

Contract Procedure Rules

1. BASIC PRINCIPLES

1.1 All procurement procedures must:

- realise value for money by achieving the optimum combination of whole life costs, and quality of outcome,
- be consistent with the highest standards of integrity,
- operate in a transparent manner,
- ensure fairness in allocating public contracts,
- comply with all legal requirements including European Union (EU) treaty principles,
- support all relevant Council priorities and policies, including the Medium Term Financial Plan, and:
- comply with the Council's Corporate Strategy for Commissioning and Procurement, and the Sustainable Commissioning and Procurement Policy, and Procurement Code of Practice.

NB These Rules shall be applied to the contracting activities of any partnership for which the Council is the accountable body unless the Council expressly agrees otherwise.

2. OFFICER RESPONSIBILITIES

2.1 Officers

2.1.1 Officers will comply with these Contract Procedure Rules (CPRs), the Council's Constitution and with all UK and EU legal requirements. Officers must ensure that any agents, consultants and contractual partners acting on their behalf also comply.

2.1.2 Officers will:

- have regard to the guidance in the Procurement Code of Practice (PCoP),
- keep the records required by Rule 5 of these CPRs,
- take all necessary procurement, legal, financial and professional advice, taking into account the requirements of these CPRs,
- prior to letting a contract on behalf of the Council, check whether:

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- the Council already has an appropriate contract in place in the Corporate Contracts Register, or:
- an appropriate national, regional or other collaborative contract is already in place.

Where the Council already has an appropriate contract in place, then this must be used unless it can be established that the contract does not fully meet the Council's specific requirements in this particular case, and this is agreed following consultation with Corporate Procurement.

Where an appropriate national, regional or collaborative contract is available, consideration should be given to using this, provided the contract offers value for money.

- ensure that when any employee, either of the Council or of a service provider, may be affected by any transfer arrangement, then any Transfer of Undertaking (Protection of Employment) issues are considered and legal and HR advice from within the Council is obtained prior to proceeding with the procurement exercise.

2.1.3 Failure to comply with any of the provisions of these CPRs the Council's Constitution or UK or EU legal requirements may be brought to the attention of the Monitoring Officer, Head of Internal Audit, or relevant Corporate Director as appropriate. Depending on the nature of the non-compliance this may result in disciplinary action being taken.

2.2 Chief Officers

2.2.1 Chief Officers will:

- ensure their Service Grouping complies fully with the requirements of these CPRs,
- ensure contracts are recorded in the Corporate Contracts Register as held and maintained by Corporate Procurement,
- ensure that their Service Grouping provides the requisite information to allow the Council to maintain the Procurement Work Programme.

3. VARIATIONS AND EXEMPTIONS

3.1 Except where the Public Contracts Regulations 2006 apply, the Executive has the power to waive any requirements within these CPRs for specific projects.

3.2 Additionally, these Rules may be waived or varied where the circumstances are certified by the Corporate Director, Resources (advised as appropriate by the Corporate Procurement Manager) as meeting any of the following criteria:

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- (a) for works, supplies or services which are either patented or of such special character that it is not possible to obtain competitive prices;
 - (b) for supplies purchased or sold in a public market or auction;
 - (c) for the execution of works or services or the purchase of supplies involving specialist or unique knowledge or skills;
 - (d) with an organisation which has won a contract for an earlier phase of work via a competitive process and where the work forms part of a serial programme and has previously been identified as such;
 - (e) with an organisation already engaged by the Council for a similar and related procurement and where there is significant benefit to extending the contract to cover this additional requirement, without exposing the Council to unacceptable risk;
 - (f) for works, supplies or services which are only available from one organisation;
 - (g) involving such urgency that it is not possible to comply with the CPRs;
 - (h) for the purchase of a work of art or museum specimen, or to meet the specific requirements of an arts or cultural event which cannot be procured competitively due to the nature of the requirement;
 - (i) in relation to time-limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this; or
 - (j) where relevant UK or EU legislation not otherwise referred to in these CPRs prevents the usual procurement process from being followed.
- 3.3 The appropriate Officer will complete and submit a Variation form, as contained within the PCoP, for approval by the Corporate Director, Resources.
- 3.4 Every Variation form will be recorded on a master register to be maintained by Corporate Procurement.
- 3.5 Where a Variation is being applied for by Corporate Procurement, it must also be scrutinised by Internal Audit, to ensure the robustness of the procedure.
- 3.6 These CPRs do not apply to contracts:
- for the execution of mandatory works by statutory undertakers;
 - with Ofsted for the inspection of a school;
 - which have been procured on the Council's behalf:

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- through collaboration with other local authorities or other public bodies, where a competitive process which complies with the CPRs of the leading organisation has been carried out;
 - by a National or Regional contracting authority where the process followed is in line with the Public Contracts Regulations 2006 (e.g. the North Eastern Purchasing Organisation, Yorkshire Purchasing Organisation or Buying Solutions); or:
 - under the terms of a Strategic Partnership arrangement approved by the Executive.
- to cover urgent special educational needs, urgent social care contracts or urgent operational needs, if in the opinion of the relevant Corporate Director it is considered to be in the Council's interests or necessary to meet the authority's obligations under relevant legislation. Use of this exemption by the relevant Corporate Director must be followed up with a written report under Rule 3.2 using the Variation form, setting out the reason for such urgency, how it complies with relevant legislation and represents value for money.

3.7 The use of e-procurement does not negate the requirement to comply with all elements of these CPRs. The circumstances under which an exemption to the use of e-procurement can be requested are detailed in Rule 11.

4. RELEVANT CONTRACTS

4.1 All Relevant Contracts must comply with these CPRs. A Relevant Contract is any arrangement made by, or on behalf of, the Council for the carrying out of works, supplies or services. These include arrangements for:

- the supply or disposal of goods,
- 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
 - land and property transactions
 - financial and consultancy services.

4.2 Relevant Contracts do not include:

- contracts of employment which make an individual a direct employee of the authority,
- agreements regarding the acquisition, disposal, or transfer of land (to which the Financial Procedure Rules apply), or:
- the payment of grants to third parties.

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NB While grants are not covered by these CPRs, there are rules on the awarding of grants which do need to be observed. The Council cannot simply choose to treat a procurement as a grant in order to avoid conducting a competitive process. Officers should follow any guidance contained in the PCoP.

5. RECORDS

5.1 The Public Contracts Regulations 2006 require contracting authorities to maintain the following comprehensive records of procurement activities:

- contract details including value
- selection decision
- justification for use of the selected procedure
- names of bidding organisations, both successful and unsuccessful
- reasons for selection
- reasons for abandoning a procedure

The outcome of any competitive procurement process must be recorded in a Procurement Acceptance Report and submitted to Corporate Procurement. Corporate Procurement will maintain a register of all Procurement Acceptance Reports. Information from Procurement Acceptance Reports will also be used for the tracking of procurement savings, sustainability benefits, and other data.

Additional records management advice is contained in the PCoP.

6. RISK ASSESSMENT

6.1 All procurements via Invitation to Tender, and Requests for Quotation where appropriate, must be supported by a risk assessment. This risk assessment must be carried out at the start of the procurement process.

6.2 The risk assessment process will identify where further specialist advice should be sought.

6.3 Full details of the process to be followed, including the approved risk log and matrix, are available in the PCoP.

7. ADVERTISING

The Procurement Officer will ensure that the minimum advertising requirements, in line with EU treaty principles and as outlined in the PCoP, are met.

8. APPROVED LISTS AND FRAMEWORK AGREEMENTS

8.1 Approved Lists

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8.1.1 Approved lists must not be used where they are prohibited under the Public Contracts Regulations 2006.

8.1.2 Approved lists should only be used in accordance with the guidance contained in the PCoP.

8.2 Framework Agreements

8.2.1 Framework Agreements are agreements between the Council and one, or three or more suppliers for the provision of goods, works or services on agreed terms for a specific period, for estimated quantities against which orders may be placed if and when required during the contract period.

8.2.2 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 several organisations, there must be at least three in number.

8.2.3 Where Frameworks are awarded to several organisations, contracts based on Framework Agreements may be awarded in one of two ways, as follows:

- where the terms of the agreement are sufficiently precise to cover the particular call-off, by applying the terms laid down in the Framework Agreement without re-opening competition, or
- where the terms laid down in the Framework Agreement are not precise or complete enough for the particular call-off, by holding a further 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 bids electronically via the Further Competition step on the e-tendering system, with an appropriate time limit for responses, taking into account factors such as the complexity of the subject of the contract,
 - awarding each contract to the bidding organisation who has submitted the best bid on the basis of the relevant Award Criteria set out in the Framework Agreement.

9. COMPETITION REQUIREMENTS / ASSETS FOR DISPOSAL

9.1 Competition Requirements

9.1.1 The Procurement Officer must establish the total value of the procurement including whole life costs and incorporating any potential extension periods which may be awarded.

9.1.2 Based on this value, quotations or tenders must then be invited in line with the financial thresholds detailed in the PCoP.

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9.1.3 Where the Public Contracts Regulations 2006 apply, the Procurement Officer shall consult Corporate Procurement to determine the procedure for conducting the procurement exercise.

