

South Hams District Council

Contract Procedure Rules (Formally Known as Standing Orders Relating to Contracts)



July 2010

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A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

These contract procedure rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good procurement practice and public accountability and deter corruption.

Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

Officers responsible for purchasing or disposal must comply with these contract procedure rules. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract.

(For example, if Rule 8.1 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations or tender submissions. Equally, it may not always be appropriate to make use of an Exemption under Rule 3 even if one might apply or be granted.)

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail (or other e-communication systems e.g. e-tendering) fax transmissions as well as hard copy.

- Follow the rules whenever you purchase goods or services or order building work.
- Take all necessary legal, financial and professional advice.
- Declare any personal financial interest in a contract. Corruption is a criminal offence.
- Conduct any *Value for Money* review and appraise the purchasing need.
- Check whether there is an existing Corporate Contract you can make use of before undergoing a competitive process.
- Normally allow at least four weeks for submission of bids (not to be submitted by fax or e-mail).
- Keep bids confidential.
- Complete a written contract or Council order before the supply or works begin.
- Identify a contract manager with responsibility for ensuring the contract delivers as intended.
- Keep records of dealings with suppliers.
- Assess each contract afterwards to see how well it met the quality of delivery and Value for Money requirements.

In accordance with the *Constitution*, the *S.151 Officer* shall have the power to make amendments from time to time to these contract procedure rules after consultation with the Council's solicitor, Internal Audit and the *Corporate Procurement Officer*. Proposed amendments must be submitted to the Audit Committee for recommendation to the Council for approval, where appropriate. Terms in italics are defined in the Definitions Appendix.

Internal Audit: South Hams District Council
Internal Audit: Teignbridge District Council
Corporate Procurement Officer (Shared)
Acknowledgement: CIPFA

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

1. BASIC PRINCIPLES

All purchasing and disposal procedures must:

- Achieve *Value for Money* for public money spent
- Be consistent with the highest standards of integrity, having regard to the Council's Anti-Fraud & Corruption Strategy, the Bribery Act 2010 and the Office of Fair Trading guidance on Anti Competitive Behaviour.
- Ensure fairness in allocating public contracts
- Comply with all legal requirements
- Ensure that *Non-commercial Considerations* do not influence any Contracting Decision
- Support the Council's corporate and departmental aims and policies
- Comply with the Council's corporate Sustainable Procurement Strategy, Policy and Guidance and competition policy.

2. OFFICER RESPONSIBILITIES

2.1 Officers

2.1.1 Officers responsible for purchasing or disposal must comply with these contract procedure rules, *Financial Instructions*, the Code of Conduct and with all UK and European Union binding legal requirements. *Officers* must ensure that any *Agents*, *Consultants* and contractual partners acting on their behalf also comply.

2.1.2 Officers must:

- Have regard to the Council's purchasing and contract guidance
- Ensure that the appropriate approved budgetary provision is in place
- Check whether a suitable Corporate Contract exists before seeking to let another contract; where a suitable Corporate Contract exists, this must be used unless there is an auditable reason not to
- Keep the records required by Rule 6
- Take all necessary legal, financial and professional advice.

2.1.3 When any employee either of the authority or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.

2.2 Directors/Heads of Service

2.2.1 Directors/Heads of Service must:

- Ensure that their staff comply with Rule 2.1
- Keep registers of:
 - contracts completed by signature, rather than by the Council's seal (see Rule 16.3) and arrange their safekeeping on Council premises
 - exemptions recorded under Rule 3.2.

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

3. EXEMPTIONS, COLLABORATIVE & E-PROCUREMENT ARRANGEMENTS

Exemptions

3.1 The Council and its *Executive* have power to authorise exemptions from the requirement to seek quotations or invite tenders for specific projects, and any such decision may be a *Key Decision*.

3.2 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services (**life or death**), **Increased Costs/Loss of Income, Limited Markets or Reputation** the *Officer* with the approval of their Head of Service/*Strategic Director*, Internal Audit and *S.151 Officer* and Leader/Deputy Leader of the *Council* may jointly approve the exemption but a report must be prepared for the next *Executive* to support the action taken. Terms defined as:

- **Life or Death** – Is there a significant chance that the life or health of officers, members or the public will be put at real risk?
- **Increased Costs/Loss of Income** – Will the Council incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council)?
- **Limited Markets** – Would the Council be wasting its time obtaining quotations as supply of the product or service is demonstrably restricted to one or a few businesses? (Evidence that the market has been tested must be available)
- **Risk to Reputation** – Would the Council be criticised for failing to act promptly?

3.3 **No exemption** can be used if the **EU Procedure** applies.

