



# Contract Procedure Rules

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## CONTENTS

1	INTRODUCTION .....	3
2	APPLICATION .....	3
3	SCOPE .....	4
4	REGULATION & LEGISLATION .....	4
5	ROLES AND RESPONSIBILITIES .....	5
6	CONTRACT VALUE CALCULATION .....	6
7	AUTHORISATION .....	6
8	PROCUREMENT METHOD .....	6
9	SINGLE TENDER ACTION .....	7
10	INFORMATION GOVERNANCE .....	7
11	ACCEPTANCE .....	7
12	CONTRACT SIGNING and SEALING .....	7
13	CONTRACT MANAGEMENT .....	8
14	EXTENSIONS and VARIATIONS .....	9
15	WAIVERS .....	9
16	DEFINITIONS .....	10
17	APPENDIX 1 - TABLE A – Authorisation and Acceptance Thresholds .....	12

## 1 INTRODUCTION

- 1.1 Procurement decisions are among the most important decisions a manager makes because the money involved is public money and the Council is concerned to ensure that as a minimum high quality supplies, works and services are provided in a timely manner. Effective and efficient use of resources in order to achieve best value is a legislative duty. The Council's reputation is also important and should be safeguarded from any suggestion of dishonesty, corruption or failure to meet legal responsibilities.
- 1.2 Any Procurement activity must comply with the Contract Procedure Rules, Council policy, Constitution and English law. It is a disciplinary offence to fail to comply with Contract Procedure Rules when undertaking Procurement on behalf of the Council. Council employees and third party service providers have a duty to report breaches of Contract Procedure Rules to an appropriate senior manager and the Chief Internal Auditor.
- 1.3 All Procurement must be undertaken with regard to high standards of probity. The Council has a commitment to transparency and it is important that the procurement process is as transparent and open as possible.

## 2 APPLICATION

- 2.1 The Contract Procedure Rules provide the governance structure within which the Council may procure works, supplies and services. The aims of these rules are to:
  - ensure value for money and propriety in the spending of public money;
  - enable works, supplies and services to be delivered effectively and efficiently without compromising the Council's ability to influence strategic decisions;
  - ensure that the Council is not exposed to unnecessary risk and likelihood of challenge arising from non-compliant procurement activity; and
  - ensure compliance with current legislation, update all appropriate guidance notes, tools and templates and follow Procurement Policy Notes (PPN) issued by Cabinet Office
- 2.2 The Cabinet Resources Committee may, from time to time, recommend to the Constitution, Ethics and Probity Committee and Council that the thresholds as set out in these rules be amended.
- 2.3 Reference must be made to any approved Scheme of Delegation with regard to identifying any manager with the right to undertake Procurement as delegated by their Director, Assistant Director, Lead Commissioner or Head of Service. Schemes of Delegation will be maintained by the relevant Director, Assistant Director or Lead Commissioner and will be published on the Council's website.
- 2.4 Reference must be made to the Procurement Code of Practice for more detailed explanation of Procurement procedures, processes, associated Council policies, and required contract terms. Further detailed guidance can be provided by Central Procurement.

- 2.5 All officers should undertake Procurement in a manner which avoids any potential conflicts of interest and should follow the procedure as set out in the Staff Code of Conduct.
- 2.6 The Commercial Lead in consultation with the Chief Operating Officer shall maintain and issue the Contract Procedure Rules and the Procurement Code of Practice.
- 2.7 Unless the context otherwise requires, terms used in these Contract Procedure Rules shall have the meanings ascribed to them as set out in the Definitions section 16 of these rules.
- 2.8 The Contract Procedure Rules take precedence over the Procurement Code of Practice.

