

Uttlesford District Council Contracts Procedure Rules

INTRODUCTION

1. The purpose of these Contracts Procedure Rules is to set clear rules for the procurement of goods, works and services for the Council. This will ensure a system of openness, integrity and accountability where the probity and transparency of the process will be beyond reproach. In turn this will lead to better value for money and give confidence to all concerned that the Council is fulfilling its fiduciary responsibilities.
 2. Responsibility for complying with these Rules rests with **Chief Officers (COs)** and **Deputy Chief Officers (DCOs)**. In this context COs are the Chief Executive and Chief Officers as defined by the Local Government & Housing Act 1989. In practice this means the Monitoring Officer, S151 Officer and Directors. DCOs are as defined in the LGHA 1989 and are those senior officers responsible for managing services and who report directly to a CO.
 3. Guidance on the interpretation and application of these rules is available from the Council's procurement advisers or S151 Officer.
 4. These Rules complement the Council's [Financial Regulations](#) and [Procurement Strategy](#) and should be used in combination with those documents.
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WHAT IS PROCUREMENT?

5. Procurement is the process of acquiring **goods, works** and **services** from suppliers. It is the whole cycle from the identification of needs through to the completion of a contract.
6. Procurement can take many forms ranging from the purchasing of stationery, furniture and consultancy services to major IT projects, housing repairs contracts, and the outsourcing of services.
7. Procurement plays a critical role in the delivery of the Council's services and Corporate Priorities. Savings realised from efficient procurement shall make an important contribution to the Medium Term Financial Strategy. Inadequate planning and contract failures can result in financial loss, poor performance and damage to the Council's reputation.

IDENTIFYING NEED AND PROCUREMENT PATH

8. There are some basic preliminaries that all procurements should go through as listed below:
- **Do you need to buy something?** *For Example:* Can we get it in-house?
You should check if internal departments are able to supply (if a service) or currently buy the same therefore giving you the ability to aggregate your spend.
 - **What exactly do you want?** You should be able to specify exactly what you need and when it needs to be delivered/completed.
 - **How much is it going to cost?** You need to obtain a realistic estimate of the amount you will be spending. This information can be obtained from potential suppliers, however you must not make any promises at this stage. If it is a requirement that repeats itself, you should consolidate it into one contract.
 - **Have you got budget approval?** You need to obtain budget approval to spend the money
 - **Have we already got a contract for this?** There may already be a contract in place internally or externally that you can “tap into” for your requirements, see “Understanding the Market” below.
9. If you require assistance with any of the above, please contact the Council’s procurement advisers.
10. In some instances it will be appropriate to create a business case, if so please contact the procurement advisers, or your Line Manager.
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TECHNICAL SPECIFICATIONS AND STANDARDS

11. Specifications must not be written so as to discriminate or inhibit competition. They should not generally refer to trade names or patents. The Specification must refer to European Standards or to a performance or functional specification. Essentially, the Council must describe what it wants and allow suppliers to prove that they can supply it.
12. The specification should be clear, concise and unambiguous. The key aims of a specification are:

- To ensure that the proposed contract is consistent with the Council's standards regarding equality & diversity, social responsibility, health & safety, environmental management and sustainability.
- To provide information that encourages and enables suppliers to accurately cost and price our requirement.
- To communicate our expectations.
- To describe how we will measure the successful suppliers performance.
- To encourage suppliers to use their expertise in suggesting innovative alternatives.
- To generate competition for our business and obtain value for money.
- To manage a fair and efficient method for evaluating suppliers' bids.

13. There are three types of specification:

- TECHNICAL** often **input** based, for example, stipulating that specific standards and/or materials will be used. For example, the grade/quality of materials to be used in housing maintenance.
- FUNCTIONAL** a description of **what** is to be done, e.g. advice on the setting up of a joint venture.
- PERFORMANCE** output based, what is to be **achieved** not how to achieve it e.g. develop an e-procurement strategy, get the best possible price for the disposal of print equipment.

14. In reality, the specification may be a mixture of all three. Performance however should always feature in a specification to allow the delivery to be measured. Performance specifications also enable the suppliers to suggest new or improved ways of meeting the requirement.

