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## **SECTION A**

### **GENERAL APPLICATION OF THE RULES**

#### **1. Introduction**

- 1.1 These Contract Rules (“Rules”), issued in accordance with section 135 of the 1972 Local Government Act), are the Council’s procedure rules for procuring, (buying, renting, leasing etc) goods, services and works for the Council. They are intended to promote good purchasing practice and public accountability and to deter acts of corruption.
- 1.2 The Rules are part of the Council’s Constitution and therefore Officers have a duty to ensure they have fully understood them prior to commencing any procurement or contracting activity.
- 1.3 These Contract Rules are prepared and are to be read in conjunction with the provisions of the Regulations. Where there is any conflict between the Regulations and these Rules the Regulations shall prevail.

#### **2. Variation and Amendment of these Rules**

- 2.1 The Chief Executive may, on the advice of the Director of Law and Governance, make such necessary or incidental amendments to these Rules to effect or implement any changes in law (whether due to legislation, case law or EU Directive), or to correct any inconsistency in, or clarify any interpretation of, these Rules.
- 2.2 If there is any change to the law which affects these Rules then that change must be observed until these Rules can be revised. If these Rules conflict in any way with the law then the law takes precedence.
- 2.3 In accordance with the Council’s Constitution, the Chief Executive has final say on interpretation of these Rules (after taking advice from Corporate Procurement and Legal Services).

#### **3. Scope of the Contract Rules**

- 3.1 These Rules apply to all contracts and procurements for goods, works or services entered into by or on behalf of the Council, irrespective of whether the contract is financed from Council funds or from external funds, grant or other funds intended to be spent on procurement by the Council.
- 3.2 These Rules apply to all Officers of the Council and any companies or organisations wholly or partly owned by the Council or otherwise within the Council’s control. They also apply to third party contractors providing goods and services for and on behalf of the Council where the relevant contract between the Council and Contractor provides for the Contractor to comply with these rules.

#### **4. Exempt Agreements**

4.1 These Rules do **NOT** apply to:

- (a) The acquisition or disposal of land or any interest in land - The Rules do not apply where the Council is acquiring or disposing of any interest in land, whether by freehold, lease, licence etc. Legal Services and Property Services must be consulted on Development Agreements, as these may be considered a 'works' contract.
- (b) Contracts of employment - Human Resources should be consulted in respect of such contracts.
- (c) In-House Contracts - The tendering and contract award provisions of these rules shall not apply to the award of contracts between the Council and Council owed companies or such other bodies over which the Council has central management provided the following conditions can be met:
  - (i) the Council exercises control over the entity similar to that which it exercises over its own departments;
  - (ii) more than 80% of activities of the entity relate to the performance of tasks entrusted to it by the Council; and
  - (iii) there is no direct private capital participation in the entity (with the exception of non-controlling and non-blocking forms of private capital participation required by national law in conformity with the EU Treaties).

Where Officers are unsure about the application of this rule they must consult with Legal Services.

- (d) Subscriptions/ Membership fees - These Rules do not apply where the Council is paying a subscription fee for any professional, political or other such grouping to which the Council or Council Officers belong on a professional or representative basis.

#### **5. Partially Exempt Procurements**

5.1 The procurements and contracts listed below are exempt from the full tendering requirements of Section C of these Rules in that Officers do not need to undertake a full procurement tender exercise. Officers must ensure however that the requirements of Section B to these Rules are adhered to, that the appropriate procurement strategy approval process has been followed e.g. by the Procurement Board, and that any necessary waiver has been granted.

- (a) Framework Agreements/Contracts - Procurements from Frameworks are exempt from the full application of the Rules provided the framework has been properly procured under the Regulations and the procurement is made in accordance with the Framework's terms and conditions.
- (b) Consortia Arrangements - Where a procurement is made by another public authority or body (as lead contracting authority) acting with, by, or for the Council and any other authority, these Rules will not apply provided

the Regulations and standing orders of the lead contracting authority or body have been followed and the provisions of Section B followed.

- (c) Emergency procurements - Goods, works or services may be procured in a genuine Emergency without complying fully with the Rules provided an appropriate waiver has been obtained in accordance with Rule 6.
- (d) Personalised Contracts - Chief Officers may exempt Personalised Contracts from the full tendering requirements of these Rules. Officers must ensure however that the requirements of Section B to these Rules are adhered to where possible. Procurement Strategy reports must be prepared before any procurement for such contract with a Contract Value of £50,000 or more is commenced, but where such contract is a High Value Contract, such report shall be submitted for consideration and approval by the relevant Chief Officer rather than the Procurement Board. Personalised Contracts, where the Council is statutorily obliged to enter into the contract, may be approved by the Chief Officer rather than by the Cabinet / Health and Wellbeing Board (HWB).
- (e) The instructing of counsel or lawyers by the Director of Law and Governance where the Contract Value is less than £50,000

## **6. Waivers**

- 6.1 Subject to Rules 6.2 and 6.3 below, where for any of the reasons set out in Rule 6.6 (a) to (h) a Chief Officer is satisfied that compliance with any of the provisions of Section C of these Rules will prejudice the Council's interests, that Chief Officer may grant or, where applicable, apply to Cabinet/HWB for a waiver of compliance with any of the Rules in Section C of these Rules.
- 6.2 No waiver shall be granted by a Chief Officer or by Cabinet/HWB which purports to or has the effect of waiving the requirements of UK and EU Law or the EU Treaty principles of transparency, equality and non discrimination.
- 6.3 Where the Contract Value of a contract is or exceeds £500,000, approval to waive any of the Rules in Section C must be obtained from the Cabinet/HWB except in an Emergency, in which case the Chief Executive can issue the waiver pursuant to Rule 6.4 below.
- 6.4 Subject to clause 6.6 below, in an Emergency, the Chief Executive can, on the advice of the Director of Law and Governance and the Chief Financial Officer, issue a waiver from compliance with any of the provisions contained in Section C of these Rules for a contract with a Contract Value which exceeds £500,000, provided the requirements of the Urgent Action procedure set out in paragraph 4, Chapter 16, Part 2 of the Constitution are complied with and subject to the Regulations. Any such waiver must be reported to the next available meeting of the Cabinet/HWB.
- 6.5 A Chief Officer may, subject to Rules 6.2 and 6.6, issue a waiver of any of the Rules contained in Section C where the Contract Value of the Contract is below £500,000.

- 6.6 Before a waiver is granted, a report must first be submitted to Cabinet/HWB or to the Chief Officer (as appropriate) clearly stating which of the grounds set out below is relied upon for a waiver:
- (a) That an emergency situation exists, or
  - (b) That there is clear evidence the goods, services or works to be procured are of a specialist technical, artistic or proprietary nature, or
  - (c) That there is only one supplier in the market capable of providing the service, goods or works e.g. a specific artist with intellectual property rights in a work of art, such that there is no benefit to be gained from competition or
  - (d) For reasons of systems or software licence support or compatibility, or
  - (e) The circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English law).

**In the case of non-EU procured contracts only, any of the above or where:**

- (f) The contract is a Personalised Contract, or
- (g) The nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is such that a departure from the requirements of Contract Rules is justifiable; or
- (h) There are other circumstances which are genuinely exceptional.

**And** in any and every such case as mentioned in Rule 6.6 (a) to (h), the appropriate decision-maker considers, subject to the requirements of the Regulations and these Rules, that no satisfactory alternative is available and it is in the Council's overall interests.

- 6.7 Advice should be obtained from Corporate Procurement or Legal Services where Officers are unsure whether any of the above-mentioned grounds apply to any particular request for a waiver.
- 6.8 Waivers must not be used to avoid the administrative inconvenience of a tender process. The provisions to waive the requirement to tender and in particular the "Emergency" waiver provisions (as set out in Rule 6.4 above), must only be used in exceptional circumstances. Urgency produced by poor procurement planning would not qualify for this waiver.
- 6.9 An Emergency for the purpose of this Rule must be agreed as an emergency by the Chief Officer, the Director of Law and Governance and the Chief Financial Officer.
- 6.10 Any waiver granted by a Chief Officer must be evidenced in a Delegated Authority Decision Statement. Every such Delegated Authority Decision Statement must be supported by a written report. Where the waiver relates to a contract with a Contract Value of £50,000 or more the report shall be in the form of a Procurement Strategy Report Where the waiver relates to a class D,

E or F contract, the Procurement Strategy Report must contain sections outlining the Financial and Legal Implications written by the Chief Financial Officer and the Director of Law and Governance respectively, or their nominated delegates.

- 6.11 The Chief Officer must keep a written record of all waiver approvals for his/her department and work with Corporate Procurement to avoid seeking exemptions in future. Copies of this record must be produced to the Procurement Board, and when required by the Monitoring Officer or Audit.

## **7. Cabinet and HWB's Role and Responsibilities**

- 7.1 Cabinet is ultimately responsible for all the Council's strategic procurement. Whilst Chief Officers have delegated authority to procure and award contracts with a Contract Value of less than £500,000, Cabinet shall be entitled to require any such procurement or contract to be approved by Cabinet if it deems fit.
- 7.2 Whilst Cabinet and Cabinet Members may propose, agree or participate in setting the procurement strategy for any procurement or contract, Members, and in particular Cabinet Members, should avoid direct participation in the procurement and evaluation process for any contract.
- 7.3 The HWB has the same power as Cabinet to authorise the procurement and award of contracts where such procurement /contract is funded in part or in whole from the Public Health Grant or from within social care budgets.
- 7.4 Any approval, authorisation, waiver, reference or consultation required in these Rules to be made by/to Cabinet, may, where the procurement/contract is funded in part or in whole from the Public Health Grant or from within social care budgets, be made either by/to Cabinet or by/to the HWB. The relevant Chief Officer shall determine the appropriate body to make the decision.
- 7.5 Cabinet/HWB must agree the Procurement Strategy for all procurements of:
- (a) all proposed revenue contracts with a Contract Value of £500,000 or more and
  - (b) contracts where the final award may involve outsourcing any part of an existing in-house service or bringing a service back in-house

## **8. Chief Officer Responsibilities**

- 8.1 Each Chief Officer for the department procuring the goods, works or services shall be responsible for the compliance by Officers within their department with these Rules.
- 8.2 Authority to make decisions under these Rules may be further delegated by Chief Officers to other Officers within their department. Those officers who have delegated authority to take decisions in the name of the Chief Officer must be identified in the Officer Scheme of Delegation for the relevant department.

- 8.3 Chief Officers will be held accountable for all decisions made within their department under delegated authority and these Rules.
- 8.4 The Chief Operating Officer shall be the Council's lead Officer responsible for procurement overview and obtaining value for money.

## **9. Officers' Responsibilities**

- 9.1 Procurements and contracts can only be made or entered into by duly authorised Officers and in accordance with the Corporate and departmental Schemes of Delegation.
- 9.2 Officers must also ensure that any persons and/or organisations acting on behalf of the Council and spending Council funds e.g. contractors, agents, consultants and partners) fully comply with these Rules.
- 9.3 Officers responsible for purchasing on behalf of the Council must comply with these Rules, any accompanying Guidance, the Council's Procurement Strategy, Social Value Policy, applicable Financial Rules, and all UK and European Union law and binding legal requirements. In particular, where appropriate, Officers must comply with the provisions of the [Public Contract Regulations 2015](#).
- 9.4 It is Officers' ultimate responsibility before embarking on any procurement activity and particularly if they are in any doubt about whether the Rules apply, to seek appropriate advice, support and guidance from the Council's Corporate Procurement team and/or Legal Services.