### **3 SCOPE**

- 3.1 The Contract Procedure Rules are applicable to all Procurement activities, including where funding such as grant allocation is received by the Council from external sources, as defined in Section 16 Definitions of these Contract Procedure Rules.
- 3.2 The Contract Procedure Rules are not applicable to Non-Procurement activities as defined in Section 16 Definitions of these Contract Procedure Rules or the activities defined in the Exemptions List as approved by the Commercial Lead. The exemptions list will be published alongside the Contract Procedure Rules. Payments to Third Parties for Exempted services shall be subject to a dual authorisation process where both Finance and Central Procurement approve individual payments.
- 3.3 Where the Council is entering into a contract as an agent and or in collaboration with another public body or organisation, these Contract Procedure Rules apply only in so far as they are consistent with the requirements of the body concerned. Where the Council is acting as principal the Contract Procedure Rules will take precedence.
- 3.4 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 the Contract Procedure Rules.
- 3.5 Any interest in land, transaction in land and or lease transaction is excluded from the Contract Procedure Rules but must be authorised in accordance with the requirements set out in the Constitution and, specifically, the Management of Real Estate, Property and Land Rules.

### **4 REGULATION & LEGISLATION**

- 4.1 Central Procurement is responsible for ensuring Council awareness and compliance with the requirements of all relevant legislation. Any significant changes to existing legislation and/or new legislation will be updated in the Code of Practice.
- 4.2 The Code of Practice will be regularly reviewed and updated by Central Procurement with any significant changes referred to the Constitution, Ethics and Probity Committee in accordance with paragraph 2.6.

## 5 ROLES AND RESPONSIBILITIES

Directors, Assistant Directors, Lead Commissioners and Heads of Service are accountable for all Procurements in their respective Delivery Units/area of responsibility. Their duties in relation to all Procurements and contract management are to:

- 5.1 ensure compliance with English law, Council policy, Contract Procedure Rules and the Procurement Code of Practice;
- 5.2 identify, deliver, measure and record value for money;
- 5.3 ensure that a pre-tender estimate of anticipated costs, as calculated in accordance with Section 6 (Contract Value Calculation) of these Contract Procedure Rules, is prepared, is in budget and recorded in writing;
- 5.4 identify, evaluate, record and appropriately mitigate risk e.g. provision of performance bond or parent company guarantee;
- 5.5 maintain a Scheme of Delegation, in accordance with Constitutional requirements;
- 5.6 ensure that all appropriate staff comply with the provisions of the Contract Procedure Rules and the Procurement Code of Practice and have attended Central Procurement approved training before undertaking procurement and contract management activities;
- 5.7 take immediate action in the event of a breach of the Contract Procedure Rules or Procurement Code of Practice within their area of responsibility;
- 5.8 ensure that all existing and new contracts above the published limits and planned during the forthcoming financial year are clearly identified in their Budget and Procurement Forward Plan;
- 5.9 ensure that contract terms and conditions to be used in a Procurement have been approved by HB Public Law (Joint Legal Service);
- 5.10 ensure an original signed contract is provided to the Deed Officer and a digital copy of the signed version, together with Acceptance approval documents and any waiver of these Contract Procedure Rules are placed on the Council's contract repository;
- 5.11 ensure that proper records of all contracts, tenders etc. including minutes of tender evaluation panels and other meetings are kept on the Council's approved Electronic Procurement Portal, which may be inspected and kept for the period specified in the Council's Records Retention and Disposal Policy
- 5.12 ensure that the appropriate Procurement Method as set out in Section 8 of these Contract Procedure Rules is followed;
- 5.13 keep a register of all contracts with total values of £5,000 or over, which may be inspected; and will support the annual budget review. Central Procurement will keep and publish a consolidated register of all contracts with total values of £10,000 or over, subject to Data Protection requirements;

- 5.14 ensure that all contract management is executed in accordance with Section 13 Contract Management of these Contract Procedure Rules.

