

2017 **WYCHAVON**  
*Contract Procedure Rules*



**WYCHAVON DISTRICT COUNCIL**  
**CONTRACT PROCEDURE RULES**

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## INTRODUCTION AND SUMMARY OF ESSENTIAL REQUIREMENTS

### **A. Introduction**

In this document, any words in *italics* are explained in the Definitions Appendix. References to “the Council” includes the Council’s Executive Board and any other Committee or persons acting in accordance with delegated authority on behalf of the Council, as set out in the Council’s Constitution.

These Contract Procedure Rules exist to ensure that the Council lets contracts in a fair, consistent, honest, legal and transparent manner. There is a statutory basis for the rules which promote good purchasing practice and public accountability. Following the rules is also the best defence against potential allegations that a purchase has been made incorrectly or fraudulently.

**All Council staff with financial responsibilities, especially for purchasing, must comply with these Contract Procedure Rules. This includes purchasing on behalf of other organisations and purchasing using external funding e.g. grants. The Contract Procedure Rules lay down the minimum requirements and more rigorous procedures may be appropriate for specific contracts. Exemptions are only to be used in exceptional circumstances as detailed in Section 3. Failure to comply with these Contract Procedure Rules could result in disciplinary action.**

This edition of the Procedure Rules will apply from March 2017 and supersedes all previous editions. The Rules are reviewed from time to time and are available on the Council’s Intranet and Website.

### **B. Summary of essential requirements**

- Follow the rules if you have a delegated responsibility to purchase goods or services or order building work.
- Always check with your line manager about your responsibilities and take all necessary legal, financial and professional advice.
- Declare any personal interest in a contract and withdraw from taking part in it. Corruption and/or Bribery is a criminal offence.
- Conduct an appraisal of the purchasing need and the requirement to obtain best value for money.
- Check whether there is an existing *corporate or national* contract you can make use of before undergoing a competitive process.
- Allow at least four weeks for submission of bids for high value contracts.
- Keep bids confidential.
- Complete a written contract or Council order before the supply or works begin.
- Identify a *contract manager* (on both sides) with responsibility for ensuring the contract delivers as intended.
- Keep records of all dealings with suppliers.
- Ensure that where there is a requirement for communication to be in writing.
- Assess each contract afterwards to see how well it met the purchasing need and *value for money* requirements.

### **C. Summary of values and thresholds determining competition requirements**

<b>Total value</b>	<b>Award procedure</b>
<b>Low value:</b> Up to <b>£3,000</b>	At least 1 verbal <i>quotation</i> (confirmed in writing) where the <i>total value</i> is up to £3,000
<b>Medium value:</b> <b>£3,001 - £50,000</b>	Must seek at least 3 written <i>quotations</i>
<b>High value: £50,001 – EU threshold*</b>	<i>Invitation to tender</i> by advertisement/select list to at least four <i>potential tenderers</i>
Above <b>EU threshold*</b>	<i>EU procedure</i> or where this does not apply, <i>invitation to tender</i> by advertisement/select list to at least four <i>potential tenderers</i>

See Section 11 for further information.  
Values exclude VAT, staff costs and fees.

**\*EU Threshold** as at 1<sup>st</sup> January 2016 (updated every 2 years)  
Currently £164,176 for supplies and services contracts, £4.104million for works contracts and £589,148 for special and other specific services (light touch regime),

## SCOPE OF CONTRACT PROCEDURE RULES

### 1. BASIC PRINCIPLES

All purchasing and disposal procedures must:

- achieve *best value* for public money spent;
- be consistent with the highest standards of integrity;
- ensure fairness in allocating public contracts;
- comply with all legal requirements;
- ensure that where *non commercial* considerations are discussed in every contracting decision and that these are linked to and support the Councils 'social value' aims as set out in our corporate strategy. No other *non-commercial* considerations should influence any contracting decision;
- support the Council's corporate vision, aims, values and policies;
- comply with the Council's corporate *procurement strategy*.