## **10. Conflict of Interests**

- 10.1 If any Officer or elected Member involved in any procurement or award of contract has any connection – whether past or present, direct or indirect – with any bidder, then:
- (a) that connection should be declared and registered using the appropriate conflict of interest form (see the Council's Constitution, in particular the Codes of Conduct for both Officers and Members); and
  - (b) Such officer or Member must not participate in any aspect of the tender process.
- 10.2 Officers must not accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in the contract if this may prejudice the equal treatment of all potential bidders or distort competition.
- 10.3 Any consultant or advisor appointed to provide professional or consulting services and advise on the procurement or design of a project, or to advise on the selection, award or weighting criteria must not be permitted to bid for that or any subsequent stage or other aspect of the work or project.



## **11. Consequences of Non-Compliance with these Rules**

- 11.1 If the Council enters into a contract without complying with these Rules, the procurement process and subsequent contract could be challenged by an aggrieved party. If challenged the courts have the power to award damages against the Council or may issue an injunction which could prevent the Council from entering into the contract with a successful bidder.
- 11.2 In the case of a contract that should be procured under the EU procurement regime, i.e. under the Regulations, the courts also have the power to fine the Council and more importantly, can declare the award of the contract 'ineffective' which means that the Council may be prevented from entering into the contract or the contract may be cut short.
- 11.3 It is therefore imperative that there is strict compliance with these Rules when making procurement on the Council's behalf.
- 11.4 Officers failing to comply with or found to have breached these Rules may be subject to disciplinary action.

## **SECTION B**

### **BEFORE COMMENCING A PROCUREMENT EXERCISE**

#### **12. Pre-Procurement Review**

- 12.1 Before commencing a procurement, officers responsible for the procurement must first conduct a review of the proposed procurement to determine whether it will provide the Council with best value.
- 12.2 Officers' approach to the appraisal tasks must be proportionate to the complexity and value of the procurement and will require Officers to:
- (a) appraise the need for the expenditure and its priority;
  - (b) define the objectives of the procurement;
  - (c) assess the risks associated with the procurement and how to manage them.
- 12.3 Officers must also consider the size, scope, and specification of the goods, services or works required. In particular, officers:
- (a) must decide whether or not a contract should be divided into separate lots and determine the size and subject matter of such lot;
  - (b) must record their reasons for not separating the contract into lots in the Procurement Strategy Report and the Contract Award Report;
  - (c) must include in the Invitation to Tender (ITT) an indication whether tenders may be submitted for one, for several, or for all of the lots;
  - (d) may limit the number of lots that may be awarded to one tenderer provided the maximum number of lots per tenderer is stated in the contract notice or in the ITT,
  - (e) shall indicate in the ITT all the criteria or rules they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number;
  - (f) may award contracts combining several or all lots where they have specified in the notice or ITT that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined; and
  - (g) must determine the duration of the contract that will provide the most economically advantageous outcome for the Council.
- 12.4 Officers must be satisfied that there is sufficient budgetary provision (whether from Council or external funds) for the anticipated procurement and any sources of funding are agreed before conducting the procurement.

### **13. Procurement Route**

- 13.1 Officers must consider what procurement method and procedure is most likely to best achieve the Council's objectives including, but not limited to:
- (a) a full tender exercise;
  - (b) Procuring via an existing Framework agreement;
  - (c) Utilising a buying consortium (e.g. ESPO, CCS) to procure on behalf of the Council;
  - (d) Procuring via an existing Corporate Contract or Council procured framework; and
  - (e) Procuring via the Council's Strategic Partnership Contract with Elevate.

### **14. Corporate Contracts**

- 14.1 Officers must ensure they do not procure any works, goods or services or seek an exemption in relation to procuring any contract without first checking with Corporate Procurement whether the provision can be provided via an existing corporate contract i.e. one procured by the Council generally and not necessarily by or for a specific department. Officers must use Council procured corporate contracts or framework agreements where these exist, unless otherwise specifically agreed with Corporate Procurement.

### **15. Delivery Options**

- 15.1 Officers must also consider the options for the delivery of the required goods, services or works. The options include but are not limited to:
- (a) Providing the goods, services or works in-house;
  - (b) Getting a third party public or private body to provide the goods, services or works on behalf of the Council;
  - (c) Providing the goods, services or works in partnership with a third party;
  - (d) Commissioning jointly with another Council/public body; and
  - (e) Procuring from or via Elevate.
- 15.2 Officers should note that the Council has a strategic partnership agreement with Elevate and all goods, services or works that fall within the scope of the agreement must be procured from or via Elevate. Advice shall be taken from the Chief Operating Officer as to whether any particular procurement falls within the scope of the Elevate agreement.

### **16. Joint Procurements**

- 16.1 Officers should actively seek out opportunities to collaborate and procure jointly with other public bodies where this is likely to be of benefit to the Council.

16.2 Where a joint procurement occurs, the procurement rules of the authority leading the procurement will apply unless the lead authority specifically agrees otherwise.

## **17. Sustainable Procurement**

17.1 Sustainable procurement offers the Council the opportunity to encourage and work collaboratively with suppliers and contractors. Officers must consider the environmental and social impacts of the procurement and endeavour to adopt practices that maximise the beneficial impacts and minimise adverse or detrimental impacts on the environment.

17.2 Officers are required to consider ways of procuring more resource and energy efficient alternatives and pay particular regard to the Council's environmental policies.

## **18. The Council's Social Value Policy**

18.1 Officers should procure in compliance with the Public Services (Social Value) Act 2012 and the Council's Social Value Policy.

18.2 Before starting a procurement process, Officers should consider:

- (a) how what is proposed to be procured might improve the economic, social and environmental well-being of the Council's area;
- (b) How, in conducting the process of procurement, it might act with a view to securing that improvement; and
- (c) Whether to conduct any consultation on the above matters to help shape specifications, programmes and services and, if so, with whom.

18.3 In particular officers should wherever possible, but without breaching any law, use the Council's purchasing power to support local small and medium-sized enterprises (SMEs) or voluntary and community organisations and seek benefits and added value for the local geographical area and where this provides equal or better value for money for the Council than alternatives.

18.4 Officers must carefully review the required specifications and evaluation methodology of any procurement to ensure that small and medium sized enterprises are not being disadvantaged in their ability to tender for goods, works or services with the Council. Officers must not, however, conduct a procurement in any way that is likely to show bias towards or discriminate in favour of any such organisation.

18.5 Officers must ensure that processes do not over burden or restrict SMEs or voluntary and community organisations from having the same opportunity to respond to procurements as those in the commercial sector. Equally, consideration should be given to the supply chain and how each specific procurement can help the local community and local small medium enterprises within the borough.

18.6 Officers may incorporate questions in their Invitations to Tender and evaluate responses relating to local economical benefits, social value benefits, and

regeneration within the community or any other benefits (such as apprenticeships and employment) that support the local economy and prosperity for the borough where this is appropriate to the procurement. Advice on the preparation of the ITT and where appropriate, the Pre-Qualification Questionnaire (PQQ), can be obtained from Corporate Procurement.

- 18.7 Officers must include a statement as to how the procurement meets and addresses the Council's Social Value policies in every Procurement Strategy Report covering the procurement.
- 18.8 Relevant bodies can, in exercise of the Community Right to Challenge (under the Localism Act 2011), propose a solution to provide a service that the Council currently provides. Advice on the process to follow should be obtained from the Council's Policy Team (should a challenge be received).

## **19. Market Research and Consultation with Third Parties**

- 19.1 Officers responsible for procurement may consult potential providers prior to the commencement of a procurement exercise with a view to preparing the procurement and informing providers of their procurement plans and requirements. This may include seeking or accepting advice from independent experts, authorities or from market participants. Advice obtained in the preliminary market consultation process can be used in the subsequent planning and conduct of the procurement procedure provided that the advice does not have the effect of distorting competition and does not breach requirements for non-discrimination and transparency. Officers should consult Corporate Procurement for advice.
- 19.2 Where a candidate or tenderer, or an undertaking related to a candidate or tenderer, has been involved at the pre-procurement stage (for example they have advised the Council in relation to 19.1 above or have otherwise been involved in the preparation of the procurement procedure) the Council must take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer, for example by providing the information which has been made available at the pre-procurement stage to all tenderers.
- 19.3 The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to treat suppliers equally.
- 19.4 Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition.
- 19.5 Officers must avoid any conflict of interest as provided for in Rule 10 of these Rules.

## **20. TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) and Pensions**

- 20.1 Where, as a result of any procurement, any employee either of the Council or of a current service provider is likely to be affected by changes to staffing or

work conditions, redundancy, relocation or transfer of employment, Officers must have regard to the possible impact on such procurement and employee(s) of the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended. Such TUPE issues should be included in the procurement strategy report and any evaluation and award reports.

- 20.2 Officers must ensure that appropriate consultation with staff and trade unions is undertaken and that pension entitlements are considered and as far as possible, protected.
- 20.3 Advice regarding TUPE must be sought from the Corporate Procurement, and Human Resources teams and where necessary, from Legal Services.

## **21. Insurance**

- 21.1 Before commencing procurement, Officers should take advice from the Council's Insurance team on levels and type of insurance that may be required for the procurement.
- 21.2 Every contract for the carrying out of work or the provision of services shall require the contractor to take out and maintain during the duration of the contract such levels of Employers Liability, Third Party Liability, Professional Indemnity and such other insurance as the Council's Insurance team shall advise as being necessary and appropriate to the particular contract.
- 21.3 Such insurance policies shall contain endorsements sufficient to indemnify the Council against any loss, damage or injury to persons or property arising from the contractor's operations in connection with the contract.

## **22. Pre-Procurement Notices**

- 22.1 Officers must ensure that any Prior Information Notices (PINs) or Voluntary Ex-Ante Transparency (VEAT) notices, required for the EU Procedure are placed in the Official Journal of the European Union (OJEU) by a member of Corporate Procurement.
- 22.2 PINs may be used by the Council:
- (a) to make known their intention of planned procurements through the publication of a prior information notice, or
  - (b) as a call for competition.
- 22.3 In each such case the provisions of [Regulation 48](#) shall be complied with.
- 22.4 Where officers wish to use this method, advice must be sought from Corporate Procurement and Legal Services.

## **23. Procurement Strategy and Procurement Board Scrutiny**

- 23.1 Before any procurement process for contracts with a Contract Value of £50,000 or above begins, a formal procurement strategy must be planned and a written Procurement Strategy Report (as described in Rule 24 below) prepared.