3.4 All exemptions, and the reasons for them, must be recorded. Exemptions shall be signed by a combination of the *Officer* their Head of Service/*Strategic Director*, Internal Audit and *S.151 Officer* and Leader/Deputy Leader of the Council depending whether the value is above or below £30K.

3.5 Pro-formas must be used and are available on the Council's Intranet or from Internal Audit who will monitor the use of all exemptions and ensure that the exemptions are reported to the next Executive.

Collaborative Contracts

3.6 The *Corporate Procurement Officer* must be consulted prior to a commencing procurement process using any consortia contracts e.g. Buying Solutions contracts. The terms and conditions of contract applicable to any consortia arrangement, including the requirement to undertake competition between providers, must be fully complied with.

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

3.7 In order to secure *Value for Money*, the authority may enter into collaborative procurement arrangements. The *Officer* must consult the *Corporate Procurement Officer* where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.

3.7.1 All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these contract procedure rules and no exemption is required e.g. Devon Procurement Services. However, purchases above the EU Threshold must be let under the EU Procedure, unless the consortium has demonstrated that it has satisfied this requirement already by letting their contract in accordance with the EU Procedures on behalf of the authority and other consortium members.

3.7.2 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation, will be deemed to comply with these contract procedure rules and no exemption is required. However, advice must be sought from the Corporate Procurement Officer.

3.8 The use of e-procurement technology enhances the administrative process for tendering (audit trails etc.) but does not negate the requirement to comply with all elements of these contract procedure rules, particularly those relating to competition and Value for Money.

4. RELEVANT CONTRACTS

4.1 All *Relevant Contracts* must comply with these contract procedure rules. A *Relevant Contract* is any arrangement made by, or on behalf of, the authority for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

- The supply or disposal of goods (see also Financial Instructions)
- The hire, rental or lease of goods or equipment
- The delivery of services, including (but not limited to) those related to:
 - the recruitment of staff
 - financial and consultancy services.

4.2 *Relevant Contracts* do not include:

- Contracts of employment which make an individual a direct employee of the authority; or
- Agreements regarding the acquisition, disposal, or transfer of land and buildings (for which Financial Instructions shall apply); or
- *S.151 Officer* dealing in the money market or obtaining finance for the Council; or
- Contracts made by the *Council's Solicitor* for the appointment of counsel.

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5. STEPS PRIOR TO PURCHASE

5.1 The *Officer* must appraise the purchase, in a manner commensurate with its complexity and value and taking into account any *purchasing guidance*, by:

- Taking into account the requirements from any relevant *Value for Money* review
- Appraising the need for the expenditure and its priority
- Defining the objectives of the purchase
- Assessing the risks associated with the purchase and how to manage them
- Considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium
- Consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring
- Drafting the terms and conditions that are to apply to the proposed contract
- Setting out these matters in writing if the *Total Value* of the purchase exceeds £30,000.

5.2 The officer must also confirm that:

- There is member or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the Constitution
- If the purchase is a *Key Decision*, all appropriate steps have been taken.

6. RECORDS

6.1 Where the *Total Value* is less than £30,000 (see also Financial Instructions), the following records must be kept:

- Invitations to quote and Quotations
- A record:
 - of any exemptions and the reasons for them
 - of the reason if the lowest price is not accepted
- Written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

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6.2 Where the *Total Value* exceeds £30,000 the *Officer* must record:

- The method for obtaining bids (see Rule 8.1)
- Any *Contracting Decision* and the reasons for it
- Any exemption under Rule 3 together with the reasons for it
- The *Award Criteria* in descending order of importance
- Tender documents sent to and received from *Suppliers*
- Pre-tender market research
- Clarification and post-tender negotiation (to include minutes of meetings)
- Legal advice
- The contract documents
- Post-contract evaluation and monitoring
- Communications with *Suppliers* and with the successful contractor throughout the period of the contract.

6.3 Records required by this rule must be kept for six years after the end of the contract. However, written documents which relate to unsuccessful *Suppliers* may be microfilmed or electronically scanned or stored by some other suitable method after 12 months from award of contract, provided there is no dispute about the award.

7. ADVERTISING AND FRAMEWORK AGREEMENTS

7.1 Identifying and Assessing Potential Suppliers

7.1.1 *Officers* shall ensure that, where proposed contracts, irrespective of their *Total Value*, might be of interest to potential *Suppliers* located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- The Council's website
- Portal websites specifically created for contract advertisements
- National official journals, or
- The Official Journal of the European Union (OJEU)/E Notices/Tenders Electronic Daily (TED) (even if there is no requirement within the EU Procedure).

7.1.2 *Officers* are responsible for ensuring that all *Suppliers* for a *Relevant Contract* are suitably assessed. The assessment process shall establish that the potential *Suppliers* have sound:

- Economic and financial standing
- Technical ability and capacity

to fulfil the requirements of the authority.