## **6 CONTRACT VALUE CALCULATION**

- 6.1 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 extensions of the contract.
- 6.2 Where the contract term is without fixed length the estimated value of the contract should be calculated by monthly value of spend multiplied by 48 in accordance with EU Regulations.
- 6.3 Contracts must not be artificially underestimated or disaggregated into two or more separate contracts where the effect is to avoid the application of Contract Procedure Rules or English law. Please refer to the Code of Practice for further information.
- 6.4 Where a Framework Agreement is planned the contract value must be calculated to include the total value of all the individual contract arrangements envisaged under the Framework Agreement.

## **7 AUTHORISATION**

- 7.1 Any Procurement, including additions, extensions and variations included in the Annual Budget and Annual Procurement Forward Plan, as approved by Cabinet Resources Committee, is deemed as Authorised irrespective of value.
- 7.2 Any Procurement which has not been Authorised as set out in 7.1 must be Authorised in accordance with Table A in Appendix 1 of these Contract Procedure Rules.

## **8 PROCUREMENT METHOD**

- 8.1 Refer to Table A in Appendix 1 of these Contract Procedure Rules to determine the Procurement process that should be used. If any further clarification is required reference should be made to the Central Procurement Team.
- 8.2 All tender opportunities for works or services over £10,000 must be published and in accordance with Appendix 1, Table A and be subject to Tender Review as set out in the Procurement Code of Practice.
- 8.3 The E-Procurement portal must be used for any Procurement where the value exceeds £10,000.
- 8.4 Where a performance bond or guarantee would be required for the execution of the contract, the requirement must be pre-notified and the bond or guarantee must be in place before contract signature.

## **9 SINGLE TENDER ACTION**

- 9.1 A single tender action or commitment is not allowed unless approved in advance by the Commercial Lead. Refer to the Procurement Code of Practice for detailed guidance.

## **10 INFORMATION GOVERNANCE**

- 10.1 When procuring a new contract the senior responsible Council officer must ensure due diligence checks are carried out to provide sufficient guarantees that the contractor's technical and organisational security measures for handling and protection of information and data are appropriate, suitable and lawful. This is a requirement under Principle 7 of the Data Protection Act.
- 10.2 Evidence of these checks, copies of policies and guarantees provided by the contractor must be retained by the officer responsible for management of the contract and be regularly reviewed throughout the life of the contract.
- 10.3 Refer to the Procurement Code of Practice section on Information Governance for more detailed guidance or contact the Information Management Team.

## **11 ACCEPTANCE**

- 11.1 Acceptance of contracts in all cases is subject to:
- budgetary provision;
  - a compliant procurement process; and
  - confirmation of acceptable financial status of the service provider
- 11.2 Acceptance thresholds for contract extensions and variations of all values are subject to further conditions as set out in Section 14 Extensions and Variations of these Contract Procedure Rules.

## **12 CONTRACT SIGNING and SEALING**

- 12.1 Every contract or contract novation must be in a form approved by the Monitoring Officer (on consultation with HB Public Law) or delegated officer, if its value exceeds £24,999 or where appropriate to the nature of the contract.
- 12.2 All contracts signed following a European Procurement Procedure shall be sealed unless the Monitoring Officer or delegated officer directs otherwise.
- 12.3 Framework Agreements entered into with respect to the provision of social care to individual service users must be sealed.

- 12.4 Save for circumstances where a Court or Tribunal directs a particular placement, Individual Placement Agreements and Individual Funding Agreements must be made under a Framework Agreement specified in 12.3 above and in this case need only be signed (without being sealed) by the respective Director, Assistant Director or Head of Service in accordance with Schemes of Delegation.
- 12.5 Where the Monitoring Officer or delegated officer considers it desirable that a contract should be sealed other than as specified above, then such a contract must be sealed.