### 2. OFFICER RESPONSIBILITIES

2.1 *Service Managers* will ensure that:

- *Authorised Officers* comply with these procedure rules;
- registers are securely maintained of:
  - (i) contracts completed by signature, rather than by the Council's seal
  - (ii) exemptions recorded under Rule 3.1;
- appropriate training is provided to staff involved in procurement.

2.2 All *Authorised Officers* responsible for purchasing or disposal must comply with these procedure rules, the Council's *Financial Regulations*, and codes of conduct and with all UK and European Union binding legal requirements. *Authorised Officers* must ensure that any agents, consultants and contractual partners acting on their behalf also comply, as if they were an officer of the Council.

2.3 Where the Council is acting jointly with other organisations it shall be a condition of any contribution by the Council that these procedure rules are followed where applicable.

2.4 *Authorised Officers* must:

- have regard to any Council guidance on best practice in purchasing;
- check whether a suitable *corporate or national contract* exists before seeking to let another contract; where a suitable *corporate or national contract* exists, this must be used unless there is an auditable reason not to;
- keep the records required by Rule 6;
- where appropriate ensure the providers of Council services will comply with the 7 Nolan principles  
<https://www.gov.uk/government/publications/the-7-principles-of-public-life>
- comply with the requirements of Government transparency code 2015  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408386/150227\\_PUBLICATION\\_Final\\_LGTC\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf)
- take all necessary legal, financial, audit, procurement and other professional advice.

- 2.5 When any employee (either of the Council or of a service provider) may be affected by any transfer arrangement, *Authorised Officers* must ensure that the Transfer of Undertakings (Protection of Employment) (*TUPE*) *regulations* are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.
- 2.6 Any doubts as to the interpretation of these procedure rules should be referred to the relevant Service Manager in the first instance and if necessary to the South Worcestershire Procurement Manager or the Legal Services Manager.
- 2.7 Failure to comply with these procedure rules may leave the Council, or individual officers or members, open to the risk of legal challenge. Breaches will be regarded as a serious matter. Any officer becoming aware of any compliance failure should inform the *Managing Director or Deputy Managing Director* who will, if necessary, investigate the matter and report to the Executive Board. Alternatively, matters can be raised through the Council's whistleblowing policy.

### 3. EXEMPTIONS, COLLABORATIVE AND E-PROCUREMENT ARRANGEMENTS

#### 3.1 Exemptions

In exceptional circumstances, these Contract Procedure Rules will not apply if the appropriate *Service Manager*, in consultation with the *Managing Director or Deputy Managing Director* is satisfied :

- (i) that there is no genuine competition, for example where:
  - (a) the goods or materials are proprietary articles or are sold only at a fixed price and no satisfactory alternative is available;
  - (b) the price of goods, materials or services are wholly controlled by trade organisations or government order;
  - (c) the goods, materials or services are required for repairing or servicing existing specialist plant or equipment;
  - (d) the work is required to be carried out by public service providers.

Where there is no genuine competition, the *Service Manager*, will obtain written quotations from the contractor, and where appropriate, will negotiate to obtain best value for money for the Council prior to awarding any contract;

- (ii) the proposed contract for the execution of work forms part of a serial programme, the terms having been negotiated with the contractor on the basis of the rates and prices contained in an initial contract awarded competitively following an invitation to provide a written quotation or tender;
- (iii) that to maintain service continuity and minimise disruption, considers it desirable in the best interests of the Council that a tender be invited for the execution of work from a contractor

selected by it, or negotiated with a contractor already engaged by the Council;

- (iv) the goods, materials or services are required due to an emergency involving immediate risk to persons, property or serious disruption to Council services;
- (v) that significant financial loss may be incurred if the letting of the contract is delayed;
- (vi) that external/partner funding arrangements require other procedures to be followed;