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7.1.3 This shall be achieved in respect of proposed contracts that are expected to exceed £75,000 by selecting firms from shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement.

7.1.4 Public advertisements issued in respect of Rule 7.1.3 above shall reflect the potential degree of interest from *Suppliers* located within other member states of the EU.

7.1.5 For proposed contracts that are expected to exceed £30,000 but NOT £75,000, selection will be in conjunction with the *Corporate Procurement Officer* by, as a minimum, *Invitation to Tender* to at least four *Suppliers* although best practice in relation to advertising is encouraged.

7.2 Approved Lists

7.2.1 *Approved Lists* will not be maintained. This is because of the cost of proper administration and the need to ensure that competition is maximised.

7.2.2 Suppliers interested in doing business with the Council must register on the Council's e-tendering system, which is available on the Council's web-site.

7.2.3 A register of pre-qualified contractors and *Consultants* maintained by or on behalf of central government (e.g. Constructionline, Accredited) will be not be deemed to be an *Approved List* for the purpose of these contract procedure rules.

7.3 Framework Agreements

7.3.1 The term of a *Framework Agreement* must not exceed four years and, while an agreement may be entered into with one provider, where an agreement is concluded with more than one organisation, there must be at least three in number.

7.3.2 Contracts based on *Framework Agreements* may be awarded by either:

- Applying the terms laid down in the *Framework Agreement* (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or
- Where the terms laid down in the *Framework Agreement* are not precise enough or complete for the particular call off by holding a **mini competition** in accordance with the following procedure:
 - inviting the organisations within the *Framework Agreement* that are capable of executing the subject of the contract to submit written *Tenders*
 - fixing a time limit which is sufficiently long to allow *Tenders* for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract
 - awarding each contract to the tenderer who has submitted the best *Tender* on the basis of the *Award Criteria* set out in the specifications of the *Framework Agreement*.

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8. COMPETITION REQUIREMENTS FOR PURCHASE OR DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The *Officer* must calculate the *Total Value* (excluding VAT) for the period of the contract.

The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with government. If in doubt, *Officers* must seek the advice of the *Corporate Procurement Officer* or Internal Audit.

8.1 Purchasing – Competition Requirements

8.1.1 Where the *Total Value* for a purchase is within the values in the first column below, the *Award Procedure* in the second column must be followed. *Short listing* shall be done by the persons specified in the third column.

Total Value (excl. VAT)	Award Procedure	Short listing
Up to £5,000	One quotation, but good practice to seek most favourable prices and terms, having regard to the Council's Procurement Strategy.	Officer - See Financial Instructions
£5,001 – £30,000	Three written Quotations	Officer and Service Manager
£30,001–£75,000	Invitation to Tender to at least four suppliers	Officer and Service Manager in consultation with the Corporate Procurement Officer – see Rule 7.1.5
£75,001–EU Threshold	Invitation to Tender by advertisement/list to at least four suppliers	Officer and Service Manager in consultation with the Corporate Procurement Officer
Above EU Threshold	EU Procedure (Seek advice from the Corporate Procurement Officer)	Officer, Service Manager and Strategic Director/Head of Service in consultation with the Corporate Procurement Officer
Up to EU Threshold	All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these contract procedure rules and no exemption is required e.g. simple purchases through Devon Procurement Services.	See paragraph 3.7.

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8.1 Purchasing – Competition Requirements (continued)

Total Value (excl. VAT)	Award Procedure	Short listing
All values. Collaborative Contracts	The <i>Corporate Procurement Officer</i> must be consulted prior to commencing any procurement process using Collaborative Contracts. The terms and conditions applicable to any Collaborative Contract arrangement, including the requirement to undertake competition between providers, must be fully complied with.	See paragraphs 3.6 to 3.8
All values. ICT	All system developments and purchases of computer equipment or software must be approved by the Head of ICT, or her/his nominated deputy, and awarded in line with these Rules.	Officer, Service Manager and Head of ICT, in consultation with the Corporate Procurement Officer

8.1.2 Where it can be demonstrated that there are insufficient suitably qualified *Suppliers* to meet the competition requirement, all suitably qualified *Suppliers* must be invited and the *Corporate Procurement Officer* informed.

8.1.3 An *Officer* must not enter into separate contracts nor select a method of calculating the *Total Value* in order to minimise the application of these contract procedure rules.

8.1.4 Where the *EU Procedure* is required, the *Officer* shall also consult the *Corporate Procurement Officer*, as appropriate, to determine the method of conducting the purchase. See table at Rule 8.1.

8.2 Collaborative and Partnership Arrangements

8.2.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these contract procedure rules (Rule 3). If in doubt, *Officers* must seek the advice of the *Council's solicitor* and the *Corporate Procurement Officer*.

