

Contracts procedure rules

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Contracts procedure rules**1. The scope of these rules**

- 1.1 These rules are the council’s contract standing orders under section 135 of the Local Government Act 1972 and must be followed every time the council enters into a contract for work, materials or services.
- 1.2 European Union and domestic laws must also be followed where appropriate and in the case of any conflict with these rules, override them.
- 1.3 If the estimated value of a contract exceeds the value thresholds set out in any European Union directive or regulation the contract must be let in accordance with that directive or regulation. The thresholds applicable from 1 January 2018 are:

Services and Supplies	£181,302
Works	£4,551,413

- 1.4 In these procedure rules:
 - (1) “awarding body” means the council, cabinet, portfolio holder, committee, sub-committee or officer responsible for a contract;
 - (2) “head of service” means the chief executive, deputy chief executive and any head of service including all officers authorised in writing by any of them to discharge their functions relating to a contract;

- (3) references to the value of a contract relate to the aggregated contract value over the life of the contract (including any potential period of extension) either to the council or the supplier;
- (4) “ESPO” means the Eastern Shires Purchasing Organisation;
- (5) references to writing or documents shall include references to documents submitted or maintained electronically.

1.5 These rules must be read in conjunction with the council’s constitution in particular the scheme of delegation in part 3 and the council’s financial procedure rules in part 4.

1.6 In the event of any dispute about the interpretation of these rules the interpretation of the head of democratic services and monitoring officer shall be final.

2. **Exceptions**

2.1 Subject to the requirements of the European Union directives, acts of parliament and United Kingdom regulations, the requirements in these rules to obtain quotations and tenders in competition do not apply in the following circumstances:

- (1) in the case of contracts for the supply of goods, services or materials if:
 - (a) the goods, services or materials are proprietary articles or are sold only at a fixed price and no reasonably satisfactory alternative is available; or
 - (b) the prices of goods, services or materials are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available; or
 - (c) for other reasons, there would be no genuine competition.

- (2) the work to be executed or the goods, materials or services to be supplied constitute an extension of an existing contract the terms of such extension to be substantially the same as, or more favourable to the council than, the existing contract, provided that the variation or extension is specifically provided for in the original contract;
- (3) the contract is for the execution of work or the supply of goods, materials or services certified by the relevant head of service, in consultation with the relevant portfolio holder and the head of democratic services and monitoring officer, as being required so urgently as not to permit compliance with these rules;
- (4) the awarding body have decided that an extension, addition to, or maintenance of existing buildings, works, plant or equipment can only be done satisfactorily by the original contractor or supplier;
- (5) quotations or tenders have been invited on behalf of any consortium collaboration, partnership or similar body, of which the council is a member or a party to, in accordance with any method adopted by such a body;
- (6) the goods, materials or services are to be supplied or carried out under arrangements with another local authority or statutory undertaking;
- (7) the procedure relating to the contract is controlled by government requirements or the provisions of any agency agreement;
- (8) when appointing professional consultants, a particular consultant has special expertise;
- (9) where items to be purchased are of a minor nature, a budget provision exists and the total value is not more than £5,000;
- (10) the contract is to buy or sell land or buildings or an interest in land or buildings;

- (11) the contract is for insurance, loan or another financial arrangement;
- (12) the council is acting on behalf of another public authority, provided any rules or standing orders of that authority are complied with;
- (13) having asked appropriate suppliers, only one or two quotations are received;
- (14) there is only one supplier for the goods or services or there is no supplier available to provide acceptable alternative goods and services of the quality required;
- (15) the awarding body has decided to standardize by buying only from one supplier;
- (16) the contract is being let by ESPO;
- (17) the contract is for the employment of an individual employee.

2.2 Other exceptions to these rules can only be made by the cabinet after considering a report from the relevant head of service.

2.3 Procuring officers are recommended to seek advice from a member of the Office Procurement Team if they consider an exception rule applies. In all such cases officers are requested to provide a report to the Head of Democratic Services and Monitoring Officer detailing the justification for taking this route.

3. Authority to enter into contracts

3.1 Part 3 of this constitution provides that the authority to enter into contracts within budget provision is delegated as follows.

Contract Value	Authority
Over £500,000	Cabinet
More than £50,000 and up to £500,000	Portfolio holder
Not more than £50,000	Head of Service

3.2 Contracts for which there is no budget provision or for which the budget provision available is inadequate and which cannot be resourced by virement in accordance with rule 8 of the financial procedure rules can only be awarded by full council after approval of a supplementary estimate.

