



Contract Procedure Rules

1 APPLICATION

- 1.1 These Contract Procedure Rules provide the governance structure for the Council to procure works, goods and services.
- 1.2 These mandatory Contract Procedure Rules apply to everyone who commissions or procures contracts on behalf of the Council, including external consultants and third party providers.
- 1.3 Approved Officers (Heads of Service and above) are accountable for all Procurement in their respective area of responsibility including following the Contract Procedure Rules and complying with operational procurement guidelines and codes of practice.
- 1.4 All Officers must ensure that the Council's approved processes and standards for Procurement, as set out in the Procurement Toolkit are adhered to. All information governance, insurance, safeguarding, social value (including Support to Local Community), conflict of interest and business continuity requirements must be adhered to in line with the Procurement Toolkit and the Council's Information Governance Policies.
- 1.5 The Director of Commercial Services in consultation with the Director of Resources shall maintain and issue the Contract Procedure Rules.
- 1.6 Customer Support Group (CSG) Procurement is responsible for ensuring Council awareness and compliance with all relevant Law. Any significant changes to relevant Law will be reflected in these Contract Procedure Rules.

2 SCOPE

- 2.1 The Contract Procedure Rules apply to all Procurement activities, including expenditure of external funding on Procurement, such as grant allocation, received by the Council from external sources.
- 2.2 The Contract Procedure Rules do not apply to Non-Procurement activities whereby the Council has to pay for a Service which it did not initiate or for payments where it is not appropriate to tender including (but not exclusively) inter-authority and inter-agency payments, subscriptions/memberships, emergency temporary accommodation for vulnerable people, assessments and recoupment. Payments to third parties for these activities are subject to authorisation by Finance.
- 2.3 Where the Council is entering into a Contract as an agent in collaboration with another public body or organisation which is the principal or lead body in the collaboration, these Contract Procedure Rules apply only in so far as they are consistent with the requirements of the principal or lead body concerned. Where the Council is acting as principal or the lead body, these Contract Procedure Rules will take precedence.

- 2.4 Where the Council's schools have to abide by the Scheme for Financing Schools which requires them to follow Contract Standing Orders (CSO) for Schools, then the CSO for Schools shall take precedence over these Contract Procedure Rules.
- 2.5 These Contract Procedure Rules do not apply to any acquisition or disposal of any interest in land, or to any transaction in land under section 75 of the National Health Services Act 2006; arrangements between NHS bodies and the council are not subject to these Contract Procedure Rules though procurement activities undertaken under any such arrangements may be.

3 CONTRACT VALUE CALCULATION

- 3.1 Contract value means the estimated aggregate or recurring value payable in pounds sterling exclusive of Value Added Tax over the entire Contract period including any form of options or extensions of the Contract. Where the Contract term is not fixed the estimated value of the Contract must be calculated by multiplying the monthly spend value by 48 in accordance with Regulation 6 of the Public Contracts Regulations 2015.
- 3.2 Contracts must not be artificially underestimated or disaggregated into two or more separate contracts with the intention of avoiding the application of Contract Procedure Rules or the Law.
- 3.3 In the case of Framework Agreements or Dynamic Purchasing Systems the contract value must be calculated to include the total estimated value, net of VAT, of all the contracts envisaged to be awarded for the total term of the Framework Agreement or the Dynamic Purchasing System.

4 AUTHORISATION

- 4.1 Any Procurement, including extensions and variations to Contracts set out in the Annual Procurement Forward Plan and approved by the Policy and Resources Committee, is deemed as Authorised irrespective of the Contract value.
- 4.2 Any Procurement which has not been Authorised as set out in 4.1 must be Authorised in accordance with Article 10 of the Constitution, Table B.

5 PROCUREMENT METHOD

- 5.1 The method of procurement is set out in Article 10 of the Constitution, Table B.
- 5.2 All Procurements for goods and services over £25,000 must be advertised on Contracts Finder within 24 hours of the time when the Procurement is advertised in any other way. Procurement over the EU financial threshold must be advertised in the OJEU first and then on Contracts Finder. A

Contract award notice must also be published on Contracts Finder. CSG Procurement will arrange this.

- 5.3 Commissioners may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots. If commissioners decide not to subdivide into lots they must document the main reasons for their decision.
- 5.4 Where the Council accesses an existing Framework Agreement, the Framework Agreement terms and conditions of contract must be used, amended as appropriate as permitted by the Framework Agreement. Before entering into a Framework Agreement due diligence checks must be carried out to demonstrate that the Council can lawfully access the Framework Agreement and that it is fit for purpose and provides value for money.
- 5.5 For activities that result in a contractual obligation for social care placements and special education needs where the decision has been made on the Council's behalf (such as court directed order, personal budget/statement request or an individual's specific needs) the authority to sign off to award an individual funding agreement in accordance with the decision making framework is contained within the Article 10 (Decision-Making) as set out in the Constitution.
- 5.6 Procurement activity for Contracts for certain health, social, community, educational and cultural related services, "Light-Touch Regime Services" whose value is equal to or over the threshold of £615,278 must be tendered and awarded in compliance with the Public Procurement Regulations 2015. Refer to the CSG Procurement Team to advise on the procedures to be applied in connection with the award of these Contracts.
- 5.7 For Procurements below the EU financial threshold only Suitability Assessment Questions can be asked. This means there can be no SQ stage.
- 5.8 For Contracts under the OJEU financial threshold the Commercial Services Director may waive the requirement to seek 2 written quotes subject to a Summary DPR being provided, demonstrating that the market place has been fully tested and the Council has obtained value for money.
- 5.9 The award of Contracts will be based on the most economically advantageous tender assessed from the Council's point of view.
- 5.10 Commissioners shall require tenderers to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, goods or services

6 SINGLE TENDER ACTION

- 6.1 A Single Tender Action is the awarding of a Contract to a contractor without undertaking a competitive tendering exercise. This is permitted only in exceptional circumstances and should be approved in advance by the Commercial Director. Procurement advice should be sought in all cases. Exceptional circumstances may include where the works, supplies or services can be supplied only by a particular supplier.
- 6.2 Where a competition has been undertaken and only a single bid has been received the Commercial Director can approve the award of a Contract, subject to an appropriate review being undertaken and an audit trail being available for inspection.