8.3 The Appointment of Consultants to Provide Services

8.3.1 Consultant architects, engineers, surveyors and other professional *Consultants* shall be selected and commissions awarded in accordance with the procedures detailed within these contract procedure rules and as outlined at Rule 8.1.1.

8.3.2 The engagement of a *Consultant* shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment to be in the form agreed by the *Council's solicitor*.

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8.3.3 Records of consultancy appointments shall be maintained in accordance with Rule 6.

8.3.4 *Consultants* shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the Council's Insurance Officer for the periods specified in the respective agreement.

8.4 Assets for Disposal

8.4.1 Assets for disposal must be sent to public auction except where better *Value for Money* is likely to be obtained by inviting *Quotations* and *Tenders*. (These may be invited by advertising on the Council's internet site). In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed as required by *Financial Instructions* and the Scheme of Delegation.

8.5 Contracts to Provide Services to External Purchasers

8.5.1 The *Council's solicitor, Corporate Procurement Officer* and *Financial Instructions* must be consulted where contracts to work for organisations other than the authority are contemplated.

9. PRE-TENDER MARKET RESEARCH AND CONSULTATION

9.1 The *Officer* responsible for the purchase: may, prior to the issue of the *Invitation to Tender*, consult potential suppliers in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential *Supplier*.

9.2 The *Officer* must not seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential *Suppliers* or distort competition, and should seek advice from the *Corporate Procurement Officer*.

10. STANDARDS AND SELECTION & AWARD CRITERIA

10.1 The *Officer* must ascertain what are the relevant British, European or international standards which apply to the subject matter of the contract. The *Officer* must include those standards which are necessary properly to describe the required quality. This includes sustainability standards. The *Council's solicitor and Corporate Procurement Officer* must be consulted if it is proposed to use standards other than European standards.

10.2 The *Officer* must define *Award Criteria* that are appropriate to the purchase and designed to secure an outcome giving *Value for Money* for the authority. The basic criteria shall be:

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- ‘Most economically advantageous’, where considerations in addition to price also apply.
- ‘Lowest price’ where payment is to be made by the authority when the *Award Criteria* is price alone; or
- ‘Highest price’ if payment is to be received (See *Financial Instructions* on disposal of assets)

If the last criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters.

10.3 *Award Criteria* must not include:

- *Non-commercial Considerations* (See Definitions Appendix);
- Matters which discriminate against suppliers, irrespective of size, from the European Economic Area or signatories to the Government Procurement Agreement.

11. INVITATIONS TO TENDER/QUOTATIONS

11.1 The *Invitation to Tender* shall state that no *Tender* will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*. No *Tender* delivered in contravention of this clause shall be considered.

11.2 All *Invitations to Tender* shall include the following:

- (a) A specification that describes the authority’s requirements in sufficient detail to enable the submission of competitive offers.
- (b) A requirement for tenderers to declare that the *Tender* content, price or any other figure or particulars concerning the *Tender* have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- (c) A requirement for tenderers to complete fully and sign all *Tender* documents including a form of *Tender* and certificates relating to canvassing and non-collusion.
- (d) Notification that *Tenders* are submitted to the Council on the basis that they are compiled at the tenderer’s expense.
- (e) A description of the *Award Procedure* and, unless defined in a prior advertisement, a definition of the *Award Criteria* in objective terms and if possible in descending order of importance.

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- (f) Notification that no *Tender* will be considered unless it is:
 - o enclosed in a sealed unmarked envelope or container (electronic) which bears the word 'Tender' followed by the subject to which it relates, but no other name or mark indicating the sender; or
 - o submitted via the Council's electronic tendering system.
- (g) A stipulation that any *Tenders* submitted by fax or e-mail shall not be considered, see Rule 13.3 re electronic tendering.
- (h) The method by which any arithmetical errors discovered in the submitted *Tenders* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender* or vice versa.

11.3 All *Invitations to Tender* or *Quotations* must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 16).

11.4 The *Invitation to Tender* or *Quotation* must state that the Council is not bound to accept any *Quotation* or *Tender*, either as a whole or in part.

11.5 All *Suppliers* invited to *Tender* or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

12. SHORTLISTING

12.1 Any *Shortlisting* must have regard to the financial and technical standards relevant to the contract and the *Award Criteria*. Special rules apply in respect of the *EU Procedure*.

12.2 Evaluation criteria must be transparent and sub-criteria specified. Shortlisting records must be kept and held for the period specified in the Council's Document Retention Policy and Rule 6.

12.3 The officers responsible for *Shortlisting* are specified in Rule 8.1.1.

13. SUBMISSION, RECEIPT AND OPENING OF TENDERS/ QUOTATIONS

13.1 *Suppliers* must be given an adequate period in which to prepare and submit a proper *Quotation* or *Tender*, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of *Tenders*. The *EU Procedure* lays down specific time periods (see the Council's *purchasing guidance*).