COMPLIANCE WITH CONTRACTS PROCEDURE RULES

15. Every contract made by or on behalf of the Council shall comply with these Contract procedure rules.
16. It shall be a condition of any contract between the Council and any person (not being an officer of the Council) who is required to supervise a contract on their behalf that, in relation to such contracts, they shall comply with the requirements of these Rules as if they were a CO or DCO of the Council.

17. No exception from any of the Rules shall be made otherwise than by direction of the Council or by the committee concerned, where it is satisfied that the exception is of necessity and justified in special circumstances. If business reasons require a decision to be made before the next scheduled Committee or Council meeting, the DCO and S151 Officer, in consultation with the relevant Committee Chairman, shall be permitted to authorise an exception to Standing Orders. The S151 Officer shall maintain a record of any exemptions made.
18. In connection with procurement in general, informal contact between the Council and suppliers or potential suppliers is permitted, but negotiations must be conducted in conjunction with the Council's procurement advisers, and shall be subject to documentary evidence being retained of all such discussions and outcome.
19. Where a Pre Qualification questionnaire (PQQ) is not used, e.g. due to the low value or sensitivity of a particular contract, full regard should be taken of potential contractors policies with regard to the Environment, Ethical issues, Equality & Diversity, Social responsibility, Business continuity, Financial standing and Health and safety.

FINANCIAL THRESHOLDS

20. Where the estimated amount of the goods, services or works to be supplied by the nominated contractor does not exceed £50,000, the following criteria shall be used:

Up to £10,000 – at discretion of the DCO. It is advisable to obtain at least two comparable prices where possible (this may be done by phone)

From £10,001 to £50,000 – a minimum of three written quotations to be obtained in consultation with the Council's procurement advisers.

From £50,001 to EU Threshold – competition procedure to be performed in conjunction with the Council's procurement advisers.

EU Threshold and above – EU tendering procedure to be coordinated by the Council's procurement advisers.

COMPETITION PROCEDURE

21. The Council's procurement advisers must be consulted on the use of this procedure, and if tenders are to be obtained, the Council's procurement advisers will coordinate the process.
22. There are three methods of competition, either of which can be used as most appropriate to the circumstances. The DCO shall determine the most

appropriate method in consultation with the Council's procurement advisers.

- Use of Framework Contracts
- Use of a Supplier Portal
- Selective Tendering

FRAMEWORK CONTRACTS

23. This is an arrangement where the an EU-compliant tendering process has already been completed by another public services organisation, and a contract established which enables other local authorities to make use of it without having to go through a separate tendering process.

24. The Council's procurement advisers, Improvement East and the Office of Government Commerce maintain databases of framework contracts.

SUPPLIER PORTAL

25. The Supplier Portal offers suppliers the ability to view contract announcements in real time. The Portal is used for placing EU and non-EU public notices, and for giving suppliers instant access to the contract opportunities. The Portal also allows suppliers to register their interest in current and future opportunities.

26. The rules for selecting suppliers via the Portal are broadly the same as for Selective Tendering below. The Council's procurement advisers shall be consulted on the use of the Portal.

SELECTIVE TENDERING

27. This involves inviting potential contractors, through an advertisement in a regional or National publication.

- (i) Public notice shall be given:
 - (a) in local newspapers covering the district of Uttlesford, and
 - (b) in at least one newspaper or journal circulating among such persons or bodies who undertake such contracts e.g. a trade or professional journal.
- (ii) The public notice shall:
 - (a) specify details of the contract into which the Council wish to enter

- (b) invite persons or bodies interested, to express their interest, and
 - (c) specify a time limit, being not less than 10 days, within which such applications are to be submitted to the Council.
- (iii) After the expiry of the period specified in the public notice, and a PQQ has been sent to all applicants and been scored, invitations to tender for the contract shall be sent to not fewer than six of the persons or bodies who applied for permission to tender.
- (iv) Where fewer than four persons or bodies make application, or pass the PQQ process, then the proposed contract must be re-advertised in the same manner but in different publications, after which (provided that at least four persons or bodies have applied and have passed the PQQ process, an invitation to tender shall be sent to not fewer than four of the persons or bodies who applied on either occasion.
- (v) Where fewer than four persons or bodies have applied or are considered suitable, the DCO may invite to tender three bodies who have applied and have passed the PQQ process.
- (vi) At the same time as invitations to tender are sent out, the responsible DCO will advise the Committee & Electoral Services Manager in writing setting out those persons or bodies who have been invited to tender, the deadline by which tenders are to be returned, the estimated tender value, together with the budget allocation.