- 23.2 Subject to Contract Rule 23.3 the Procurement Strategy Report must be submitted:
- (a) In the case of contracts requiring Cabinet/HWB approval and other High Value Contracts, to the Procurement Board for consideration and comment prior to Cabinet/HWB or Chief Officer approval; or
  - (b) in the case of contracts with a Contract Value of £50,000 or more but which are not High Value Contracts, or Personalised Contracts, to the relevant Chief Officer.
- 23.3 A Procurement Strategy Report shall not be required to be prepared where the procurement strategy is included in the annual Procurement Plan report as set out in rule 25.3 or where Cabinet/HWB has approved the scheme specifically and has delegated authority to the Procurement Board to approve the procurement strategy.
- 23.4 Before commencing a procurement, Officers must ensure that an accurate procurement timetable is calculated taking into account all of the requirements of the procurement process.
- 23.5 Where the Regulations apply, the applicable statutory timescales must be complied with.
- 24. Procurement Strategy Report (for Contracts Valued above £50,000)**
- 24.1 A Procurement Strategy Report must be completed for every contract procurement other than Class A or B contracts (contracts with a Contract Value less than £50,000).
- 24.2 The Procurement Strategy Report must specify the strategy proposed for the procurement, and must address the following issues:
- (a) an outline specification of the works, goods or services being procured;
  - (b) the estimated Contract Value, including the value of any uplift or extension period;
  - (c) the duration of the contract, including any options for extension;
  - (d) the outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract;
  - (e) in the case of service contracts whether the service is subject to the Regulations and if so, whether they are subject to the Light Touch Regime;
  - (f) a recommended procurement procedure and the reasons for the recommendation, evidencing what alternative solutions (including existing contracts and Frameworks) were considered but were not pursued;
  - (g) details of the criteria against which the contract is to be awarded, (advice on this should be obtained from Corporate Procurement);

- (h) details of whether the contract is to be subdivided into lots and any details relating to such sub-division as required in Contract Rule 12.3 (a);
  - (i) an explanation as to whether and how the procurement will address and implement the Council's Equality and Social Value policies;
  - (j) the contract delivery methodology to be adopted;
  - (k) confirmation whether the procurement constitutes a Key Decision and if so, ensuring that all requirements in respect of the same have been complied with, including confirmation that the procurement has been placed on the Forward Plan prior to formal approval;
  - (l) an indication whether employees are to be TUPE transferred as part of the procurement and if so, the staffing, trade union and financial implications of such transfer;
  - (m) details of any consultations had or to be had with relevant stakeholders including unions and service users; and
  - (n) details (including any results) of any impact assessments conducted or to be conducted.
- 24.3 For procurements requiring Cabinet/HWB approval (those with a Contract Value of £500,000 and above), the Procurement Strategy Report should also:
- (a) confirm that the proposal has been agreed in principle by the Procurement Board and that the proposed solution fits in with corporate strategies;
  - (b) request that Cabinet/HWB delegate authority to the relevant Chief Officer, in consultation with the relevant Cabinet Member(s), the Chief Financial Officer and the Director of Law and Governance, to conduct the procurement and enter into the contract with the successful bidder(s) and/or any other necessary agreements in accordance with the strategy set out in the report.
- 24.4 Where, following the submission of a Procurement Strategy Report to the Procurement Board or relevant Chief Officer, additional criteria or requirements are set by the Procurement Board or relevant Chief Officer, Officers must comply with those requirements.
- 24.5 All Procurement Strategy Reports for contracts with a Contract Value of £100,000 or more must contain sections outlining the financial and legal implications written by the Chief Financial Officer and the Director of Law and Governance respectively, or their nominated delegates.

## **25. The Corporate Procurement Plan**

- 25.1 Corporate Procurement shall prepare and maintain an annual forward-looking Procurement Plan. The Plan shall consist of details of all of the new contracts which have been registered with Corporate Procurement and for which procurements (including extensions, additions and renewals) are planned for the forthcoming financial year. The Plan shall include all contracts with a



Contract Value of £500,000 or above scheduled to start in the forthcoming financial year.

25.2 The Procurement Plan serves two principal purposes:

- (a) To provide Cabinet and other readers with an overview of significant procurement activity; and
- (b) To inform potential suppliers of major future market activity.

25.3 Corporate Procurement shall each year prepare and submit an annual report to Cabinet detailing the contracts on the Procurement Plan and a brief summary of the proposed procurement strategy for each contract to include the items set out in Rules 24.2 (a) to (n) above.

25.4 Cabinet may, upon consideration of the Procurement Plan report, confirm its agreement to the proposed Plan in its entirety or in part and may identify any individual procurements/contracts about which it requires separate more detailed Procurement Strategy Reports to be submitted to it for closer consideration.

25.5 No contract shall be included in the Procurement Plan report for approval by Cabinet unless a Procurement Strategy Report has first been prepared and reviewed by the Procurement Board.

25.6 The procurement strategy for any contract with a Contract Value above £500,000 which has not been approved by Cabinet as part of the Procurement Plan in accordance with this Rule 25 must be approved in line with Rule 24 and the table at Rule 28.8.

25.7 The Procurement Plan shall be regularly reviewed and updated with any new planned procurement activities added to existing approved entries.

25.8 Corporate Procurement shall prepare and submit to Cabinet update reports on the Procurement Plan on a quarterly basis (or such other frequency as Cabinet shall deem appropriate).

25.9 A similar plan and report as described in this Rule 25 shall be prepared and maintained in respect of contracts funded in part or in whole from the Public Health Grant or from within social care budgets, and reports thereon submitted (following the same procedure as set out above) for approval by the HWB at such frequency as the HWB shall deem appropriate.

## **26. Key Decision**

26.1 Officers must consider whether a procurement involves a Key Decision. If it does, and the Contract Value is £200,000 or more, then Officers must enter the Procurement Strategy Report on the Forward Plan.

26.2 Chief Officers may approve the procurement and award of contracts with a Contract Value of up to £500,000. Chief Officers must however consider whether in the circumstances of the particular contract, such a decision should be made by them or whether it is more appropriate that the decision be made by Cabinet or HWB.

## **SECTION C**

### **THE PROCUREMENT PROCESS**

#### **27. Contract Value**

- 27.1 Procuring Officers must ensure that they obtain value for money with every procurement. Value for money is defined with reference to price, quality, availability, functionality and the optimum combination of whole life costs. Opportunities to save money by providing the optimum service for less than budgeted price should also be pursued.
- 27.2 Wherever practicable, procurements for a given type of goods, service or works from across the Council should be amalgamated for the purpose of determining the Contract Value, procurement procedures and thresholds. This also applies to Framework Agreements. Officers must consult with Corporate Procurement.
- 27.3 Officers shall ensure that all contracts are procured in accordance with the procedures prescribed by law and these Rules as being appropriate to the type of procurement.
- 27.4 Officers shall comply with the procurement procedure prescribed in the Approval Table in Rule 28 for the relevant Contract Value of the contracts.
- 27.5 Where a contract includes the service provider offering goods, services or works as part of their bid, the monetary value of the goods, service and works must be considered and calculated in addition to any remaining monetary value of the contract. Officers should seek the advice of Corporate Procurement in these cases.
- 27.6 Officers shall not sub-divide works, services or goods contracts into small contracts with the intention of avoiding compliance with these Rules, thresholds or any legal requirement where these could reasonably be treated as a single contract. For the avoidance of doubt this shall have no effect on the obligation referred to in Rule 12.3(a).
- 27.7 If the contract value of the procurement is on the border of two of the financial thresholds in the Approval Table, the Contract Value should be treated as falling into the higher band. Procurement must not be divided into smaller parts with the sole purpose of bringing it into a lower banding or avoiding full compliance with the requirements for contracts in the higher band.
- 27.8 If procurement involves a mixture of goods, works and/or services advice should be sought from Corporate Procurement as to how such procurement should be categorised.
- 27.9 An assessment of the Contract Value of a procurement shall still be necessary notwithstanding the Council will be receiving and using external funding to cover the cost of the project, services or works. The use of external funding does not preclude the application of the Rules or the Regulations.
- 27.10 The calculation of the Contract Value shall be exclusive of VAT.

## **28. Contract Values Procedure**

- 28.1 All the required approval forms must be completed fully and accurately.
- 28.2 **Contracts Valued below £5,000** - Where the Contract Value is estimated to be less than £5,000 (Class A contracts), Officers should act in the most expedient manner to secure value for money for the Council. Value for money must be demonstrated in writing.
- 28.3 **Contracts Valued above £5,000 but below £50,000** - Where the contract value of the procurement is estimated to be more than £5,000 but less than £50,000 (Class B contracts), competitive quotes must be obtained from at least three contractors without the need to advertise the contract or follow a competitive tendering exercise. The process for submission of Quotes shall mirror the provisions in relation to Submissions and Opening of Tenders set out in Rule 43 and the selection process shall be managed in accordance with the Department's financial Scheme of Delegation. Where appropriate, Officers shall make use of any existing Framework Agreement.
- 28.4 **Contracts Valued £25,000 or more** - Contracts below £50,000 may, but need not be, opened to competitive tender. Where Officers decide to subject such contracts to competitive tender and the Contract Value is £25,000 or more then such contracts must be advertised on Contracts Finder within 24 hours of the time when the procurement is advertised in any other way. Where such contract opportunity is advertised on Contracts Finder a contract award notice must also be published on Contracts Finder. The requirement to advertise within Contracts Finder shall only apply where the contract is fully advertised. The procurement process, including reasons and award, must be recorded in an officer DA decision statement.
- 28.5 **Procurement Process for Contracts Valued above £50,000** - Contracts with an estimated Contract Value of £50,000 or more (Class C, D or E contracts) must (except where a formal waiver in accordance with Rule 6 of these Rules has been obtained) be let following publication of an appropriate advertisement and a subsequent competitive tendering process (single stage tender is required for procurements below EU thresholds) as set out in these Rules. Procurement Strategy Reports shall be prepared by Officers and approved by the Chief Officer for all procurements with a Contract Value of £50,000 or over.
- 28.6 **Procurement process for contracts above EU threshold and High Value Contracts but below £500,000** - Procurement Strategy Reports for all procurements for High Value Contracts must be prepared and submitted to the Procurement Board for consideration before being approved by the Chief Officer.
- 28.7 **Procurement process for Contracts Valued £500,000 or above** - Except in an Emergency or Personalised Contracts where the Council is statutorily obliged to enter into the contract, all procurements for contracts with a Contract Value of £500,000 or more must be approved by Cabinet/HWB. The procurement strategy for any such procurement must be set out in a Procurement Strategy Report and first be submitted to the Procurement Board for consideration before being submitted to Cabinet for approval.

### Approval Table

28.8 The following table indicates the class bands in relation to the procurement process which must be followed, the documents required to be completed and the requisite authority for the different valued contracts to be obtained.

