct. Officers found to have breached the Council's Contracts Procedure Rules may be subject to disciplinary action.
- 1.3 These Rules are governed by Section 135 of the Local Government Act 1972.
- 1.4 Compliance with the Contracts Procedure Rules ensures that:
 - All contractors, suppliers and providers are treated fairly and equally and that all procurement takes place in an open and transparent way, encouraging competition
 - The rules and procedures governing the procurement process are set out clearly for Council Members, Officers, third parties buying or commissioning on behalf of the Council, and suppliers and other interested stakeholders
 - All elements of procurement, from identifying the need through to disposal of goods or ending of contracts, are governed to ensure sound, robust procurement practice
 - Procurement procedures are undertaken in line with the Council's Section 151 (S151) Standards
 - The Council complies with EU Procurement Directives and the UK Public Procurement Regulations
 - The Council is better able to defend against allegations of incorrect or fraudulent procurement practice

2. Basic Principles of Procurement

All procurement and commissioning procedures must:

- Be compliant with current UK and EU procurement legislation
- Be compliant with the Council's Contracts Procedure Rules and S151 Finance and Contract Standards
- Be in line with the Council's Corporate Objective of Everyone Different, Everyone Matters

- Have regard to the principles set out in the Councils Procurement Strategy and Sustainable Procurement Strategy
- Meet the purchasing need and achieve best value for money
- Ensure fairness and transparency in the allocation of public contracts
- Comply with all appropriate legal requirements
- Ensure that all risks in the process are appropriately assessed and managed
- Ensure that all required pre-tender consultation has taken place.

3. Compliance

3.1 The Contracts Procedure Rules encompass Sections 1 and 2 of the Rules, and all appendices attached to them.

3.2 The Contracts Procedure Rules must be adhered to by:

- All Members
- All Officers
- Contractors, suppliers and third parties responsible for awarding, managing and monitoring contracts on behalf of the Council.

4. Procedures for Schools

Governing bodies, in association with Head Teachers and Management Teams, are required to use the Council's Contracts Procedure Rules as the basis for development of their own Contracts Procedure Rules.

SECTION 2 – CONTRACT RULES

5. Rules for Contracts

- 5.1 A contract is a legally binding agreement required for all goods, works or services entered into by a representative of the Council.
- 5.2 Only the Head of Democratic and Partnership Services has delegated authority to execute contracts. Where an unauthorised officer does sign a contract, this may still be binding on the Council.
- 5.3 As soon as an exchange of money or consideration is agreed, a contract is deemed to exist.
- 5.4 Types of contract governed by these Contracts Procedure Rules may include, but are not limited to:
- Letters engaging contractors
 - Leases, including those for any type of equipment or machinery
 - Full sets of documents including a specification, terms and conditions and pricing schedules
 - Purchase Orders
- 5.5 Letters of Intent may be issued in very exceptional circumstances by the Head of Democratic and Partnership Services through submission of a Chief Officer Waiver request, accompanied by a risk assessment showing implications of allowing the contractor to commence work before terms and conditions of the contract have been finalised.
- 5.6 The Council may enter into nil (cash) value contracts and the Council's Contracts Procedure Rules will still apply in this case.
- 5.7 Contractors fulfilling duties on behalf of the Council must comply with the Council's Contracts Procedure Rules.
- 5.8 Any lease, hire, rental or credit arrangement (such as vehicle or equipment leasing) which has a capital cost must be approved for inclusion in the Capital Programme in accordance with the S151 Finance Procedure Rules relating to Capital expenditure, prior to commencing any procurement exercise.

6. Contract Value

- 6.1 Competitive tendering exercises must be undertaken with due consideration of the Contracts Procedure Rules, EU Procurement

Regulations thresholds and EC Treaty principles which include fairness, transparency, non-discrimination and mutual recognition.

- 6.2 Purchases or orders must not be split into smaller values in order to avoid the competitive tender process.
- 6.3 When contracting goods, services or works, a genuine assessment of the whole life value of the costs must be undertaken.
- 6.4 The estimated value must represent the total potential cost, exclusive of VAT, over the whole life value of the project, including any extension terms.
- 6.5 If the project can be demonstrated as truly innovative, and an estimate cannot be provided, approval to proceed must be obtained from the Head of Finance and the Head of Democratic and Partnership Services before commencing a competitive tendering process.
- 6.6 Any tender exercise or contract which exceeds the original contract estimate or budget allocation by more than £10,000 or 5%, whichever is the greater, must be referred back to the Chief Officer, in consultation with the appropriate Cabinet Member, or to Cabinet if key decision thresholds are reached, prior to any contract award.