13.2 All *Tenders* must be returned to the Member Services department or if electronically be submitted through the Council's approved and secure electronic tendering system.

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- 13.3 The Council's electronic tendering system should be used where practical. However, *Tenders* received by fax or other electronic means (e.g. email) must be rejected.
- 13.4 The *Officer* must not disclose the names of *Suppliers* to any staff involved in the receipt, custody or opening of *Tenders*.
- 13.5 The Member Services department shall be responsible for the safekeeping of *Tenders* until the appointed time of opening. Each *Tender* must be:
- Suitably recorded so as to subsequently verify the date and precise time it was received
 - Adequately protected immediately on receipt to guard against amendment of its contents
 - Recorded immediately on receipt in the *Tender Register Pro-Forma*.
- 13.6 The Member Services department must ensure that all *Tenders* are opened at the same time when the period for their submission has ended. The *Officer* or his or her representative must be present. *Tenders* must be opened in the presence of an officer representing the Head of Corporate Services and a Council Member. Where the *Total Value* is more than the *EU Threshold*, the *Corporate Procurement Officer* shall also attend.
- 13.7 Upon opening, a summary of the main terms of each *Tender* (i.e. significant issues that are unique to each *Tender* submission and were not stated in the *Tender* invitation documents such as *Tender* sum) must be recorded in the *Tender Register Pro-Forma*. The summary must be signed by all present. Where an electronic tendering process is used, those involved must verify the results to the screen.

14. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

- 14.1 Providing clarification of an *Invitation to Tender* to potential or actual *Suppliers* or seeking clarification of a *Tender*, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a *Tender* and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an *EU Procedure* where this might distort competition, especially with regard to price.
- 14.2 If post-tender negotiations are necessary after a single-stage *Tender* or after the second stage of a two-stage *Tender*, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best *Tender* and after all unsuccessful *Suppliers* have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the *Tender* documents. *Officers* appointed by the *Director/Head of Service* to carry out

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post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

- 14.3 Post-tender negotiation must only be conducted in accordance with the guidance issued by the *Corporate Procurement Officer* who must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two *Officers*, one of whom must be from a division independent to that leading the negotiations.
- 14.4 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

15. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING SUPPLIERS

- 15.1 Apart from the debriefing required or permitted by these contract procedure rules, the confidentiality of *Quotations*, *Tenders* and the identity of *Suppliers* must be preserved at all times and information about one *Supplier's* response must not be given to another *Supplier*.
- 15.2 Contracts must be evaluated and awarded in accordance with the *Award Criteria*. During this process, *Officers* shall ensure that submitted *Tender* prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 15.3 The arithmetic in compliant *Tenders* must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their *Tender*. Alternatively, if the rates in the *Tender*, rather than the overall price, were stated within the *Tender* invitation as being dominant, an amended *Tender* price may be requested to accord with the rates given by the tenderer.
- 15.4 *Officers* may accept *Quotations* and *Tenders* received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these contract procedure rules. Awarding of contracts that are expected to exceed the approved budget sum shall be referred back to the *Executive*, or the Head of Finance, as appropriate in line with the Scheme of Delegation.
- 15.5 Where the *Total Value* is over £30,000, the *Officer* must notify all *Suppliers* simultaneously and as soon as possible of the intention to award the contract to the successful *Supplier*, and include the reasons why for the unsuccessful bidders. The *Officer* must provide unsuccessful *Suppliers* with a period of at least ten days in which to challenge the decision before the *Officer* awards the contract. If the decision is challenged by an unsuccessful *Supplier* then the *Officer* shall not award the contract and shall immediately seek the advice of the *Council's solicitor*.
- 15.6 The *Officer* shall debrief in writing all those *Suppliers* who submitted a bid about the characteristics and relative advantages of the leading bidder. No

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information, other than the following, should be given without taking the advice of the *Council's solicitor*.

- How the Award Criteria were applied
- The prices or range of prices submitted, in either case not correlated to Suppliers' names
- The names of Suppliers where there were three or more Suppliers.

15.7 For EU contracts, if a *Supplier* requests in writing the reasons for a *Contracting Decision*, the *Officer* must give the reasons in writing within 15 days of the request. If requested, the *Officer* may also give the debriefing information at Rule 15.6 above to *Suppliers* who were deselected in a pre-tender *Short listing* process.

16. CONTRACT DOCUMENTS

16.1 Relevant Contracts

16.1.1 All Relevant Contracts above £30,000 shall be in writing in a form approved by the Council's solicitor.

16.1.2 All *Relevant Contracts*, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done)
- The provisions for payment (i.e. the price to be paid and when)
- The time, or times, within which the contract is to be performed
- The provisions for the Council to terminate the contract.