TENDER DECLARATION

28. There shall be included in every form of tender for the provision of Goods, Services or Works the following declaration, or a declaration to the same effect:

"I/We declare that I/We are not parties to any scheme or arrangement:

- (a) under which I/We communicate the amount of my/our tender to any other person or body before the contract is let;
- (b) under which any other tenderer is reimbursed any part of his tendering costs;
- (c) under which my/our tender prices are adjusted by reference directly or indirectly to the prices of any other tenderer.

No provision is made in my/our tender price for any such reimbursement or adjustment; or any contribution thereto."

29. The form of tender shall provide that such a declaration is signed by the tenderer before the tender is delivered to the Council.

SUBMISSION OF TENDERS

30. Where invitation to tender is made, every invitation shall state that no tender will be considered unless it is enclosed in a plain sealed envelope which shall bear the word "Tender" - followed by the subject to which it relates (but no other name or mark indicating the sender). All tenders shall be addressed to the Committee & Electoral Services Manager.
 31. The tenders shall be kept in the custody of the Committee & Electoral Services Manager until the time and date specified for their opening.
 32. No tender received after Tenders have been opened or not complying with the above, shall be accepted or considered under any circumstances.
 33. At the same time as invitations to tender are sent out, the responsible DCO will advise the Committee & Electoral Services Manager in writing setting out those who have been invited to tender, the deadline by which the tenders are to be returned, and the estimated tender value, together with the budget allocation.
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OPENING AND ACCEPTANCE OF TENDERS

34. All Tenders received shall be opened at one time and in the presence of any two of the following:
 - The Committee & Electoral Services Manager or his/her nominee,
 - The relevant DCO or his/her nominee.
 - One of the Council's procurement advisers.
 35. Tenders received after opening will be opened and returned following the award of the contract.
 36. All tenders received shall be recorded in bound register. Each officer present at the opening of the tenders shall sign the entries in such register, together with nil returns or where late or identifiable tenders were not accepted. All opened tender envelopes shall be retained with the contract documents until disposal of contract documents.
 37. A valid tender, which is fully compliant and has passed the stipulated evaluation criteria, other than the lowest or joint lowest tender if payment is to be made by the Council or the highest or joint highest tender if payment is to be received by the Council shall not be accepted except as authorised by the S151 Officer.
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SUB-CONTRACTORS

38. In general Sub Contractors will only be allowed with the express written permission of the S151 Officer.

39. Where Sub Contractors are permitted it shall be agreed as part of the Contract that all of the terms, conditions warranties and duties which are applicable to the main Contractor shall be equally applicable to any and all Sub Contractors and further more it is the express duty of the main Contractor to ensure that any or all Sub Contractors shall fully comply with all such responsibilities.

CONTRACT CONDITIONS

40. Every contract which exceeds £10,000 in value shall:

- (a) be in writing from an officer of the Council duly authorised in that behalf and in the form required by the S151 Officer.
- (b) specify the goods, materials or services to be supplied and the work to be executed; the price to be paid together with a statement as to the amount of any discount(s) or other deduction(s); the period(s) within which the contract is to be performed and such other conditions and terms as may be agreed between the parties, and
- (c) in appropriate cases provide for the payment of liquidated damages by the contractor where he fails to complete the contract within the time specified.

41. The Council may also require a contractor to give sufficient security for the due performance of any contract.

- (a) in all cases, tender documents issued by the Council shall make it clear to the Tenderers that a performance bond, provided by their Bank, may be required. If so the Tenderer will be advised in due course and in the meantime the tenderer is requested to specify the cost of the bond.
- (b) any decision as to whether a bond shall or shall not be required in a particular case shall be taken before the decision to award the contract is made.
- (c) in any case where due to the nature of a particular contract the officer responsible for its execution considers that the interests of the Council ought to be protected, then a bond or other security equivalent to 10% of the annual contract sum shall be required.
- (d) in the case of contracts estimated to exceed £100,000, a bond or other security equivalent to 10% of the contract sum shall be required unless the S151 Officer shall otherwise decide in a particular case.

