



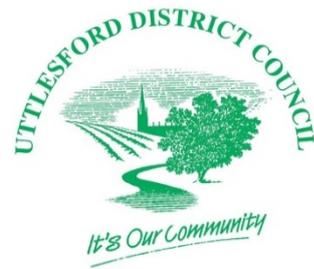
Uttlesford District Council

Contract Procedure Rules



To be submitted to Full Council

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Contract Procedure Rules

1 Introduction

- 1.1 The Local Government Act 1972 section 135 requires the Council to have standing orders for how it enters into contracts. These Contract Procedure Rules (“Rules”) are the standing orders required by the 1972 Act. They form part of the Council's Constitution and are, in effect, the instructions of the Council, to Officers and elected Members, for entering into contracts on behalf of the Council.
- 1.2 These Rules govern all purchases of works, goods and services across the whole Council; they cover UK and EU legislative requirements as well as good practice. Should there be any discrepancies between these Rules and legislation, legislation is the dominant authority and MUST be followed. Current legislative requirements include Local Government Act 1972, Public Contracts Regulations 2015, Concessions Contracts 2016, Social Value Act 2012, Localism Act 2011 and Small Business, Enterprise and Employment Act 2015.
- 1.3 All Council procurements must demonstrate; true and fair competition, public accountability, an open, fair and transparent process, seek to prevent bribery and corruption, whilst ensuring probity. All procurements must demonstrate a full audit trail.
- 1.4 Following the Contract Procedure Rules will also help to ensure that the Council obtains best value when it buys works, goods or services.
- 1.5 These Contract Procedure Rules are to protect the interests of the Council (financial and reputational risk), its Officers and elected Members and the public.
- 1.6 Guidance on the application and interpretation of these Rules is available from the Council's Section 151 Officer, Assistant Director of Resources or the Procurement Manager and should be read in conjunction with the Financial Regulations.
- 1.7 The Regulations refer to the responsibilities of 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 (LGHA) 1989. In practice this means the Monitoring Officer, Section 151 Officer (CFO) 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.

2 Application & Scope of Rules

- 2.1 These Rules do apply to:
- all contracts for the supply of works, goods or services (including consultancy) to the Council, regardless of value
 - partnership and collaborative arrangements with other public bodies
 - concession contracts

Appendix 1 sets out a summary of the requirements for all procurement

Appendix 2 provides guidance for the timetable of contracts at levels 3 and 4

- 2.2 They do not apply to:

- contracts for the purchase or sale of any interest in land, (including leasehold interests)
- contracts of employment for the appointment of individual members of staff, including members of staff sourced through employment agencies

- sponsorship agreements
- supply of works or services from Statutory Bodies where no competition exists (e.g. Essex County Highways, Essex Police & Crime Commissioner)

3 Compliance

- 3.1 All contracts, (as defined in point 2.1) on behalf of the Council, must comply with:
- these Contract Procedure Rules
 - the Council's Financial Regulations
 - all relevant UK and EU legislation
- 3.2 Each Chief Officer and Deputy Chief Officer is responsible for ensuring that their department complies with these Contract Procedure Rules, the Financial Regulations and all applicable legislation. They must ensure that procurement requirements are appropriately planned, reported, monitored and awarded. They may delegate the practical elements of the processes to competent personnel within their departments, who are then equally responsible for ensuring these Rules are adhered to.
- 3.3 All Officers and consultants engaged in any capacity in the procurement of any works, goods or services for the Council must comply with these Contract Procedure Rules.
- 3.4 Non-compliance with these rules may constitute grounds for disciplinary action.
- 3.5 All Council spend must have a valid purchase order raised and approved in the Council's Financial Management System before delivery of the works, goods or services commence; where the level of risk or value of spend also requires a formal contract, work must not begin until the contract document has been appropriately completed by both parties. Any exemptions from this process must be approved and signed-off by the Deputy Chief Officer with delegated responsibility for finance, before commencement.