16.1.3 The Council's order form or standard terms and conditions issued by a relevant professional body must be used wherever possible. If any doubt exists, the advice of the *Council's solicitor* and *Corporate Procurement Officer* must be sought.

16.1.4 In addition, every *Relevant Contract* of purchase over £30,000 must also state clearly as a minimum:

- That the contractor may not assign or sub-contract without prior written consent
- Any insurance requirements
- Health and safety requirements
- Ombudsman requirements
- Data protection requirements, if relevant
- That charter standards are to be met if relevant

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- Race relations requirements
- Disability Discrimination Act requirements
- Freedom of Information Act requirements
- Where *Agents* are used to let contracts, that *Agents* must comply with the Council's contract procedure rules
- A right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.

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16.1.5 The formal advice of the *Council's solicitor* must be sought for contracts where any of the following apply:

- Where the Total Value exceeds £75,000; or
- Those involving leasing arrangements; or
- Where it is proposed to use a supplier's own terms; or
- Those involving the purchase of application software with a Total Value of more than £30,000; or
- Those that are complex in any other way.

16.2 Contract Formalities

16.2.1 Agreements shall be completed as follows:

Total Value	Method of Completion	By
Purchase orders - up to £30,000	Electronic Order or Signature	Authorised officer (see Rule 16.2.3)
Contracts and licences up to £30,000	Signature	<i>Head of Service</i> or Nominated Deputy (Rule 16.2.3)
£30,001 to £75,000	Signature	<i>Head of Service, Strategic Director or the Council's solicitor</i> (Rule 16.2.3)
Above £75,000 or if any of para 16.1.5 applies except ICT software.	Signature or Sealing (as advised by the Council's solicitor)	<i>Strategic Director or the Council's solicitor</i> (See also Rule 16.2.3 and 16.3)
ICT - system developments and purchases of computer equipment or software		
Purchase Orders – Up to £30,000	ICT Electronic Order or Signature	Authorised ICT officer
Contracts and licences - up to £30,000	Signature	Head of ICT or Nominated Deputy
£30,001 to £75,000		<i>Head of ICT, Strategic Director or the Council's solicitor</i>
Above £75,000	Signature or Sealing (as advised by the Council's solicitor)	<i>Strategic Director or the Council's solicitor</i> (Rule 16.2.3 and 16.3)

16.2.2 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the *Chief Executive or S.151 Officer*. An award letter is insufficient.

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16.2.3 The *Officer* responsible for securing a signature on the contract must ensure that the person signing for the other contracting party has authority to bind it.

16.2.4 For contracts with a value above £30k, the *Officer* responsible for securing a signature must provide the Council's solicitor with the original for secure storage. An electronic copy must be copied to the *Corporate Procurement Officer*.

16.3 Sealing

16.3.1 Where appropriate contracts are completed by each side adding their formal seal. The fixing of the Council's seal must be witnessed by a further officer on behalf of the *Council's solicitor*.

16.3.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed except in accordance with the Council's *Constitution*.

16.3.3 A contract must be sealed where:

- The Council may wish to enforce the contract more than six years after its end,
- The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services, or
- There is any doubt about the authority of the person signing for the other contracting party.

17. BONDS AND PARENT COMPANY GUARANTEES

17.1 The *Officer* must consult the *Head of Financial Services* about whether a *Parent Company Guarantee* is necessary when a *Supplier* is a subsidiary of a parent company and:

- The Total Value exceeds £75,000, or
- Award is based on evaluation of the parent company, or there is some concern about the stability of the Supplier.

17.2 The *Officer* must consult the *Head of Financial Services* about whether a Bond is needed:

- Where the Total Value exceeds £1,000,000, or
- Where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the Supplier i.e. following a formal risk assessment.

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18. PREVENTION OF CORRUPTION & ANTI COMPETITIVE BEHAVIOUR

18.1 Prevention of Corruption

18.1.1 The *Officer* needs to be aware of the Bribery Act 2010, which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official and the new corporate offence of failing to prevent bribery, as well as the Council's Anti-Fraud and Corruption Strategy.

18.1.2 The *Officer* must comply with the Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 18.1.3 below.

18.1.3 The following clause must be put in every written Council contract:
"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or
- (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees. Any clause limiting the Contractor's liability shall not apply to this clause."

18.2 Anti Competitive Behaviour

18.2.1 In their guidance for public sector procurers, the Office of Fair Trading has highlighted practical steps to take to reduce the risks of anti-competitive behaviour, and this should be followed where it is practical to do so:

- (a) Use non-collusion clauses, certificates of independent bids and requests;
- (b) Ensure sufficient credible bidders;
- (c) Look for suspicious bidding patterns (further guidance available);
- (d) Keep good notes of all discussions and potential bidders and systematically scrutinise them for suspicious patterns e.g. geographical prevalence of certain suppliers' areas.