4. **Estimates**

4.1 Before any procurement is begun the head of service must estimate the value of the procurement. The purpose of the estimate is to determine which of these rules apply to the procurement.

4.2 Under no circumstances shall procurements be broken down into separate contracts for the purpose of bringing a procurement outside the value limits set out in these rules or the scheme of delegation contained in part 3 of the constitution or in order to avoid reaching European Union thresholds.

5. **Consultation**

5.1 The relevant head of service may make enquiries of suppliers before quotations or tenders are invited in order to:

- (1) establish whether the goods, works or services the council wishes to procure are available and within what price range;
- (2) prepare tender documents, price estimates and contracts and
- (3) establish whether particular suppliers wish to be invited to quote or tender.

5.2 In undertaking consultation under this rule:

- (1) no information will be disclosed to one supplier that is not then disclosed to all those consulted or that are subsequently invited to quote or tender;
- (2) no supplier will be led to believe that the information they offer will necessarily lead to them being invited to quote or tender or be awarded the contract;

- (3) the relevant head of service shall keep a written record of the consultation and responses received.

6. Qualification

6.1 The council shall only enter into a contract with a supplier over £50,000 in value if it is satisfied that the supplier meets any minimum standards specified for the contract.

6.2 The standards which may be specified include any or all of the following:

- (1) financial standing;
- (2) technical or professional capability or experience;
- (3) compliance with recognised quality standards;
- (4) commitment to equality of opportunity.

6.3 Invitations to quote, tender or expressions of interest shall include a requirement for suppliers to supply information to enable the awarding body to judge whether or not the council's minimum standards are met.

7. Award and evaluation criteria

7.1 Every contract or official order for works, supplies or services shall be for the purpose of achieving the council's statutory and approved objectives and must be made in accordance with the council's equality policy and procurement strategy.

7.2 Before any quotation or tender is sought the awarding body must decide the award criterion to be used.

7.3 The award criterion must be:

- (1) the lowest price (where the council is to pay the supplier);
- (2) the highest price (where the supplier is to pay the council); or
- (3) the most economically advantageous quotation or tender.

- 7.4 For contracts involving innovative forms of procurement where the scheme is not defined at the tender stage, the award criterion will be the most economically advantageous tender. In the case of such contracts, the awarding body must decide and record the basis on which tenders will be evaluated and must also inform tenderers of the process of awarding and developing the contract.
- 7.5 The criteria that will be used to determine which quotation or tender is the “most economically advantageous” must be stated in any quotation or tender documents in the descending order of importance. Where quotations or tenders are to be assessed on a price versus quality mix the ratio of price to quality shall be specified in the quotation or tender documents together with an explanation of any method of scoring to be used in the assessment process.
- 8. Framework arrangements**
- 8.1 A framework arrangement is a formal tendered arrangement which sets out terms and conditions under which specific purchases can be made throughout the term of the agreement from the successful tenderer in unpredicted quantities at various times during the period that the agreement is in force.
- 8.2 In any case where a framework arrangement is in place:
- (1) orders to be placed against a known price do not require further competition unless required by law;
 - (2) in circumstances where the price was not specified under the framework arrangement an order can only be placed if three quotes have been obtained from the list of suppliers specified in the arrangement or, if there are less than three suppliers specified, then all of them.
- 8.3 When advertising for a framework arrangement the advertisement must indicate:
- (1) that it is a framework arrangement which is being tendered;
 - (2) the duration of the arrangement;

- (3) the expected maximum number of suppliers;
- (4) the estimated total value of the contracts to be covered by the arrangement;
- (5) the award criteria for choosing suppliers and subsequent criteria for placing orders.

8.4 Heads of service must ensure that supplies, services and works are ordered directly or indirectly via ESPO, consortia or corporately negotiated contracts whenever such arrangements have been put in place by the council, unless demonstrable and significantly better value for money can be secured by using an alternative source of supply taking into account the procurement costs incurred by using the alternative source of supply.

9. Quotation and tender requirements

9.1 The following table sets out the procedure to be followed for inviting quotations and tenders:

Value	Procedure
Up to £5,000	Purchase order in accordance with the council's purchasing procedure
Over £5,000 and up to £100,000	Three quotations
Over £100,000 – European Union threshold.	Invitation to tender: <ol style="list-style-type: none"> (1) by open advertisement, or (2) to three suppliers chosen from a framework arrangement (3) to between three and five suppliers selected by response to advertisement. If fewer than three respond to the advertisement, all those considered suitable must be asked to tender. (4) the negotiated procedure specified in rule 21.