<b>Contract Value</b>	<b>Class</b>	<b>Procurement Process</b>	<b>Documents Required</b>	<b>Approval</b>
£1 to Under £5000	A	Value for Money	Officer Delegated Authority Decision statement which must demonstrate value for money (Rule 28.3)	As per Directorate Scheme of Delegation
£5,000 and over to Under £50,000  £25,000 and over to under £50,000	B	3 documented quotes  See Rule 28.4  Advertisement on Council website and Contracts Finder	Contract Award Report under officer DA (Rule 50.3)  Information about contract award published on Contracts Finder  If Waiver Required: Officer Delegated Authority decision statement supported by a report. (Rule 6.10)	As per Directorate Scheme of Delegation   Chief Officer
£50,000 and over but which are not High Value Contracts	C	Formal invitation to tender by way of a single stage (open) tender exercise.  Advertisement on Council website and Contracts Finder.  Compliance with EU Treaty principles (for below threshold and Light Touch Regime procurements)	Procurement Strategy Report for officer approval under DA (Rule 24.1)        At award stage a Contract Award Report must be completed (Rule 50.3)	As per Directorate Scheme of Delegation        Chief Officer

			<p>Information about contract award published on Contracts Finder</p> <p>If Waiver Required: Officer Delegated Authority Decision Statement to include justification for a waiver under grounds in Rule 6.6.</p>	<p>Chief Officer</p>
<p>High Value Contracts which are under EU procurement thresholds</p>	<p>D</p>	<p>Formal invitation to tender.</p> <p>No PQQ for contracts with a Contract Value below the EU procurement thresholds for supplies and services (including works)</p> <p>Advertisement on Council website and Contracts Finder.</p> <p>Compliance with EU Treaty principles (for below threshold and Light Touch Regime procurements)</p>	<p>Procurement Strategy report for officer approval under DA (Rule 24.1) to include Finance and Legal Implications.</p> <p>At award stage a Contract Award Report must be completed (Rule 50.3)</p> <p>Information about contract award published on Contracts Finder</p> <p>If Waiver required: Officer Delegated Authority Decision Statement and include justification for waiver under grounds in Rule 6.6)</p>	<p>As per Directorate Scheme of Delegation</p> <p>Corporate Procurement Board.</p> <p>As per Directorate Scheme of Delegation</p> <p>Chief Officer, following Procurement Board approval.</p>

<p>EU procurement thresholds to Under £500,000</p>	<p>E</p>	<p>Formal invitation to tender</p> <p>Compliance with the Regulations (for above threshold procurements</p> <p>Advertisement in OJEU and Contracts Finder and on Council website.</p> <p>If Contract Value is £200,000 or over, enter on Forward Plan as Officer Key Decision.</p>	<p>Procurement Strategy Report for officer approval under DA (Rule 24.1) with Finance and Legal Implications.</p> <p>At award stage a Contract Award Report must be completed (Rule 50.3)</p> <p>Contract Award Notice published in OJEU and award information on Contracts Finder.</p> <p>If Waiver required: Procurement Strategy Report to include justification for waiver under grounds in Rule 6.6.</p>	<p>Corporate Procurement Board, and</p> <p>Chief Officer or as per Directorate Scheme of Delegation</p> <p>Cabinet/HWB at the discretion of the Chief Officer</p> <p>Chief Officer</p> <p>Chief Officer, following Procurement Board approval.</p>
<p>£500,000 or over</p>	<p>F</p>	<p>Formal invitation to tender</p> <p>Advertisement in OJEU and Contracts Finder and on Council website.</p> <p>Enter on Forward Plan.</p>	<p>Cabinet procurement strategy and waiver report template.</p> <p>At award stage a Contract Award Report must be completed (Rule 50.3)</p>	<p>Corporate Procurement Board, and</p> <p>Cabinet/HWB</p> <p>Chief Officer, unless Cabinet/HWB</p>

			<p>Contract Award Notice published in OJEU and award information on Contracts Finder.</p> <p>If Waiver required: Procurement Strategy Report to include justification for waiver under grounds in Rule 6.6.</p>	<p>decides otherwise.</p> <p>Cabinet/HWB</p>
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**29. Advertisements and Notices**

- 29.1 Except where a waiver has been granted in accordance with these Rules, all contracts must be advertised to a degree and in a manner that demonstrates adherence to the EU procurement principles of transparency, openness and non-discrimination. The degree and manner of advertising must be sufficient to allow the relevant market to be opened up to competition. The decision as to the degree of advertising necessary has to be based on an evaluation of the individual circumstances of each case such as the subject-matter of the contract, its estimated value, the size and structure of the market, the geographic location of the place of performance and the likely cross-border interest in the contract. This Rule applies irrespective of whether a proposed contract is of low value (under the relevant EU threshold) or a subject to the Light Touch Regime and therefore not subject to the full requirements of the Regulations.
- 29.2 Officers shall ensure that the provisions of Rule 18 (Council’s Social Value Policy) are applied when deciding where and how to advertise the contract.
- 29.3 Except where a valid waiver from tendering requirements has been obtained in accordance with these Rules, no Class C,D, E or F contract shall be procured without competitive tenders having been obtained by one of the following methods:
  - (a) In the case of contracts below Regulation thresholds (including contracts below the threshold for Light Touch Regime Services), by selection of bidders from an EU-procured framework or following appropriate advertisement and tender exercise.
  - (b) In the case of contracts to which the full Regulations regime apply (including above threshold contracts covered by the Light Touch Regime), following a formal Contract Notice having been published in the Official Journal of the European Union (‘OJEU’). Copies of all such notices must be published on the Council’s web site.

- 29.4 All procurements, the aggregate Contract Value of which exceeds £50,000 must as a minimum, be advertised on the Council's website and on Contracts Finder.
- 29.5 Where a procurement may attract cross-border interest within the EU, an advertisement must also be placed on a suitably accessible website. Advice on whether any particular website is suitably accessible should be sought from Corporate Procurement.

### **30. Electronic Communication and Access to Documents**

- 30.1 All communication and information exchange relating to and during a procurement exercise must be carried out by electronic means. Where Officers wish to use an alternative method this must be allowed under the Regulations and Officers must seek advice from Corporate Procurement.
- 30.2 Officers shall, by means of the internet, offer unrestricted and full direct access free of charge to the Procurement Documents from the date of publication of the contract notice or the date on which the ITT is sent.

### **31. Pre-Qualification Questionnaire (PQQ)**

- 31.1 Tenders that fall below the EU threshold values for goods and services will follow a single stage procurement i.e. one stage which will encompass selection and award criteria. A Pre-Qualification Questionnaire (PQQ) stage shall not be included for tenders below the EU threshold for goods and services whether such contract is for goods, services or works. A PQQ stage may be included for works contracts with a Contract Value over the threshold for goods and services. The Council can however ask Suitability Assessment Questions. These are questions which are relevant to the subject matter and proportionate. The Council may only use the information and evidence requested in suitability assessment questions to establish whether candidates meet requirements or minimum standards of suitability, capability, legal status or financial standing. All candidates meeting the requirements and minimum standards must be invited to tender.
- 31.2 Where in above threshold procurements Officers decide to include a PQQ stage they shall:
- (a) use the Standardised Pre-Qualification Questionnaire (or the PAS91 for works contracts);
  - (b) verify that bids submitted comply with the rules and requirements applicable to the tender; and
  - (c) check whether grounds for exclusion apply and selection criteria is satisfied.
- 31.3 The Council may with a view to determining the economic and financial standing of tenderers impose requirements that tenderers possess the necessary economic and financial capacity to perform the contract.
- 31.4 In determining the requirements of 31.3 the Council may require tenderers:



- (a) to have a minimum yearly turnover, which should not, except in exceptional high risk situations, exceed twice the estimated Contract Value;
- (b) provide information on their annual accounts showing the ratios, for example, between assets and liabilities; and
- (c) have an appropriate level of professional risk indemnity insurance.

## **32. EU Procurement Procedures**

32.1 Where a competitive tendering process is to be undertaken, the procurement procedure to be followed shall be determined prior to advertising and where the procurement comes within the scope of the Regulations the procurement procedure shall be one of the following procedures prescribed by the Regulations:

- (a) **Open procedure** - where all contractors expressing an interest in the contract are invited to submit tender bids in response to an advertisement;
- (b) **Restricted procedure** - where all interested contractors are invited to submit expressions of interest in response to an advertisement, and shortlisted contractors are then invited to submit a tender bid;
- (c) **Competitive Procedure with Negotiation** – where all interested bidders are invited to submit expressions of interest in response to an advertisement, and shortlisted contractors are invited to negotiate. This procedure can be concluded following evaluation of the bidders' initial tenders or can be carried out in successive stages in order to reduce the number of tenders to be negotiated provided this is indicated to bidders upfront. When the Council intends to conclude the negotiations it must inform the bidders and set a deadline for submission of new or revised tenders. The Council must then assess the final tenders on the basis of the award criteria and award the contract.
- (d) **Competitive dialogue** - where all interested contractors are invited to submit expressions of interest in response to an advertisement, and the Council enters into dialogue with shortlisted contractors to identify a solution (or solutions) which meets the Council's requirements, and selected bidders are invited to submit tenders based on the solution/s resulting from the dialogue.
- (e) **Innovation Partnership** - a procedure designed to allow the Council to establish a long-term partnership for the development and subsequent purchase of a new, innovative product, service or works. Officers must obtain advice from Corporate Procurement and Legal Services in relation to this procedure.
- (f) **Negotiated Procedure without prior publication** – this procedure may be used where the specific grounds for its application apply. Use of this procedure will require a waiver under Rule 6 and advice of Legal Services as well as Corporate Procurement needs to be obtained before proposals for its use are progressed.

- 32.2 Below EU threshold Procurements** - There are no prescribed procedures to be followed for the procurement of contracts with a Contract Value below EU Thresholds. Officers can determine what procedure to use but shall not introduce a pre-qualification stage. Any such procurement will be subject to the application of the EU Treaty principles of transparency, non-discrimination and openness. Officers should consult with Corporate Procurement for advice.
- 32.3 Social, Education, Health and Other Specific Services** - Contracts for social, education, health and other specific services listed in [Schedule 3](#) of the Regulations and which have a contract value of £589,148 or over shall be subject to the Light Touch Regime. The Light Touch Regime means that the procurement of these contracts are not subject to the same full regime as other above threshold service contracts but are subject to a lighter touch procedure which requires only that a contract notice or PIN be used to commence the procurement and a contract award notice published once a contract has been awarded. The Council has flexibility to determine what type of procedure it uses but any such procedure must comply with the principles of equal treatment and transparency and provide reasonable and proportionate timescales. Officers may use or adapt any of the procedures set out in Rule 32.1.
- 33. Purchasing from Framework Agreements**
- 33.1** Officers may access and call-off goods, services or works from a Framework Agreement if the Council is either specifically named or described or referred to in acceptable geographic terms (e.g. “all London Boroughs” or “all UK local authorities” etc) in the Framework Agreement and the scope of the Council’s requirements are specified in the Framework.
- 33.2** Officers must get confirmation from Corporate Procurement that the Council is signed up to or otherwise has access to a specific Framework Agreement before procuring from that Framework Agreement.
- 33.3** Where the terms of a Framework Agreement allow for direct call-offs without competition and the terms of such call-off are sufficiently precise, Officers may, after consultation with Corporate Procurement and/or Legal Services, call-off under the Framework Agreement without competition.
- 33.4** Where it is proposed to award a specific contract based on a Framework Agreement in which all the terms of the proposed contract are not laid down or where the terms of the Framework Agreement so specify, a mini-competition shall be held in accordance with the terms of the Framework Agreement. Unless otherwise provided, tenders shall be invited from all members of the relevant category of the Framework Agreement which are capable of carrying out or delivering the requirements of the specific contract.
- 33.5** Procurement Strategy Reports must be prepared for all procurements with a Contract Value of £50,000 or more intended to be made from framework agreements except where the subject-matter of the procurement has been included within the scope and calculations of a previously approved Procurement Strategy Report covering the procurement of works, goods or services of the nature proposed from the framework agreement.