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18.2.2 If there is any doubt during a procurement exercise, or for further guidance, the *Officer* should contact the Corporate Procurement Officer or Internal Audit.

19. DECLARATION OF INTERESTS

19.1 If it comes to the knowledge of a member or an employee of the authority that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Head of Corporate Services.

19.2 Such written notice is required irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest is distinct from a direct pecuniary interest in as much as it is not a contract to which the member or employee is directly a party.

19.3 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not a pecuniary interest for the purposes of this standing order.

19.4 The Head of Corporate Services shall maintain a record of all declarations of interests notified by members and *Officers*.

19.5 The Head of Corporate Services shall ensure that the attention of all members is drawn to the National Code of Local Government Conduct.

20. MANAGING CONTRACTS

20.1 **Heads of service in sponsoring departments are to name contract managers for all new contracts.** All contracts must have a named Council contract manager for the entirety of the contract.

20.2 Contract managers must follow the procedures set out in the Council's *purchasing guidance*.

20.3 All **variations** to contracts are to be in writing in the form of an appropriately authorised variation instruction and sequentially numbered.

20.4 **Payments** to contractors will only be made on certification by the designated contract manager in line with the Financial Instructions.

20.5 **Liquidated and ascertained damages** must be deducted for all periods of delay in line with the terms of the contract. Any instance, where in the opinion of the *Officer/Contract Manager*, this does not apply must be fully justified to and authorised by the responsible *Strategic Director, the Council's solicitor and the S.151 Officer*.

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20.6 The *Officer/Contract Manager* will consult with the responsible *Strategic Director, the Council's solicitor and the S.151 Officer* promptly on becoming aware of any significant **dispute, claim for additional payment** in connection with a contract. No liability shall be accepted without the approval of the Executive in such cases.

21. RISK ASSESSMENT AND CONTINGENCY PLANNING

21.1 A business case must be prepared for all procurements with a potential value over the *EU Threshold*. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

21.2 For all contracts with a value of over £75,000, contract managers must:

- Maintain a risk register during the contract period in accordance with the Council's Risk Management Strategy
- Undertake appropriate risk assessments and for identified risks (in consultation with the Council's Lead Officer – Risk Management and Risk Management Strategy as appropriate)
- Ensure contingency measures are in place

22. CONTRACT MONITORING, EVALUATION AND REVIEW

Contracts Financed from Revenue

22.1 All contracts which have a value higher than the *EU Threshold* limits, or which are *High Risk*, are to be subject to formal review(s) by the contract manager with the contractor. The review may be conducted at a frequency that is determined by the risk value and profile of the contract.

22.2 As a minimum, for all contracts with a value higher than the *EU Threshold* limits, or which are *High Risk*, an annual report must be submitted to the *Strategic Management Team*.

22.3 A contract review process must be applied to all contracts deemed to be *High Risk, High Value, or High Profile*. This process must be applied at key stages of major procurements.

22.4 During the life of the contract, the *Officer* must monitor and take any necessary corrective action in respect of:

- Performance
- Compliance with specification and contract
- Cost
- Any Value for Money requirements
- User satisfaction and risk management.

22.5 When the contract is completed the *Officer* must submit a report to the *Strategic Management Team*. The report must evaluate the extent to which the purchasing need and the contract objectives (as determined in

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accordance with Rule 5.2) were met by the contract. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

Contracts Financed from the Capital Programme

- 22.6 The Council's Asset Management Group (AMG) is responsible for consideration and prioritisation of any proposed projects that require financing through the Council's Capital Programme, subject to the approval of a detailed project plan by the Strategic Management Team (SMT). The Group's Terms of Reference form part of the Asset Management Strategy which must be approved by the *Executive*.
- 22.7 Any *Officer* proposing a project for inclusion in the Capital Programme must submit a Project Appraisal Form to the Head of Property Services for submission to SMT and include any revenue impact that the project may incur. This will form the basis of the recommendation to the *Executive* for approval.
- 22.8 Delegated authority has been given to the Council's Strategic Management Team to deliver the Capital Programme, including the procurement of appropriately skilled resources and expenditure of the contingency budget, to support delivery within the required timeframe, in consultation with the Leader and the appropriate Executive Member.
- 22.9 SMT in association with the Leader have monitoring responsibilities for the projects under its management, both to receive regular reports from Project Managers on the performance of their project; and quarterly to the Executive on the overall progress of the Capital Programme.
- 22.10 The monitoring report will outline the budget position as a whole and include, as a minimum, the financial position of each approved project.