7. Awarding the Contract

The authority to accept a tender is delegated to:

- Cabinet if the award is a key decision, or;
- Chief Officers with appropriate delegated authority, where Cabinet key decisions do not apply or;
- By the appointed Project Board for the relevant project with appropriate delegated authority

8. Relevant Contracts

- 8.1 All relevant contracts must comply with the Contracts Procedure Rules.
- 8.2 A relevant contract is any arrangement made by, or on behalf of, the Council for the carrying out of works, or for the supply or provision of goods, materials or services. This includes arrangements for:
 - The supply or disposal of goods
 - The hire, rental or leasing of goods or equipment
 - The delivery of services, including (but not limited to) those related to:

- Use of agency staff
- Land and property transactions relating to development agreements
- Financial services
- Consultancy services
- Concessions

8.3 Relevant Contracts do not include:

- Contracts for the employment of staff (permanent, interim or casual) which make an individual a direct (salaried) employee of the Council
- The employment of Counsel - Counsel engaged to represent the Council must be undertaken through the Head of Democratic and Partnership Services
- Contracts relating to disposal or acquisition of an interest in land
- Urgent special educational needs or urgent social care contracts, if in the opinion of the appropriate Chief Officer it is considered to be in the Council's interests or necessary to meet its obligations under relevant legislation and demonstrates value for money
- Residential and nursing care contracts which the Council has a duty to provide under relevant legislation, and if in the opinion of the appropriate Chief Officer it is considered to be in the Council's interests and demonstrates value for money
- Contracts for the issue and receipt of grants and grant funding
- Contracts for the award of concessions

9. Exemptions to the Contracts Procedure Rules

9.1 No exemptions can be made to the requirements of competition in terms of the Contracts Procedure Rules, unless authorised in writing by the Head of Democratic and Partnership Services, after considering a written report by the appropriate Chief Officer.

9.2 A register of exemptions will be maintained by the Head of Democratic and Partnership Services and reported to the Audit Committee on a six-monthly basis.

10. Exceptions to the Contracts Procedure Rules

Exceptions to the Contracts Procedure Rules may be allowed under certain circumstances. Exceptions which may be permitted include:

- (a) Where the Chief Officer is able to demonstrate that only one specialist firm is able to meet the requirement.

- (b) A contract to be placed as an emergency solution only where the Chief Officer is able to demonstrate immediate risk to persons or property or serious disruption to Council Services.

The Chief Officer must notify the Head of Democratic and Partnership Services and the Head of Finance immediately of the action taken in dealing with the emergency. The Chief Officer must submit a report to Cabinet detailing the circumstances of the exception made in accordance with this rule. The specific circumstances in which the exemption was justified must be recorded.

- (c) The use of frameworks, consortia contracts or other public sector contracts in liaison with the Head of Finance and the Head of Democratic and Partnership Services

11. Chief Officer Waivers for Exceptions to Contracts Procedure Rules

- 11.1 Only Chief Officers have authority to waive Contracts Procedure Rules for exceptions listed in Contract Procedure Rule 10.
- 11.2 Any other request for a waiver of Contracts Procedure Rules outside of those listed requires the approval of the Head of Democratic and Partnership Services.
- 11.3 Waivers must be obtained in advance of a procurement action as a waiver will not be issued retrospectively.
- 11.4 Waivers will not be authorised in cases where a lack of foresight or planning has given rise to difficulties.
- 11.5 Waivers must not be used to deliberately avoid the requirements of the Contracts Procedure Rules to go to competition.
- 11.6 Requirements of EU Procurement Directives, UK Procurement legislation or any other relevant law or external regulatory framework cannot be waived.
- 11.7 Waivers must demonstrate that value for money has been obtained and that there is a clear benefit or advantage to the Council.
- 11.8 Waivers must be documented in a form approved by the Head of Finance, in accordance with S151 Standards for Contracts.
- 11.9 Copies of waivers must be submitted to the Legal Services Team for inclusion on the Council's Register of Waivers.

11.10 Copies of waivers must be retained in accordance with the Council's Records Management Retention and Disposal Schedule.

11.11 The approval chain for waivers is:

Value of Contract	Approval Body for Waivers for Exceptions as detailed in Section 5
Up to £60,000 (sixty thousand)	Chief Officer
Over £60,000 (sixty thousand) and up to Cabinet Key Decision Matters	Chief Officer
Cabinet Key Decision Matters	Cabinet

12. Using Corporate Contracts

12.1 Where the Council holds corporate contracts on behalf of all services, officers are required to use these contracts.

12.2 Details of current corporate contracts are published on the Commercial Procurement Unit intranet page.

12.3 There is no exemption from use of corporate contracts unless agreed by the Head of Finance or their nominated representatives.

13. Using Framework Contracts

13.1 Services wishing to use a framework agreement let by another public sector body, such as OGC Buying Solutions, YPO, other public sector consortia, or another Council, are required to demonstrate that value for money can be delivered through this procurement option.

13.2 Contracting through frameworks requires the consultation and approval of:

- Head of Finance and
- Head of Democratic and Partnership Services

13.3 The Commercial Procurement Unit will place 'ITQs – Invitations to Quote' on the OGC Buying Solutions site on behalf of Council Services, in line with the protocol published on the Commercial Procurement Unit intranet page.

14. Approved Lists

14.1 Approved lists may only be set up in agreement with the Head of Finance and the Head of Democratic and Partnership Services and in line with the Commercial Procurement Unit Guide to Setting up Approved Lists.

14.2 Contracts which exceed the EU Directive thresholds cannot be tendered using approved lists, and the contract must be advertised under EU rules.

15. Collaborative Procurement Arrangements

Officers wishing to enter into a collaborative arrangement with another public sector body are required to consult with:

- Head of Democratic and Partnership Services
- Head of Finance

16. ICT and ICT Related Contracts

The Head of Business Change and Performance Management must be consulted regarding the procurement of ICT consumables, hardware, software or website development or any other associated ICT service prior to the commencement of any tendering activity.

17. Tenderers assisted by State Aid

17.1 It is the responsibility of the Chief Officer to ensure that a tenderer assisted by grants from grant awarding authorities, including the Council, does not provide an unfair advantage to any other tenderers.

