



Contracts Procedure Rules

Revised July 2011

Draft for consideration by the
Performance & Audit Committee

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1.0 INTRODUCTION

- 1.1 The purpose of these Contracts Procedure Rules is to set out clear rules under which the procurement of goods, services or works, as required by the Council, shall be obtained.

Procurement is strictly governed by legislation and, as well as ensuring a system of openness, integrity and accountability, the process must be fair and transparent and able to stand up to legal challenge. To do otherwise is to fail to protect Officers, to fail in our duties of equal treatment to suppliers and to expose the Council to risk, both financial and reputational.

Procurement plays a critical role in the delivery of the Council's services and corporate priorities. Savings realised from efficient procurement make an important contribution to the Medium Term Financial Strategy.

- 1.2 Responsibility for complying with these Rules rests with Chief Officers¹ and Deputy Chief Officers²
- 1.3 Guidance on the application and interpretation of these rules is available from the Council's Section 151 Officer³ or Procurement Manager
- 1.4 These Rules complement the Councils' Financial Regulations and Corporate Procurement Strategy and should be read and used in conjunction those documents and relevant Personnel Policy Notes.
- 1.5 The Council, its Members and Officers have a duty to comply with all relevant legislation (including European legislation) in the use and application of these Contracts Procedure Rules. In the event of a conflict, legislation shall take precedence over these Rules.

2.0 SCOPE

- 2.1 These Rules apply to the procurement of everything required by the Council in order to deliver our services.

It may be a straightforward contract for the supply of goods or services (including consultancy services), or for works to be carried out. Alternatively, it may be a contract for a larger, complex project such as a new building, major IT infrastructure or housing repairs contracts.

¹ Chief Officers: The Chief Executive and Chief Officers as defined by the Local Government and Housing Act 1989. In practice, this means the Monitoring Officer, the Section 151 Officer and Directors.

² Deputy Chief Officers: Deputy Chief Officers as defined by the Local Government and Housing Act 1989. In practice, this means those senior Officers responsible for managing services and who report directly to a Chief Officer.

³ The Asst Chief Exec (Finance) is appointed to act as the Section 151 Officer

- 2.2 The procurement process covers the whole life cycle, from identification of need, obtaining quotations or tenders and awarding contracts. Management of contracts⁴ remains the operational responsibility of departments, whilst the Procurement Manager will assist in conducting annual reviews of high value and/or high risk contracts. In addition to ensuring compliance with all legislation, the process will challenge need and seek to introduce innovation (such as new ways of delivering the identified need).

3.0 ESTABLISHING NEEDS

- 3.1 There are some basic questions that should be answered before embarking on procurement:
- Do you need it?
 - Can we provide it “in-house”?
 - What exactly do you want?
 - How much is it going to cost?
 - Do you have the budget?
- 3.2 Do you need it? You must be able to justify why you need something. There may be an alternative way to meet your need(s) that will avoid the need to spend money.
- 3.3 If you do need something, can we supply it “in-house”? Departments can sometimes fulfil needs without having to go to the external market e.g. printing requirements and vehicle fleet. Check with internal colleagues to see if this is possible.
- 3.4 What exactly do you want? Or what do you want to achieve? There may be more than one way to fulfil your requirements. You may not need to go to the market. If you do need to approach the external market, you will need to be clear when setting out your requirements in your specification⁵.
- 3.5 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 commitments or promises at this stage. If the value of the contract is likely to exceed European Thresholds⁶ you are required to demonstrate transparency, which you can do by ensuring you do not speak solely with one potential supplier. This is important to safeguard the Council from risk of legal challenge.
- 3.6 Do you have the budget? An approved budget (capital or revenue) must be in place before you can commit to purchasing anything. In some instances, it may be appropriate to present a business case for approval. If so, you should discuss with your line manager or the Procurement Manager.

⁴ See Section 10

⁵ See Section 7

⁶ See Section 4.5

4.0 FINANCIAL TRESHOLDS

- 4.1 Once you have established the answers to the questions set out in Section 3, estimate the value of the proposed contract. The contract value is the value over the life of the contract (net of VAT), including any options for extensions to the contract.