42. Where an appropriate European Standards Specification or European Standard Code of Practice issued by the European Standards Institution is current at the date of tender, every contract shall require that all goods, services and materials used or supplied, and all the workmanship shall be at least of the standard required by the appropriate European Standards Specification or Code of Practice.
43. There shall be inserted in every written contract a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council, or if the like acts shall have been done by any person employed by him/her or acting on his/her behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Council, the contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Prevention of Corruption Acts, 1989 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act, 1972.
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APPOINTMENT OF CONSULTANTS

44. Where it is intended to appoint consultants, and the value of the professional fees is likely to be greater than £10,000, quotations shall be invited from at least three appropriate persons or bodies. Where the expected value is likely to be greater than £50,000 then formal Tenders should be invited.
45. A standard letter of appointment will be sent to the appointed consultant, such letter to contain reporting procedures, details of valuations required, restrictions on the appointment of sub-contractors, amount of the fees/expenses and arrangements for payment.
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TENDER EVALUATION GUIDELINES

46. In general terms contractors shall be expected to operate quality systems in accordance with the principles and practices described in ISO 9000 and to demonstrate their ability to do so in their PQQ.
47. No variations will be allowed on submitted tender prices at the evaluation stage. In the case of apparent inconsistencies or errors, tenderers will be invited to stand by their price or withdraw.
48. Clarification may be sought from tenderers on non-financial matters in which case 5 working days will be allowed for reply.

49. Post Tender clarifications/negotiations may only be conducted when deemed appropriate by the S151 Officer or the Council's procurement advisers with appropriate records being kept.
50. Corporate support to tender evaluation will be provided by the Council's procurement advisers.
51. Officers who are involved in the checking of tenders shall have regard to the following:
- (a) Whether the tender document has been correctly completed in all respects.
 - (b) Qualification or proviso relating to a contract conditions.
 - (c) Arithmetical accuracy.
 - (d) Significant deviation from anticipated unit rates etc.
 - (e) Any requirements for Insurance, Guarantees, Performance Bonds etc.
 - (f) The total amounts of the tender.
 - (g) Structure of the tender and impact upon the contract.
 - (h) The guidance contained in DETR Circular No. 16/97, and any amendments.
 - (i) The requirements of any EU Procurement Directives which apply and the associated contract award procedures.
 - (j) Extraneous costs to be borne by the Council.
 - (k) The tenderer's ability to demonstrate compliance with the Council's standards and expectations regarding health and safety, environmental management, diversity and sustainability.
 - (l) Environmental effects of any waste disposal arising from discharge of the contract.
 - (m) The tenderer's track record in meeting the needs of vulnerable people.
 - (n) The total cost of ownership and any consequential effects e.g. training for staff, storage of spares, preparation and dissemination of manuals and guidance.
 - (o) Other relevant factors.
52. Communication with unsuccessful tenderers will be through the Council's procurement advisers.

EU PROCUREMENT DIRECTIVES GUIDELINES

53. All procurement under EU tendering procedure shall be managed and coordinated by the Council's procurement advisers.

54. The European Public Procurement regime is based on three principles:

- (a) European Union-wide publication of the availability of certain contracts (above a threshold) across the community;
- (b) the use of non-discriminatory technical standards and specifications;
- (c) the use of objective, and open, criteria for tender evaluation and selecting tenderers.

55. The principal EU directives which affect this Council are:

(a) the Works Directive

- applies to Council contracts involving certain construction or civil engineering works. From 1 January 2010 contracts exceeding a threshold of £3.927 million are covered.

(b) the Supplies Directive

- applies to Council contracts for the purchase, lease and hire of goods. From 1 January 2010 contracts exceeding a threshold of £156,000 are covered.

(c) the Services Directive

- splits services into priority and residual services. From 1 January 2010 contracts exceeding a threshold of £156,000 are covered.

NB The threshold figures relate to the anticipated total contract value.

