

## 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 Public Contracts Regulations 2015
  - 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 priority outcomes:

Growth  
Ambition  
Resilience  
Sustainability  
Efficiency  
Fairness

- Have regard to the principles set out in the Councils Procurement Strategy  
Have regard to the Public Services (Social Value) Act 2012, the Calderdale Social Value Charter and any further guidance with regard to Social Value issued by the Head of Finance
- 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 are recommended to follow these Contracts Procedure Rules as a model of good practice.

## **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 Council's Contracts Procedure Rules and Public

Contracts Regulations 2015, EU Procurement Regulations thresholds and EC Treaty principles which include fairness, transparency and non-discrimination.

- 6.2 Purchases or orders must not be split (disaggregated) 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. Chief Officers must submit a report at the end of each financial year to Internal Audit detailing the exception or exceptions made in accordance with this rule, including the specific circumstances in which the exemption was justified.

- (c) The use of frameworks, consortia contracts or other public sector contracts with the agreement of the Head of Finance and the Head of Democratic Partnership Services or their nominated representatives.

## **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:

<b>Value of Contract</b>	<b>Approval Body for Waivers for Exceptions as detailed in Section 5</b>
Up to £100,000 (one hundred thousand)	Chief Officer
Over £100,000 (one hundred 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 are required to consult with Head of Finance and Head of Democratic & Partnership Services to ensure that the framework option they wish to follow is legally compliant before calling off any work under the framework.
- 13.2 Services are required to demonstrate that value for money can be delivered through this procurement option.
- 13.3 Contracting through frameworks requires the consultation and approval of:
- Head of Finance and
  - Head of Democratic and Partnership Services
- 13.4 All Requests for Quotes will be placed on the Crown Commercial Services site by the Head of Finance on behalf of Services, used the 'sealed' requirement for return.

## **14. Approved Lists**

- 14.1 Approved lists may only be set up in consultation and agreement with the Head of Finance and the Head of Democratic and Partnership Services.
- 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 Director of Communities and Service Support 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. Legislative Requirements**

As well as current EU and UK procurement legislation, all current legislative requirements must be complied with, including but not exclusively;

- (a) Equality Act 2010
- (b) Public Services (Social Value) Act 2012
- (c) Human Rights Act 1988

- (d) Freedom of Information and Data Protection Acts
- (e) S17 Prevention of Corruption Crime & Disorder Act 1988
- (f) Bribery Act 2010

**19. Financial Checks**

The financial status of tenderers will be ascertained by the Head of Finance where the estimated value of a contract is £100,000 or over, or where appropriate risk is identified for contracts with an estimated value under £100,000.

**20. 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 where it is identified to be relevant and appropriate.

**21. Insurance Requirements**

- 21.1 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.
- 21.2 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.

**22. 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.

**23. Contingencies**

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

**24. Liquidated Damages**

- 24.1 Contracts with an estimated value of £100,000 or more will require a liquidated damages clause to be built into the contract, unless deemed otherwise and authorised by the Head of Finance.

24.2 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 for contracts with an estimated value below £100,000

## **25. Signing and Sealing of Contracts**

25.1 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.

25.2 Contracts with a value of less than £100,000 must be signed by the Head of Democratic and Partnership Services.

25.3 Contracts with an estimated value of £100,000 or more must be sealed with the Common Seal of the Council, unless the Head of Democratic and Partnership Services deems otherwise.

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

## **26. Purchase Orders**

26.1 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.

26.2 Purchase orders must be raised on the Councils Accounts Payable/Financials system as soon as the requirement is identified, and in advance of receipt of any invoices.

## **27. Contract Variations and Extensions**

27.1 Variations must be evidenced in writing.

27.2 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.

27.3 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.

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

<b>Value of Contract</b>	<b>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</b>
Up to £100,0,000 (one hundred thousand)	Chief Officers
Over £100,0,000 (one hundred thousand) and up to Cabinet key decision matters	Chief Officers
Cabinet Key Decision Matters	Cabinet

- 27.5 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.

- 27.6 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.

