



# **Uttlesford District Council**

## **Contract Procedure Rules**

*Approved by Council*

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## Contract Procedure Rules

### 1) Introduction, Scope and Principles

These Contract Procedure Rules are made under the provisions of section 135 of the Local Government Act 1972 and govern the making of contracts for and on behalf of the Council. The purpose of these Rules is to provide clear guidance for the processes that result in the award of a contract for:

- Goods
- Services
- Works
- Concessions
- Public Sector to Public Sector Trading

These Rules 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)

These Rules look at the various methods and procurement routes the Council can employ in order to reach contract award. They are:

- Procurement Card
- Quotation
- Tender
- External / Internal Framework
- External / Internal Dynamic Purchasing System (DPS)
- eAuction

The Rules are intended to promote good purchasing practice, value for money, public accountability and deter bribery and corruption. They aim to ensure:

- True and fair competition
- Clear and auditable procedures
- Accountable and compliant processes

- The Council to use its purchasing power for the benefit of the local economy, environment and community under its jurisdiction.

The Rules 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) Key Considerations**

Before commencing any procurement using public money, officers must understand the following:

- 1) The contract value – this dictates which procurement routes can be used.
- 2) Strategic nature and public interest in the procurement - this influences which of the allowable routes is most appropriate.

### **Estimating Contract Value**

The value of a contract is the total amount the Council expects to pay (or receive), net of VAT, over the length of the agreement, including any extension period or stated add-ons such as maintenance and support costs.

If the contract is for an uncertain or unfixed term, the value is the amount the Council expects to pay (or receive) over four years. This could be, for example, the monthly value multiplied by 48. If the contract is broken into lots, all lots must be factored into the total.

For Internal Framework Agreements / DPS, the value should be based on the level of anticipated spend from all parties with access.

### **Aggregation/Disaggregation**

The Council is required to aggregate need whenever it is possible to do so. Aggregation groups together demand for commonly purchased goods and services to harness greater economies of scale and seek better value for money. Aggregation results in a single contract to manage as opposed to several smaller contracts.

Disaggregation, an offence under the Regulations, is the reverse; dividing up similar requirements into smaller contracts to remain below the relevant procurement threshold.

### 3) Procurement Thresholds

#### i. External Thresholds

The Public Contract Regulations 2015 (PCR) require a fully compliant process to be undertaken when the value of the contract exceeds a set level. The tender has to be advertised in Find a Tender Service (FTS) and follow guidelines provided in the PCR. These thresholds are reviewed every two years. There is threshold for each category of spend.

<b>Category</b>	<b>Threshold (2018-19)</b>	<b>Example</b>
<b>Works</b>	£4,733,252	Constructions, repairs, maintenance
<b>Goods / supplies</b>	£189,330	Stationery
<b>Services</b>	£189,330	Cleaning
<b>Concessions</b>	£4,733,252	Bailiffs, catering
<b>Light Touch Regime</b>	£633,540	Education e.g. Apprenticeships
<b>Land Lease &amp; Property</b>	Neither the procurement rules stated here, or the Procurement Regulations apply to contracts of this type	

## ii. Internal Thresholds

Below the PCR thresholds the Council has set its own spend limits. These limits provide guidelines for the method of procurement that should be used, and the associated authority needed to undertake it. The table below provides a broad outline with further detail provided in section 5 Procurement Activity Guidance.

Threshold	Notes	Level of Authority Required	Exemption Request Authority
Up to £10,000	Best value principles	Service Manager/ Officer in line with financial delegations	Procurement Team notification
£10,001 to £50,000	3 Quotes to be requested from the market	Service Managers	
£50,001 to £189,330	Procurement team involvement is required. Route to Market Assessment to be carried out.	Senior Officer/ Service Manager and Procurement Team approval	Chief Officer or Deputy Chief Officer approval following Procurement Team approval.
Spend over £189,330 <i>Goods &amp; Services</i>	Falls under the PCR Regulations, a fully compliant process is required Procurement team involvement is mandatory to ensure compliance with Regulations. Route to Market Assessment to be carried out	Chief Officer or Deputy Chief Officer and Procurement Team approval.	
Spend over £100,000	All contracts with a value of £100,000 or above will be a key decision. <i>To ensure the publication of the key decision does not delay the award this will be published alongside the stand still period or at an alternative point during the procurement process to ensure timescales are met.</i>		

## **Strategic / Public Interest Considerations**

Regardless of the contract value, Service Managers must consider the likely impact of the procurement on internal and external stakeholders. If the proposed activity is of a contentious nature (perceived or actual), high risk or relating to matters that affect public sensitivities, then advice should be taken from Procurement Team.

## **4) General Notes – Apply to all Procurement Procedures**

### ***a. eProcurement***

eProcurement is a requirement under the Regulations; all communication with potential contractors must be in electronic format. eProcurement provides a comprehensive and complete audit trail, enabling the Council to meet its accountability and compliance obligations.