## 13 CONTRACT MANAGEMENT

- 13.1 During the life of the contract Directors, Assistant Directors, Lead Commissioners and Heads of Service must ensure that the Councils approved processes for contract management, as set out in the Procurement Code of Practice are adhered to. In particular to ensure continuous improvement and Value for Money is achieved Directors, Assistant Directors, Lead Commissioners or Heads of Service must ensure that those responsible for managing contracts undergo Central Procurement approved training to ensure:
- contract performance and key performance indicators are met;
  - compliance with specification and contract terms; and
  - cost management including reconciliation of payments against work done, supplies or services delivered;
- 13.2 Throughout the life of the contract, contract managers must ensure the elimination of unlawful discrimination and the promotion of equality in accordance with current legislation.
- 13.3 Contract managers or owners must ensure appropriate security measures are applied to prevent the unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to personal data.
- 13.4 For services or goods contracts valued above £173,934 and works contracts above £499,999 a contract monitoring and review check must be performed 6 months after contract commencement.



## 14 EXTENSIONS and VARIATIONS

- 14.1 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 TABLE A, Appendix 1.
- 14.2 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 Appendix 1, Table A;
  - the extension or variation has an approved budget allocation;
  - the extension or variation is in accordance with the terms and conditions of the existing contract;
  - if the initial contract was subject to EU tender procedure, that the extension option was declared within the OJEU notice and the original Acceptance (Delegated Powers Report/Cabinet Resources Committee Report) ; and
  - the contract has not been extended before;
- 14.3 In the event that any of the conditions at 14.1 or 14.2 cannot be met, then either a waiver must be sought in accordance with Section 15 (Waivers) or a new procurement commenced.
- 14.4 Where a variation or extension moves the total value of the Contract into a higher threshold, then either a waiver must be sought in accordance with Section 15 (Waivers) or a new procurement commenced.
- 14.5 Any variation or extension that has the effect of raising the contract value above the relevant OJEU threshold is not allowed as this would contravene English law.
- 14.6 The Acceptance thresholds for contract extensions and variations are set out in Table A, Appendix 1 of these Contract Procurement Rules.

## 15 WAIVERS

- 15.1 In the event that the application of these rules prevents or inhibits the delivery or continuity of service, Directors or Assistant Directors, Lead Commissioners and Heads of Service may apply for a waiver. All applications for a waiver of these Contract Procedure Rules must be submitted to Cabinet Resources Committee specifically identifying the reason for which a waiver is sought, including justification and risk.
- 15.2 Directors, Assistant Directors, Lead Commissioners and Heads of Service may take decisions on emergency matters (i.e. an unexpected occurrence requiring immediate action) as set out in the Leader's Scheme of Delegation providing they report to the next available Cabinet

Resources Committee, setting out the reasons for the emergency waiver. A copy of the relevant Cabinet Resources Committee report must be provided to Central Procurement and stored on the Councils contract repository.

- 15.3 Inadequate planning and organisation of resources does not constitute an acceptable justification for a waiver.
- 15.4 Any waiver can only be granted for a maximum period of 12 months and will count as a variation.

## 16 DEFINITIONS

- 16.1 **“Acceptance”** is the authorisation to enter into a contract with a particular supplier(s) on the terms, conditions and at the price(s) as set out in the contract documents.
- 16.2 **“Authorisation”** is the approval required to enable any Procurement to occur.
- 16.3 **“Budget”** is the annually agreed budget and supporting plans and strategies for each Delivery Unit.
- 16.4 **“Contract”** means a formal written agreement between the Council and the provider of any goods, services or works, including Terms and Conditions as approved by Joint Legal Services.
- 16.5 **“CPT”** means Central Procurement Team.
- 16.6 **“Approved Officer”** means the Director, Assistant Director, Service Lead or Lead Commissioner Officer or Head of Service in accordance with the Scheme of Delegation who has responsibility for all contracts tendered and let by their respective area of responsibility including contract monitoring and management once contract is in place.
- 16.7 **“DPR”** means Delegated Powers Report. Templates and guidance for completion are available from the Assurance Group (Governance).
- 16.8 **“Emergency”** where immediate action is needed to protect life or property or to maintain a critical service. Decisions that were not anticipated within the budget or budget plan but nevertheless relate to everyday business, not major changes/decisions outside the approved budget and statutory plans.
- 16.9 **“EU”** means European Union.
- 16.10 **“Exemptions List”** is the list of services, goods or works as approved by the Commercial Lead and which are exempt from the Contract Procedure Rules. The Exemptions List is maintained by Central Procurement and will be a published document.
- 16.11 **“Framework agreement”** is an agreement between one or more contracting 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. In the UK we would know this as a “standing offer to treat (see Code of Practice).