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

**28. 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.

## **29. Assignments, Novations and Sub-Letting**

- 29.1 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.
- 29.2 At the time of tendering, contractors must notify the Authority of details of any sub-contractors known at the time, for works and services provided at facilities under direct oversight of authority.
- 29.3 All contracts must include clauses to require that contractors, and sub-contractors must pay sub-contractors in the supply chain within 30 days of receipt of invoice, unless that invoice is in dispute.
- 29.4 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.
- 29.5 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.
- 29.6 If the new company is a subsidiary, consideration must be given as to whether a parent company guarantee is needed.
- 29.7 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
- 29.8 Only the Head of Democratic and Partnership Services has the authority to accept new terms and to execute a variation to a contract.
- 29.9 Where it is decided that a contract will not be novated, the contract may need to be terminated and re-tendered

**30. Receivership, Administration and Liquidation**

- 30.1 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.
- 30.2 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.

**31. Settlement of Disputes and Claims**

- 31.1 Chief Officers must consult with the Head of Democratic and Partnership Services as soon as a dispute arises.
- 31.2 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.

**32. Termination of Contract**

- 32.1 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.
- 32.2 The Head of Finance must be consulted where there are serious concerns over the performance of a contract.
- 32.3 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.

**33. 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 Bribery Act 2010, 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.

**34. 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.

**35. Gifts and Hospitality**

35.1 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.

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

**36. Declarations of Interest**

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

## APPENDIX 1 - CONTRACT PROCEDURES

### 37. Introduction

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

- (a) Under £10,000
- (b) Quotes over £10,000 and below £100,000
- (c) Competitive Tenders without PQQ over £100,000 and up to lower EU threshold of £172,514
- (d) EU thresholds and above of:
  - (i) Works £4,322,012
  - (ii) Services & Supplies £ 172, 514
  - (iii) Social and other specific Services £ 625,050

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

37.3 The Contracts Procedure Rules must be used in conjunction with any guidance issued by the Head of Finance and published on the Commercial Procurement Unit Intranet page.

37.4 Pre-qualification questionnaires are not permitted under the Public Contract Regulations 2015 for contracts with a value below the lower EU threshold of £172,514.

37.5 All procurement opportunities with a value of over £10,000 must be advertised and managed through the Council's nominated electronic tender system.

37.6 Quotes and tender procedures will be placed on the Council's nominated electronic tender system by the Head of Finance.

37.7 Use of any alternative method to the Council's nominated electronic tendering system must be authorised by the Head of Finance and the Head of Democratic & Partnership Services.

**38. Corporate Contracts**

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

**39. Contracts under £10,000**

39.1 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.

39.2 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.

**40. Contracts between £10,000 and £100,000**

40.1 Where the requirement cannot be met by existing contracts, four written quotes are required to be received.

40.2 In order to achieve submission of four written quotes, it is recommended that a minimum of six to eight quotes are sought, and these must include at least two local suppliers where appropriate.

40.3 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.

40.4 Suitability assessments may be undertaken for suppliers where relevant and appropriate to the nature of the contract, and in line with guidance issued by the Head of Finance.

40.5 All procurement documents, including the specification, contract terms and conditions and evaluation criteria must be ready for issue prior to going out to quote.

40.6 Opportunities to quote must be advertised through the Council's nominated electronic tendering system, unless otherwise authorised by the Head of Finance.

**41. Contracts over £100,000 and up to EU thresholds**

41.1 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.

- 41.2 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
- 41.3 All procurement projects with a whole life value exceeding £100,000 should include:
- (a) A business case
  - (b) A risk analysis
  - (c) A decision log
- 41.4 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.
- 41.5 All procurement documentation including:
- Specification (including standards for contract performance monitoring)
  - Evaluation criteria
  - Proposed terms and conditions
- Must be completed prior to going out to tender.
- 41.6 The specification and evaluation criteria must be approved by the Head of Finance and the Head of Democratic and Partnership Services prior to release for the tender exercise.
- 41.7 Competitive tendering must be run using the 'Open' procedures and suitability assessments may be undertaken for suppliers where relevant and appropriate to the nature of the contract, and in line with guidance issued by the Head of Finance.

41.8 Chief Officers must ensure that construction contractors are appointed in line with S151 Standards for Contracts for the Construction Industry Scheme (CIS).

## **42. Contracts Exceeding EU Thresholds**

42.1 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.

42.2 The Head of Finance and the Head of Democratic and Partnership Services must be consulted regarding the use of options listed at paragraph 34.1 to ensure that any existing opportunity is compliant with EU legislation.

42.3 All procurement close to or exceeding EU thresholds must be undertaken in consultation with the Head of Finance and the Head of Democratic and Partnership Services.

