

## **Broadland District Council Procurement Guidance**

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## 1 INTRODUCTION

### 1.1

“Procurement” is the process of acquiring goods, works and services, covering both acquisitions from third parties and from in house providers. The process spans the *whole cycle* from identification of needs, through to the end of the services contract or the end of the useful life of an asset. It involves options appraisal and the critical “make or buy” decision which may result in the provision of services in house in appropriate circumstances. (This is the definition of procurement contained in the National Procurement Strategy for Local Government).

1.2 The Council’s Procurement Strategy and Action Plan was adopted by the Council on 24 May 2005 and updated by the Council on 18 September 2007 and again on 22 March 2011. The Action Plan contains a number of actions to improve procurement processes including

- reviewing Contract Procedure Rules to increase flexibility and permit e-procurement
- producing standard contract documentation
- producing guidance for staff on procurement.

The outcomes from these actions are

- more efficient and effective procurement
- lower risk
- improved communications
- improved staff procurement skills and productivity
- improved career prospects and work/life balance for Council staff
- clear focus on holistic, not narrow, solutions
- more innovation from contractors.

1.3 New Contracts Procedure Rules were initially adopted by the Council on 20 September 2005 and have been regularly updated to reflect changing legislation or as part of the Annual Constitution review. The purpose of this

guide is to help staff to understand and apply the rules.

- 1.4 This guidance should also be read in conjunction with the Council's Constitution particularly Part 3, Financial Procedure Rules.
- 1.5 In June 2010 the Council adopted a Single Equalities Scheme. Section 11 of the Council's Procurement Strategy and Action Plan 2011 - 15 states the Council's commitment that any procurement decision must take forward the principles contained in this Policy. In particular the guidance states that the Council will:
  - (1) require contractors to deliver effective and appropriate services, fairly and without unlawful discrimination of any kind;
  - (2) provide that contractors shall not discriminate either on grounds of race, nationality, ethnic or national origin, gender, sexual orientation, marital status, age, religious belief or health.
  - (3) use procurement processes to evaluate equality and diversity issues and
  - (4) establish appropriate contract monitoring mechanisms to ensure that contractors are complying with their equality and diversity obligations.

## 2 THE PROCUREMENT PROCESS

2.1 There are seven steps to the procurement process

- (1) identifying goods or services to meet a need
- (2) identifying a budget to pay for it
- (3) obtaining authority to make the purchase
- (4) preparation for making the purchase
- (5) a process of choosing a supplier of the goods/services required
- (6) making a contract with the supplier
- (7) contract management

2.2 Steps (1) and (2) are outside the scope of this guide which deals with the remaining steps. A flowchart showing the processes involved is attached.

2.3 The Contracts Procedure Rules in Part 4, 7.1 of the Constitution are to be followed for all procurement unless one of the exceptions set out in rule 2 applies.

2.4 The rules do not apply to minor items for which budget provision exists and the total value is not more than £5,000. (See rule 2.1 (a)). These purchases can be made by any officer authorised to make purchases and the only requirement is to issue a purchase order using the Council's online purchasing system. The standard purchase order conditions will apply to such purchases. For low value items the Council's credit card should be used. For online or telephone purchasing using a credit card the supplier's terms and conditions can be used. It is important to ensure that terms and conditions apply to the purchase so that there is no doubt about matters such as payment terms, delivery, insurance etc.

### 2.5 **Guidance on the use of Purchase Orders and Purchase Order Conditions**

The purpose of Purchase Orders is to record the terms on which goods, services or works not exceeding £10,000 in value are purchased, when these terms would not otherwise be recorded. It will not be necessary to issue Purchase Orders with the Conditions attached when making purchases using the supplier's terms and conditions eg for online purchasing from a supplier's website. Purchase orders should be used for confirmation of orders placed by

telephone. Purchase Orders should not be confused with works orders to suppliers under contracts that are already in existence.

The Council has a set of Conditions that should be attached to Purchase Orders when appropriate. For purchase orders sent to the supplier electronically there is link on Civica Financials to the Conditions that can be added to the electronic Purchase Order. The Purchase Order Conditions are also available on Broadcast, Forms and Documents Library, Procurement. For paper orders the Conditions should be printed off and posted with the Purchase Order.

The table below gives guidance on how to purchase. However, for purchases over £5,000 in value consider carefully what terms and conditions may need to be applied.

What are you buying ?	Value of purchase		
	Up to £5,000	£5,000 < £10,000 (3 quotes required)	More than £10,000
<b>Goods</b>  Stationery products, office equipment, consumables)	Purchase on line or by fax/letter. Use supplier's conditions.	Use purchase order and supplier's conditions or BDC Conditions if supplier has none	Contract signed by 2 officers (sealed if over £50,000)
<b>Services – Low Risk</b>  Training courses, seminars, venue booking, catering, Travel			
<b>Services – Moderate to High Risk</b>  Consultancy, professional services.	Purchase online or by fax/letter Use purchase order and supplier's conditions or BDC Conditions if supplier has none	Use purchase order and BDC Conditions with special conditions if appropriate.	