Above European Union threshold	European Union procedure or through a framework arrangement which complies with European Union Procedure
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- 9.2 Quotations or tenders may be submitted in such permanent paper or electronic format as may be prescribed by the awarding body but oral quotations or tenders are not permitted.
10. **Quotation procedures (contracts over £5,000 and up to £100,000)**
- 10.1 Quotations should be obtained from any or all of:
- (1) suppliers participating in the council's electronic marketplace including the ESPO electronic catalogues;
 - (2) the approved suppliers list maintained by the central services unit;
 - (3) suppliers known by the head of service to be able and willing to provide the goods or services required.
- 10.2 All quotations shall be addressed to the relevant head of service.
- 10.3 A record shall be kept of all quotations received.
- 10.4 Quotations expected to exceed £10,000 shall be opened by the relevant head of service in the presence of a witness and recorded in the register of tenders maintained by the head of democratic services.
- 10.5 Quotations shall be evaluated by the relevant head of service in accordance with the award and evaluation criteria contained in rule 7 and a record shall be kept of the successful supplier.
- 10.6 Heads of service must ensure that value for money will be achieved if a contract with a value more than £10,000 is awarded after submission of a single quotation.

11. Tendering procedures (contracts over £100,000 and up to the European Union threshold)

11.1 For contracts with an estimated value over £100,000 and up to the European Union threshold tenders must be invited by one of the following methods.

11.2 Open advertisement

(1) tenders must be invited by public advertisement stating what the contract is for and giving a closing date at least two weeks later by which tenders must be received, in one or more of the following:

- (a) a local or national newspaper or trade publication;
- (b) on the council's website;
- (c) by notice at the council's offices or information centres;
or
- (d) by such other means as the awarding body may determine.

(2) A copy of the advertisement may be sent to any known suppliers who may be interested in tendering.

11.3 Chosen suppliers

(1) Suppliers selected to tender may be chosen from an appropriate framework arrangement previously negotiated by a third party and to which the council has access.

11.4 Selective tendering by advertisement

(1) tenders must be invited by public advertisement stating what the contract is for and giving a closing date at least two weeks later by which expressions of interest must be received, in one or more of the following:

- (a) a local or national newspaper or trade publication;

- (b) on the council's website;
 - (c) by notice at the council's offices or information centres;
or
 - (d) by such other means as the awarding body may determine.
- (2) The criteria used to select suppliers shall be included in the request for expressions of interest in accordance with rule 6.
- (3) a copy of the advertisement may be sent to any known suppliers who may be interested in tendering including suppliers included in the government's electronic catalogues, for example S-Cat and G-Cat.
- (4) after the closing date, at least five different suppliers, chosen by the awarding body, must be asked to tender. If there are fewer than five, all those that meet the qualification criteria must be asked to tender.

11.5 The negotiated procedure as specified in rule 21.

12. Invitations to tender

12.1 Invitations to tender shall include details of the council's requirements for the particular contract including:

- (1) a description of the services, works or supplies being procured;
- (2) the procurement timetable including the tender return date and time, which shall allow a reasonable period for applicants to prepare their tenders;
- (3) a specification and instructions on whether any variants are permissible;
- (4) the terms and conditions of contract;
- (5) the evaluation criteria and including any weightings between price and quality;

- (6) pricing mechanism and instructions for completion;
- (7) whether the council is of the view that TUPE may apply;
- (8) form and content of any method statements to be provided;
- (9) rules for submission of tenders;
- (10) whether tenders may be submitted electronically and any proposals to hold an electronic auction for all or part of the tender process;
- (11) any further information which will inform or assist tenderers in preparing tenders.

13. Electronic tendering

13.1 With the exception of rules 15.2, 15.3 and 17.1, the provisions of these rules apply to electronic tendering.

13.2 Requests for quotations and invitations to tender may be transmitted by electronic means. Quotations and tenders may be submitted by electronic means provided that:

- (1) evidence that the transmission was successfully completed is obtained and recorded by the head of democratic services and monitoring officer in hard copy;
- (2) electronic tenders are kept in a separate secure folder under the control of the head of democratic services and monitoring officer which is not opened until the deadline has passed for receipt of tenders and
- (3) the council must have no means of identifying the tenderer until the deadline has passed for receipt of tenders.

14. Electronic Auctions

14.1 All or part of the tendering process under rule 11 may be conducted using the internet to receive, evaluate and publish submissions from tenderers thereby enabling them to revise their tenders in real time using electronic means.