- 16.12 **“Monitoring Officer”** is defined within Article 12 of the Constitution.
- 16.13 **“Part A Procurement”** covers all goods or services not defined as Part B Procurement or Works.
- 16.14 **“Part B Procurement”** means a procurement activity which includes the provision of Health services, Social Care services, Educational services, Temporary Housing needs, recreational, cultural and sporting services.
- 16.15 **“Procurement”** means any activity which includes the identification of need, options appraisal and the execution of a competitive selection process, quotation or tendering process.
- 16.16 **“Non-Procurement”** expenditure applies where the Council has to pay for a Service which it did not initiate or is contained within the Exemptions list duly authorised by the Commercial Lead.
- 16.17 **“OJEU”** means the Official Journal of the European Union.
- 16.18 **“Procurement Forward Plan”** means the annual report compiled by the Council setting out their planned contractual Procurements for the forthcoming financial year and submitted to the Cabinet Resources Committee for authorisation.
- 16.19 **“Purchase”** means the activity which uses a mechanism to undertake Procurement under the Council’s standard terms and conditions (Purchase Card or Purchase Order) or against an accepted contract.
- 16.20 **“Quotation”** means a priced bid for the provision of goods, a service, or supply of works.
- 16.21 **“Reasonable means of selection”** means an unbiased selection process based on the relative merits of the quotation provided and taking account of previous purchasing practices for supplies, services or works of a similar type. This process would normally involve attaining more than one quotation, audit trail of action undertaken and confirmation from the relevant approved officer that budget is available and rationale for appointment is accepted. Reasonable means of selection process are detailed in the Procurement Code of Practice.
- 16.22 **“Works”** means building & engineering, including capital works.

17 APPENDIX 1 - TABLE A – Authorisation and Acceptance Thresholds

	Procurement value	Authorisation to commence a procurement process	Authorisation Documentation	Procurement method	Acceptance process	Acceptance Documentation	Variation or extension Acceptance
<b>A</b>	Up to £25,000	Head of Service or as designated by approved Scheme of Delegation	Audit trail, recommended to be on forward plan over £10,000	Reasonable means of selection including budget authorisation and audit trail <sup>i</sup>	Head of Service or as designated by approved Scheme of Delegation	Audit Trail	Summary DPR
<b>B</b>	£25,001 to £173,934	Director/Assistant Director	On forward Plan or Full Officer DPR	Minimum 2 written Competitive Quotations received <sup>ii</sup>	Approved Officer	Summary DPR	Full DPR (maximum £173,933 – please refer to 14.3)
<b>C</b>	£173,934 to £499,999	Cabinet Member	On forward Plan or Full Cabinet Member DPR	Part A <sup>iii</sup> : EU tender	Director	If within budget and agreed savings target on forward plan (Summary DPR) otherwise Full DPR	Cabinet Member
				Part B: Minimum 3 competitive Quotations received			
				Works: EU tender above £4,348,350			
<b>D</b>	£500,000 and above	Council or Cabinet Resources Committee	On Forward Plan Cabinet Resources Committee Report	EU tender (works contract value above £4,348,350)	Cabinet Member	Cabinet Member DPR	Cabinet Resources Committee

<sup>i</sup> All procurements above £10,000 must be advertised on the E-portal (see 8.2)

<sup>ii</sup> Under £75k Head of Procurement may waive requirement of 2 written quotes subject to assurance that the market place has been fully tested

<sup>iii</sup> To determine if the goods or services to be purchased are Part A or Part B refer to Definitions (see 16.12 and 16.13) or Central Procurement