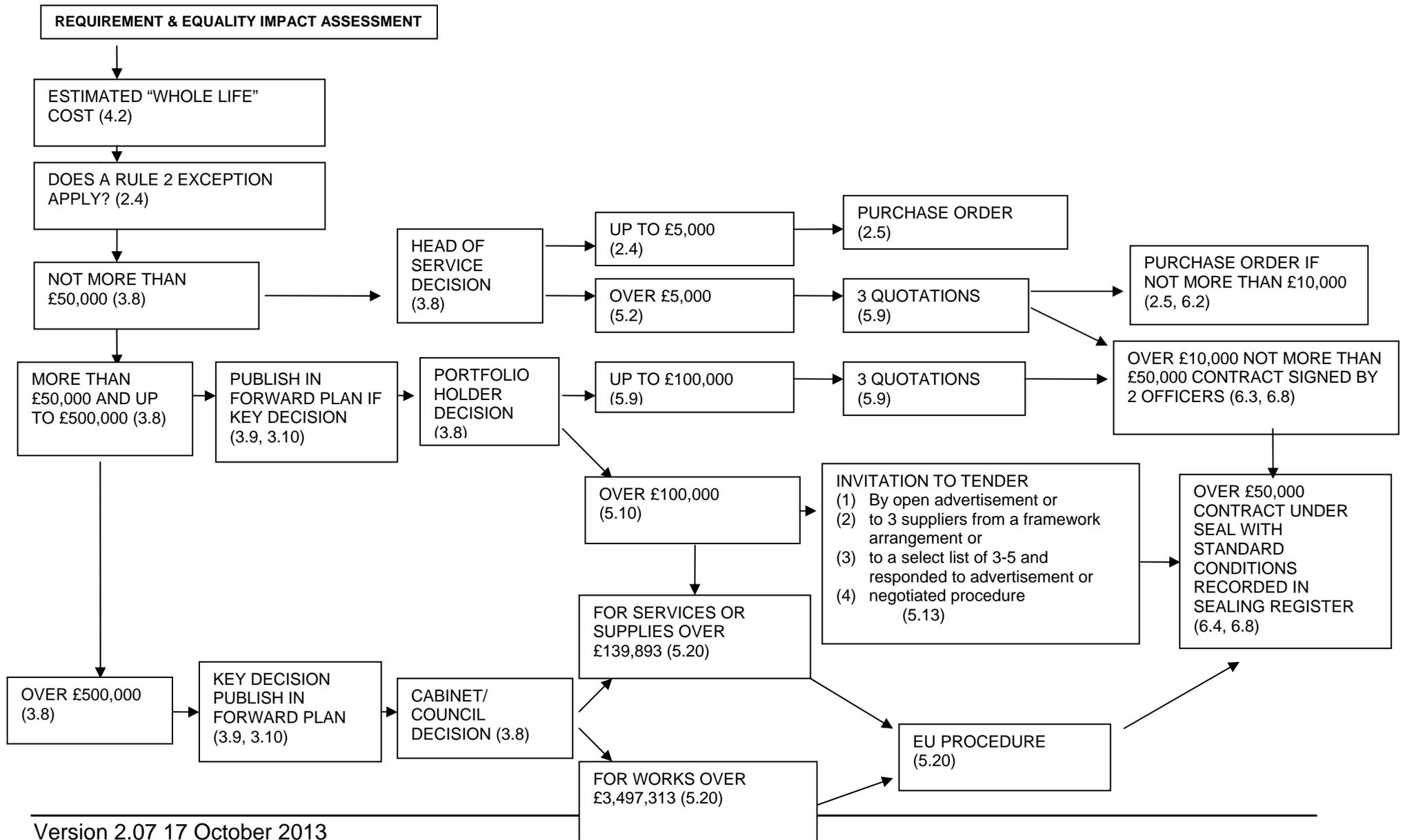
<p><b>Works (not works orders)</b> Getting something done either for us or on our behalf building works, clearing drains etc</p>	<p>Purchase online or by fax/letter Use purchase order and BDC Conditions</p>	<p>Use purchase order and BDC Conditions with special conditions if appropriate.</p>	
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## 2.6 Raising Purchase Orders

- (1) Two-part Purchase Order pads are controlled stationery issued to Heads of Service.
- (2) Purchase Orders must be approved by authorised members of staff within the Service.
- (3) Purchase Orders should not be authorised unless money is available in the budget to do so.
- (4) Details on the Purchase Order must be sufficient to ensure there should be no confusion as to the goods or services to be provided. It is recommended that Services include the following information:
  - Date
  - Supplier's Name
  - Supplier's Address
  - Originating Department and Contact Name
  - Description of Goods or Service to be provided
  - Budget Account Code
  - Delivery Date (if appropriate)
- (5) Once the Purchase Order details have been completed, check to ensure all the details are correct and sign the order. The order should be presented to the Service's Budget Holder or Head of Service as appropriate for a second authorisation signature.
- (6) Send the top copy of the Purchase Order to the supplier, if necessary after the order details have been sent by fax, email or given verbally, in which case it should be clearly identified as "Confirmation".
- (7) File the pink copy of the Purchase Order Form in the 'outstanding' section of the Purchase Order File, and used to check that the goods or services order are received.