DEFINITIONS APPENDIX

Term	Definition
Agent	A person or organisation acting on behalf of the Council or on behalf of another organisation.
Award Criteria	The criteria by which the successful <i>Quotation</i> or <i>Tender</i> is to be selected (see further Rules 10 and 11.2e).
Award Procedure	The procedure for awarding a contract as specified in Rules 8, 10 and 15.
Bond	An insurance policy: if the contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Council against a level of cost arising from the contractor's failure.
Code of Conduct	The code regulating conduct of Officers, available on the Council's Intranet.
Constitution	The constitutional document approved by the Council which: <ul style="list-style-type: none"> • allocates powers and responsibility within the Council and between it and others • delegates authority to act to the Executive, Other Member Bodies and Officers; regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.
Consultant	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work.
Contracting Decision	Any of the following decisions: <ul style="list-style-type: none"> • composition of Approved Lists • withdrawal of Invitation to Tender • whom to invite to submit a Quotation or Tender • Short listing • award of contract • any decision to terminate a contract.
Corporate Contract	A contract let by the <i>Corporate Procurement Officer</i> to support the Council's aim of achieving <i>Value for Money</i> .
Corporate Procurement Officer	The Council's central procurement officer charged with providing strategic direction and advice to secure <i>Value for Money</i> in the Council's procurement activities.
Council's Solicitor	As identified in the <i>Constitution</i> .
Director/Head of Service	The officers defined as such in the <i>Constitution</i> .
Executive	The Council's Executive as defined in the <i>Constitution</i> .
EU Procedure	The procedure required by the EU where the <i>Total Value</i> exceeds the <i>EU Threshold</i> .
EU Threshold	The contract value at which the EU public procurement directives apply.
European Economic Area	The 15 members of the European Union, and Norway, Iceland and Liechtenstein.

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Term	Definition
Financial Instructions	The Financial Instructions outlining <i>Officer</i> responsibilities for financial matters issued by the <i>S. 151 Officer</i> in accordance with the <i>Constitution</i> (Financial Procedure Rules).
Framework Agreement	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
Government Procurement Agreement	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the <i>European Economic Area</i> are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.
High Profile	A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong.
High Risk	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
High Value	A high-value purchase is where the value exceeds the <i>EU Threshold</i> values.
Invitation to Tender (ITT)	Invitation to tender documents in the form required by these contract procedure rules.
Key Decision	Decisions that are defined as key decisions in the <i>Constitution</i> .
Nominated Suppliers and Sub-Contractors	Those persons specified in a main contract for the discharge of any part of that contract.
Non-commercial Considerations	<p>(a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').</p> <p>(b) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.</p> <p>(c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.</p> <p>(d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').</p> <p>(e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.</p> <p>(f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.</p> <p>(g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support. Continues Overleaf.</p>

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Term	Definition
Non-commercial Considerations (continued)	(h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best <i>Value</i> ; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (<i>TUPE</i>) may apply.
Officer	The officer designated by the <i>Director/Head of Service</i> to deal with the contract in question.
Parent Company Guarantee	A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead.
Portfolio Holder	A member of the <i>Executive</i> to whom political responsibility is allocated in respect of specified functions.
Priority Services	Those services required to be tendered as defined in the EU public procurement directives.
Procurement Strategy	The document setting out the Council's approach to procurement and key priorities for the next few years.
Purchasing Guidance	The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these contract procedure rules. The guidance is available on the Council's intranet.
Quotation	A quotation of price and any other relevant matter (without the formal issue of an <i>Invitation to Tender</i>).
Relevant Contract	Contracts to which these contract procedure rules apply (see Rule 4).
S.151 Officer	The Strategic Director (Resources) or such other officer as may be designated S.151 Officer by the Council, including the appointed Deputy S.151 Officer.
Service Manager	The <i>Officer's</i> immediate superior or the <i>Officer</i> designated by the <i>Director/Head of Service</i> to exercise the role reserved to the Service Manager by these contract procedure rules.
Shortlisting	The process of selecting <i>Suppliers</i> who are to be invited to quote or bid or to proceed to final evaluation.
Supplier	Any person who asks or is invited to submit a <i>Quotation</i> or <i>Tender</i> .
Tender	A <i>Supplier's</i> proposal submitted in response to an <i>Invitation to Tender</i> .
Tender Register Pro Forma	The log kept by the Head of Corporate Services to record details of <i>Tenders</i> (see Rule 13.5).
Total Value	The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows: (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months. Continues Overleaf.

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Term	Definition
Total Value (continued)	<p>(c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48</p> <p>(d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result</p> <p>(e) for <i>Nominated Suppliers and Sub-contractors</i>, the total value shall be the value of that part of the main contract to be fulfilled by the <i>Nominated Supplier or Sub-contractor</i>.</p>
TUPE Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246)	<p>Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business</p>
Value for Money	<p>Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.</p>