33.6 Details of all contracts awarded under Framework Agreements must be provided to Corporate Procurement who shall publish such details on Contracts Finder and include all such details in a quarterly report to Cabinet.

#### **34. Setting up a Framework Agreement**

34.1 Officers must prepare a Procurement Strategy Report before they procure any Framework Agreement. Such procurement report must be approved by the Chief Officer or Cabinet/HWB, as the case may be, in accordance with the approval process set out in Rule 28 and ascertained on the basis of the aggregate Contract Value of the Contracts to be let under the Framework Agreement.

34.2 The term of any Framework Agreement must not exceed four years (EU requirement) except in exceptional circumstances relating to the subject of the Framework Agreement. Officers must seek advice and approval from Legal Services in the event that a Framework Agreement for more than four years is required.

34.3 The default for creating a call-off mechanism when creating a Framework Agreement should be a mini-competition. Proposals to resort to direct call-offs should be set out in the Procurement Strategy Report and approved by the Procurement Board or in the case of Personalised Contracts, by the relevant Chief Officer.

34.4 Officers must consider the impact of potentially closing the market in any sector to new suppliers during the period of the Framework Agreement and ensure that the benefits and length of the Framework Agreement are justified.

#### **35. Shortlisting and Exclusions**

35.1 Officers may introduce procedures for above threshold contracts aimed at reducing the number of bidders that it will invite to tender to a manageable number as part of the shortlisting process.

35.2 If a shortlist of potential bidders has to be drawn up in order to take forward a manageable number of bidders the criteria and reasons for shortlisting must be documented.

35.3 The shortlisting process must be open and transparent to all contractors and pre-determined selection criteria must be used.

35.4 The provisions of Rule 44 must be complied with when shortlisting.

35.5 The basis for both shortlisting and rejecting tenderers should be documented. These decisions must be based on factors that relate explicitly to the contractor's ability to deliver the contract.

35.6 The Council shall exclude a bidder from participation where a bidder has, or where the Council becomes aware, committed a criminal offence relating to fraud, corruption, terrorism, tax evasion, money laundering or such other offences as are prescribed in [Regulation 57 \(1\) – \(5\)](#).

- 35.7 The Council may exclude a bidder from participation where the bidder is found to be, or the Council becomes aware of the bidder becoming, bankrupt, guilty of professional misconduct, colluded with other bidders with a view to distorting competition and has shown significant deficiencies in the performance or a prior public contract or such other provisions as may be prescribed by [Regulation 57 \(8\)](#).
- 35.8 For full detail of the circumstances under which a bidder shall or may be excluded the Officer must obtain advice from Corporate Procurement.
- 35.9 These provisions will apply unless the bidder produces evidence that they have self-cleaned within the provisions of [Regulation 57 \(13\)](#).
- 35.10 Advice from Corporate Procurement should be sought before any bidder is excluded from the shortlist.

### **36. Invitations to Tender**

- 36.1 Officers must ensure that the number of tenderers invited to participate in a tender exercise is sufficient to ensure genuine competition.
- 36.2 Where procurements are conducted following procedures prescribed under the Regulations, the minimum number of tenderers required to be invited to participate in a tender exercise to ensure genuine competition shall be:
- (a) five tender responses where the Restricted Procedure is proposed to be followed, and
  - (b) three tender responses where the Competitive Procedure with Negotiation or Competitive Dialogue procedures are proposed to be followed.
- 36.3 Officers may, following a pre-qualification exercise which results in fewer than the required minimum number of responses (as set out in Rule 36.2 above) being selected, continue a procurement exercise with less than the minimum number of tenderers referred to in Rule 36.2 above, provided the number of tenderers invited is sufficient to ensure genuine competition. In any such case the advice of Corporate Procurement and Legal Services must first be taken.
- 36.4 Candidates invited to tender must be given within adequate period in which to prepare and submit a tender response consistent with the urgency of the procurement requirement, the level of complexity of the requirement and according to the industry norm.
- 36.5 Normally at least three weeks should be allowed for submission of tenders. For tenders above the EU Threshold, Officers must adhere to the EU tender minimum timescales.
- 36.6 The tender documentation must explain how information provided in the bidder's response/s will be treated with regard to any statutory requirements (e.g. Freedom of Information Act requests). If in doubt please seek advice from Corporate Procurement.
- 36.7 Council Officers should not amend the tender documentation once it has been issued. In exceptional circumstances it may be necessary to make

amendments to tender documentation. Before making and publishing any amendments to tender documents Officers should consult with Corporate Procurement and obtain the advice of Legal Services.

- 36.8 Any amended tender documentation must be issued to all persons to whom the original documentation was sent.
- 36.9 Invitations to tender must include a statement that the Council does not bind itself to accept the lowest price tender or any other tender.
- 36.10 Bidders must be required to hold their tenders open and valid for acceptance by the Council for a minimum of 90 days from the date of opening.
- 36.11 The evaluation criteria and sub criteria must be disclosed in the Invitation to Tender documentation and any prequalification documentation.
- 36.12 The contract terms and conditions must be included with the Invitation to Tender documents. These must be obtained from Corporate Procurement or Legal Services.
- 36.13 Every Invitation to Tender (ITT) or Invitation to Quote (ITQ) shall state the date and time by which it should be returned and where physical bids are invited, inform bidders that no tender will be received except in a plain sealed envelope which shall bear the word "Tender" followed by the subject to which it relates, but shall not bear any name or mark indicating the identity of the sender.

### **37. Contract Documentation**

- 37.1 Officers shall not spend money on goods, works or services without a proper contract being in place. The only valid contracts will be those which are created in accordance with these Rules.
- 37.2 With the exception of the Leader or where authorised under the Council's Constitution, elected Members of the Council cannot procure or enter into contracts on behalf of the Council. Council contracts may only be entered into by Officers authorised in accordance with the Council's Officer Scheme of Delegation
- 37.3 All contracts made on behalf of the Council must be in writing and signed or sealed (as appropriate) at the end of the procurement and award process.
- 37.4 Officers must ensure that all the necessary permissions are in place (e.g. funding commitments, licences, and leases) before the contract is entered into. If in doubt Officers should consult Legal Services.
- 37.5 Officers must ensure that the terms and conditions of each contract are appropriate for the purpose. Except as provided below, the Council's standard terms and conditions, including any special conditions applicable, for the type and value of contract should always be used. If in any doubt, Officers must take advice from Corporate Procurement and where appropriate, Legal Services.

- 37.6 The Council acknowledges that with certain industries for example, within construction, ICT, finance or software licences, it is traditional for parties to contract on agreed industry standard terms and conditions, for example JCT, RIPA, ICE. Where services are being procured for such services Officers may contract on such industry or Contractor's standard terms and conditions, subject to advice from Corporate Procurement and/or Legal Services, and in the case of construction contracts also from Capital Commissioning and Delivery if appropriate.
- 37.7 Where it is proposed that a form of contract other than the Council's standard contract is used for a particular procurement, Legal Services must be instructed to review and approve the proposed alternative form of contract or draft appropriate alternative contract terms and conditions.
- 37.8 No contract should be entered into on a contractor's (including supplier's and consultant's) terms and conditions without the prior approval of Corporate Procurement and where necessary, on the advice of Legal Services.

### **38. Pre-Tender Clarification**

- 38.1 Officers may answer questions or provide information in response to requests from prospective bidders in relation to an ITT or ITQ. However, the selection process must be demonstrably fair to all participants. Accordingly, no bidder should be given information from which they may gain an unfair advantage over rival bidders who do not have access to that information.
- 38.2 A formal procedure for recording questions posed and responses sent must be in place and be used.
- 38.3 Questions of a complex technical or procedural nature must be notified to Corporate Procurement who may, if they deem it necessary, refer the issue to Legal Services.
- 38.4 Officers responsible for the procurement must set the date by which the bidders must submit questions and following which no further queries will be accepted after such time. This must be clearly stated in the ITT.
- 38.5 Where questions are asked, the anonymised questions received and answers/responses provided must be provided to all bidders at least six days before the final date for submission of tenders. If the information is not provided within this time frame then the time limit for receipt of tenders must be extended for a reasonable period.

### **39. Fraud Prevention**

- 39.1 Every contract shall contain a condition permitting the Council to cancel the contract and recover from the contractor the amount of any loss resulting from such cancellation, should the contractor, his servant or agent:
- (a) offer, give or agree to give to anyone, any inducement or reward in respect of the relevant or any other Council contract (even if the contractor does not know what has been done); or

- (b) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or
- (c) commit any fraud in connection with any Council contract, whether alone or in conjunction with Council members, Officers, contractors or employees.

#### **40. Insurance and Bonds or Other Security**

- 40.1 Every contract for the carrying out of works or the provision of services shall require the contractor to take out and maintain Employers Liability, Public Liability and such other insurance policies as are deemed appropriate for the duration of the contract.
- 40.2 The contractor shall take out insurance for such a period as the Council's Insurance Team shall advise. Officers shall reserve the right to check insurance certificates for this period.
- 40.3 Where the contractor has not taken out the required insurance certificates, the responsible Officer must notify the Council's Insurance team immediately.
- 40.4 Officers should seek advice from the Insurance team and Corporate Procurement to determine whether a performance bond, parent company guarantee (PCG) or other security will be required from the successful tenderer as a condition of the contract being awarded to such tenderer. Any such requirement shall be included in the ITT or otherwise advised to tenderers before the deadline for submission of tenders.
- 40.5 Where the Insurance team advises that a bond, PCG or other form of security is required Officers shall ensure that arrangements are in place for the provision of the bond, or such other security required, before the contract start date.

#### **41. Confidentiality**

- 41.1 Officers must ensure security and confidentiality of documentation supplied at all stages of a procurement exercise, including tender evaluation reports, working papers and minutes of meetings. The procuring Officer must ensure that he or she records in writing all minutes of meetings and decisions/actions taken.
- 41.2 Where a bidder's briefing is to be held to brief prospective bidders of a procurement, all bidders should be informed in advance that multiple bidders shall be in attendance and that it is the responsibility of the representatives present to ensure that the identity of their organisation is kept confidential and more importantly details of their respective bids are not disclosed to other parties.

#### **42. Freedom of Information and Data Protection**

- 42.1 The Council has specific obligations under the Freedom of Information Act 2000 and Data Protection Acts regarding disclosure of information, and all

tenderers must be notified that any documentation produced and provided during the procurement process may be subject to disclosure under the Acts.

- 42.2 During tender processes, bidders must be informed that they should state if any of the information supplied by them is confidential or commercially sensitive or should not be disclosed in response to a request for information made to the Council. Bidders should state why they consider the information to be confidential or commercially sensitive. Any such information shall be identified in the contracts concluded between the Council and successful bidder. This will not guarantee that the information will not be disclosed but will be examined in the light of the exemptions provided in the Act.