Officers must remain mindful of commercial confidentiality and Data Protection legislation in all dealings with suppliers and external bodies.

### ***b. Procurement Documentation & Retention Thereof***

The Procurement Team will work with Services to produce ITTs (Invitations to Tender) and RFPs (Requests for Proposals) for procurements above the PCR threshold and of strategic importance. PCR procedures require a specific set of documents to be published as part of the tender pack. The Legal Services Team will provide appropriate support and guidance as and when required in conjunction with Procurement Team.

All relevant documentation should be retained in line with the Council's Document Retention Policy.

### ***c. Responsible Procurement***

The Council is required to consider how a procurement project might improve the economic, social and environmental wellbeing across its area.

Procurements that may result in pollution, waste management issues, high energy use or have any other notable environmental impact should have relevant mitigating requirements built into the specification. Evaluation and scoring schemes should contain criteria that enable Council staff to fully consider and score these elements in each submission.

### ***d. Terms and Conditions of Contract***

All agreements must be in written English, price must be stated in British currency and subject to the jurisdiction of English Law.

British standards must be used where they are applicable to the subject of a contract.

Where the Procurement Team has undertaken a process on behalf of a Service Manager, the

Lead Procurement Officer will take responsibility for instructing the Legal Team to prepare or approve the terms and conditions of a contract if required. This applies whether the contract: was created by the Council; is based on the supplier's terms and conditions; or forms the basis of a call off agreement.

#### **e. In-house Services**

Where the Council has an in-house service, external companies must not be used for these services unless the Service Manager responsible for the in-house service confirms specifically that they are unable to meet the requirements on that occasion.

#### **f. Public to Public Trading**

If the Service Manager is considering entering into a contract with another public body, early advice must be sought from the Procurement Team. It should not be assumed that arrangements entered between the Council and other public bodies are outside the scope of the Regulations.

#### **g. Contract Award / Value for Money**

The Council operates under the 'Duty of Best Value' which requires overall value, including economic, environmental and social value, to be considered when reviewing any service provision.

Social Value is a statutory duty of the Council for services over the PCR threshold, however, these principles should be applied to all the Council's procurement activity. Social value considerations should be built in at the pre-procurement stage.

Due Diligence checks are undertaken to review performance, reputation and financial stability of prospective suppliers, and can be part of the award criteria or used as a pass/fail criterion.

### **5) Procurement Activity Guidance**

#### **a. Contracts up to £10,000**

The Service Manager is responsible for these procurements using best value principles, and principles of fairness, transparency and equal treatment.

Managers and officers may access Procurement Team support as required. Quotations are the main method used at this level of spend.

#### **b. Contracts up to £50,000**

The Service Manager is responsible for these procurements but may access Procurement Team support as required. Quotations, frameworks and DPS (Dynamic Purchasing Systems) are all possible procurement options.

If the procurement is for non-critical, non-strategic goods, services or works the minimum requirement is for three quotations known as RFQ (Request For Quotations)

If the procurement is strategic in nature, high risk, impacts on other services or has wider implications across the Council and/or the provision of its services, apply the guidance under section c.

**c. Contract Value above £50,000 (and any strategic procurement) but below PCR 2015 threshold**

Prior to undertaking any type of procurement exercise, the service must engage with the Procurement Team to seek advice on the best and most appropriate process to meet the identified need. This will result in a Route to Market Assessment being prepared.

For strategic level contracts a Business Case may also be required. This could involve all, or some, of the following actions/plans:

1. Needs assessment
2. Route to market assessment
3. Plan for stakeholder engagement
4. Market assessment
5. Risk assessment
6. Financial implications assessment
7. Social value assessment
8. Environmental and Ecological Impact assessment

The Business Case must be signed off by the Service Manager and Procurement Services Manager.

Framework and DPS options will be investigated as part of the Route to Market Assessment. If the expected contract value is below the EU threshold by 10% or less please speak to the Procurement Team before taking any further action.

**d. Contract Value above PCR 2015 Threshold**

A fully compliant process is required. This process must only be undertaken with the full involvement of the Procurement Team.

Please be aware that a full tender process takes around 12 weeks to complete. Please ensure you advise the Procurement Team of your plans in a timely manner to enable a schedule to be put in place.

Framework and DPS options will be investigated as part of the Route to Market Assessment which will require approval by the Procurement Services Manager and Chief Officer approval.

### **e. Executive Decision / Key Decision**

An Executive Decision is taken by the Leader, the Cabinet or delegated to a committee of the Cabinet, a Cabinet member or an officer, and is publicly notifiable 28 days prior to being taken. For the purpose of procurement a key decision is defined as expenditure of above £100K, authorisation is delegated to Chief Officers as set out in the Constitution.