- 14.2 During the course of the electronic auction the identity of each tenderer shall not be disclosed to the other tenderers.
- 14.3 An electronic auction may be discontinued by the awarding body at any time and the tender let in accordance with rules 11 – 13 and 21.
- 14.4 The invitation to tender shall contain full information for tenderers about the conduct of the electronic auction including information on the aspects of the tender to be included in the auction, the timing of the auction and rules for participation in the auction.
- 15. Submitting and opening tenders**
- 15.1 The evaluation criteria that will be used to award the contract must be set out in the invitation to tender.
- 15.2 When tenders are to be received in paper form the invitation to tender must state that a tender will only be considered if it is received in a sealed, plain envelope with the word "Tender" and the title of the contract written on it. There must be no mention of the sender's name or any other way of identifying him from the envelope.
- 15.3 Any tender opened in error before the date and time set for opening tenders shall be immediately resealed and a record made of the event in the register of tenders.
- 15.4 If it is necessary to extend the date for opening tenders this shall be recorded by the head of democratic services and monitoring officer in the register of tenders.
- 15.5 The head of democratic services and monitoring officer must keep the envelopes and open them at the same time in the presence of another head of service.
- 15.6 In the case of an electronic tender, the head of democratic services and monitoring officer shall print a copy of the tender at the same time as opening any tenders received in paper form, sign as received and keep the tender with those tenders received by post.

15.7 The head of democratic services and monitoring officer must keep a record of all tenders received in the register of tenders.

16. European Union Procedure (contracts over the European Union threshold)

16.1 The awarding body must comply with all of the procedures and requirements contained in relevant European Union directives and any United Kingdom regulations which implement the directives.

16.2 These rules shall apply to such contracts to the extent that they are not in conflict with the requirements of any European Union directive or United Kingdom Regulations. Contracts over the European Union threshold may be awarded following a tendering procedure to three suppliers chosen from an appropriate framework agreement negotiated by ESPO or the Office for Government Commerce.

17. Late tenders

17.1 Any tender received after the specified time shall be retained unopened by the council and kept with the unsuccessful tenders in the council's strong room.

18. Alterations in tender price

18.1 Where examination of tenders reveals arithmetical or copying errors present in the documents submitted at the time of tender these shall be corrected. If the correction has the effect that the tender is no longer the most competitive tender then the next tender in competitive order is to be examined and dealt with in the same way.

18.2 Where examination of tenders reveals errors or discrepancies (other than arithmetical errors as in 18.1 above) which would affect the tender figure in an otherwise successful tender, the tenderer is to be given details of such errors and discrepancies but no other information and afforded an opportunity of confirming his tender as submitted or withdrawing it.

18.3 If the tenderer withdraws, the next tender in competitive order is to be examined and dealt with in the same way.

19. Post tender negotiations

19.1 Negotiations may not take place under this rule unless the invitation to tender specifically reserves the right to do so.

19.2 Post tender negotiations shall only be used in one or more of the following circumstances:

- (1) where the lowest submitted tender or the most economically advantageous (where applicable) exceeds the estimated value of the contract or the budget provision available;
- (2) where the price of the lowest tender submitted does not represent the best value for money that can reasonably be obtained;
- (3) where the price is dependent upon which of a number of tendered options the council accepts.

19.3 Post tender negotiations shall be conducted in accordance with the following procedure:

- (1) all tenderers who meet the requirements of the contract shall be invited to participate in the negotiations;
- (2) the negotiations shall be conducted on the council's premises or by written or electronic correspondence but not by telephone or at the premises of the tenderer;
- (3) negotiations shall be carried out by at least two officers one of whom must be a head of service;
- (4) full records of all negotiations shall be made;
- (5) all amendments to tenders shall be put in writing signed by the tenderer and incorporated into the contract.

20. Acceptance of tenders

- 20.1 Following any alteration in tender price or post tender negotiations in accordance with rules 18 and 19 the awarding body shall accept only the tender which meets the award criteria for the contract as defined in rule 7.3.
- 20.2 No tender may be accepted unless the expenditure has been included in approved estimates or in capital or reserve accounts or has been otherwise approved by or on behalf of the council.
- 20.3 Acceptance of a tender must be in writing signed by the relevant head of service or by email from the relevant head of service. Such acceptance must not prejudice any formal contract required by rule 22.
- 20.4 The relevant head of service shall comply with the requirements of European Union or domestic law to inform tenderers of the results of the tendering procedure.