### **43. Criteria and Evaluation**

- 43.1 Before tendering any contract, Officers responsible for the procurement must decide upon the criteria and associated weighting on which tenders and quotations will be evaluated. All those who are invited to tender or quote must be notified of the evaluation criteria and weighting. These must be documented before the start of the procurement and set out in the advertisement or in the ITT (as appropriate).
- 43.2 Officers must treat selection and award criteria separately. Selection criteria are based on a bidder's capability to perform the contract and are only used at the pre-qualification to tender (PQQ) stage in a Restricted Procedure or other two (or more) stage tender exercise. Award criteria are used at the Invitation to Tender stage to determine which of the bids best satisfies the Council's requirements. These should be described in the tender documentation. Criteria used to select bidders should not be used or re-evaluated at the award stage.
- 43.3 The evaluation criteria must establish that the contract will be awarded to the bidder that submits the most economically advantageous tender assessed from the point of view of the Council. This may be on the basis of the price or cost, using a cost effectiveness approach, such as life-cycle costing, and may include the best price-quality ratio, assessed on the basis of criteria such as qualitative, environmental and/or social aspects linked to the subject-matter of the public contract in question. Such criteria may include, by way of example, quality, organisation, qualifications and experience of staff assigned to performing the contract, after sales service and technical assistance. This should be made explicit in both the Invitation to Tender and any advertisement. Any sub-criteria must also be documented in the Invitation to Tender. Every contractor must be informed of the weightings attached to each criterion.
- 43.4 Evaluation criteria and weightings must be non-discriminatory and should include whole life cycle costs where appropriate.
- 43.5 Officers must ensure that the specification and evaluation criteria take into account the Council's strategic and policy priorities.
- 43.6 Officers must apply the criteria as set out in the ITT or contract notice when evaluating tender bids and shall not introduce any additional criteria or amend the weightings to tenders. Should it prove necessary to amend the criteria or



weightings, all parties to whom the ITT was issued must be issued with the amended documentation before the deadline for submission of tenders and if necessary, the time for submission of tenders should be extended.

- 43.7 Officers should not include any Non-Commercial Considerations in the selection or award criteria.
- 43.8 Officers must ensure that experts or appropriately qualified or experienced Officers or consultants evaluate all tenders in accordance with the pre-determined evaluation criteria.
- 43.9 A full documented record must be made and kept of the selection process, recording relevant scores for each bidder and a clear statement as to how the final decision was reached. All such decisions must be communicated to unsuccessful bidders and are open to challenge.

#### **44. Use of Presentations and Site Visits in a Tender Process**

- 44.1 Save where the Competitive Procedure with Negotiation or Competitive Dialogue Procedures are used to conduct procurement, careful consideration should be given to the use of presentations and/or site visits within the tender process. There should be a clear understanding of the reason for the use of the presentation or visit and how it will contribute to the evaluation process. The documentation must clearly state what relevance and weighting presentations/site visits carry as part of the award criteria. If in doubt, officers should seek advice from Corporate Procurement and/or Legal Services.
- 44.2 The default position should be not to conduct site visits except where any of the location, activity undertaken, state of repair and suitability of the site will be important factors in the delivery of the service. In such cases Officers need to consider whether such criteria should be applied at the short listing stage. If a site visit is required, this must be declared as part of the evaluation criteria in the tender documentation. The ITT should state clearly what issues will be evaluated, the criteria against which they will be evaluated and the scores and weighting to be applied. Alternatively site visits may be used as a verification exercise to verify criteria set out in the ITT.
- 44.3 Where a service is to be provided from Council premises and it is considered important that potential providers view the premises, all bidders must be invited to be present or be included in every site visit organised by the Council.

## **SECTION D**

### **AWARDING THE CONTRACT**

#### **45. Tender Submissions and Opening (Class C, D E and F Contracts)**

- 45.1 Subject to Rule 46.1 no tenders shall be accepted unless it complies with Rule 36.13. Every ITT or ITQ must inform tenderers that all tenders must be addressed to the officer and address stated in the ITT or ITQ.
- 45.2 Tenders received must be date stamped and locked away until the specified time for their opening and a record of the tenders received must be signed for and logged in the tender record book.
- 45.3 Tenders must be opened at the same time as soon as possible after the date and time specified for the receipt of tenders. Electronic tenders may only be opened via the Council's electronic tendering system after the closure time has passed.
- 45.4 All tenders must be opened by the Security team and recorded in the required template and then handed over to the Officer responsible for the procurement.
- 45.5 All tenders received must:
- (a) Be opened in the presence of the Security team and where necessary or appropriate, a representative from Corporate Procurement;
  - (b) Be date stamped and signed by the Security team at the time of opening on the page containing the overall Contract Value, alternatively on the pages containing the price information where no overall value is quoted; and
  - (c) Be logged in the tender record book.

#### **46. Receiving Late Tenders, Irregular Tenders or Errors in Tenders**

- 46.1 Where a tender has been received which is an irregular tender in that it does not fully comply with the instructions given in the ITT to bidders (e.g. not to have any identifying markings on the bid envelope or packaging), the Officer shall, prior to opening any of the tenders, report this to his/her Chief Officer giving details of the irregular tender. The appropriate Chief Officer, with the prior approval of the Director of Law and Governance may accept the irregular tender if s/he determines that the bidder has gained no unfair advantage from the irregularity and the tender process has not been compromised as a result.
- 46.2 Where a tender has been received which is deemed to be late (has passed the tender response deadline) the Officer shall prior to opening any of the tenders report this to his/her Chief Officer giving details surrounding the circumstances of the late tender. The Chief Officer with the prior approval of the Director of Law and Governance may accept the late tender if they determine that:
- (a) the delay was caused by exceptional circumstances for which the bidder was not primarily responsible; and

- (b) the bidder has gained no unfair advantage from it being late and the tender process has not been compromised as a result.
- 46.3 The appropriate Chief Officer, with the prior approval of the Director of Law and Governance may permit a bidder to correct an identified arithmetic or clerical error or omission that, in the opinion of the Chief Officer, is an obvious one and if they determine that the bidder has gained no unfair advantage from correcting the error. Any such corrections will be recorded on the tender file.
- 46.4 The Chief Officer of a procuring department may treat as irregular and may invalidate and reject a bid:
- (a) where it appears that the tenderer is in breach of the Regulations and/or these Rules;
  - (b) where a bid is subject to any qualification, amendment or alteration which has been prohibited by the Council as part of the procurement exercise;
  - (c) any amendment to the tender price is received after the tenders have been opened; and
  - (d) any tender from which the tender price has for some reason either been omitted or is otherwise not ascertainable.
- 46.5 The Chief Officer shall record in writing the reasons why each irregular or late tender has been accepted or rejected and sign and date the record
- 46.6 All tender related documentation must be stored and available for inspection in a secure location and must not be moved without the permission of Officers responsible for the procurement.
- 47. Abnormally Low Tenders**
- 47.1 Officers shall require a bidder to explain prices and costs in their tender which appear to be abnormally low in relation to the works, supplies or services.
- 47.2 The Council shall assess the information provided by consulting with the tenderer.
- 47.3 Officers may only reject a tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed. Officers need to seek advice from Corporate Procurement as to specific explanations and evidence that may be considered.
- 47.4 The Council shall reject the tender where it has established that the tender is abnormally low because it does not comply with the environmental, social and labour law obligations.
- 48. Post Tender Clarification**
- 48.1 Seeking post-tender clarification of a tender whether in writing or by way of a meeting is permitted only with the approval of Corporate Procurement and on the advice of Legal Services.

- 48.2 Post tender clarifications should not be used as opportunities to conduct post-tender negotiations. Post-tender negotiation means negotiations with any bidder after submission of a tender and before the award of the contract with a view to obtaining an adjustment in price, delivery or content. Such negotiations are prohibited under EU law.
- 48.3 Officers shall take into account the requirements of the Regulations and these Rules and consult Corporate Procurement before conducting any clarifications or refinements to any tender and related documentation.
- 48.4 Any post-tender clarifications must be conducted in line with the relevant EU Procedure and must not distort competition particularly with regard to price. They should be used only to clarify any aspect of a tender that is not clear.
- 48.5 Any clarification or discussions must be conducted by or in the presence of at least two Officers, one of whom must be from Corporate Procurement, on Council premises, and a detailed contemporaneous written record kept.
- 48.6 Where post-tender clarifications may result in a significant change to the specification (or contract terms) the contract must not be awarded but be re-tendered. Officers should consult Corporate Procurement and Legal Services in cases of uncertainty.

#### **49. Standstill Period and Challenge**

- 49.1 In the case of contracts subject to the full scope of the EU Regulations, which shall also include contracts subject to the Light Touch Regime, Officers must notify all bidders of the intended award of the contract and must allow a mandatory minimum standstill period of 10 calendar days (otherwise 15 days for non-electronic tenders) between notification of a proposed award and entering into a contractually binding agreement (Standstill Period).
- 49.2 Officers may not make an award of contract, nor make any commitment to award a contract, until the standstill period has expired. The standstill period must not commence until all internal approvals have been finalised.
- 49.3 Officers must notify all tenderers that submitted a bid of its decision in relation to the award of the contract. This must be done in writing by the quickest means of communication available as soon as possible after the award decision has been made.
- 49.4 The notice referred to above must include:
- (a) details of the award criteria;
  - (b) the reason for the decision, including characteristics and (in the case of bidders only) the relative advantages of the winning bidder;
  - (c) the score obtained by the unsuccessful bidder;
  - (d) the score obtained by the successful bidder;
  - (e) the name of the bidder to be awarded the contract; and

- (f) the date on which the standstill period ends or before which the Council will not enter into the contract with the successful bidder.
- 49.5 A notice of the nature and containing the detail referred to in Rule 49.4 above must also be sent to all candidates i.e. those who applied to be invited to bid but who were not so invited. Such notice must also inform the candidates of the reason why they were unsuccessful but does not need to detail the relative advantages of the winning bid.
- 49.6 It is most important that any communication with the preferred bidder(s) does not lead such bidders to believe it constitutes a contract award or a conditional award. Corporate Procurement and Legal Services can advise on this.
- 49.7 The mandatory standstill period does not apply to below threshold procurements.
- 49.8 The mandatory standstill period applies for framework agreements only at the stage at which the framework agreement itself is awarded, but not during subsequent call-offs or mini-competitions within framework agreements. However, Officers should always consider applying a standstill for mini competitions for High Value Contracts.
- 49.9 In the event a challenge is made to the award of the contract, Legal Services and Corporate Procurement must be notified immediately and advice obtained.

## **50. Contract Award**

- 50.1 No contract or Framework shall be awarded unless the award has first been approved by Cabinet/HWB or an Officer duly authorised under the Scheme of Delegation, as appropriate.
- 50.2 A contract may only be awarded where the appropriate budget holder has the funds in place to sustain the contract prior to award.
- 50.3 Every decision to award a contract or Framework must be in writing by a Cabinet/HWB minute or a Delegated Authority Decision Statement. The relevant Decision Statement must be supported by a report (“Contract Award Report”) signed by the relevant Chief Officer or other Officer authorised under the Scheme of Delegation (as the case may be) and, in the case of contracts with a Contract Value of £100,000 or more, agreed by the Chief Financial Officer and the Director of Law and Governance or their nominated delegates. The Contract Award Report shall be submitted to Democratic Services for publication on the Council’s website.
- 50.4 The Contract Award Report shall set out the details of the procurement, including details of the subject matter and value of the contract or Framework, details of the tender(s), the criteria and weighting applied, the evaluation process followed, a recommendation as to the successful tenderer(s) to whom the Council proposes to award the contract or Framework and reasons why it/they were successful. In the case of EU procured contracts or Frameworks, all the requirements of [Regulation 84 \(1\)](#) must be complied with.