## **6) Use of Frameworks, DPS, eAuctions**

### **a. External Agreements**

The Council is eligible to use a wide range of Frameworks and DPS created by other public sector bodies. The Procurement Lead must ensure that the Council is lawfully able to use the Framework or DPS; the Procurement Team can provide advice and assistance on use. They must also establish that there is a clear benefit to the Council of using a Framework or DPS over other procurement options.

For procurements exceeding £100k or those of a particularly strategic nature, a Route to Market Assessment must be undertaken.

The Framework or DPS rules must be adhered to at all times.

Where the use of a Framework/DPS is subject to signing an Access Agreement, this document should be authorised by the Procurement Manager.

The Procurement Team must be advised of any contracts entered into via a Framework Agreement, regardless of value.

### **b. Internal Agreements**

Where it is in its best interests to do so the Council can create its own Framework, DPS or eAuction, using its eProcurement software.

Use of the Framework/DPS will be mandatory across the Council for all goods, services and works that have been included in the scope of the arrangements.

Should the supply be of a significantly higher than normal value, the Procurement Manager should be consulted to establish if new rates should be sought, or an alternative procurement method used.

Frameworks can only be created with the agreement of the Procurement Manager.

### **d. Value Engineering & Negotiation**

The PCR (allow, in some circumstances, a tender process to be switched to a negotiated procedure. This can only be used where the nature of the original competition is not substantially altered and does not artificially restrict competition.

## **7) Contracts**

### **a. Contract Award**

The Council requires all relevant spend to be placed against a formal and legally binding contract and supported by a purchase order to enable payment.

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.

All significant amendments to contract terms shall be agreed by the relevant Chief Officer or Deputy Chief Officer and Procurement following advice from Legal and Procurement Teams prior to the procurement commencing.

A contract can only be awarded by those with delegated authority to do so (see Scheme of Delegation within the Constitution) and in appendix 2

For service contracts a Contract Manager should be designated (who may be mentioned in the contract itself) to monitor the Supplier's performance.

The Procurement Team will produce and publish information regarding contract award on all platforms required by the Regulations.

### **b. Contract variation, modification or termination**

A contract can be varied, post award, if agreed by both parties.

During the term of a contract modifications may be proposed, which, if adopted, would result in additional works, goods or services. There are significant limitations upon the Council's ability to make such modifications, especially when the Regulations apply. There are tolerances allowed within contract variations under Reg 72.

A contract cannot be varied where the additional value would either:

- cause it to breach the PCR threshold, where it was procured as a below PCR tender or;
- breach the provisions of the PCR where the contract was awarded as an PCR tender

Before discussing any variation or modification with the Supplier, the Service Manager must seek advice from the Procurement and Legal Teams

### **c. Contract Extension**

If an extension period is clearly stated in the contract, the option is available to extend. Before exercising a contractual right to extend the Service/Contract Manager must consider whether it is in the best interests of the Council to continue with the contract by examining performance to date and any changes in cost both under the terms of the contract and also in

the wider market. Variations.

Any extension will require the agreement of both parties. Please contact the Procurement team for further advice.

## **8) Exemptions to Contracts Procedure Rules**

The Council can consider a request for an exemption from the procedural requirements for spend below PCR Limits.

Officers 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.

All exemptions must be submitted via council's standard form to the Procurement Team in the first instance.

Approval may only be granted by the Chief Officers as detailed in Appendix 1.

## **9) Officer responsibilities - Compliance**

### **a) Compliance**

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.

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.

Non-compliance with these rules may constitute grounds for disciplinary action.

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.

### **b) Conflicts of Interest**

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

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

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.

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.

### **c) Prevention of Bribery and Corruption**

The Council takes bribery and corruption very seriously. This includes, any gift, consideration or inducement during any procurement process. Officer terms and conditions of employment detail the responsibilities of all officers.

All contractors and suppliers are required to declare that they will not attempt any bribery or corruption and any evidence to suggest this has occurred will result in termination of contract or

services immediately.

- 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.

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.

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

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.

#### **d) Duties and Powers of Delegation**

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.

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.

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.

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.

### **e) Separation of Duties**

A contract or purchase order cannot be raised or recommended and then approved by the same person.

The Council requires that the procurement process and any resultant awards are authorised by separate officers; most usually by the Officer's line manager.

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.

### **f) Government Procurement Cards**

The Council operates a Government Procurement Card scheme; these are available, with the approval of the Deputy Chief Officer.

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. The use of cards is just an alternative method of payment.

The principle of disaggregation applies to spend on purchase cards both in relation to the individual and the Council as a whole.

### **g) Bonds & Parent Company Guarantees**

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 as part of the procurement process.

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.

Where a bond or parent company guarantee is deemed necessary it shall be in a form acceptable to the Council.