- 3.1.2 In cases (iv) and (v) above the appropriate *Service Manager* may obtain verbal quotations provided they are subsequently confirmed in writing.
- 3.1.3 If the *Managing Director, Deputy Managing Director*, appropriate *Service Manager* or *Authorised Officer* with appropriate authority to deal with a particular contract is of the opinion that any of these procedure rules should not apply to a contract, an appropriate report will be submitted to the Executive Board at the earliest opportunity. Where the contract is likely to exceed £50,000, the relevant *portfolio holder* must be consulted.
- 3.1.4 Where a proposed contract is likely to exceed the *EU threshold*, a *Service Manager* has no delegated powers and the matter has to be determined by the Executive Board.
- 3.1.5 Where an exemption is necessary because of an unforeseeable emergency the *Authorised Officer* in conjunction with the *Managing Director* or *Deputy Managing Director* may jointly approve the exemption but they must prepare a report for the next Executive Board to support the action taken.
- 3.1.6 All exemptions, and the reasons for them, must be recorded and signed by the *Authorised Officer* and countersigned by the *Service Manager* and a copy sent to the South Worcestershire Procurement Manager.
- 3.1.7 Where the Council carries out work using a recognised standard form of contract from a professional institution, procedural requirements may differ slightly to those laid down in these Contract Procedure Rules.
- 3.1.8 *Service Managers* will monitor the use of all exemptions.

## 3.2 Collaborative and E-procurement arrangements

- 3.2.1 In order to secure value for money, the Council may enter into collaborative procurement arrangements, including initiatives such as E-auctions with other Councils. *Authorised Officers* wishing to do this must consult the *Deputy Managing Director* and the Legal Services Manager where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.
- 3.2.2 All purchases made via a local authority purchasing and distribution consortium (e.g. ESPO, YPO and CCS) are deemed to comply with these contract procedure rules and no exemption is required. However, purchases above the *EU threshold* must be let under the EU procedure, unless the consortium has satisfied this requirement already by letting their contract in accordance with the EU procedures on behalf of the authority and other consortium members.
- 3.2.3 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation, will be deemed to comply with these contract procedure rules and no exemption is required. However, advice must be sought from the *Deputy Managing Director* and Legal Services Manager
- 3.2.4 The use of e-procurement technology does not negate the requirement to comply with all elements of these contract procedure rules, particularly those relating to competition and value for money.

## 4. RELEVANT CONTRACTS

- 4.1 All relevant contracts must comply with these contract procedure rules. A relevant contract is any arrangement made by, or on behalf of the Council for the carrying out of works, or for the supply (or disposal) of goods and materials or the carrying out of services. These include arrangements for:
- the supply or disposal of goods;
  - delivery of services, including (but not limited to) those related to:
    - the recruitment of staff;
    - land and property transactions;
    - financial and consultancy services.
- 4.2 *Relevant contracts* do not include:
- contracts of employment which make an individual a direct employee of the authority, or;
  - agreements regarding the acquisition, disposal or transfer of land (for which Financial Regulations shall apply).

## COMMON REQUIREMENTS

### 5. STEPS PRIOR TO PURCHASE

#### 5.1 Pre-commitment appraisal

5.1.1 *Authorised Officers* must carry out an appraisal of the proposed purchase, in a manner appropriate to its complexity and value, taking into account any advice and guidance available within the Council. The appraisal should where relevant:

- take into account the requirements from any relevant review;
- appraise the need for the expenditure and its priority;
- define the objectives of the purchase;
- assess the risks associated with the purchase and how to manage them;
- consider the procurement method most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium;
- consult users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring;
- draft the terms and conditions that are to apply to the proposed contract;
- set out these matters in writing if the *total value* of the purchase is High Value i.e. exceeds £50,000.

5.1.2 The appraisal must confirm that there is member or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the *Constitution*. The proposed contract must be provided for in an appropriate budget and a proper financial and technical appraisal must be carried out.

#### 5.2 Preparation of tender documents

5.2.1 Where written quotations or tenders are required, the tender documentation will normally consist of some or all of the following documents:

- (i) instructions to tenderers;
- (ii) specification;
- (iii) drawings;
- (iv) pricing schedule;
- (v) conditions of contract;
- (vi) form of tender.