Based on this estimated value, you must obtain prices from suppliers as set out below:

- 4.2 Up to £10,000

Where the value of the contract shall be no more than £10,000 Deputy Chief Officers have discretion regarding the obtaining of quotations (including the number of quotes obtained and how they are obtained). It is advisable to obtain at least two comparable prices as set out under Section 5 (Obtaining Quotations).

The Deputy Chief Officer has delegated authority to deal with contracts to this value, however the Procurement Manager may be contacted for advice if, for example, it is felt that the risks involved make it preferable for additional terms and conditions to be agreed with the proposed supplier/contractor

- 4.3 £10,001 to £50,000

Where the value of the contract is likely to be greater than £10,000 but below £50,000 a minimum of three written quotations shall be obtained in consultation with the Procurement Manager as set out in Section 5 (Obtaining Quotations). Again, consideration shall be made to the terms and conditions of such contracts.

- 4.4 Over £50,000 and up to EU Thresholds

Where the value of the contract is likely to be greater than £50,000 offers will be invited by tender. This process shall be co-ordinated by the Procurement Manager and shall comply with the rules set out in Section 8 (Competitive Tendering)

- 4.5 EU Thresholds⁷

All procurement under the EU tendering procedure shall be managed and co-ordinated by the Procurement Manager.

- 4.6 No exception from these requirements shall be made otherwise than as set out in Section 11

⁷ The EU Thresholds are set in Euros: 193,000 Euros for Supplies or Part A Services and 4,845,000 Euros for Works. The sterling equivalent thresholds relevant to this Council (with effect from 1 Jan 2010) are £156,442 for Supplies or Part A Services and £3,927,260 for Works.

5.0 OBTAINING QUOTATIONS

5.1 Depending on the estimated value of the contract (see Section 4 – Financial Thresholds), there is a requirement to obtain competitive quotations.

The first step in all cases is to ascertain the availability of an existing contract that has already been tendered and can lawfully be used. Such contracts may be internal agreements⁸ or external framework agreements⁹. Use of such contracts is the preferred option in accordance with the Council's Procurement Strategy.

The principles of transparency and accountability in the decision making process shall remain where existing contracts are used. The Procurement Manager should be consulted as part of this decision making process.

5.2 If there is no existing contract available, quotations may be obtained from a number of sources, including the following:

- (a) Suppliers registered on the Procurement Agency for Essex Supplier Portal (www.paessex.gov.uk)
- (b) Suppliers registered on "Constructionline" (www.constructionline.co.uk)
- (c) Local links and publications (for example www.yell.com)
- (d) Other sources of information such as professional bodies or trade journals.

For assistance with using the above, please ask the Procurement Manager.

5.3 Where contracts are formed on the basis of a quotation, the contract shall be on the suppliers' terms and conditions. Depending on the nature of the contract, the Procurement Manager or Legal Team can advise or assist you checking these.

5.4 Where a pre-qualification questionnaire is not used for the selection/short listing of potential suppliers, e.g. due to the low value or sensitivity of a particular contract, full regard shall be taken of the following before appointing a supplier.

Equality & Diversity Policies
Health & Safety Policies
Environmental Policies / Corporate Social Responsibility
Business Continuity
Financial Standing

Section Continues...

⁸ A list of internal contracts is published on the Procurement pages of the intranet (Home/Procurement/Contract Information)

⁹ A number of external organisations publish information. Links to those most frequently used are available from the Procurement pages of the Intranet (Home/Procurement/Useful Contacts). You may also contact the Procurement Manager for advice.

5.5 The acceptance of quotations shall be based on the principle of best overall value for money and whilst the Council is not bound to accept the lowest quotation on price alone documentary evidence shall be made available for audit purposes to show justification where the supplier providing the lowest priced quotation was not instructed. It is important that the assessment process is transparent, objective and fair – and that it is seen to be so.