- 2.6 Exceptions set out in rule 2.1 (1) (a) - (c); (2) (3) (4) (13) (14) and (15) should be relied upon only after seeking advice from the Head of Democratic Services and Monitoring Officer and/or NPLaw. The exceptions do not apply to contracts over the European Union thresholds which are set out in rule 1.3. If an exception contained in rule 2.1 applies, it is not necessary to obtain authority from Cabinet to apply it. Other exceptions can be made by Cabinet (rule 2.2).

**PROCUREMENT GUIDANCE: AUTHORISATION AND PROCEDURE FLOWCHART**  
**THE NUMBERS REFER TO SECTIONS IN THE PROCUREMENT GUIDANCE**



### 3 AUTHORITY TO ENTER INTO CONTRACTS

- 3.1 Ensuring that you have the correct authority for your contract is essential to the success of the outcome you are seeking to achieve. If a contract has not been correctly authorised at the outset this can lead to delays which can adversely affect both the service being provided and the supplier's confidence in the Council as a partner organisation.
- 3.2 In project planning for any procurement it is essential that the time taken to obtain appropriate authorisation is built into the project plan.
- 3.3 Authorisation should be obtained for the following steps:
- (1) deciding to invite tenders/quotations
  - (2) deciding on the methodology to be adopted including timescales and evaluation criteria
  - (3) deciding who to invite to tender if selective tendering is used
  - (4) award of the contract following evaluation of tenders/quotations received.

Authorisation for steps (1) and (2) can be obtained at the same time.

- 3.4 If the value of a contract exceeds £50,000, such that the Portfolio Holder (or Cabinet if over £500,000), is responsible for letting it, then each of steps (1) to (4) in 3.3 must be separately authorised by the Portfolio Holder or Cabinet. Alternatively, when authorising a step, Cabinet (but not the Portfolio Holder) may delegate further steps in the process to the Head of Service, if appropriate. For example, Cabinet may authorise steps (1) and (2), then delegate step (3) to the Head of Service and (4) to the Head of Service in consultation with the Portfolio Holder. Alternatively, Cabinet may decide to retain authority to decide all steps in the process.
- 3.5 The Contracts Procedure Rules refer to steps in the process being taken by Heads of Service, as defined in rule 1.4 (2). However, Heads of Service can delegate their functions under the rules to other officers provided such officers are authorised in writing (including email) by the Head of Service.

#### **Who Can Authorise My Contract and What is the Process I Have to Follow?**

- 3.6 There are different rules for authorising contracts depending upon the nature and value of what is being procured.
- 3.7 The rules currently contained in the Constitution are set out in the following table and in rule 3.1 of the Contracts Procedure Rules.

- 3.8 The value of the contract stated in the table is the price (excluding VAT) paid over its whole life, (including any extension provided for in the contract), not the yearly price. For example, a contract worth £5,000 a year over 5 years is worth £25,000 for the purposes of the rules.

Nature/Value of Contract	Who can authorise it?	Process
For purchase of goods and services not exceeding £50,000 in value	Chief Executive, Deputy Chief Executive, Heads of Service and Officers authorised by Heads of Service	Follow Contracts and Financial Procedure Rules.
For purchase of goods and services exceeding £50,000 but not exceeding £500,000	Relevant Portfolio Holder	Portfolio Holder decision recorded on form PH1 following Corporate Management Team consultation, via a written report. NB call in applies.  Follow Contracts and Financial Procedure Rules.
For purchase of goods and services exceeding £500,000 in value	Cabinet	Cabinet following Corporate Management Team consultation via a written report. NB call in applies.  Follow Contracts and Financial Procedure Rules.
Contracts and agreements with training scheme agencies subject to no new or additional budgetary implications	Head of Economic Development	Follow Contracts and Financial Procedure Rules.
Appointing professional advisors for planning appeals	Head of Planning	Follow Contracts and Financial Procedure Rules.
NB All the above can only be authorised if there is budget provision available. Instructions on writing reports for decision can be found on Broadcast, forms and Documents Library, Committee Forms and Reports.		

Contracts for which there is no budget provision	Council	Council decision following Corporate Management Team consultation.  Follow Contracts and Financial Procedure Rules.
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### **Forward Plan**

- 3.9 Any contract which falls within the definition of a key decision within the Constitution cannot normally be authorised unless it has appeared in the Council's Forward Plan before the decision to authorise it is made.
- 3.10 In broad terms a key decision will be one which will cost in excess of 1% of the Council's net revenue budget (currently £170,000 for 2013/14) or which will have a significant impact on communities in a ward. For further advice consult Article 13 of the Constitution or Democratic Services.

### **Cabinet/Council Decisions**

- 3.11 Decisions by these bodies are made following a written report and formal resolution.

### **Decisions by portfolio holders or in consultation with them**

- 3.12 These decisions are made after consideration of a written report and recorded on forms PH1 or DP1.

### **Call in**

- 3.13 Decisions by Cabinet or portfolio holders can be "called in" for scrutiny by the Overview and Scrutiny Committee. If this happens it can add a month or more to the timetable for letting a contract. The possibility of call in should be built into any project plan for your procurement.