21. Negotiated tendering procedure

- 21.1 This rule applies to contracts with an estimated value over £100,000 or more but less than the European Union threshold provided that the head of democratic services and monitoring officer, in consultation with the relevant head of service, considers it appropriate to apply this rule.
- 21.2 The negotiated tendering procedure can only be used in one or more of the following circumstances:
- (1) where the council has no or inadequate experience in placing contracts and therefore in writing detailed specifications;
 - (2) where the industry or service has no or inadequate experience of tendering;
 - (3) when procuring applications software or other computer equipment and facilities;

- (4) where a tendering procedure has been used and resulted in unacceptable or irregular tenders or no tenders or no appropriate tenders;
 - (5) where the nature of the procurement or risks involved does not permit prior overall pricing;
 - (6) the nature of the procurement is such that a precise specification cannot be drawn up;
 - (7) a design contest is appropriate to the contract;
 - (8) the price is dependent upon the selection of one of a range of service delivery options;
 - (9) to stimulate innovation in tender responses.
- 21.3 The awarding body shall invite expressions of interest to negotiate or compile a select list of suppliers to be invited to tender and then negotiate in accordance with the procedure contained in rules 11 – 18.
- 21.4 Following receipt of the expressions of interest or tenders the awarding body shall conduct negotiations in accordance with the procedure set out in rule 19.3.
- 21.5 Following the conclusion of the negotiations the contract shall be accepted and concluded in accordance with rule 20, and rules 22 – 24.
- 22. Contents of contractual documents for contracts over £50,000**
- 22.1 Every contract over £50,000 must state:
- (1) the work or services to be done or the materials to be supplied;
 - (2) the parties to the contract including any guarantor;
 - (3) the price, any discounts and the terms of payment;
 - (4) the time within which the contract is to be carried out;

- (5) whether liquidated damages will be payable if the contractor fails to meet the terms of the contract. The head of finance and revenue services in consultation with the relevant head of service will decide whether liquidated damages are appropriate to the contract and, if so, what those shall be;
- (6) that the contractor will not assign or subcontract the contract without the written consent of the awarding body;
- (7) that the contractor shall operate an equal opportunities policy which shall comply in all respects with the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 and it shall not treat one group of people less favourably than others because of their colour, race, nationality, ethnic origin, sex or disability in relation to decisions to recruit, train or promote staff;
- (8) that the contractor shall adopt safe methods of work and comply with all other requirements of the Health and Safety at Work Act 1974 in order to protect the health and safety of its personnel and to the extent applicable the personnel of the council and all other persons;
- (9) that the council can cancel the contract and recover any resulting losses if the contractor or his employees or agents, with or without his knowledge:
 - (a) does anything improper to influence the council to give him the contract;
 - (b) commits an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117 of the Local Government Act 1972.
- (10) any other terms and conditions specified by the head of democratic services and monitoring officer (who has general powers to set standard and particular contract conditions).
- (11) that, as a minimum requirement, if the contract is not carried out properly or the time limit is not met, the council can:

- (a) cancel all or part of the contract;
 - (b) complete the contract;
 - (c) recover from the contractor any additional costs in completing the contract and
 - (d) take other legal action against the contractor.
- (12) the head of finance and revenue services in consultation with the relevant head of service will agree what, if any, security should be provided for performing contracts over £100,000.
- 23. Consultants, contractors and their technical officers – duty to comply with contracts procedure rules**
- 23.1 Consultants, contractors and technical officers employed to supervise contracts must follow these rules and the council's financial procedure rules. Their contracts for services must state this requirement.
- 24. Authentication and safe keeping of contracts**
- 24.1 Any contract with a value of £5,000 or more but not more than £10,000 shall be made by purchase order.
- 24.2 Any contract with a value over £10,000 but not more than £50,000 shall be made in writing and signed by two officers one being the relevant head of service or the officer responsible for preparing the contract the other being either the chief executive, the head of democratic services and monitoring officer or the head of finance and revenue services, or in the absence of all of them the deputy monitoring officer. A written copy must be made of any contract concluded electronically.
- 24.3 Any contract with a value of more than £50,000, or for three years or more, or which the head of democratic services and monitoring officer so decides, shall be made in writing under the common seal of the council attested by either the chief executive, the head of democratic services and monitoring officer or the head of finance

and revenue services, or in the absence of all of them by the deputy monitoring officer.

- 24.4 Officers attesting the seal shall not have been involved in the preparation or evaluation of the contract.
- 24.5 All contracts executed under seal or for services of £10,000 or more in value shall be placed in the council's strong room for safekeeping. In the case of such contracts concluded electronically a copy of the contract shall be printed and stored in the strong room.