6.0 CONTRACT CONDITIONS

6.1 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 Section 151 Officer
- (b) Specify the goods, services or works to be supplied
- (c) Set out the price to be paid, including arrangements for valuations and/or travel and expenses if appropriate
- (d) Set out any discount(s) or other deduction(s) applicable.
- (e) Set out the period(s) in which the contract shall be performed (either specific dates or duration e.g. 12 months)
- (f) Set out any options for extensions to the contract (in which case the potential expenditure during such period must be considered in the value of the contract – See 4.1)
- (g) Set out any reporting procedures
- (h) Include specific Terms and Conditions as may be agreed between the parties
- (i) In appropriate cases provide for the payment of liquidated damages by the service provider where he fails to complete the contract within the time specified.

6.2 There may be a requirement for contracts under the value of £10,000 to meet the Rules set out in 6.1 depending on the risks to the Council (for example there may be a need to set out specific terms for professional indemnity for consultancy services or public liability insurance for works contracts).

Contact the Procurement Manager or Legal team for advice if in doubt.

Section Continues...

6.3 The following condition shall be included in all written contracts:

The Contractor shall not offer or give, or agree to give, to the Council or any other public body or any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

The Contractor warrants that it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Contract.

If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by the clauses set out above, the Council may:

(a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

(b) recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of those clauses.

7.0 SPECIFICATIONS

7.1 Specifications (or User Requirements) are used to describe what the Council wants, or wants to achieve. In addition, they allow you to compare offers from potential suppliers on a "like for like" basis.

7.2 Specifications must not be written so as to discriminate or to inhibit competition. The specification should be kept generic, referring to European or British standards or performance standards. Specifications should not generally refer to trade names or patents, or where they do so, must be followed by the words "or equivalent".

7.3 The specification should be clear, concise and unambiguous. The key aims of a specification are:

- To ensure the proposed contract is consistent with the Council's standard regarding equality and diversity, social responsibility, health & safety, environmental management and sustainability.
- To provide information that encourages and enables supplier's to accurately cost and price our requirements

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- To communicate our expectations
- To describe how we will measure the successful supplier's 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' offers.

8.0 COMPETITIVE TENDERING

8.1 The Procurement Manager shall be consulted on the use of this procedure and if tenders are to be obtained, shall coordinate the process.

The first step in all cases is to ascertain the availability of an existing contract that has already been tendered and can lawfully be used. Such contracts may be internal agreements¹⁰ or external framework agreements¹¹. Use of such contracts is the preferred option in accordance with the Council's Procurement Strategy.

The principles of transparency and accountability in the decision making process shall remain where existing contracts are used.

8.2 Identifying Potential Providers.

8.2.a Selection of potential suppliers must be open and transparent and whilst local suppliers should be encouraged to apply, all suppliers must be given an equal opportunity to apply for tenders.

8.2.b Advertisement shall be made electronically, including on the Council's website and/or in national, regional or local publications and shall comply with the principles of EU Directives in demonstrating transparency and equal treatment of potential suppliers.

8.2.c Advertisements shall

- (a) Specify details of the contract into which the Council proposes to enter
- (b) Invite persons or bodies interested to express their interest and
- (c) Specify a time limit, not less than 10 days, within which such expressions are to be submitted to the Council.

¹⁰ A list of internal contracts is published on the Procurement pages of the intranet (Home/Procurement/Contract Information)

¹¹ A number of external organisations publish information. Links to those most frequently used are available from the Procurement pages of the Intranet (Home/Procurement/Useful Contacts). You may also contact the Procurement Manager for advice.

8.3 Invitation to Tender

8.3.a Invitations to Tender shall be issued to no fewer than six potential suppliers, where those suppliers meet the selection criteria.

8.3.b Where fewer than five potential suppliers make application, or pass selection stages (in the form of a pre-qualification questionnaire) consideration shall be given to re-advertising the requirement.

8.3.c Where a pre-qualification questionnaire is not used for the selection/short listing of potential suppliers, e.g. due to the low value or sensitivity of a particular contract, full regard shall be taken of the following before appointing a supplier.