9.2 Assets for Disposal

9.2.1 Assets for disposal must be dealt with in accordance with the Council's Financial Procedure Rules.

10. PRE-TENDER MARKET TESTING AND CONSULTATION

10.1 The Council may consult potential suppliers, prior to the issue of the Invitation to Tender or Request for Quotation, 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 organisation,

10.2 When engaging with potential suppliers, the Council 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, and where this may prejudice the equal treatment of all potential bidding organisations or distort competition,

10.3 In undertaking any market testing activities, the Officer responsible should refer to any guidance contained in the PCoP.

11. EVALUATION CRITERIA AND STANDARDS

11.1 Evaluation Criteria

11.1.1 In any procurement exercise the successful bid should be the one which either:

- offers the lowest price, or:
- offers the most economically advantageous balance between quality and price.

In the latter case, the Council will use criteria linked to the subject matter of the contract to determine that an offer is the most economically advantageous, for example: price, quality, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after-sales service, technical assistance, delivery date, delivery period and period of completion.

11.1.2 Issues that are important to the Council in terms of meeting its corporate objectives can be used to evaluate bids. The criteria can include, for example sustainability considerations, support for the local economy, or the use of sub-contractors. The bidding organisations' approaches to continuous improvement and setting targets for service improvement or future savings could also be included. All criteria must relate to the subject matter of the

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contract, be in line with the Council's corporate objectives and must be objectively quantifiable and non-discriminatory.

- 11.1.3 The procurement documentation should clearly explain the basis of the decision to bidding organisations, making clear how the evaluation criteria specified in the process will be applied, the overall weightings to be attached to each of the high-level criteria, how the high-level criteria are divided into any sub-criteria and the weightings attached to each of those sub-criteria.

11.2 Standards

- 11.2.1 Relevant British, EU and International standards which apply to the subject matter of the contract and which are necessary to properly describe the required quality must be included with the contract.

Officers should refer to any further guidance outlined in the PCoP.

12. INVITATION TO TENDER / REQUEST FOR QUOTATION

- 12.1 Invitations to Tender / Requests for Quotation must be issued in accordance with the requirements of these CPRs, with particular attention to Rule 7, Rule 9 and Rule 17.
- 12.2 Above the single quotation threshold outlined in the PCoP, all Invitations to Tender and Requests for Quotation must be issued via the Council's e-tendering system. Procurement documents must be issued via the e-tendering system.
- 12.3 In exceptional cases, where specific circumstances mean that a procurement process cannot be carried out electronically or, for example, where there is a failure of the electronic system, permission to conduct a procurement process by alternative means must be obtained from the Corporate Procurement Manager using the relevant exemption form. This can be found in the PCoP.

13. SHORTLISTING

Any shortlisting (i.e. supplier selection or pre-qualification) must have regard to the economic, financial and technical standards relevant to the contract and the Evaluation Criteria. Special rules apply to contracts covered by the Public Contracts Regulations 2006. Officers should refer to any further guidance contained in the PCoP.

14. SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS

14.1 Tenders

- 14.1.1 Bidding organisations must be given an adequate period in which to prepare and submit a proper quotation or tender, consistent with the complexity of the contract requirements. Where the Public Contract Regulations 2006 apply, Part 3 of the Regulations lays down specific minimum time periods for tenders.

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14.1.2 As in Rule 12 (above) tenders, except those which have been approved as exempt from electronic tendering, must be submitted electronically via the e-tendering system. Tenders submitted by any other means must not be accepted.

14.2 Quotations

14.2.1 As in Rule 12 (above), competitive quotations must be submitted electronically via the e-tendering system, except where specifically exempt under Rule 12.3. Quotations submitted by any other means must not be accepted.

14.3 Electronic Arrangements

14.3.1 Quotations, Further Competition bids and Pre-Qualification Questionnaires which are received electronically via the e-tendering system will be opened by the Procurement Officer. The system will not allow any quotations to be opened until the allocated return date / time has passed.

14.3.2 Tenders which are received electronically via the e-tendering system will be opened by a representative from Legal & Democratic Services.

14.4 Hard Copy Arrangements

14.4.1 In the event that 'hard copy' tenders are to be accepted (see Rule 12 and Rule 14.1.2 of these CPRs for guidance) these must be submitted, sealed, in the envelope provided with the procurement documents and addressed to the Head of Legal & Democratic Services without any mark revealing the bidding organisation's identity.

14.4.2 All hard copy tenders will be held by the Head of Legal & Democratic Services until the tender opening date/time has been reached.