56. The basic framework of the EU regime is as follows:

- (a) Appropriate contracts exceeding the relevant thresholds are covered by the directives.
- (b) There are specified contract award procedures:
 - (i) Open procedures - any supplier may tender;
 - (ii) Restricted procedures - any supplier may apply to be considered (this is the method recommended by H M Treasury)

- (iii) Negotiated procedures - direct discussions take place between the purchaser and a supplier of the purchaser's choice.
 - (iv) Design Contests.
 - (v) Competitive Dialogue – Direct discussions take place between the purchaser and more than one supplier, under strict conditions
57. Objective criteria are laid down restricting the use of certain procedures, and advice from the Council's procurement advisers should be sought before any particular procedure is adopted.
58. Objective and pre-determined selection criteria are laid down for selecting the persons invited to tender.
59. Objective and pre-determined award criteria are laid down for awarding the contract e.g.
- lowest price; or
 - most economically advantageous tender (MEAT)
- (NB this is the method recommended by H M Treasury).
60. Specifications are required to be non-discriminatory.
61. Contracts are required to be advertised in the Official Journal of the European Union (OJEU)
- a prior indicative notice (PIN) gives advance notice that works will be advertised during the year;
 - a contract notice informs prospective tenderers of the availability of a contract, gives its value and its essential characteristics;
 - a contract award notice gives details of the award.
62. Timetables for the tendering procedure are laid down and are required to be adhered to.
63. Certain records are required to be kept and statistical returns made.
64. There are provisions for enforcing the regime at both a national level and before the European Court of Justice.

AN EXAMPLE OF THE USE OF THE EU RESTRICTED PROCEDURE

65. The timetable below is based on the 'restricted tendering procedure' and is the procedure recommended by H M Treasury for general application.

- (i) Prepare non-discriminatory specification.
- (ii) Place contract notice in OJEU. Contract notice may have been preceded by prior indicative notice (PIN), notice may indicate number who it is proposed to invite to tender; if so the minimum is five.
- (iii) Give interested parties a minimum of 37 days (30 if sent electronically) to respond by showing an interest in being considered for the work.
- (iv) Select candidates on basis of a PQQ, which clearly indicates exactly how the PQQ will be evaluated and Tenderers selected.
- (v) Send out contract documentation etc to selected candidates inviting them to bid, allowing a minimum of 40 days (35 days if sent electronically and 26days if a PIN is issued) to respond.
- (vi) If tenderers request additional information within 5 days of closing date supply it.
- (vii) Evaluate tenders on pre-published criteria:
 - lowest price; or
 - Most economically advantageous Tender (MEAT) (this is the method recommended by H M Treasury)
 - Where MEAT is used the Tender documents must be specific on exactly what criteria and sub criteria will be used in the subsequent evaluation and if weightings are to be applied what they are and to what criteria they apply.
- (viii) Award contract.
- (ix) Send a contract award notice to OJEU within 48 days.
- (x) Keep records and make appropriate statistical return.

CONTRACT IMPLEMENTATION

66. The detail required in implementation is dependent on the nature of the contract however consideration should be given to:

- Who will manage the contract for the Council and the Supplier
- Ensuring sufficient contract review meetings are scheduled

- Who will use the contract within the Council and are they aware of its existence and how to use it
- Agreeing a baseline set of KPIs with the successful supplier

67. An implementation plan should be developed and agreed with all parties, which clearly defines roles and responsibilities in ensuring the implementation of the contract.

68. For large scale projects the establishment of a Project Team to oversee implementation of the contract would be beneficial.

CONTRACT MANAGEMENT

69. Managing the contract once awarded will vary dependent on the procurement of service but listed below are some useful points to consider once the contract has commenced:

- Ensure ongoing regular review by contract supervisor/senior management to address any major issues arising.
 - Monitor and report on progress against contract and performance programme; issue monthly project progress reports to senior managers and Members. Reviews should look at price, quality, delivery and any possible efficiency savings.
 - Measure key performance indicators/measures that were built into the specification/contract.
 - Quality control: Check work against specification; test materials.
 - Ensure implementation of quality assurance system.
 - Manage expenditure of risk allowance; maintain latest estimated cost and cash flow; initiate action to avoid.
 - Overspend: issue monthly financial status reports; submit high level reports to senior management.
 - Monitor efficiency and improvement clause.
 - Ensure payments are made in line with contractual arrangements
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