17.2 If a tenderer is in receipt of grants, the Head of Democratic and Partnership Services must be consulted to ensure that State Aid rules do not apply.

18. Sustainable Procurement Strategy

Officers must comply with the Council's policies relating to sustainable procurement.

19. Legislative Requirements

(a) S17 Prevention of Corruption - Crime and Disorder Act 1998

(b) Freedom of Information and Data Protection Acts

Officers must treat any written request for information as a Freedom of Information request and refer to their Assistant Information Liaison Officer who will advise on the action to be taken.

(c) Human Rights Act 1998

Where a public function is being fulfilled through a contract, the Chief Officer must ensure that the contractor complies with the Human Rights Act 1998.

(d) Equalities 2010

The Council is required to ensure that its suppliers meet the Council's standards in observing equalities legislation in line with the Council's Sustainable Procurement Strategy.

(e) UK and EU Procurement Legislation

As a public sector authority, the Council is required to meet UK and EU procurement legislation in all its procurement activities.

20. Financial Checks

The financial status of tenderers will be ascertained by the Head of Finance where the estimated value of a contract is £60,000 or over.

21. Health and Safety

Contractors and suppliers engaged by and on behalf of the Council will be required to meet the minimum levels of Health and Safety standards identified for the relevant contract.

22. Insurance Requirements

22.1 The Head of Finance must be consulted where the proposed insurance limits of other authority and framework contracts differ from the Council's minimum requirements.

22.2 It is the responsibility of the Chief Officer to ensure that the contract insurance requirements meet the financial value and risk of the contract, in order to protect the Council.

23. Bonds and Guarantees

Contracts in excess of £250,000 will require security for the performance of the contract as specified by the Head of Finance.

24. Contingencies

Chief Officers are required to ensure the inclusion of contingencies, where appropriate, as agreed with the Head of Finance.

25. Liquidated Damages

25.1 Contracts with an estimated value of £60,000 or more will require a liquidated damages clause to be built into the contract, unless deemed otherwise and authorised by the Head of Finance.

25.2 In the case of the following contracts:

- Social Care Contracts
- Provision of Educational Services contracts

The Head of Finance must be consulted to establish if liquidated damages will be required

26. Signing and Sealing of Contracts

26.1 All contracts made on behalf of the Council must be in hard copy. Chief Officers must ensure that a properly executed and completed contract is in place before works or services begin, or goods are delivered.

26.2 Contracts with a value of less than £60,000 must be signed by the Head of Democratic and Partnership Services.

26.3 Contracts with an estimated value of £60,000 or more must be sealed with the Common Seal of the Council, unless the Head of Democratic and Partnership Services deems otherwise.

26.4 For all other contracts, advice as to whether a written contract is required must be sought from the Head of Democratic and Partnership Services.

27. Purchase Orders

The Chief Officer is responsible for ensuring that a purchase order is raised on the Councils Accounts Payable/Financials system as soon as the contract is formally awarded and accepted by the winning contractor/supplier.

28. Contract Variations and Extensions

28.1 Variations must be evidenced in writing.

28.2 Where a contract variation constitutes a major change in requirement, the Head of Democratic and Partnership Services and the Head of Finance must be consulted to assess whether re-tendering is required.

28.3 If an appropriate budget has been approved, Chief Officers can agree to variations of up to £10,000 or 5% of the total contract value, whichever is the greater. The contract sum must take into account any year on year indexation increases.

28.4 Variations must be referred to the appropriate body for approval to proceed:

Value of Contract	Approval Body for contract valuation variations exceeding £10,000 or 5% of the total contract value whichever is the greater, or where provision for extensions is built into the original contract
Up to £60,000 (sixty thousand)	Chief Officers
Over £60,000 (sixty thousand) and up to Cabinet key decision matters	Chief Officers
Cabinet Key Decision Matters	Cabinet

28.5 The term of a contract may only be extended where all the following criteria are met:

- (a) Provision for an extension of the term is evidenced by the original contract; and
- (b) Where there is budget provision and the extension is in line with S151 Finance Rules; and

- (c) Where the contract value including the extension exceeds the Cabinet key decision threshold of £200,000 and Cabinet has given prior approval to the extension.

28.6 Only Cabinet may approve an extension to the term of a contract outside of these Contracts Procedure Rules following a report from the relevant Chief Officer, in consultation with the Head of Democratic and Partnership Services.

28.7 Deeds of Variation, Variation Orders and contract extensions can only be executed by the Head of Democratic and Partnership Services.

29. Transfer of Undertakings (Protection of Employment Regulations) 2006 (TUPE)

It is a requirement that officers undertaking procurement activity consider any potential implications of the Transfer of Undertakings (Protection of Employment Regulations) 2006 (TUPE) at the earliest possible stage. The Head of HR and Head of Democratic and Partnership Services must be consulted as soon as potential TUPE issues are identified.

30. Assignments, Novations and Sub-Letting

30.1 Every contract must state that the contractor is prohibited from assigning, sub-letting or sub-contracting the contract, unless with prior agreement of the Head of Democratic and Partnership Services.

30.2 If, at the time of tendering, a contractor states their intention or desire to sub-let any portion of the work not normally undertaken by them, consent may be given providing that the sub-contractor is a person approved for the purpose by the Chief Officer concerned. The principle contractor shall be responsible for all work done by the sub-contractor and for it being carried out under the same conditions as if executed by the principle contractor.