- 50.5 In the case of tenders above the EU thresholds, bidders must be notified in writing of the award in accordance with Rule 49 above. Guidance may be sought from Corporate Procurement.
- 50.6 In the case of procurements where a standstill period is required to be observed, a letter “(Letter of Intention to Award)” must be written to the successful bidder advising them that following the evaluation of bids, the Council intends, subject to the standstill period elapsing without challenge, to award the contract to the bidder.
- 50.7 The Letter of Intention to Award must set out the main terms of the contract that will bind the parties including the duration, price, contract conditions, and other significant contract terms and documentation such as the specification and tender response documents.
- 50.8 The Letter of Intention to Award must make it clear that the issuing of the Letter of Intention to Award is merely a statement of intention and does not equate to a firm offer to contract with the successful bidder as the Council still reserves the right not to award the contract.
- 50.9 Corporate Procurement must be notified immediately of any challenge to a procurement process in order that appropriate and conforming action may be taken.
- 50.10 Officers responsible for the procurement must submit a report and obtain the further approval of Cabinet/HWB/the Chief Officer prior to award when:
- (a) The contract which is the most economically advantageous solution, in accordance with the established tender evaluation criteria, is not being recommended for acceptance;
  - (b) Cabinet/HWB has chosen in advance to become involved in awarding the contract.
- 50.11 If at the completion of the tender process the final price falls within a higher band of the Approval Table, the contract should not be signed or sealed until the Officer / body designated to give approval for that higher band gives the requisite written approval.
- 50.12 If all the bids exceed the set budget, or none represent value for money there is no obligation to award the contract. In this situation Officers may abandon the procurement and notify all bidders. Officers must seek approval from authorising Officers named in the Approval Table before notifying any bidders.
- 50.13 If the bid that represents the most economically advantageous tender comes in at a cost that exceeds the budget for the procurement, a report must be submitted to the relevant Chief Officer or Cabinet/HWB (as the case may be), informing them of this fact and the Chief Officer or Cabinet/HWB (as the case may be), shall decide whether sufficient additional funds should be released to award the contract or to authorise Officers to abandon the procurement. Officers shall not engage in post-tender negotiations with a view to altering the scope or nature of the specification as this will likely distort the competition.

- 50.14 If a bidder withdraws from the tender process before the contract is awarded, this must be confirmed in writing. If the withdrawing bidder had the highest score, the contract may be awarded to the bidder with the next highest score.
- 50.15 In the absence of any direction to the contrary from the Cabinet/HWB, contracts may be awarded by the Chief Officer or in accordance with the Scheme of Delegation as long as the necessary financial approval has been given by Corporate Finance.
- 50.16 After the tender evaluation process and any relevant standstill period has elapsed without any challenge, the contract may be awarded to the successful bidder.
- 50.17 Where the Standstill period has elapsed without any challenge being made, a letter (Letter of Award) must be written to the successful bidder advising them that the standstill period has elapsed without challenge and confirming the Council's intention to award the contract to the bidder.
- 50.18 The contract documentation to be signed by the successful bidder should accompany the Letter of Award.
- 50.19 Where the contract documentation is not immediately available for execution by the parties, the Letter of Award must confirm the main terms of the contract that will bind the parties as set out in the Letter of Intention to Award and the successful bidder shall be required as a condition of the Council entering into the contract with them, to confirm acceptance of the Council's offer to contract by signing and returning a signed copy of the Letter of Award accepting the Council's offer and agreeing to be bound by the terms stated in the Letter of Award (Letter of Acceptance). The signed Letter of Acceptance shall constitute a contract between the Council and the successful bidder until the formal contract documentation has been executed by all parties.

## **51. Debrief**

- 51.1 The procuring Officer shall, if requested in writing and provided a notice under Rule 49.4 has not already been provided, within 15 days of receipt of such request, debrief in writing all those bidders who submitted a tender about the characteristics and relative advantages of the successful bidder.
- 51.2 This should normally include:
- (a) the criteria for the award of the contract (e.g. the scoring and assessment mechanisms);
  - (b) the reasons for the decision, including the characteristics and relative advantages of the successful tender.
  - (c) the name of the winner
  - (d) the winner's score
  - (e) the tenderer's own score; and

- (f) if relevant, an explanation as to why the tenderer did not meet the technical specifications of the procurement.

## **52. Contract Sealing/Signing**

- 52.1 Chief Officers must ensure that a signed or sealed contract is in place and all pre-conditions have been complied with (such as provision of insurance certificates and DBS checks) before the goods are ordered or works or services begin. Where for matters of urgency it is necessary for the contractor to commence work without a signed contract being in place, the procuring Officer shall ensure that a Letter of Acceptance of the contract has been signed and returned by the successful bidder before the goods are ordered or works or services begin. Legal Services should be consulted before officers agree that the contractor can commence work without a formal contract being in place.
- 52.2 All contracts with a total contract value of £100,000 or more must be sealed by Legal Services.
- 52.3 The fixing of the Council's Seal must be witnessed by the Director of Law and Governance or such other authorised Officer as s/he shall nominate. The seal must not be affixed without evidence of governance approval being in place.
- 52.4 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal.
- 52.5 In order for Legal Services to seal a contract, Officers responsible for the procurement must provide:
  - (a) The Minute evidencing Cabinet/HWB approval; and/or
  - (b) A signed Delegated Authority Decision Statement.
- 52.6 All contracts must be recorded on the Council's Contracts Register immediately after award. Officers are required to provide Corporate Procurement with an electronic copy of the signed contract and complete the Contract Register Form.
- 52.7 A Contract Award Notice must be placed by Corporate Procurement in the OJEU following the award of a contract procured under the Regulations within 48 days of such award.
- 52.8 Within a reasonable time of publishing a Contract Award Notice in OJEU Officers shall ensure that a notice is also published on Contract Finder which contains at least the following information:
  - (a) The name of the Contractor;
  - (b) The date on which the contract was entered into; and
  - (c) The value of the contract.



- 52.9 The requirements of Rule 52.8 above shall also apply where a contract is awarded based on a framework agreement, i.e following a direct call off or a mini competition from or within a framework agreement.
- 52.10 Records of all procurement activity must be retained in accordance with the Council's Document Retention Policy in either electronic or hard-copy format as appropriate.
- 52.11 The Council's original copy of the sealed contract must be registered with and retained by Legal Services. Council Officers are required to retain a photocopy and/or scanned version for their own records and to ensure appropriate monitoring of the obligations placed upon the contractor.
- 52.12 Chief Officers must keep a register of contracts completed by signature (rather than by the Council's seal) and arrange their safekeeping on Council premises.

## **SECTION E**

### **POST CONTRACT AWARD**

#### **53. Contract Management and Monitoring**

- 53.1 All contracts must contain a Performance Monitoring schedule and contain a clear procedure for the resolution of disputes.
- 53.2 The Chief Officer for the service area shall be ultimately responsible for ensuring that appropriate contractual, financial management and security measures are in place.
- 53.3 The Council's Finance department should be fully informed of the contact and banking details of the contractor (through Oracle if required) in order to issue payments.

#### **54. Managing Contracts**

- 54.1 All contracts must have a named contract manager for the entirety of the contract who must be identified and recorded against the contract on the Council's contracts Register.
- 54.2 All contracts are to be subject to formal reviews between the Council's contract managing Officer and the contractor.
- 54.3 During the life of the contract the contract's managing Officer must monitor:
  - (a) Performance;
  - (b) Compliance with specification and contract;
  - (c) Cost;
  - (d) Any value for money requirements; and
  - (e) User satisfaction and risk management.

#### **55. Risk Assessment and Contingency Planning**

- 55.1 Contract managers are required to consider if there are any significant risks to key contracts which might adversely impact on contract cost or delivery. Such risks should be recorded on team/service/department risk registers as necessary and should indicate how the risks are being, or are proposed to be, managed to bring the risk to a level acceptable to the Council. This approach will make any key contracting risks visible and ensure they are managed in accordance with Risk Management policy.
- 55.2 Officers should seek advice and guidance on risk management from Corporate Procurement or the Council's Risk team.
- 55.3 The Council's Insurance team should be informed of the commencement of the contract and if applicable be provided with copies of a contractor's policy documents.

## **56. Monitoring Reports**

- 56.1 The Chief Officer shall ensure that a report of all contracts approved by him/her or under the Officer Scheme of Delegation for that department shall be prepared and submitted to him/her quarterly. The report shall identify:
- (a) All contracts entered into during the monitoring period;
  - (b) An update of any risks;
  - (c) Any default notices issued during the monitoring period and throughout the life of the contract;
  - (d) The expenditure made under the contract (including any extensions and variations); and
  - (e) A budget status report on the contract.
- 56.2 The Procurement Board shall be entitled to call for and consider any monitoring report and make any recommendations it deems necessary for the future management of the contract to which the report refers.

## **57. Contract Extension**

- 57.1 Extensions can only be made where:
- (a) there is budgetary provision; and
  - (b) value for money can be clearly demonstrated; and
  - (c) there is a provision stipulated in the Notice and/or original contract for an extension; or
  - (d) no specific provision for extension exists in the contract and a waiver is granted in accordance with Rule 6.
- 57.2 No contract subject to the Regulations may be extended unless the original OJEU Notice advertisement and the contract itself permit of the extension. It is not possible to extend the contract if an extension provision was not in place from the outset of the tendering process.
- 57.3 Officers must seek advice from Legal Services and Corporate Procurement before extending any contract. Legal Services will advise whether the extension can be made and draft all documentation in relation to the same.
- 57.4 No further extension can be made where a contract has been extended to the full extent permitted under the contract conditions. Any 'extension' beyond this is a new contract and needs to be procured in accordance with these Rules unless a waiver is granted.
- 57.5 Contract extensions shall only be awarded by Officers with the requisite delegated authority (depending on Contract Value) in accordance with the Council's Scheme of Delegation.

- 57.6 Every decision to extend a contract must be in writing by a Cabinet/HWB minute or a Delegated Authority Decision Statement signed by the Officer authorised under the Scheme of Delegation (as the case may be).
- 57.7 All contract extensions must be registered and included with the original contract in the Council's Contract Register.

## **58. Variations**

- 58.1 Once a contract has commenced, the terms should not be amended unless provided for within the contract and on the basis that both parties shall have agreed the variation.
- 58.2 Modifications to existing contracts are permitted without commencing a new procurement in the following circumstances:

- (a) Where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options.
- (b) For additional works, services or supplies by the original contractor, irrespective of their value, that have become necessary and were not included in the initial procurement where a change of contractor:\*
- (i) cannot be made for economic or technical reasons; or
  - (ii) would cause significant inconvenience or substantial duplication of costs for the Council;

provided that any increase in price does not exceed 50% of the value of the original contract.

- (c) Where all of the following conditions are fulfilled:\*
- (i) the need for modification has been brought about by circumstances which the Council acting diligently could not foresee;
  - (ii) the modification does not alter the overall nature of the contract; and
  - (iii) any increase in price is not higher than 50% of the value of the original contract or framework agreement.

(\*Note: the Council must publish a [Regulation 51](#) notice in the OJEU when a contract has been modified under these headings.)