Environmental Policies
Equality & Diversity Policies
Health & Safety Policies,
Corporate Social Responsibility,
Business Continuity
Financial Standing

8.3.d At the same time as Invitations to Tender are issued, the Procurement Manager shall advise the Committee & Electoral Services Manager of the following information:

The subject matter of the tender
The UDC reference number
The names of the tenderers to whom the Invitation has been issued
The deadline by which tenders are to be received
The estimated tender value and
The budget allocation.

8.4 Terms & Conditions of Contracts

8.4.a Tenders shall incorporate terms and conditions appropriate to the subject and risk(s) of the contract.

8.4.b The Council may require contractors to give sufficient security for the due performance of any contract.

- 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 required to specify the cost of the Bond.

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- A decision as to whether a Bond shall be required in a particular case shall be taken before the decision to award the contract is made.
- 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.
- 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 Section 151 Officer shall instruct otherwise.

8.4.c

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 European Standards Specification or Code of Practice.

8.5 Tender Declaration

8.5.a There shall be included in every form of tender the following declaration:

I/We declare that I /We am/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.

8.5.b The Form of Tender shall provide that such declaration is signed by the Tenderer before the tender is delivered to the Council.

8.6 Receipt and Opening of Tenders

- 8.6.a Whenever possible, tenders shall be received into a secure electronic mail-box which provides a secure and fully auditable process.
- 8.6.b Where tenders or supporting information (such as samples) are to be received manually, every Invitation to Tender issued by the Council shall state that no tender will be considered unless the response called for is enclosed in a plain sealed envelope which shall bear the words
“TENDER” – followed by the subject matter to which it relates.
There shall be no marks or other information indicating the name of the sender.
- 8.6.c All tenders and/or supporting information not being received electronically shall be addressed to the Committee & Electoral Services Manager
- 8.6.d All tenders received by the Committee & Electoral Services Manager shall be kept securely until the time and date specified for their opening.
- 8.6.e All tenders and/or supporting information received through whatever method shall be opened at one time and in the presence of any two of the following:
- The Committee & Electoral Services Manager or their nominee
 - The relevant Deputy Chief Officer or their nominee
 - The Procurement Manager
- 8.6.f All tenders received shall be recorded in the Bound Register. Each Officer present at the opening of the tenders shall sign the entries in such register, together with nil returns and late/identifiable tenders not accepted.
- 8.6.g All opened tender envelopes shall be retained with the tender submission until disposed of in accordance with the document Retention Schedule.
- 8.6.h No tender received after Tenders have been opened shall be accepted or considered under any circumstances.

Subsequent to the award of contract, such tenders shall be opened, recorded (in accordance with 8.6f) and returned to the Tenderer.
- 8.6.i Tenders not complying with the above shall not be accepted or considered under any circumstances.

8.7 Tender Evaluation

- 8.7.a A valid tender, which is fully compliant and has passed the stipulated evaluation criteria, other than the lowest or joint lowest if payment is to be made by the Council, or highest or joint highest where payment is to be received by the Council, shall not be accepted except as authorised by the Section 151 Officer.
- 8.7.b In general terms, suppliers 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 Pre-Qualification Questionnaire.
- 8.7.c 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.
- 8.7.d Clarification may be sought from tenderers on non-financial matters in which case 5 working days will be allowed for reply.
- 8.7.e Post-tender clarifications/negotiations may only be conducted when deemed appropriate by the Section 151 Officer or the Procurement Manager with appropriate records being kept.
- 8.7.f Corporate support to tender evaluation will be provided by the Procurement Manager
- 8.7.g Officers involved in the checking of tenders shall have regard to the following:
- (a) Whether the tender documents have been correctly completed in all respects
 - (b) Qualification or proviso relating to a contract condition
 - (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.