30.3 If a contractor is taken over by another company, the relevant Chief Officer shall request that the Head of Finance undertake an assessment of the capability and financial standing of the new company, as to whether the contract should be novated to the new owner.

30.4 If the new company is a subsidiary, consideration must be given as to whether a parent company guarantee is needed.

30.5 The Head of Democratic and Partnership Services and the Head of Finance must be consulted to assess if:

- The new company is able to take on the new contract
- Whether a parent company guarantee is required
- Whether the contract is to be novated over

30.6 Only the Head of Democratic and Partnership Services has the authority to accept new terms and to execute a variation to a contract.

30.7 Where it is decided that a contract will not be novated, the contract may need to be terminated and re-tendered

31. Receivership, Administration and Liquidation

31.1 In the event of a contractor entering into receivership, administration or liquidation, the relevant Chief Officer must inform the Head of Democratic and Partnership Services and the Head of Finance immediately to seek advice on appropriate action.

31.2 If the opportunity to novate the contract is presented to the Council, the Council may choose to reject a contractor deemed to be unsuitable, and the contract must be re-tendered.

32. Settlement of Disputes and Claims

32.1 Chief Officers must consult with the Head of Democratic and Partnership Services as soon as a dispute arises.

32.2 Chief Officers must notify the Head of Democratic and Partnership Services immediately of all claims by or against contractors which are the subject of dispute. This includes where the Council is a third party.

33. Termination of Contract

33.1 Provision for the termination of a contract must be included within the terms and conditions of the contract. Only the Head of Democratic and Partnership Services has the authority to agree early termination of a contract where this is not built into the contract terms and conditions.

33.2 The Head of Finance must be consulted where there are serious concerns over the performance of a contract.

33.3 The Head of Democratic and Partnership Services must be consulted if the performance of a contract is giving rise to concern and consideration is given to termination.

34. Cancellation of contracts in the event of corrupt practices

Every written contract must have a clause inserted which empowers the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if:

The contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do so or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council or if the like acts have been done by any person employed by the contractor or acting on the contractors behalf (whether with or without the knowledge of the contractor), or if, in relation to any contract with the Council, the contractor or any person employed by the contractor, or acting on the contractors behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under section 117(2) and (3) of the Local Government Act 1972, or any statutory modification, extension or re-enactment thereof.

35. Restrictions on Contracts with Certain Persons

No Member of the Council, nor any company or partnership firm in which any Member of the Council is interested, nor any employer, nominee or spouse of a Member of the Council shall accept an order exceeding £2,500 in value or amount for the supply of goods, materials or services to any department of the Council unless such work or order for goods, materials or services has been offered by competitive tender.

36. Gifts and Hospitality

36.1 Hospitality must not be accepted during any tender period. Officers should also be aware that contractors offering hospitality may be involved in a bidding process elsewhere in the Council.

36.2 Officers must comply with the Code of Conduct for Officers and Members, when dealing with both potential tenderers and contracted suppliers.

37. Declarations of Interest

The Council's Code of Conduct for Officers and Members will apply.

APPENDIX 1 - CONTRACT PROCEDURES

38. Introduction

38.1 This appendix contains the actions required under the Contracts Procedure Rules for contracts for the following values:

- (a) Under £10,000
- (b) Over £10,000 and below £60,000
- (c) Over £60,000 and up to EU threshold
- (d) EU thresholds and above

38.2 This appendix (Appendix 1) forms part of the Council's Contracts Procedure Rules and must be applied during any procurement process.

38.3 The Contracts Procedure Rules must be used in conjunction with the Commercial Procurement Unit Guidance Series for procurement procedures published on the Commercial Procurement Unit Intranet page

39. Corporate Contracts

Procurement of goods or services must always be made through the Council's Corporate Contracts where available.

40. Contracts under £10,000

40.1 Where the requirement cannot be met by existing contracts, the appropriate budget holder should undertake the most efficient method of procurement which can demonstrate value for money.

40.2 A written record of the reasons for the choice of procurement method should be retained for audit purposes in line with the Council Records Management Retention and Disposal Schedule.

41. Contracts between £10,000 and £60,000

41.1 Where the requirement cannot be met by existing contracts, four written quotes should be obtained.

41.2 If it can be demonstrated that four quotes cannot be obtained due to a lack of suitable contractors willing to quote, then the Chief Officer must retain a written record of this in line with the Council Records Management Retention and Disposal Schedule.

- 41.3 Purchases and contracts valued below £60,000 may not carry the same financial risk as larger contracts, but may still carry risks for the delivery of essential services or damage to the Council's reputation. An evaluation of suppliers must be undertaken in line with S151 Standards for Contracts and S151 Standards for Purchasing

42. Contracts over £60,000

- 42.1 It is the responsibility of the Chief Officer to ensure that the appropriate approval process and budget approval are in place before the procurement process begins.
- 42.2 Procurement projects valued over £60,000 must be undertaken following the Calderdale Way project management method.
- 42.3 Services should first consider the availability of:
- Appropriate framework contracts
 - Opportunities for current appropriate available contracts through other public sector bodies
 - Shared or collaborative opportunities
- 42.4 All procurement projects with a whole life value exceeding £60,000 require the completion of the following standard Council documents:
- (a) A business case
 - (b) A risk analysis
 - (c) A decision log
- 42.5 The Head of Finance and the Head of Democratic and Partnership Services must be informed of the decision to commence a procurement process by receipt of:
- Approved business case including confirmation of budget approval
 - Procurement risk assessment
- These documents form the notification to the Commercial Procurement Unit for the Council's Contract Register and must be submitted before commencement of the procurement exercise.
- 42.6 The specification, including standards for contract performance monitoring, evaluation criteria and the proposed terms and conditions for the contract must be completed and agreed in accordance with Appendix 6 Contracts Over £60k Approval Table prior to going out to tender.