4 Conflicts of Interest

- 4.1 All members of staff must avoid any conflict between their own interests and the interests of the Council, this includes: but is not limited to:
- not accepting gifts or hospitality from organisations or suppliers with whom the Council has dealings, full guidance can be found in HRP 62 - Gifts and Hospitality
 - not working for, or having a pecuniary shareholding in organisations or suppliers with whom the Council has dealings
- If an officer has links with (e.g. they previously worked for, or a family member or close friend works for) an organisation or supplier who is tendering or quoting for a contract with the Council or already has a contract with the Council they must notify the Chief Officer, Deputy Chief Officer or Procurement as appropriate. Further guidance relating to this can be found in HRP 38 – Code of Conduct
- 4.2 All consultants engaged to act on behalf of the Council must declare that:
- they will avoid any conflict between their own interests or those of any of their other clients and the interests of the Council
 - they will notify the Chief Officer or Deputy Chief Officer if they have any links with (e.g. a family member or close friend works for) an organisation or supplier who is tendering or quoting for a contract with the Council or already has a contract with the Council
- 4.3 Elected Members of the Council or Officers having an interest, financial or otherwise,

in a contract or proposed contract, must declare it in writing to either the Chief Officer or Deputy Chief Officer as soon as they become aware of the interest. An elected Member or Officer who has an interest in a contract must not take part in the procurement or management of that Contract.

- 4.4 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is less) is not a pecuniary interest for the purpose of this Rule.

5 Prevention of Bribery and Corruption

- 5.1 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 Council 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.

- 5.2 Where evidence suggests inappropriate action or events have occurred, a contract may be terminated immediately, and any losses to the Council arising from the termination recovered from the supplier.

- 5.3 A declaration to this effect must be included in all Invitations to Tender (ITT).

- 5.4 Any elected Member of the Council, Officer or consultant who becomes aware or has reason to believe that a supplier or potential supplier has committed one of the improper acts listed, must report that to the Monitoring Officer and the Head of Internal Audit.

6 Pre-Procurement Requirements

- 6.1 As part of the Council's process, officers are required to obtain the necessary approvals before commencing a procurement process. The values stated in Appendix 1 are accumulated spends over the life of the contract, these approvals vary according to value.

- 6.2 Evidence of the relevant approval to procure must be provided before the procurement process can be commenced and again before the contract can be awarded.

7 Duties and Powers of Delegation

- 7.1 Where the proposed contract award is greater than the approved and available budget, the officer is required to submit a report to the Chief Officer or the Deputy Chief Officer to seek additional funding.

- 7.2 Under the scheme of delegation, Officers have the authority to delegate to Heads of Service, the ability to procure, subject to a budget having been approved

- 7.3 Where the value of the contract is level 3 and below, this power of delegation includes the ability for the Chief Officer to delegate to the Deputy Chief Officers, the ability to award the contract subject to compliance with these procedures

- 7.4 Both the Chief Officer and the Deputy Chief Officer have the authority to delegate the practical delivery of the procurement process to any officer deemed suitably competent; however responsibility for compliance with these procedures is the joint

responsibility of the Chief Officer and Deputy Chief Officer accordingly.

8 Separation of Duties

- 8.1 A contract or purchase order cannot be raised or recommended and then approved by the same person.
- 8.2 The Council requires that the procurement process and any resultant awards are authorised by separate officers; most usually by the Officer's line manager.
- 8.3 Where a Deputy Chief Officer manages the practical element of a procurement process, completes an Exemption form or makes another recommendation, the award must be agreed by a Chief Officer.

9 Creating a Contract

- 9.1 The Council requires expenditure at level 3 and 4 to be placed against a formal and legally binding contract and supported by a purchase order to enable payment.
- 9.2 A contract is a defined set of requirements, Terms and Conditions, specified by the Council, regarding how both parties will engage during the contract period.
- 9.3 The Council requires all construction contracts to use industry standard forms, with minimal amendments, unless agreed otherwise by the relevant Chief Officer or Deputy Chief Officer and Procurement and where applicable Legal.
- 9.4 The Council will not accept amendments to the proposed Council terms and conditions nor sign a supplier's terms and conditions of business, unless pre-agreed by the relevant Chief Officer or Deputy Chief Officer and Procurement and where applicable Legal prior to the procurement commencing.

10 Market Research

- 10.1 The Council encourages the use of pre-procurement dialogue, market research and benchmarking, prior to defining the specification requirements for the contract.
- 10.2 Such research;
- must not create an anti-competitive environment,
 - be positively or negatively discriminatory to any potential bidders
 - use any specific, exact information or advice from a company, to write the specification or contract, where they have a commercial interest in the contract

11 Advertising

- 11.1 The Council advertises all contract opportunities at levels 3 and 4.
- 11.2 The Council is required to advertise all contracts over the EU threshold in the Official Journal of the Europe Union (OJEU process).
- 11.3 Where there is a genuine urgency, the Public Contract Regulation includes a provision to reduce the period of advertisement; this must be with the approval of the Procurement Manager and the relevant Officer. Examples of such urgency include Health and Safety or Environmental risks but does not include failure to plan.