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8.7g	(h)	The guidance contained in DETR Circular No 16/97 ¹² and any amendments.
Contd.,	(i)	The requirements of any European Procurement Directives which apply and the associated contract award procedures
	(j)	Extraneous costs to be borne by the Council
	(k)	The tenderers 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 the performance 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)	The advantages to the local economy of choosing local suppliers which will ordinarily be the preferred outcome, subject to the above considerations and ensuring the Council's duty to secure value for money and comply with appropriate legislation, including any Procurement Directive is fulfilled
	(p)	Other relevant factors

8.8 Contract Award

8.8.a	Tender acceptance shall not be issued until a Tender Evaluation Report & Recommendation has been completed and signed by the appropriate Officer, in accordance with the Financial Thresholds.
8.8.b	Communication with unsuccessful tenderers will be through the Procurement Manager
8.8.c	The Council is at risk of legal challenge when awarding contracts, and all relevant legislation and case law must be observed during this period to minimise this risk.

¹² The DETR (Dept of the Environment, Transport and Regions) Circular contains principles to follow to avoid charges of anti-competitive behaviour. These are:

- (1) Ensuring the competition process is undertaken, and is seen to be undertaken, in an open and transparent manner,
- (2) Consulting service users, and potential service providers, on the level and standard of services to be provided,
- (3) Securing services that are economic, effective and efficient, in which considerations of price and quality are properly balanced,
- (4) Seeing that all competing bids are objectively evaluated and
- (5) Acting fairly between potential suppliers to ensure that tendering practice does not advantage any one potential supplier or group of suppliers.

9.0 CONTRACT IMPLEMENTATION

9.1 The detail required in implementation is dependant on the nature of the contract however consideration should be given to:

- (a) Who will manage the contract between the Council and the Supplier
- (b) Setting out Change control processes.
- (c) Setting out Key Performance Indicators
- (d) Ensuring sufficient contract review meetings are scheduled
- (e) Who will be using the contract within the Council, ensuring visibility across the Council by publishing details on the Procurement Intranet pages

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

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

10.0 CONTRACT MANAGEMENT

10.1 Managing the contract once awarded will vary dependent on the nature of the contract, but the following points should be considered and used as appropriate:

Ensure on-going and regular reviews by the contract supervisor/senior management. This will address concerns from either party or continuous improvements.

Monitor and report on progress against contract and performance programme; issue monthly project reports to senior managers and Members. Reviews should include price, quality, delivery and any possible efficiency savings.

Measure key performance indicators/measures that were built into the contract

Quality Control: Check standards of goods/services or works against specification; include for testing of materials if appropriate

Ensure implementation of quality assurance systems

Record and monitor expenditure to ensure projects are within budgets, providing accurate and timely reports for budget forecasts.

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10.1 Report expenditure and budget forecasts to appropriate level of management.

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Monitor efficiencies and improvements

Ensure payments are made in accordance with contract conditions

Arrange formal annual contract review meetings with the Procurement Manager for high value contracts¹³ or high risk contracts¹⁴

11.0 COMPLIANCE WITH CONTRACTS PROCEDURE RULES

11.1 Every Contract made by or on behalf of the Council shall comply with these Contract Procedure Rules

11.2 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 behalf of the Council, that, in relation to such Contracts, they comply with the requirements of these Rules as if they were a Chief Officer or Deputy Chief Officer of the Council.

11.3 No exception from any of the Rules shall be made otherwise than in accordance with the Scheme of Delegation.

Such exceptions to be made only where it is considered they be necessary and justified in special circumstances.

The S151 Officer shall maintain a record of any exemptions made.

11.4 In connection with procurement in general, informal contact between the Council and suppliers or potential suppliers is permitted however care must be taken to ensure such discussions do not advantage any one supplier. Negotiations must be conducted in conjunction with the Councils' Procurement Manager and shall be subject to documentary evidence being retained of all such discussions and outcomes.

11.5 All Members and Officers shall report instances of suspected bribery or attempted bribery in accordance with the Council's Whistleblowing Policy (PPN61).

¹³ Those contracts with a value in excess of EU Threshold values – see Section 4.5 (Footnote 9)

¹⁴ Those contracts with an overall risk score of 8+ using the methodology set out in the Council's Risk Management Strategy (available from the Intranet)