Please click [here](#) for a Guide to Specification Writing

Please click [here](#) for an Invitation to Quote template that may be used

Please click [here](#) for an Invitation to Tender template that may be used

- 5.2.2 Other information may need to be made available to ensure that tenderers' bids reflect service requirements and are competitively priced. This may include the following:
- (i) an outline of the tender evaluation criteria;
  - (ii) the terms and conditions under which any assets will be made available;
  - (iii) workforce information required for assessing any prospective liability in relation to *TUPE legislation*. To ensure consistency of provision of information, any information provided by an existing contractor should be checked and issued by the Council's *Authorised Officer*;
  - (iv) the amount of work likely to be available under the contract.

Please click [here](#) for a **Guide to Evaluating Tenders and Quotes**

5.2.3 The *Authorised Officer* will ensure that:

- (i) ambiguities and contradictions do not occur between documents and information provided;
- (ii) any locally prepared variations to standard documentation are clear and use generally accepted terms;
- (iii) contract conditions and specifications are in the best interests of the Council in respect of quality, cost and performance;
- (iv) independent scrutiny of tender documentation occurs at this stage, as errors may eventually prove costly;
- (v) contracts are sufficiently clear and robust to enable the Council to enforce their fulfilment;
- (vi) potential tenderers understand the implications of the Freedom of Information legislation, in particular that commercial confidentiality cannot be guaranteed.

5.2.4 To ensure consistency and to aid understanding by the tenderer, tender documentation will be collated by an experienced officer who will obtain the advice and approval of the *Legal Services Manager*.

5.2.5 For all contracts, sufficient time must be made available at each of the key stages, for example to allow potential contractors to provide a considered response and answer any supplementary questions.

5.2.6 The Council's E-procurement Portal will be used to advertise and manage the procurement process. Please contact the Procurement Team for further information.

## 6. RECORDS

6.1 Where the total value is less than £50,000, the following records must be kept:

- Invitations to quote and quotations received;
- a record of:
  - any exemptions and the reasons for them;
  - the reason if the lowest price is not accepted;
  - written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

- 6.2 Where the total value exceeds £50,000 the *Authorised Officer* must record:
- the method for obtaining bids (see Rule 11.1.1);
  - any contracting decision and the reasons for it;
  - any exemption under Rule 3 together with the reasons for it;
  - the award criteria in descending order of importance;
  - tender documents sent to and received from tenderers;
  - pre-tender market research;
  - clarification and post-tender negotiation (to include minutes of meetings)
  - the contract documents;
  - post-contract evaluation and monitoring;
  - formal communications with tenderers and with the successful contractor throughout the period of the contract.
  - Regulation 84 report for any OJEU contracts.
- 6.3 Records required by this rule must be kept for six years after the end of the contract. However, documents which relate to unsuccessful tenderers will be stored in a suitable method after 12 months from award of contract, provided there is no challenge to the award.
- 6.4 *Service Managers* will maintain adequate records in order to produce a register or list of all current contracts, to include the name of the contractor, the work to be done/goods supplied, the contract value, expiry dates and timescales for renewal.

## 7. ADVERTISING, SELECT LISTS AND FRAMEWORK AGREEMENTS

### 7.1 Identifying and assessing potential tenderers

- 7.1.1 *Authorised Officers* shall ensure that, where proposed contracts, irrespective of their total value, might be of interest to potential tenderers located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:
- the Council's E-Procurement Portal
  - the Council's website;
  - finditinworcestershireshire website
  - Contracts finder website ( legal requirement for all high value contracts above £50,000)
  - portal websites specifically created for contract advertisements;
  - national official journals, or;
  - the Official Journal of the European Union (OJEU)/Tenders Electronic Daily (TED) (even if there is no requirement within the *EU procedure*).
- 7.1.2 *Authorised Officers* are responsible for ensuring that all potential tenderers for a *relevant contract* are suitably assessed. The assessment process shall establish that *potential tenderers* have sound:
- economic and financial standing;
  - technical ability and capacity to fulfil the Council's requirements.