## 4 PREPARATION AND PROJECT PLANNING

- 4.1. Contracts Procedure Rule 4 requires an estimate to be made of the value of the purchase (See 3.8 above). This is to determine which of the rules applies and if the contract exceeds the thresholds over which European Union Procurement Rules apply. The current thresholds are to be found in Contracts Procedure Rule 1.3. Although the rules require contracts of higher monetary value to be subject to more rigorous procedures, it may be appropriate to subject some lower value but higher risk contracts to more rigorous procedures than those strictly required by the rules.
- 4.2 In estimating the value of the purchase look at the value over the whole life of the contract including any extensions provided for in the contract. The contract should not be broken down into separate purchases to avoid the thresholds being reached. For contracts that continue indefinitely until determined by notice or other event the value is estimated by multiplying the expected monthly price by 48. (This is the method of calculation used to determine if the European Union threshold has been reached for contracts of indefinite length.)
- 4.3 If the value of your procurement exceeds £100,000 or the European Union threshold or you intend to invite tenders in any other circumstances consult with NPLaw on the procedures to follow (see the Forms and Documents Library, Legal Services, on Broadcast, which explains how to do this).
- 4.4 Contracts Procedure Rule 5 enables Heads of Service to consult suppliers about the procurement process and this is good practice. A written record of the consultations and responses should be made.
- 4.5 For all but the smallest procurements it is good practice to develop a project plan of the process working backwards from when the contract is to start or the goods are to be delivered. This could be a simple timetable or a detailed project plan using a project planning tool, such as Prince or Microsoft Office Project. For advice on procurement project planning contact the ICT and Facilities Manager. Remember to build into your plan time needed to obtain authorisation for your contract or purchase as well as the procedure required by law and the Contracts Procedure Rules.
- 4.6 In the early stages of the project consideration should be given to whether or not equality is a core requirement of the goods or services being procured. An Equality Assessment must be carried out for all procurements that the Corporate Management Team identifies as requiring one. It is appropriate to look at existing provision and identify improvements that could be achieved through the new procurement. It will be appropriate to consult current and future users of services and to include equalities issues in any consultations with prospective suppliers.
- 4.7 The 'Buying better outcomes: Mainstreaming equality considerations in

procurement' 2013 document gives advice to determine if equality is a core requirement of a contract as follows:

### Five Questions

We advise the following five questions to help you assess whether equality is a core requirement in any contract for goods, works or services.

- 1 What is to be provided under the contract?**
- 2 Is the provision of the goods, works, or services in question one of the functions or policies we have assessed as being relevant to meeting the duty to promote race equality? [Broadland District Council's Single Equality Scheme]**
- 3 Is the provision of the goods, works or services in question likely to affect, directly or indirectly, our ability to meet the duty to promote equality?**
- 4 If the answer to either 2 or 3 is yes, is it necessary to include requirements for promoting equality in the contract, to make sure we meet the duty?**
- 5 If the answer to 4 is yes, what equality requirements are appropriate for the contract in question?**

By applying tests of 'necessary' and 'appropriate', you should be able to define core equality requirements that reflect the contract's relevance to promoting equality - in proportion to other essential elements of the contract. While equality is more likely to be relevant to contracts for services, you cannot assume that it will not be relevant to contracts for goods or works. It is important that you consider all aspects of a contract, to make sure you have not overlooked less obvious equality implications.

4.8 The following procurements by Broadland District Council are likely to have equality as a core requirement.

- services directly to the public or staff eg refuse collection, restaurant services, payroll, debt collection, training, leisure, arts or information services.
- provision of goods eg publicity material should not contain material that may be offensive to any individual or group who belong to a protected characteristic.

4.9 Where equality is a core requirement of a procurement, the relevant requirements should be included in the specification. Any action identified as required during the Equality Assessment should also be included. Adding value to the procurement: there may be additional equality or social outcomes that generate added value, but are not absolutely necessary for fulfilment of the contract. Local Authorities seeking to gain added value from the contract or to contribute to the wider objectives of the authority can do so in three ways:

- making them part of the specification
- including them as part of the terms and conditions, or
- by using voluntary measures.

Examples may include the targeted recruitment and training benefits, such as providing a specified number of apprenticeships, or providing work for the long-term unemployed.

4.10 **Partnership procurements** Increasingly the Council is procuring suppliers and entering into contracts in partnership with other councils or bodies either as lead authority on their behalf or when another council is acting as lead authority. This is because the “partnerships” are not legal entities and one authority must enter into the contract on their behalf, or invite the tenders or quotations on behalf of all the councils, the final contract being between the supplier and each council individually. The Contracts Procedure Rules apply to partnership procurements subject to any exceptions. Rules 2.1 (6) and (12) contain exceptions that may apply in these circumstances. If you are considering a partnership procurement please seek advice from the Head of Democratic Services and Monitoring Officer and/or NPLaw.