- 42.7 The specification and evaluation criteria must be approved by the Commercial Procurement Unit and the Legal Team prior to release for the tender exercise.
- 42.8 Competitive tendering using open or restricted procedures must be undertaken in line with the Guide to Competitive Tendering documents.
- 42.9 Chief Officers must ensure that construction contractors are appointed in line with S151 Standards for Contracts for the Construction Industry Scheme (CIS).
- 42.10 For any contracts valued over £60,000, an assessment of the financial capacity of a supplier to deliver the contract must be undertaken.

43. Contracts Exceeding EU Thresholds

- 43.1 Services should first consider the availability of:
 - (a) Appropriate framework contracts
 - (b) Opportunities of available contracts through other public sector bodies
 - (c) Shared or collaborative opportunities.
- 43.2 The Commercial Procurement Unit and Legal Team must be consulted regarding the use of options listed at paragraph 43.1 to ensure that any existing opportunity is compliant with EU legislation.
- 43.3 The Commercial Procurement Unit and Legal Team must be consulted prior to commencing any procurement with a value close to or exceeding EU thresholds.

44. Minimum Number of Bids

- 44.1 A minimum of four tenders must be considered.
- 44.2 Where there are fewer than four, all bids submitted must be considered.
- 44.3 Where it can be demonstrated that the market has been sufficiently tested and only one bid received, a Chief Officer Waiver under Rule 10(a) must be obtained in order to proceed with acceptance of the bid.

45. Advertising Contract Opportunities

- 45.1 Contracts over £60,000 must be advertised to prospective tenderers.

- 45.2 Advertisements must be placed in the most appropriate media, or via an electronic tendering system approved by the Head of Finance and the Head of Democratic and Partnership Services, and which offers the most opportunity for competition.
- 45.3 Contracts which exceed the EU threshold must be advertised via the Official Journal of the European Union (OJEU).
- 45.4 All notices on OJEU must be agreed by the Head of Democratic and Partnership Services and placed by the Commercial Procurement Unit.

46. Preparation of Contract Documentation

- 46.1 The Chief Officer is responsible for ensuring that all appropriate documentation is submitted to the Head of Democratic and Partnership Services for the legal completion of the contract document.
- 46.2 The Chief Officer is responsible for ensuring that all outstanding legal matters are resolved before the commencement date of the contract.

47. Retention of Contract Documents and Deeds

- 47.1 The original executed contract will be retained by the Head of Democratic and Partnership Services.
- 47.2 An executed copy must also be provided to the Contract Officer for retention with the project file and as a reference for the purposes of contract management.

APPENDIX 2 – SUBMISSION, RECEIPT AND OPENING OF PRE-QUALIFICATION QUESTIONNAIRES, QUOTES AND TENDERS

48. Quotes for Contracts Less Than £60,000

48.1 The invitation to quote must include:

- (a) a requirement that the quote must be submitted in a sealed envelope, using the Council's red-banded Quotes label provided by the Council with the invitation to quote
- (b) a requirement that the return envelope must not bear any name or mark by which the bidder can be identified
- (c) a statement that the Council will not be bound to accept:
 - Any quote, or
 - The lowest submitted quote
- (d) clear notification of the time, date and location for return of the quote.

48.2 All returned quotes must be treated in confidence.

48.3 Written quotes must be received by an officer not involved in the evaluation of submitted quotes and retained in a secure environment until the appointed time for opening.

48.4 Quotes should be opened following the closure of the return deadline and the bids recorded on the standard Submission of Quotes form and retained in accordance with Council Records Management Retention and Disposal Schedule.

49. Pre-Qualification Questionnaires as Part of the Restricted Tender Process

The pre-qualification questionnaire must:

- (a) be returned to a person independent of the evaluation process and opened at the appointed time
- (b) be treated in the strictest confidence and shall not be disclosed other than to persons directly involved with the opening or evaluation of tenders.
- (c) require that the return envelope must not bear any name or mark by which the bidder can be identified

- (d) must provide details of the time, date and location for return of the completed pre-qualification questionnaire and required supporting documents

50. Tenders for Contracts Over £60,000

- 50.1 Details of submitted tenders will be treated in the strictest confidence and shall not be disclosed other than to persons directly involved with the opening or evaluation of tenders.
- 50.2 All tenders for contracts over £60,000 must be returned to the Head of Democratic and Partnership Services.
- 50.3 Before submission of tenders for contracts estimated at £60,000 and over, officers must:
 - (a) Notify the Democratic Services Manager of the forthcoming tender exercise including the title of the contract, closing date and time
 - (b) Identify an appropriate officer to open the tender with the Democratic Services Manager

The tender documents must include a copy of the green banded tender label.