- 7.1.3 In respect of proposed High Value contracts that are expected to exceed £50,000 this shall be achieved by selecting firms from:
- *Select Lists* of providers, maintained by the authority or on its behalf, and compiled following responses to a public advertisement, or;
  - Ad-hoc *select lists* or shortlists, assessed from expressions of interest in a particular contract submitted in response to a public advertisement.

## 7.2 Select Lists

### Quotations and Tendering by reference to a Select List of Contractors

- 7.2.1 Select lists cannot be used where the *EU procedure* applies.
- 7.2.2 Select lists of contractors now exist for general, non-specialist work. These are available on the Council's intranet.
- 7.2.3 Any works not covered by these lists should be referred to the procurement or legal teams for written confirmation that it is specialist work and that the following procedures do not apply, prior to quotations being obtained.
- 7.2.4 Specialist work is different from Emergency Works which are covered in 3.1.1 (v).
- 7.2.5 Contracting procedures outlined in this document continue to apply when an Authorised Officer has determined that the work to be carried out is covered by a select list, but invitations to quote or tender for a contract are to be limited to those contractors whose names are included in the relevant select list.
- 7.2.6 Invitations to quote or tender will be sent in line with Table C on page 4 to contractors on the relevant select list.
- 7.2.7 The basis of contractor selection when 3 or more quotations/ tenders are required will be as follows:-
- One contractor based on previous competitiveness
  - One contractor based on past performance
  - One or more contractors based on rotation within the relevant select list
- 7.2.8 It is important that fair competition is achieved therefore rotation of contractors must be undertaken when obtaining quotations or all tenders, including those of low value. In addition, effort should be made to ensure that receipt and opening of competitive quotations is managed to demonstrate fairness in award of contracts and that names of contractors invited to quote or tender should not be divulged to other parties involved in the same process.

7.2.9 The Select list will be reviewed annually and re-advertised at least every three years. On re-advertisement, a copy of the advertisement will be sent to each person on the list, inviting them to reapply. Review means:

- contractors on the select list will be requested to provide evidence of both financial and insurance compliance on an annual basis ;
- the deletion of those persons no longer qualifying, with a written record kept justifying the deletion.

### 7.3 Framework Agreements

7.3.1 *Authorised Officers* will check whether a suitable framework agreement exists before seeking to let another contract.

## 8. COMMUNITY RIGHT TO CHALLENGE

8.1 The Community Right to Challenge under Part 5 of the Localism Act allows certain *Relevant Bodies* to submit expressions of interest to deliver council services. The Act states that the Council must consider expressions of interest in respect of relevant services from relevant bodies which include:

- (i) voluntary/community bodies;
- (ii) charities;
- (iii) parish councils;
- (iv) two or more employees of the relevant authority.

8.2 Details of the Statutory Guidance on Community Right to Challenge along with other background information can be found at:  
<http://www.communities.gov.uk/documents/localgovernment/pdf/2168126.pdf>

8.3 In order to meet our obligations under the Localism Act the Council will:

- accept informal approaches from all Relevant Bodies;
- acknowledge all Expressions of Interest;
- evaluate the EOI in accordance with the statutory guidance;
- run a procurement exercise under normal procurement rules if the EOI is accepted.

## 9. CONSTRUCTION, DESIGN AND MANAGEMENT REGULATIONS

It is a requirement that all relevant contracts let by the Council comply with Construction, Design and Management (CDM) Regulations.

## 10. PUBLIC SERVICES (SOCIAL VALUE) ACT 2012

10.1 The Public Services (Social Value) Act 2012 requires contracting authorities to consider at the pre-procurement stage of **any** services contract and services framework agreement (including goods and works contracts procured in combination with services) to which the Public Contracts Regulations 2015) apply:

- how the proposed procurement may improve the economic, social and environmental well-being of their areas;
- how the contracting authority may act with a view to securing that improvement in conducting the process of procurement;
- in addition, the contracting authority is required to consider whether to undertake any community consultation on the above matters.