## 5 CHOOSING A SUPPLIER

- 5.1 It is a requirement of Section 135 of the Local Government Act 1972 that the Council's Contracts Procedure Rules "include provision for securing competition" unless the contract is below a price threshold or an exemption is justified by special circumstances. The Council's Contracts Procedure Rules comply with this legal requirement.
- 5.2 All purchases should be made following competition between suppliers, unless the purchase is of low value (ie less than £5,000) or an exception applies (see Contracts Procedure Rule 2). Competition avoids any appearance of favouritism, discourages monopolies and cartels (ie suppliers colluding to fix prices or contracts between them) and demonstrates that value for money has been sought which includes quality and other relevant attributes of the resulting service or goods. Competition is usually achieved through seeking quotations or tenders from several suppliers, or by inviting them to make an offer to supply specified goods or services at a stated cost or rate. Good competition provides savings or better value for money, thereby improving the cost effectiveness of the Council.
- 5.3 Contracts Procedure Rules 6-21 contain the procedures to be followed for choosing your supplier except in the case of contracts over the European Union thresholds. For contracts over these thresholds the procedures are specified in legislation and must be followed (see rule 16). Legal and procedural advice must be sought from Norfolk County Council Legal Services in respect of such contracts.
- 5.4 It is permissible to reserve the right to tender or quote for a contract to contractors that operate supported employment programmes: that is more than 50 per cent of the employees are disabled people who are unable to take up work in the open labour market. The Disability Rights Commission's document 'Procurement and the Disability Equality Duty' contains further details.
- 5.5 Rule 6 provides that for contracts over £50,000 in value a supplier must meet minimum standards. A list of some of the standards that may be appropriate is included namely: financial standing; technical or professional capability or experience, compliance with recognised quality standards; and commitment to equality of opportunity. Others could include:
- (1) commitment to the Council's environmental objectives;
  - (2) approach to health and safety;
  - (3) commitment to continuous improvement;

- (4) risk management arrangements and
- (5) performance management systems.

In addition, £10 million employers' liability and £5 million public liability insurance are required unless the Head of Finance and Revenue Services agrees otherwise.

- 5.6 Rule 7 sets out three reasons why a contract can be awarded to a particular supplier. This is either the highest or lowest price, or "most economically advantageous" which enables quality and price to be taken into account. This involves consideration of 2 aspects: (1) the cost: quality ratio; (2) how the quality will be assessed in terms of criteria and weighting. For contracts using this criterion an evaluation model should be used. The Head of Finance and Revenue Services will provide advice on the appropriate evaluation model to use and early consideration should be given to exactly how the evaluation will be done. For some contracts it may be appropriate to specify a range eg price 30 - 40% of the total score, quality 70 - 60%. Quality criteria should be prioritised. A useful starting point to test the model chosen is to score the existing contract against it, as a benchmark to judge the tenders received.
- 5.7 Rule 8 deals with "framework" agreements. These are agreements with suppliers which set out terms and conditions under which specific purchases (or "call offs") can be made throughout the term of the agreement. This can be a time saving method of procurement because the goods and services have already been procured in competition and no further competition is required to make an individual purchase. Where a framework agreement is in place, Heads of Service and their staff are expected to use the arrangement unless they can demonstrate better value for money by tendering. Current framework agreements in use by the Council include a number negotiated by the Eastern Shires Purchasing Organisation (ESPO) and the Office of Government Commerce (OGC).

ESPO has let a Consultancy Framework Contract and has produced a user guide. The framework covers a wide range of consultancy services from Financial Consultancy to Environmental Consultancy and Heads of Service should use this framework whenever possible to appoint consultants. A full list of current frameworks is available at [www.espodealingdirect.org](http://www.espodealingdirect.org). In planning any procurement Heads of Service should first consider if a framework can be used either directly, or by carrying out a "mini competition" among suppliers participating in the framework.

- 5.8 If you intend to set up a new framework arrangement this must be made clear in the documents sent to potential suppliers. You will need to take advice from NPLaw on setting up the framework. In practice, although the Council is increasingly using established framework arrangements for procurement it does not usually set up a new framework as it is more cost effective to use an established framework contract.

- 5.9 Rule 9 sets out the quotation and tender requirements for procurements of different values, as follows

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"> <li>(1) by open advertisement, or</li> <li>(2) to three suppliers chosen from a framework arrangement</li> <li>(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.</li> <li>(4) the negotiated procedure specified in rule 21 of the Contracts Procedure Rules.</li> </ol>
Above European Union threshold	European Union procedure or through a framework arrangement which complies with European Union Procedure

- 5.10 Rule 10 explains how quotations are to be obtained for contracts over £5,000 and up to £100,000 in value. A quotation is a submission by a supplier stating what price they will charge for specified goods or services. A quotation is not the same as an estimate. A quotation is a legally binding response stating how much the purchase will cost. An estimate is a non-binding suggestion and may be subject to change. If you have obtained a quotation, ensure that when you place your order you refer to the quotation, ie the price quoted and the date. Note that by rule 10.4 quotations expected to exceed £10,000 are to be opened by the Head of Service in the presence of another officer acting as witness and Democratic Services must be informed of the quotations received so that this information can be recorded in the register of tenders. If quotations are invited from 3 suppliers and only 1 is received, this can still be accepted provided it represents value for money for the Council (Rule 2.1(13) and Rule 10.6). "Value for Money" will be achieved when there is the best combination of the cost of the procurement over its whole life and benefits or outcomes for the Council from the procurement. If there is doubt about this, consideration should be given to alternative methods of obtaining a supplier or negotiations undertaken with the supplier who has submitted a quote to ascertain if it can be revised to achieve value for money.