14.4.3 All hard copy tenders for the same contract will be opened at the same time by a representative of the Chief Officer who invited the tenders and a representative from Legal & Democratic Services. A register of tenders received will be kept by Legal & Democratic Services and will be initialled on each occasion by the officers who are present at the opening of the tenders.

14.4.4 In the event that hard copy quotations are to be accepted (see Rule 12 and Rule 14.2.1 of these CPRs for guidance) these must be submitted in a plain envelope marked 'Quotation for....' followed by a description of the goods, works or services being procured.

14.4.5 Hard copy quotations will be received directly by Service staff. All quotations must be opened together once the official return date / time has been passed.

15. CLARIFICATION PROCEDURES

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- 15.1 The Council can ask bidding organisations for clarification of any details submitted as part of their bid. However, any such clarification must not involve changes to the basic features of the bidding organisation's submission.
- 15.2 When requesting clarification, the Procurement Officer must follow any guidance contained in the PCoP.

16. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING OF ORGANISATIONS

16.1 Evaluation

- 16.1.2 The evaluation of bids must be conducted in accordance with the evaluation criteria set out in the procurement documents provided to bidding organisations, and in line with any guidance detailed in the PCoP.

16.2 Award of Contract

- 16.2.1 The Council is required to notify successful and unsuccessful bidders of the outcome of a procurement process, in writing, in as timely a fashion as possible.
- 16.2.2 Where procurement has been subject to the Public Contract Regulations 2006, the Alcatel Standstill (a 10 day standstill period before a contract can be awarded to allow an unsuccessful bidding organisation an opportunity to challenge the proposed contract award) will need to be included in the procurement timetable before the contract can be awarded. Full information regarding the Alcatel Standstill is contained within the PCoP.
- 16.2.3 Decisions on award of contract must be made in accordance with the scheme of delegations in Part 3 of the Constitution.

16.3 Debriefing

- 16.3.1 The debriefing of organisations must be carried out in line with any guidance detailed in the PCoP.

17. CONTRACT DOCUMENTS

17.1 Format of Contract Documents

- 17.1.1 The Council's harmonised procurement documents or conditions issued by a relevant professional body will be used. Where there is any deviation from these, the documents to be used must be reviewed by Legal Services before being issued. These are available from Corporate Procurement or Service Area procurement staff detailed in the PCoP.

17.2 Contract Signature

- 17.2.1 Contract agreement must:

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- (a) Where the contract is in the form of a deed, be made under the Council's seal and attested as required by the Constitution, or:
- (b) Where the contract is in the form of an agreement, either:
 - I. be signed by at least two officers of the Council authorised as required by the Constitution, or:
 - II. be formalised by the sending of an award letter **and** the subsequent issuing of a purchase order.

The Procurement Officer should also follow any guidance on the use of deeds and agreements to form contracts found in the PCoP.

17.3 Legal Services Review of Tenders and Contracts

17.3.1 To ensure the integrity of the procurement process:

- All proposed Invitations to Tender, where they are not in compliance with the County Council's harmonised contract documentation or standard terms and conditions issued by a relevant professional body, will be reviewed by Legal Services.
- Any proposed Invitations to Tender which are subject to the Public Contracts Regulations 2006, or which are deemed to be of high risk, must be reviewed by Legal Services.
- Any proposed contract where there is any deviation from the contract terms included in the invitation to tender must be reviewed by Legal Services.

18. PREVENTION OF CORRUPTION

Rules and regulations pertaining to the prevention of corruption are outlined in the Council's Financial Procedure Rules and must be adhered to.

19. DECLARATION OF INTERESTS

Rules and regulations pertaining to the Declaration of Interests are outlined in the Code of Conduct for Employees within the Constitution and must be adhered to.

20. CONTRACT MANAGEMENT / MONITORING

- 20.1 All contracts must have an appointed Contract Manager for the entirety of the contract. The responsible Head of Service must ensure a Contract Manager is designated prior to award.
- 20.2 Contract management, monitoring, evaluation and review must be conducted in line with any guidance detailed in the PCoP.

21. INTERNAL PROVIDERS

Where an in-house Service is bidding in competition for the provision of goods, works or services, care must be taken to ensure a fair process between the in-house provider Service and external bidding organisations.

22. EXTERNAL BODY GRANT FUNDING

Where a procurement process is funded, in whole or part, by grant funding which has been awarded to the Council by an external funding body, the Procurement Officer must ensure that any rules or conditions imposed by the funding body are adhered to, in addition to the requirements of these CPRs.

Where there is any conflict between these CPRs and the rules or conditions imposed by the funding body, the stricter requirement should be followed.

23. REVIEW AND AMENDMENT OF CPRS

These Contract Procedure Rules shall be reviewed and updated on an annual basis as part of the annual review of the Constitution.