- 50.4 Every invitation to tender must:
 - (a) Require that the tender be submitted on the form and returned in an envelope sealed and bearing the green-banded label supplied.
 - (b) Require that the tender be returned to the Head of Democratic and Partnership Services before the time and date specified in the invitation.
 - (c) Advise the tenderer that for all hand-delivered tenders a receipt must be obtained bearing the date, time and tender envelope reference
 - (d) The tender documentation must contain a prominent warning to tenderers that any indication on a submission envelope as to the identity of the sender (including those sent by external delivery service) will invalidate the submission, and the tender will not be considered.

51. Tenders Received

- 51.1 Sealed tenders received must be opened consecutively in the presence of the Head of Democratic Services, on behalf of the Head of Democratic and Partnership Services, and an Officer from the relevant Service or Project Board.
- 51.2 The opening of submitted tenders should be carried out as soon as is practicable following the deadline for receipt of tenders.
- 51.3 The representative for the Head of Democratic and Partnership Services shall keep a record of all tenders specifying:
- (a) Subject of tender
 - (b) Company or body submitting tender
 - (c) Date and time of receipt as recorded on date stamped envelope
 - (d) Tender reference number
 - (e) Amount/value of each tender
 - (f) Date and time tenders were opened
 - (g) Names of persons present

52. Acceptance of Qualified Tenders

- 52.1 Qualified tenders may be considered for acceptance, based on an analysis of the risks to the Council. The Council's Internal Audit and Legal Teams must be consulted to advise on whether a qualified tender may be accepted.
- 52.2 Qualified tenders must not be accepted where the area of qualification could allow a challenge of discrimination by another tenderer if the qualified bid was successful.

53. Late and Rejected tenders

- 53.1 Tenders received after the date and time specified in the invitation to tender will only be accepted or considered in consultation with the Head of Democratic and Partnership Services and the Head of Finance.

- 53.2 Tenders must be rejected if the tender return envelope bears any mark which enables the bidder to be identified.
- 53.3 Rejected tenders should be opened to identify the sender and then returned to the sender with an explanation of why the bid has been rejected.

54. Buying Solutions (OGC) Invitation to Quote

- 54.1 All invitations to quote placed on the OGC Buying Solutions site are to be placed by the Commercial Procurement Unit on behalf of Council Services.
- 54.2 Invitations to Quote placed on the Buying Solutions website must be placed using the 'sealed' tender option.
- 54.3 The Commercial Procurement Unit will open the submitted bids and distribute to the nominated contract officer.

APPENDIX 3 - EVALUATION PROCEDURES

55. Introduction

- 55.1 In compliance with the EU procurement rules, the evaluation criteria for both the Pre-qualification questionnaire and tenders for contracts exceeding the EU threshold must be published in the invitation to tender.
- 55.2 The minimum number of people required for an evaluation panel is three.
- 55.3 Evaluation Panels and Challenge Points will be required to conduct the evaluation in line with the Council's Code of Conduct for Evaluation.

56. Evaluation Panel

All members of the Evaluation Panel are required to ensure that:

- each tender is marked in a fair and consistent manner
- the final marking is a true record of the process and represents the agreed views of all the evaluation panel members
- the tender is marked only against the criteria agreed and set for the procurement exercise

57. Recording of Evaluation

- 57.1 The scores of the Evaluation Panel must be recorded in line with the Council's Code of Conduct for Evaluation.
- 57.2 The Evaluation Panel Chair is responsible for ensuring the accurate recording of the cumulative scores for the Panel.
- 57.3 The Contract Officer must retain copies of all notes and the completed evaluation matrix as part of the final contract document set for Audit Purposes, in line with the Council Records Management Retention and Disposal Schedule.

58. Evaluation Challenge Point

- 58.1 Members of the evaluation panel must not be members of the Challenge Point.

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APPENDIX 4 - GLOSSARY OF TERMS

Added Value - Any benefits or services which can be provided over and above that of the contract requirements

Aggregation of Demand – Where similar or same purchases made separately over a period of time (and often from multiple suppliers) are combined into one contract requirement

Alcatel (or Standstill) Period – Contracts over the EU threshold must include a minimum standstill period between the decision to award a contract and the actual award. Unsuccessful suppliers are notified of the proposed award and given the opportunity to appeal if they believe that the award is not justified. It's named after the case law establishing a ruling of an unfairly awarded contract

Approved List – List of suppliers who have met a minimal level of quality assessments, usually through a pre-qualification questionnaire, and approved to provide specific work, goods or services

Approved Suppliers – Suppliers included on approved lists

Assignment – The transfer of rights from one contractor to another on the basis of the same contract

Audit Trail – System or paper generated evidence showing how decisions and procedures were carried out

Award – The allocation of a contract to a successful bidder/contractor/supplier

Award Stage – Final stage of the tendering process, with notification of the successful supplier and the signing of the contract

Bid – A submitted tender

Business Case (Calderdale Way Project Mandate Template) – The reasons for carrying out a procurement or project, usually indicating initial value, and justifying the need such an identified service need or meeting Council objectives

Buying Solutions – Trading arm of the Office for Government Commerce (OGC). Operates the OGC frameworks on the Buying Solutions site, formerly known as Catalyst

Cabinet Key Decision – a decision which can only be made by Cabinet, as defined by the Council's Constitution

Challenge Point – a review of the evaluation process to ensure that the procedures and outcome of the evaluation process are fair, transparent and reflect the views of the evaluation panel

Collaboration – Process by which two or more ‘organisations’ (local authorities, other public sector bodies) work together to obtain a joint solution for a shared requirement. Used to capitalise on the advantages of aggregating demand, such as economies of scale or stronger positioning in the marketplace