- 5.11 Rule 11 requires tenders to be invited for all contracts over £100,000 in value up to the European Union threshold. Contracts over the threshold are normally also let by a similar tender process, but these processes are not set out in the rules and specific guidance must be sought on the process to be followed. This can be obtained from NPLaw and ESPO, (Eastern Shires Purchasing Organisation). ESPO will manage the tender process for you and using them can be a cost effective way of managing the procurement.
- 5.12 A “tender” is the procurement process of inviting and evaluating bids from suppliers to provide goods or services. It involves preparing a detailed specification (ie description) of what is required, along with other contract documents, which are all sent to potential suppliers. Suppliers respond by submitting tenders with the prices they will charge and any other information requested in the invitation to tender.
- 5.13 Standard documentation for inviting tenders has been developed and is available on Broadcast. It includes:
- pre-qualification questionnaire
  - instructions for tendering (including formal tender, and related documents)
  - articles of agreement
  - conditions of contract
- 5.14 Rule 11 sets out 4 different methods of tendering.
- (1) Open advertisement where tenders are called for and contracts awarded usually on a highest/lowest price basis. This is suitable only for the most straight forward procurement or where there is unlikely to be much competition.
  - (2) Choosing suppliers from an existing framework arrangement.
  - (3) Select tender, where tenders go through a 2 stage process. The first stage is to determine suppliers who pass the Council’s minimum criteria and are therefore shortlisted, a small number being selected to submit a priced tender (note that it is a requirement of Section 20 of the Local Government Act 1988 that suppliers not invited to tender must be notified of that decision forthwith and be given reasons for the decision if requested in writing within 15 days of being notified.)
  - (4) Negotiation where suppliers are asked to express an interest in negotiating for a contract rather than to submit a tender.

The fact that tenders are being sought, together with the tender documentation, should be published on the Council’s website, except when choosing suppliers from an existing framework arrangement.

- 5.15 Rule 12 sets out what must be included in an invitation to tender. Although invitations to tender can be sent out by post or electronically, you should consider whether or not to hold a briefing meeting for prospective bidders. This is a meeting attended by all prospective bidders together during which they are informed about the work required, so it is usually advisable to schedule them early in the tender period. It is helpful to announce the date/time and venue in the covering letter of the Invitation to Tender. Such briefings avoid having to respond repeatedly to individual enquiries or visits from tenderers, which could be laborious, especially as any responses to individual queries need to be copied to all tenderers to ensure a “level playing field”.
- 5.16 (1) The specification used for tendering or quotations will be a key document in determining the effectiveness of the procurement. The specification should be clear and concise, with enough information to enable tenderers to decide what goods and services to offer and at what cost. If tenderers are to be permitted to offer alternative innovative solutions this should be made clear in the specification.
- (2) If equality has been identified as a core requirement of the goods or services being procured this must be adequately reflected in the requirements to be placed on the contractor that are to be included in the specification. All diversity issues should be considered. Items to consider including in the specification are:
- requiring the contract to be delivered in a way which is non-discriminatory and promotes equality of opportunity
  - requiring the contractor to undertake monitoring of service users using the Council’s standard form;
  - requiring the contractor to make effective use of an interpretation service such as the INTRAN service the Council uses;
  - requiring the contractor to use the INTRAN (or similar) logo on publicity and information leaflets.
- (3) The CRE “recommend that you specify requirements relating to race equality as a set of outcomes or performance targets, preferably expressed in easily measurable terms that is, numbers or percentages. However, there may be other, quantitative outcomes that you could reasonably expect the contractor to achieve. For example, you could require a service to be tailored to the needs of distinct groups, such as language or cultural needs, or to needs arising as a result of social isolation. You can ask contractors to set out their own ways of meeting the specified outcomes or performance targets”. The CRE also advise considering including positive action measures to meet special needs of particular racial groups and requirements to ensure the contractor’s workforce is able to carry out the race equality service requirements being specified eg by specific training for staff in racism awareness or language skills. These guidelines can also be followed for other equality target groups.