- (d) Where a new contractor replaces the one which had initially been awarded the contract as a consequence of either:
- (i) an unequivocal review clause or option which is clear, precise and unequivocal (referred to above); or
  - (ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that

fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of the Regulations.

- (e) Where the modifications, irrespective of their value, are not substantial. A modification is considered to be substantial where one or more of the following conditions is met:
  - (i) the modification renders the contract or the framework agreement materially different in character from the one initially concluded;
  - (ii) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;
  - (iii) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
  - (iv) the modification extends the scope of the contract or framework agreement considerably; and/or
  - (v) where a new contractor replaces the one to which the Council had initially awarded the contract in other cases than those envisaged above.
- (f) Where the value of the modification (on a cumulative basis) is below both of the following values:
  - (i) the relevant EU procurement thresholds; and
  - (ii) 10% of the initial contract value for service and supply contracts and below 15% of the initial contract value for works contracts. Where a modification falls outside of the above circumstances, a new procurement process is required.

58.3 Price changes, which were not anticipated in the original contract, could amount to breach of the principles of equal treatment and transparency.

58.4 Annual price reviews (such as increasing by RIPX) are usually covered within the contract and do not need a separate variation agreement. If it is unclear whether this is the case in respect of any particular contract, Legal Services must be consulted.

58.5 Officers must seek advice from Legal Services and Corporate Procurement before varying any contract. Legal Services will advise whether the change can be made and draft all documentation in relation to the same.

58.6 No contract shall be varied without the approval of the Procurement Board on the advice of the Director of Law and Governance and the Chief Financial Officer, where the effect of the variation would be to add £100,000 or more to the Contract Value.

- 58.7 Contract variations shall only be made by Cabinet/HWB or Officers with the requisite delegated authority to award the original contract (as the case may be) in accordance with the Council's Scheme of Delegation.
- 58.8 Every decision to vary a contract must be in writing by a Cabinet/HWB minute or a Delegated Authority Decision Sheet signed by the Officer authorised under the Scheme of Delegation (as the case may be) and agreed by the Chief Financial Officer and the Director of Law and Governance or their nominated delegates.
- 58.9 All contract variations must be registered and included with the original contract in the Council's Contract Register.

## **59. Novation, Assignment and Sub-Contracting**

- 59.1 No contract with a Contract Value of £100,000 or more shall be novated, assigned or sub-contracted without the express approval of the Director of Law and Governance and the Chief Financial Officer.
- 59.2 Officers must seek advice from Legal Services and Corporate Procurement before novating, assigning or sub-contracting any contract. Legal Services will advise whether the transfer can be made and draft all documentation in relation to the same.
- 59.3 All requests regarding the change of parties to the contract must be referred to Legal Services.

## **60. Changes in Law**

- 60.1 All contracts with duration longer than three years should make provision to address how changes in the law that affect the contract will be addressed. If the law changes mid-way through the contract and it significantly affects the contract, Legal Services should be consulted immediately.

## **61. Final Reports**

- 61.1 Officers responsible for the monitoring of the contract must ensure that all final reporting obligations have been adhered to and the contractor has also complied with the same.
- 61.2 Officers shall prepare Final Accounts reports for all contracts with a Contract Value in excess of £100,000. Such Final report shall, as a minimum requirement, include the following details:
- (a) An overview of the objectives of the contract and the extent to which they had been met;
  - (b) Planned start and finish dates;
  - (c) Actual start and finish dates;
  - (d) Reasons for any difference;
  - (e) Declared / estimated Contract Value on award of contract;

- (f) Actual contract cost;
- (g) Reasons for any difference; and
- (h) Any lessons learned.

61.3 Final reports shall also be submitted, in the case of High Value Contracts, to the Procurement Board, and for all other contracts to the Chief Officer, within three months of the contract end date.

## **62. Funding Withdrawal**

62.1 Funding received by the Council and being utilised for the provision of goods, services or works may in extreme circumstances be withdrawn at short notice. Officers must inform their Chief Officer and/or the Procurement Board (as appropriate) immediately in these circumstances.

## **63. Expiry Date**

63.1 Where the contract is to run its full course and reach the expiry date, Officers must review the contract and take all necessary steps to consider the re-tender of the same at least nine months prior to the expiry.

## **64. Early Termination**

64.1 Legal Services and the Chief Financial Officer must be consulted in all instances where early termination or suspension of a contract is being proposed.

64.2 Irrespective of the reason for the termination of the contract, the final authorisation to suspend or terminate a contract can only be given by Cabinet/HWB or the commissioning Chief Officer or other Officer (as the case may be) with the level of authority to award contracts of the value of the contract which is to be terminated as identified in Rule 28.

64.3 Approval for early termination of a contract shall not be given unless a report setting out:

- (a) The full circumstances leading to such termination;
- (b) The financial implications of such termination, including penalties or compensation liabilities;
- (c) The legal implications of such termination;
- (d) Proposals for ongoing service provision;
- (e) Continued funding capability following the termination;
- (f) Potential re-procurement requirements; and
- (g) Has been prepared and submitted to the Officer or body making the decision.

64.4 Except in an Emergency or where specific departmental processes have been approved for early termination or suspension (e.g. in Safeguarding cases) no High Value Contract shall be terminated or suspended without the express approval of the Procurement Board.

**65. Document Retention**

65.1 All Officers must follow the Council's Corporate Retention Guidelines.

65.2 All signed contracts must be retained for a period of six years from the execution date. Sealed contracts must be retained for a period of 12 years.

65.3 A contractor that has been delivering a contract that requires the contractor to keep records for the Council shall be required, in respect of the information which they hold, to either:

- (a) Keep the records themselves, and allowing the Council to have access upon request; or
- (b) Give the records to the Council.

65.4 Once the contract has been awarded, Officers:

- (a) Must keep the successful bidder's documents for at least six years after the end of the contract;
- (b) Must keep the unsuccessful bidder's documents for at least 12 months from when you they have been notified; and
- (c) Must keep all documents, scores and notes from the tender process (including any records from market testing), for at least 12 months from the contract was amended.



## **SCHEDULE - Definitions and Interpretation**

**Definitions** (This schedule should be read in conjunction with the definitions set out in paragraph 4 of Chapter 4 of Part 2 of the Council's Constitution.)

- **Approval Table** – means the table set out in Rule 28 detailing the Contract Value bands together with the level of approval required.
- **Contract** – means any contract, agreement or order for the carrying out of work, the provision of services or the supply of goods or materials to or for the Council, whether by the purchase, lease, rental or hire purchase, including the provision of services to the public on the Council's land or premises or a concession contract. It shall not include contracts for the employment of staff or the sale, purchase, lease or license of land or buildings.
- **Contract Award Notice** - means the notice required to be published in OJEU indicating that a relevant contract has been awarded by the Council pursuant to the Regulations
- **Contract Award Report** – means the formal written report detailing the procurement conducted as provided for in Rule 50.3, containing the details required by Rule 50.4.
- **Contract Notice** - means the notice required to be published in OJEU indicating that the Council intends commencing a relevant procurement pursuant to the Regulations.
- **Contract Value** - means and shall be measured as the aggregate amount the Council expects to pay the Contractor over the total duration of the contract (including any inflation uplift and any extension period) or where the Council is not paying a contractor directly, the Contract Value will be the financial benefit that the contractor will receive over the duration of the contract. If there is any doubt in respect of such a valuation, Corporate Procurement must be consulted.
- **Corporate Procurement** – means the Council's procurement function provided by Elevate East London LLP.
- **Council Company** - means any company or organisation owned or controlled by the Council.
- **Cross-border interest** – means the potential interest that providers in other EU Member States may have in tendering for a contract.
- **Elevate** - means Elevate East London LLP.
- **Emergency** - means a serious unforeseen event, situation or occurrence that happens unexpectedly, and which is likely to cause immediate danger to the Council, its residents or property if immediate action is not taken. The Emergency must be urgent and unforeseen – for example, natural disasters such as flooding, fires or bombing, or financial or operational, such as a current supplier ceasing to operate leaving residents without critical services.

- **Framework Agreement** - means any agreement between the Council or the Council and one or more contracting authorities and/or one or more contractors, the purpose of which is to establish the terms governing contracts to be awarded to contractors during a given period, in particular with regard to price, and where appropriate, the quantity envisaged.
- **High Value Contract** - means either a contract with a one-off expenditure or annual value of £100,000 per annum or a contract which exceeds the thresholds set out in the Regulations.
- **HWB** - means the Council's Health and Wellbeing Board as established and set out in Part 2, Chapter 7 the Council's Constitution.
- **ITT (Invitation to Tender)** – means an invitation to prospective bidders to submit tenders for contracts with a Contract Value of over £50,000.
- **ITQ (Invitation to Quote)** – means an invitation to prospective bidders to submit quotes for contracts with a Contract Value of £5,000 and over to under £50,000,
- **Legal Services** - means the Council's in-house Legal Services department.
- **Light Touch Regime** – means the regime prescribed and covered by Part 2, Chapter 3, Section 7 of the Public Contract Regulations 2015 for social and other specific services.
- **Non-commercial considerations** – means the considerations fully defined in Section 17 of the Local Government Act 1988 (as amended);
- **Officer Scheme of Delegation** – means the corporate / departmental financial authorisation scheme of delegation for officers set out in the Council's Financial Rules as the same may be amended from time to time by the Chief Financial Officer.
- **PAS91** – means the industry standard PQQ for works entitled 'Construction Pre-qualification Questionnaires'.
- **Personalised Contract** – means a contract that relates to the social, educational or welfare/care needs of a child or an individual adult.
- **PIN** – means a Prior Information Notice. A PIN can be published before the procurement starts, when a requirement is above EU thresholds, and makes it possible to reduce the time needed to complete the competition.
- **PQQ** – means a Pre-Qualification Questionnaire.
- **Procurement Board** - means the Council's corporate Procurement Board.
- **Procurement Documents** - means any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the

presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.

- **Procurement Strategy** - means the procurement strategy set out in Rule 23
- **Procurement Strategy Report** - means the formal written report provided for in Rule 24 setting out the Procurement Strategy for the proposed procurement
- **Regulations** - means the Public Contract Regulations 2015, as amended.
- **Scheme of Delegation** - means the corporate scheme of delegation set out in Part 3 of the Council's Constitution and/or the Officer Scheme of Delegation as appropriate.
- **Standardised Pre-Qualification Questionnaire** – means the document prescribed by Crown Commercial Services.
- **Suitability Assessment Questions** – means a question which relates to information or evidence which the contracting authority requires for the purpose of assessing whether candidates meet requirements or minimum standards of suitability, capability, legal status or financial standing.

## **Interpretation**

In these Rules, except where the context otherwise requires:

- the masculine includes the feminine and vice-versa;
- the singular includes the plural and vice-versa;
- a reference in these Rules to any clause, sub-clause, paragraph, Schedule or annex is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, Schedule or annex of these Rules;
- any reference to these Rules or to any other document shall include any permitted variation, amendment or supplement to such document;
- Any reference to any enactment, order, regulation, code, guidance or other similar instrument shall be construed as a reference to the enactment, order, regulation, code, guidance or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- A reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- Headings are for convenience of reference only;
- Words preceding include, includes, including and included shall be construed without limitation by the words which follow those words;
- The Schedules to these Rules form part of these Rules.