12 Tendering

- 12.1 The Council is required to advertise and manage all level 4 procurements electronically.
- 12.2 The Council will, through Procurement:
- advertise all opportunities, in accordance with Appendix 1
 - will provide the appropriate amount of time to respond, based on the procurement level
 - issue all tender information electronically
 - manage all questions electronically, ensuring all information is shared with all bidders to ensure transparency and equal treatment (except where commercially sensitive or subject to General Data Protection Regulations and the Data Protection Act)
 - only accept tenders correctly returned
 - only accept on-time tenders (unless expressly agreed otherwise by Procurement, Legal, Internal Audit and the relevant Deputy Chief Officer)

Exemptions to these requirements must be with the express approval of Procurement and Internal Audit, and where necessary, the relevant Officer.

13 Electronic Contract Register

- 13.1 The Council is required to publish all contracts over £25,000 on an electronic Contract Register.
- 13.2 A Contract Register is a list of all contracts previously let by the council. It should include the relevant contract name, various contract dates and contract value.
- 13.3 All information added to the Contract Register is to be consistent with the requirements of the General Data Protection Regulations, Data Protection Act and the Council's retention policy.

14 Government Procurement Cards

- 14.1 The Council operates a Government Procurement Card scheme; these are available, with the approval of the Deputy Chief Officer.
- 14.2 Purchase cards are to be used for low value or one-off incidental spend where it is not efficient to add the suppliers to the Finance Information System.
- 14.3 Purchase cards must not be used to bypass procurement procedures without the express permission of the Chief Officer or Deputy Chief Officer.
- 14.4 The principle of disaggregation applies to spend on purchase cards both in relation to the individual and the Council as a whole.

15 Bonds & Parent Company Guarantees

- 15.1 The requirement for a bond or parent company guarantee (and its value) is at the discretion of the Deputy Chief Officer with advice from Legal.
- 15.2 Where the project is deemed as a high risk for service failure (likelihood and/ or impacts), advice should be sought from Procurement and Finance to consider the benefits versus the costs of requiring a bond.
- 15.3 Where a bond or parent company guarantee is deemed necessary it shall be in a form acceptable to the Council.

16 Grant Funding paid or received by the Council

- 16.1 A grant is a gratuitous payment of monies for which there is no consideration.
- 16.2 The spending of a grant, received by the Council from a third party, is subject to these procedures and the conditions of the grant.
- 16.3 A grant payment by the Council to another organisation is not subject to the Council's procurement procedures.
- 16.4 Officers are required to ensure that any funding requirements have been completed satisfactorily before entering into any contractual commitments with suppliers, in respect of grants received from a third party.

17 Authority to Award

- 17.1 A contract can only be awarded by those with delegated authority to do so (see Scheme of Delegation within the Constitution).
- 17.2 Where it is identified that the necessary approvals have not been achieved, the process cannot continue until all approvals are in place.
- 17.3 Where there is a discrepancy in the approved funding and the returned prices, additional funding must be requested via a Business Case, submitted to the Chief Officer or Deputy Chief Officer, detailing the value required and the justification for the overspend.

18 Contract Awards

- 18.1 All level 3 and 4 procurements may only be awarded following the completion and approval of a Contract Award Request.
- 18.2 The Contract Award Request must follow the Council's standard template, and comply with the Public Contract Regulations requirements. Central Government may request sight of the Request.
- 18.3 The Contract Award Request provides a full audit trail of the process followed, the responses received, the evaluation process, any problems and ultimately, a recommendation to award.
- 18.4 Contract Award Requests shall be completed jointly between the Client team and Procurement before being seen by Deputy Chief Officer – Resources for comment on budget implications. Approval shall be the responsibility of the relevant Officer or Deputy Chief Officer (depending on the contract value).
- 18.5 All award letters and notifications are to be issued by the Procurement Manager using the Council's standard templates.
- 18.6 For Contracts of £25,000 and above award notices must be published on "Contracts Finder".
- 18.7 For above EU level procurements, following award of the contract, a Contract Award Notice must be published in the EU by Procurement as required.