- 5.17 Rule 12 sets out what must be included in an Invitation to Tender. The standard documents (See paragraph 5.12) incorporate these requirements. Note that rule 19.1 only permits post tender negotiations if the invitation to tender specifically reserves the right to do so.
- 5.18 Rule 13 permits requests for quotations (RFQs) and tenders to be transmitted to the Council electronically. The Council's e-marketplace is being developed for RFQs.
- 5.19 Rule 14 permits electronic auctions, although it is more likely that the Council will participate in auctions in collaboration with other authorities rather than on its own.
- 5.20 Rule 15 sets out the procedures to be followed for receiving and opening tenders. Except where ESPO is managing the tender process all tenders should be returned to Thorpe Lodge, including tenders being managed by consultants. When you send out invitations to tender, please inform the Administration Manager in Democratic Services of the closing date and time for receipt of tenders, including whether or not tenders can be sent electronically. The Administration Manager will diary a tender opening session and record the tenders received in accordance with rule 15. Tenders invited and received by ESPO should also be recorded in accordance with rule 15 when ESPO send the tenders to us after receipt by them.
- 5.21 Rules 16 (European Union Procedure) and 17 (Late tenders) are self explanatory. Note that provided the European Union rules do not apply, late expressions of interest, (but not late tenders), can be considered.
- 5.22 Rule 18 enables arithmetical and copying errors in tender documents to be corrected in the circumstances specified in the rule. If you are not sure about the application of this rule to a particular tender, please seek advice from the Head of Democratic Services and Monitoring Officer or NPLaw.
- 5.23 Rule 19 deals with post tender negotiations which are only permitted if the right to do so was reserved in the invitation to tender and if the circumstances set out in rule 19.2 apply. If you are in any doubt whether or not it is permissible to enter into post tender negotiations in respect of a particular tender please seek advice from the Head of Democratic Services and Monitoring Officer or NPLaw.
- 5.24 Rule 20 sets out the requirements for accepting tenders. A tender must not be accepted before the award of the contract has been correctly authorised, (see section 3 above). By Section 20 of the Local Government Act 1988, unsuccessful tenderers must forthwith be notified and if they so request within 15 days from the date of notification, must be given a written statement of the reasons for the decision. If the contract is subject to the EU procurement regime it cannot be accepted until all tenderers have been notified of the intended decision and given 10 days (counting from the date of the notification

letter) in which to apply to court for an order that the provisional contract award should be set aside or its implementation suspended pending a full hearing by the court.

## 6 MAKING A CONTRACT WITH THE SUPPLIER

- 6.1 Once a supplier has been chosen, it is essential that a legally enforceable contract is made between the Council and the supplier. The contract is the legal agreement in documentary form setting out the terms and conditions that have been agreed with the contractor. This stage in the procurement process is easily overlooked, but it is essential to ensure that the Council's interests are protected.
- 6.2 For contracts valued at not more than £10,000 the contract can be made using the terms and conditions on the Council's purchase order or by placing an order against the supplier's standard terms and conditions. (See Contracts Procedure Rules, Rule 24.1) This applies to purchases made using the Council's purchase card or e-marketplace. If the purchase order is used, it should be issued to the supplier with the standard terms and conditions attached.
- 6.3 Contracts valued at over £10,000 but not more than £50,000 must be made by a contract or purchase order signed by 2 officers. (Rule 24.2).
- 6.4 Contracts valued at over £50,000 must be made by a contract expressed to be a deed and sealed with the Council's seal. The deed must include the provisions required by Contracts Procedure Rule 22. Standard contract documentation should be used where it exists within an industry eg for building works. Alternatively, the Council's standard contract documentation should be used.
- 6.5 A "deed" (i.e. a contract executed under seal and expressed to be a deed) gives the Council better protection in that it is possible to bring an action for breach of the terms of it up to 12 years from the breach. Contracts executed by signing only, that are not deeds, are only enforceable for up to 6 years from breach of their terms. In the case of contracts whose value to the Council is not measured purely in monetary terms, it may be appropriate to execute them under seal as deeds eg. contracts for building works. If in doubt seek advice from the Head of Democratic Services and Monitoring Officer or NPLaw.
- 6.6 If a supplier has its own standard terms and conditions they can be used subject to advice being obtained from NPLaw and amendment of the supplier's conditions to include those specified in Contracts Procedure Rule 22.
- 6.7. Concluding a contract is a formal process and if you are in any doubt about how to achieve this, please seek advice from Democratic Services or NPLaw.
- 6.8 If NPLaw have been assisting in the preparation of the contract, please ask them to "complete" it with the supplier, ie deal with the legal formalities, as

they know what is required and can ensure that the contract is binding upon the supplier and the Council.

- 6.9 Rule 24.5 requires the originals of contracts under seal or for services of £10,000 or more (ie not goods) in value to be put in the strong room for safe keeping. Contracts concluded electronically must be copied to enable this to happen. Please give contracts for the strong room to the Administration Team in Democratic Services who will record the contract on the contracts database and file it in the strong room.
- 6.10 The contract should set out the position with regard to Value Added Tax (VAT). The quoted or tendered price will always be net of VAT. Seek advice from the Head of Finance and Revenue Services if you are not sure of the VAT position.

## 7 CONTRACT MANAGEMENT

7.1 The level of contract management required will depend upon the nature of the contract and the risks involved. Contract management is usually required only for service contracts where there is a need to manage the supplier's performance over a period of time. The foundations of successful contract management should be contained in the specification and conditions of contract. These documents should include requirements that will enable the Council to manage the Contractor. Typical requirements are

- the contractor to submit periodical returns about volumes/quality of work done, personnel deployed;
- access to the contractors' records including accounts;
- provision for regular periodical meetings between the contractor and the Council;
- requiring the contractor to submit information about compliance with legislation;
- requiring the contractor to demonstrate compliance with equality and diversity obligations;
- collection of performance indicators;
- responding to new legislation that affects the contract.