Collusion – illegal process of agreeing to unfair activities in a procurement process, such as price fixing

Commissioning – the strategic activity of assessing need and using resources (both budgets and services) to meet those needs, with procurement forming part of commissioning for the sourcing and setting up contracts to provide services

Concession – an agreement between the Council and a private company for the sole right to provide a specific service

Contingencies – future events or circumstances which may occur

Contract – Legally binding document that sets out the terms and conditions of the delivery of the works, services or goods, including performance measures

Contract Award Notice – Notice of the award of a contract published in the Official Journal of the European Union (OJEU) as required by EU legislation

Contracts Procedure Rules – The section of the Council’s Constitution which sets out the rules which must be followed when undertaking any procurement process

Corporate Contracts – contracts let on behalf of the Council to meet the requirements of good, services or works which are common or shared across the Council

Criteria – Set of specific requirements that a quote or tender will be marked against

Disaggregation – Splitting a requirement for similar works, goods or services into a number of smaller contracts to avoid having to undertake a full competitive tender exercise for contracts exceeding the EU thresholds. This practice is a breach of EU legislation

Dispute - Disagreement between Council and supplier or contractor which may result in Court action

EU Procurement Directives (EU Legislation) – European procurement law enacted into UK law as the Public Procurement Regulations 2006, detailing rules and regulations that must be complied with for all public sector procurement processes that exceed specified thresholds

Evaluation – Detailed assessment and comparisons of bid submissions verifying how suppliers will meet the requirements of the contract, measured against quality and price criteria

Evaluation Panel – Group brought together with the specific aim of assessing submitted tenders against pre-set criteria, to make final recommendations on the award of contract.

Exceptions – Permits the undertaking of a procurement action within a specific area without the need for a competitive tender exercise, but a Chief Officer Waiver is required

Execute – the completion of contract documentation, including the signing, and sealing where required, of the formal contract

Exemption – excluding a procurement activity from one or more of the Contracts Procedure Rules

Framework Agreement – Used where specific works, services or goods will be needed on a number of occasions over a known duration, but the exact requirement isn't known. Can be with a single supplier (sometimes referred to as a 'call-off' contract) or with a multiple number of suppliers. Once set up, there is no need to go to the open market as competition is held between those suppliers on the framework

Invitation to Quote (ITQ) on Buying Solutions – Electronic procedure for obtaining quotes under Buying Solutions frameworks

Invitation to Tender – Sent to tenderers asking them to submit bids based on a specification, indicating the requirements of the Council.

Letter of Intent – A written statement indicating the Council's willingness to enter into a formal contract

Liquidated Damages – Compensation awarded by a court judgement or a contract stipulation regarding breach of contract

Marketplace – Wording used to describe a commercial activity or a group of potential suppliers possibly able to meet requirements

Negotiation – Process by which a contract proposal is reached through discussion and agreement between the prospective contractor and the Council representative

Negotiated Procedure – Procurement process undertaken directly with one bidder. Used under specific circumstances

Non-Commercial Consideration – Non-financial concerns such as social and environmental factors

Novation – Substitution of a contractor with a new contractor, or of a contract with a new contract

OGC (Office for Government Commerce) – Central Government Department, leading on improving procurement practice in the public sector

OJEU (Official Journal of the European Union) – on-line publication advertising tender opportunities and publicising contract awards for the public sector in all EU Member states, the European Economic Area and the World Trade Organisation

OJEU Notice – published notice of tender opportunity or contract award in OJEU

Open Tender Procedure – Tender process which is open to any supplier who wishes to bid. All tenders must be considered

Pre-Qualification Questionnaire – Set of questions used to establish the suitability of a supplier to be included in a bidding process, based on experience, financial stability and quality assessments. Is also be used to eliminate bidders in a restricted (two stage) tender so that only the most suitable suppliers are invited to tender

Qualified Tender – Where a bidder submits a bid which has been amended to the bidders requirements, such as inserting their own terms and conditions

Quotation – Written or verbal price given by a supplier on request

Remedies Directive – EU legislation which sets out the rules by which the procurement actions and decisions may be challenged

Restricted Tender Procedure – Tender process where potential suitable tenderers are identified by the evaluation of a pre-qualification questionnaire. Only those passing the evaluation criteria of the pre-qualification questionnaires will be invited to tender

Section 151 Standards – Section 151 of the Local Government Act 1972 deals with the procedures to ensure fair contractor selection, payments, control and performance measurement of suppliers who provide works, goods and services to the Council

Specification – Detailed description of what is required, including monitoring procedures

Stakeholder – Individual or organisation with an active interest in the impact or effect of the Council's procurement activities

State Aid – Any Government aid must not distort competition by favouring certain businesses or goods

Sub-Letting – Engagement of another contractor by the main contractor

Submission – The bid or tender submitted by a supplier in response to an invitation to quote or tender

Sustainable Procurement – the economic, environmental and social issues to be considered in procurement

Tender – Written response to an invitation to tender that contains a full costed proposal. Submitted in a sealed process, and evaluated against set criteria

Tenderer – Prospective supplier who submitted a bid in response to an invitation to tender or quote

Tender Documents – Set of documents provided to prospective tenderers which forms the basis on which tenders will be submitted. Includes, as a minimum, instructions to tenderers, contract terms and conditions, specification, evaluation criteria, pricing schedule, form of tender and anti-collusion statement

Testing the Market – Formal procurement process to establish whether there are suppliers able and interested in providing quotes or bidding

Termination – Cancellation of all or most of a contract.