19 Varying a Contract

- 19.1 A contract can be varied, post award, if agreed by both parties.
- 19.2 Any contract variation must be 'in scope' and suitably similar and relevant, to the original contract advert and specification.

- 19.3 A contract cannot be varied where the additional value would either:
- cause it to breach the EU threshold, where it was procured as a below EU tender or;
 - breach the provisions of The Public Contracts Regulations 2015 where the contract was awarded as an EU tender

19.4 A written variation in the form set out in the contract must be completed and signed by both Parties.

19.5 Contracts listed on the Contracts Register shall be amended to take account of any contract variation.

20 Exemptions to Contracts Procedure Rules

20.1 The Council can consider a request for an exemption from the procedural requirements for levels 1 to 3

20.2 Level 1 2 and 3 –Spend that is level 1,2 or 3 is subject to the Council’s rules, as such, the Deputy Chief Officer can request an Exemption where it is demonstrated that:

- there is only one supplier in the market
- the time required to seek quotes could cause environmental or health and safety risks; and/ or
- the time required to seek quotes could result in funding being lost

20.3 Level 4 –Exemptions may only be granted where it is lawful to do so.

20.4 All exemptions must be submitted on the council’s standard template document.

20.5 Procurement must be consulted before consideration by the appropriate Deputy Chief Officer.

20.6 Approval may only be granted by the CFO (Section 151 Officer). Approval will be subject to the arguments and justifications proposed being seen as valid and an acceptable level of risk to the Council.

20.7 Any award of contract, following the decline of such a request may be treated as gross misconduct.

Appendix 1

Financial Levels, EU Thresholds, tender process and awards

Procurement Level	Lower Limit	Upper Limit ¹		Competition	Advertising	Officer Responsible for Procurement	Signature of Contracts	Tender Period	Award Notification
Level 1	£0	£10,000		Two quotations ² advisable	None required	Officer obtaining quotation	Purchase Order only ³	N/A	Raise Purchase Order, attach quotations
Level 2	£10,001	£50,000		Three written quotations ¹ required					
Level 3	£50,001	Light Touch	£663,540 ⁴	Sealed bid tender	Mandatory	Project Manager/Lead officer	Chief Officer or Deputy Chief Officer	Minimum 3 weeks/Major contract up to 5 weeks	Procurement Manager to issue award notices, subject to approval of contract award request
		Goods & Services	£189,330 ³						
		Works & Concessions	£4,733,252 ³						
Level 4	Contract over the EU Threshold (see above)								

¹ An existing Framework agreement may be used as an alternative to obtaining quotations or tenders as they already evidence transparency, equal treatment and best value. The rules of the framework must be observed regarding any further competition or the ability for direct award

² At least one of which should be from a local supplier where possible (i.e. within 20 mile radius of Great Dunmow or Saffron Walden)

³ Unless risk identified suggests that a formal contract be executed (e.g. a Consultancy contract or building contract where a JCT Contract will better protect the Council's interests)

⁴ Thresholds with effect from 1 January 2020 and which remain fixed for two years

Procurement Timetable for Contracts at Level 3 or 4

Stage	Description	Below EU	Above EU
Collate Tender Pack	Complete all necessary information including the provision of a specification	4 weeks	4 – 8 weeks depending on complexity. (May take 6 months in the case of Property Services contracts including allowing for Leaseholder consultation)
Tender Period	Publication of advert and allow for responses	3 – 5 weeks	5 weeks minimum
Tender Evaluation	Review responses Allow for clarifications Mediation	1 – 2 weeks	3 – 4 weeks
Contract Award Request	Collate Audit trail of procurement process and prepare award request for consideration by relevant parties	1 - 2 weeks	2 – 3 weeks
Standstill	Award Decision Notifications	N/a	Minimum 10 days
Award Letters	Notification of Award	1 week	1 week
Prepare Contract Documents	Create contract documents for signature	1 week	1 week
Sign contracts	Supplier to sign	1 week	1 – 2 weeks
	Council to sign	1 week	1 – 2 weeks
Mobilisation		For client to consider timetable	
Total expected duration		Allow 3 – 6 months	Allow 6 months + (suggest 12 months when succession planning complex requirements such as Property Services)