7 CONCESSION CONTRACTS

- 7.1 Concession Contracts are contracts under which the council outsources works or services to a contractor or provider, who then has the right to commercially exploit those works or services in order to recoup its investment and make a return. The key feature is that the contractor/provider bears the operating risk of the arrangement and so has no guarantee of recouping its investment or operating costs.
- 7.2 Concession Contracts must meet certain requirements and advice should be sought from Legal Services and CSG Procurement.

8 ACCEPTANCE

- 8.1 Acceptance of Contracts must be in accordance with Article 10 Table B of the Constitution, and in all cases is subject to: Budget provision; a compliant Procurement process; and confirmation of acceptable financial status of the contractor.
- 8.2 Acceptance of Contracts with independent providers of individual placements for children or adults will in the first instance be achieved through approved frameworks or approved lists of providers. Where requirements cannot be met through approved frameworks or approved lists, authority is delegated to the relevant officer of a service area under the scheme of delegation in the council's Constitution to enter into contract with a new independent provider.
- 8.3 Acceptance thresholds for Contract extensions and variations are set out in Article 10 Table B of the Constitution.
- 8.4 The financial evaluation of tenders will be undertaken by:

- CSG Procurement if the Contract is valued at less than £181,302 for goods or services or less than £4,551,413 for works, or;
- A Financial Officer as delegated by the Director of Finance if: (a) the contract is valued at £181,302 or more, for goods or services; or (b) the contract is valued at £4,551,413 or more for works; or (c) the Director of Finance considers that the Contract has a significant impact on the council's finances.

9 CONTRACT SIGNING and SEALING

- 9.1 Every Contract must be in a form approved by Legal services or delegated officer, if its value exceeds £25,000 or where appropriate to the nature of the Contract.
- 9.2 All Contracts awarded following a Procurement process with a Contract value above the EU financial threshold shall be sealed unless Legal Services or delegated officer directs otherwise.
- 9.3 Contracts and Framework Agreements must be sealed. Call-off Contracts from a Framework Agreement under the EU financial threshold do not require sealing and need only be signed by a Council Officer in accordance with the Scheme of Delegation.

10 CONTRACT MANAGEMENT

- 10.1 During the life of the Contract Approved Officers must ensure that the Council's approved processes for Contract Management, as set out in the Contract Management Toolkit are adhered to. In particular to ensure continuous improvement and value for money is achieved all Approved Officers must ensure that those responsible for managing Contracts undergo CSG Procurement approved training

11 EXTENSIONS and VARIATIONS

- 11.1 Contracts that have been originally advertised with extension options and which contain clear extension options can be extended subject to acceptance under Article 10 Table B of the Constitution and under Regulation 72 of the Public Contracts Regulations 2015 certain amendments, and extensions or renewals of an existing Contract can be made without triggering a requirement for a new Procurement exercise, subject to submit financial limits. Where necessary seek advice from Legal and CSG Procurement.
- 11.2 Placement Agreements for individuals in Social Care or Educational Needs may be varied or extended without reference to the Variation or Extension Acceptance levels and documentation set out in Article 10 of the Constitution, Table B.

- 11.3 The value referred to in Article 10 of the Constitution, Table B in the column headed 'Variation or extension Acceptance' is the total value of the original Contract value plus the addition of the value of any extensions and/or variations i.e. the total value of the extended or varied Contract.
- 11.4 In addition to the requirements of Regulation 72 Contracts may only be extended or varied if all of the following conditions have been met:
- the initial Contract was based on a Contract Procedure Rules compliant competitive tender or quotation process;
 - the value of the extension or variation added to the value of the original Contract does not exceed the original Authorisation threshold as defined in Article 10 of the Constitution, Table B;
 - the extension or variation has an approved Budget allocation;
 - if the initial Contract was subject to an EU regulated tender procedure, that the extension option was declared within the OJEU contract notice and the original Acceptance report (Delegated Powers Report/relevant Committee Report);
- 11.5 Where the Procurement results in a Contract which includes a provision for an extension, any Acceptance of that extension needs to be in accordance with Article 10 of the Constitution, Table B.
- 11.6 If any of the conditions at 11.4 or 11.5 cannot be met, then a new Procurement exercise must be commenced.
- 11.7 Where a variation or extension moves the total value of the Contract into a higher threshold, then acceptance must be sought in accordance with Article 10 of the Constitution, Table B.

12 **WAIVERS**

- 12.1 If the application of these Contract Procedure Rules prevents or inhibits the delivery or continuity of service, Approved Officers (Heads of Service or above) may apply for a waiver. All applications for a waiver of these Contract Procedure Rules must be submitted to Policy and Resources Committee specifically identifying the reason for which a waiver is sought, including justification and risk.
- 12.2 Approved Officers may take decisions on emergency matters (i.e. an unexpected occurrence requiring immediate action) in consultation with the Chairman of Policy and Resources Committee providing they report to the next available Policy and Resources Committee, setting out the reasons for the emergency waiver. A copy of the relevant Policy and Resources Committee report must be provided to CSG Procurement and stored on the Council's contract repository.
- 12.3 Any waiver should only be granted for a maximum period of 12 months, except in exceptional cases.