7.2 The Council's standard Conditions of Contract contain provisions to assist with contract management. Once the contract has been awarded a meeting should be held with the contractor to determine how contract monitoring and management will work in practice. Notes should be made of this meeting and all future monitoring meetings with the contractor. For service contracts an annual review meeting should be held and documented. The Appendix contains a Contract Annual Review Form that can be used for this purpose.

7.3 During the contract period it is possible that the contractor will change in some way eg change of name, buy-out by another company. If this happens, it is essential that you seek advice from NPLaw to ensure that any necessary contractual changes are made to protect the Council's position.

7.4 If equality is a core requirement of the contract then meetings with the contractor must specifically deal with the Council's requirements. It will be important to reinforce with the contractor the Council's duties and requirements. Section 11 of the CRE Guide includes helpful suggestions on how this can be achieved. Contractors should be encouraged to promote

equality of opportunity beyond the scope of their contractual obligations.

7.5 Contract management should aim to ensure that there is no difference in the satisfaction levels of users or employees, on the basis of race, age, gender, disability, religion or sexual orientation.

7.6 Ways of monitoring the contractor's compliance with equality duties include

- sending out questionnaires
- undertaking a site visit to see how the contractor is meeting equality requirements in practice.
- asking the contractor to provide information that demonstrates compliance with any specific equality requirement in the contract.
- asking the contractor to provide information about its workforce, for example the number of employees who are women or who are from black and minority ethnic backgrounds,

7.7 The Council's Financial Procedure Rules, (Rule 14) contain the following provisions.

Contracts for IT equipment and services, building, construction or engineering work

- (1) Where a contract provides for instalment payments the officer responsible for that contract will keep a record of all payments to the contractor.
- (2) The chief officer concerned or private architect, engineer or consultant engaged by the council will certify all payments on account.
- (3) The chief officer concerned or private architect, engineer or consultant engaged by the council must, subject to the provisions of the contract, authorise all variations or additions to the contract. Where a variation or addition results in an increase of £50,000 or 10% or more, whichever is the lower, in the contract price, this must be reported to the council as soon as possible.
- (4) The chief officer will be responsible for ensuring that the final account is justified and in accordance with the contract. The chief officer must retain all information relating to the contract.
- (5) Claims from contractors for matters not within the terms of the contract must be referred to the chief officer concerned for

consideration of the council's legal and financial liability before any settlement is reached.

- (6) Where completion of a contract is delayed by more than one-sixth of the contract period, or three months, whichever is the shorter, the chief officer will report to the appropriate committee. Whenever any contract is delayed the chief officer will consider the circumstances and if reasonable to do so will enforce the damages/compensation part of the contract.

7.8 A major part of contract management is considering what will happen if the service fails or is interrupted. It will normally be the provider's responsibility to manage service continuity, and this should be stipulated in the contract. However, the continuity of the business that depends on the service should be a jointly handled responsibility, agree through joint plans with the contractor.

7.10 Such planning consists of

- identifying which services must be maintained in which circumstances
- drawing up a business continuity plan that specifies how the business will continue its critical services under a range of disaster scenarios
- the consequent requirements for continuity for each critical service to the business are then derived
- service continuity plans may then be developed. Where services are provided by external providers, they may be responsible for such plans. The service contracts need to embody provision for such contingency arrangements.

7.11 In drawing up the contract you should have considered the effect of a major breakdown in the service as part of the risk analysis activity undertaken in service planning. Plans for ensuring business continuity need to be tested periodically. The contract should set out the contractor's responsibility in this area.

7.12 Reviews of business continuity plans should include:

- planning for action by the contractor to ensure continuity of service, where the contractor is required to maintain the service.
- planning by the Council to ensure continuity of service when the contractor cannot maintain the service, or when the Council decides to terminate the contract; there may need to be provision for the service to be taken over at short notice by another contractor.

**Broadland District Council  
Procurement Guidance 2011**

**APPENDIX**

**Further Information and Guidance**

Broadland District Council's Constitution

Broadland District Council Single Equality Scheme 2012 to 2015  
[www.broadland.gov.uk/jobs\\_and\\_careers/1473.asp](http://www.broadland.gov.uk/jobs_and_careers/1473.asp)

Broadland District Council Procurement Strategy and Action Plan 2013-16

Commission for Racial Equality, "Race Equality and Procurement in Local Government: A Guide for Authorities and Contractors" July 2003  
([http://www.equalityhumanrights.com/uploaded\\_files/PSD/26\\_race\\_equality\\_public\\_procurement.pdf](http://www.equalityhumanrights.com/uploaded_files/PSD/26_race_equality_public_procurement.pdf))

ESPO - [www.espo.org](http://www.espo.org)

Improvement and Development Agency (IDeA) at [www.uk-idea.co.uk](http://www.uk-idea.co.uk)

National Procurement Strategy for Local Government 2003  
<http://helg.org/2011/02/13/national-procurement-strategy-for-local-government-october-2003/>

Social Issues in purchasing <http://library.sps-consultancy.co.uk/documents/guidance-policy-and-practice/social-issues-in-public-procurement.pdf>  
[www.eauc.org.uk](http://www.eauc.org.uk) and search for 'OGC/Defra joint note on environmental issues in purchasing'