## **43. Social and other Specific Services**

43.1 In accordance with Section 7 and Schedule 3 of the Public Contracts Regulations 2015, the local authority shall determine the procedures that are to be applied to these Services.

43.2 Officers are required to seek guidance from the Head of Finance and Head of Democratic and Partnership Services for any contract which comes under this category before commencing any procurement action,

## **44. Minimum Number of Bids**

44.1 For between £100,000 to EU thresholds, a minimum of four tenders must be considered for non-EU procurement projects,

44.2 Where it can be demonstrated that the market has been sufficiently tested and less than the minimum specified number of bids are received, a Chief Officer Waiver must be obtained in order to proceed with acceptance of the bid

44.3 For EU procurement projects the minimum number of tenders required shall be in accordance with current legislation.

**45. Advertising Contract Opportunities**

- 45.1 Contracts over £10,000 must be advertised on the Councils electronic tendering system.
- 45.2 Only the Head of Democratic and Partnership Services and the Head of Finance may approve an alternative method of advertising,
- 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 Head of Finance.
- 45.5 Contract opportunities valued over £100,000 will also be advertised by the Head of Finance on the Governments e-portal Contracts Finder.

**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 £100,000**

- 48.1 Invitations to quote must contain a statement that the Council will not be bound to accept any quote or the lowest submitted quote.
- 48.2 Quotes must be submitted through the Council's nominated electronic tendering system, unless agreed otherwise by the Head of Democratic and Partnership Services and the Head of Finance.

### **49. Competitive tenders for Contracts Over £100,000**

- 49.1 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.
- 49.2 All electronic tenders must be submitted through the Council's nominated electronic tendering system unless agreed otherwise by the Head of Democratic and Partnership Services and the Head of Finance.

### **50. Quotes and Tenders Received**

All electronic tenders must be submitted through the Council's nominated electronic tendering system unless agreed otherwise by the Head of Democratic and Partnership Services and the Head of Finance.

### **51. Acceptance of Qualified Tenders**

- 51.1 Qualified tenders may be considered for acceptance, based on an analysis of the risks to the Council. The Council's Head of Finance and Head of Democratic and Partnership Services must be consulted to advise on whether a qualified tender may be accepted.
- 51.2 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.

**52. Late and Rejected tenders**

Late and rejected tenders will not be considered.

**53. Crown Commercial Services Invitation to Quote**

53.1 All invitations to quote placed on the Crown Commercial Services site are to be placed by the Head of Finance.

53.2 Invitations to Quote placed on the Crown Commercial Services website must be placed using the 'sealed' tender option.

53.3 The Head of Finance will open the submitted bids and distribute to the nominated contract officer.

## **APPENDIX 3 - EVALUATION PROCEDURES**

### **54. Introduction**

- 54.1 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.
- 54.2 The minimum number of people required for an evaluation panel is three.
- 54.3 Evaluation Panels will be required to conduct the evaluation in line with guidance published by the Head of Finance.

### **55. Evaluation Panel**

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

- Each quote or tender is marked in a fair and consistent manner
- the recorded decision of the panel is a true reflection 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

### **56. Recording of Evaluation**

- 56.1 The scores of the Evaluation Panel must be recorded using the procedure and templates published by the Head of Finance.
- 56.2 The Evaluation Panel Chair is responsible for ensuring that the scores of the Panel are recorded accurately.
- 56.3 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.

## 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** – 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

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

**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 goods, 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

**Crown Commercial Services** – Commercial function of the Cabinet Office, leading on improving procurement practice in the public sector

**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 2015, 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)** Opportunity made available only to a number of particular bidders who have been selected for that purpose **Invitation to Tender** – Opportunity openly advertised and made available to any bidder who may wish to be considered for that opportunity 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

**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. Must be used for contracts valued below EU thresholds.

**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. Can only be used by law for contracts valued over EU thresholds,

**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. Used for contracts above EU thresholds

**Social Value** – Consideration of economic, social and environmental factors as part of requirements.

**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

**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

**Soft Market Testing/Testing the Market** – Pre-procurement engagement with potential bidders or interested parties to establish whether there are suppliers able and interested in providing quotes or bidding or identify whether proposed procurement approach is appropriate.

**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 or by Head of Democratic and Partnership Services as an exemption to the Contracts Procedure Rules

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

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