Thresholds – Financial boundaries (based on the whole life value of a proposed contract) which determine the procurement action, for example whether a competitive tender is required, or whether an EU competitive action is required

TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) - Preserves the continuity of employment and safeguards employment rights of all employees transferring to a new employer i.e. where there is a change of contract provider or where current Council staff are being transferred to another service provider

Value for Money – ensuring the needs of the Council are met whilst achieving the required balance of quality and price

Variation - A variation is usually a change to the specification. It may either be a one off item of work or service, or a change for the remainder of the contract. Deeds of Variation and Variation Orders are contractually binding on both parties.

Waiver – Approval obtained prior to procurement activity, by a Chief Officer, permitting an exception to the Contracts Procedure Rules.

Whole Life Value – All costs incurred in the lifespan of the contract, including disposal.

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APPENDIX 5 - CONTRACT ACTION THRESHOLD TABLE

Action	Under £10,000	Between £10,000 and £60,000	Over £60,000 and below the EU Threshold	Above the EU Threshold
1 First use Corporate Contract if available	✓	✓	✓	✓
2 Look for opportunities to access available contracts, or initiate contracts, through other public sector bodies	✓	✓	✓	✓
3 Select most efficient method of procurement which demonstrates best value for money > Retain written record of decision for audit purposes	✓			
4 Written quotation exercise with minimum of 4 written quotes		✓		
5 Award contract based on best value assessment		✓		
6 Where appropriate opportunities are not available, contracts must be awarded using one of the following competitive tendering methods > Open Tender > Restricted Tender > Negotiated Tender			✓	
7 EU THRESHOLDS ONLY Where appropriate opportunities are not available, contracts must be awarded using one of the following competitive tendering methods > Open Tender > Restricted Tender > Competitive Dialogue Tender > Negotiated Tender				✓

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APPENDIX 6 - CONTRACTS OVER £60,000 APPROVAL TABLE

Procurement Stage	Gateway Challenge Point	Requirements (refer to full Commercial Procurement Unit process guide)	Specific EU Requirements	Approval Chain			
				Chief Officer	Cabinet Procurement Working Party and/or Scrutiny Panel	Cabinet (if key decision)	Commercial Procurement Unit / Legal
STAGE 1 Identify the Need		Initial Business Case to include: > Initial budget approval > Initial authorisation > Initiate decision log > Initiate risk analysis		✓		✓	
	Gateway 2 Agreeing the need	Approval to proceed to stage 2		✓	If called in	✓	
STAGE 2 Preparation and Planning		Completion of full business case to include: > Sourcing the market > Identifying the appropriate procurement method > Pre-qualification questionnaire > Specification documents > Evaluation criteria > Risk analysis > Compilation of completed tender document set		✓			

APPENDIX 6 - CONTRACTS OVER £60,000 APPROVAL TABLE

Procurement Stage	Gateway Challenge Point	Requirements (refer to full Commercial Procurement Unit process guide)	Specific EU Requirements	Approval Chain			
				Chief Officer	Cabinet Procurement Working Party and/or Scrutiny Panel	Cabinet (if key decision)	Commercial Procurement Unit / Legal
	Gateway 3 Agreeing full tender documents	Approval to proceed to stage 3		✓	If called in	✓	✓
STAGE 3 Tender Process		> Publication of tender opportunity > Completion of tender process	Publication of tender opportunity in OJEU				✓
	Gateway 4 Reviewing tender process and recommendations	Approval to proceed to stage 4		✓	If called in	✓	✓
STAGE 4 Contract Award		> Evidence of authority to award > Sign off agreed contract documentation by Head of Democratic and Partnership Services	> Implementation of standstill “Alcatel” Period prior to formal award	✓			

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APPENDIX 6 - CONTRACTS OVER £60,000 APPROVAL TABLE

Procurement Stage	Gateway Challenge Point	Requirements (refer to full Commercial Procurement Unit process guide)	Specific EU Requirements	Approval Chain			
				Chief Officer	Cabinet Procurement Working Party and/or Scrutiny Panel	Cabinet (if key decision)	Commercial Procurement Unit / Legal
		> Publication of award notice in OJEU					
	Gateway 5 Confirm award	Approval to proceed to stage 5 > Issuing of formal contract		✓	If called in	✓	Legal Services
STAGE 5 Implementation and Management		Performance management of contract		✓			
	Gateway 6 Monitoring contract performance	Completion of monitoring reports and issues log		✓	As required	As required	
STAGE 6 Reviewing Contract		Undertake contract review - a minimum of 12 months prior to contract completion > Identify any new/additional	Undertake contract performance review, minimum 18 months prior to contract	✓			✓

APPENDIX 6 - CONTRACTS OVER £60,000 APPROVAL TABLE

Procurement Stage	Gateway Challenge Point	Requirements (refer to full Commercial Procurement Unit process guide)	Specific EU Requirements	Approval Chain			
				Chief Officer	Cabinet Procurement Working Party and/or Scrutiny Panel	Cabinet (if key decision)	Commercial Procurement Unit / Legal
		requirements > consider lessons learned	completion				
	Gateway 1 New contract required	Approval to proceed to stage 1		✓	If called in	✓	✓