10.2 If you are undertaking a procurement exercise to which you think this Act applies please consult with the South Worcestershire Procurement Manager before proceeding.

## CONDUCTING PURCHASE AND DISPOSAL

### 11. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

*The Authorised Officer* must calculate the total value of any proposed purchase or disposal.

The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with government. If in doubt, *Authorised Officers* must seek the advice of the *South Worcestershire Procurement Manager* and/or the Legal Services Manager.

#### 11.1 Purchasing: competition requirements

- Where the total value for a purchase is within the values in the first column below, the *award procedure* in the second column must be followed.

## Purchasing: competition requirements

Total value	Award procedure
<b>Low value:</b> Up to <b>£3,000</b>	<ul style="list-style-type: none"> <li>• Must consider using existing corporate contract if there is one or an existing <i>Framework Agreement</i> provided costs are competitive.</li> <li>• Must seek at least 1 quotation (to be confirmed in writing)</li> <li>• The Contractor can be selected on price alone; or MEA evaluation criteria must be used to support decision if contract awarded other than on price alone</li> </ul>
<b>Medium value:</b> <b>£3,001 - £50,000</b>	<ul style="list-style-type: none"> <li>• Must consider using existing corporate contract if there is one or an existing <i>Framework Agreement</i> provided costs are competitive.</li> <li>• Must seek at least 3 written quotations</li> <li>• MEA evaluation criteria must be used to support decision if contract awarded other than on price alone.</li> <li>• Should consider using Tender procedure if appropriate</li> <li>• Good practice to advertise contract opportunity on the Councils website</li> </ul>
<b>High value: £50,001 – EU threshold*</b>	<ul style="list-style-type: none"> <li>• Must consider using existing corporate contract if there is one or an existing <i>Framework Agreement</i> provided costs are competitive</li> <li>• Must advertise contract and invite expressions of interest</li> <li>• Legal requirement to advertise any contracts over £50k on Contracts Finder</li> <li>• Must use Council's formal Tender documents</li> <li>• Consider using a <i>PQQ</i> (Pre-Qualification Questionnaire)</li> <li>• Invite a minimum of 4 Tenders (officers must ensure that they are satisfied that there is not a need to seek further tenders if less than 4 responses are received i.e. <i>value for money</i> has been demonstrated with/by the responses received)</li> </ul>
Above <b>EU threshold*</b>	<ul style="list-style-type: none"> <li>• In accordance with <i>EU Procedures</i> and advice from the South Worcestershire Procurement Manager and Legal Services</li> </ul>

Values exclude VAT, staff costs and fees.

**EU Threshold** as at 1<sup>st</sup> January 2016 (updated every 2 years)

Currently £164,176 for supplies and services contracts, £4.104million for works contracts and £589,148 for special and other specific services (light touch regime).

- 11.1.2 Where it can be demonstrated that there are insufficient suitably qualified *potential tenderers* to meet the competition requirement, all suitably qualified *potential tenderers* must be invited.

- 11.1.3 An *Authorised Officer* must not split orders, enter into separate contracts or select a method of calculating the total value in order to minimise the application of these contract procedure rules.
- 11.1.4 Where the *EU procedure* is required, the *Authorised Officer* shall consult the Legal Services Manager or the South Worcestershire Procurement Manager to determine the method of conducting the purchase.

Please click [here](#) for EU Procedure Decision Tool guidance

## 11.2 Assets for disposal

- 11.2.1 For stocks and stores, *Service Managers* will be responsible for the disposal of surplus assets subject to the agreement of the *Deputy Managing Director*. This will be by public auction, competitive tender or by other manner most beneficial to the Council. Any disposal of a single asset valued in excess of £5,000 will be reported to the Executive Board.
- 11.2.2 For land and property assets, the *Deputy Managing Director* in conjunction with the appropriate *Portfolio Holder in accordance with Financial Regulations* will exercise a delegation to deal with disposals up to £50,000. Disposals over £50,000 will require the prior approval of the Executive Board who will consider a report by the *Deputy Managing Director*, which will include the financial, legal and other consequences of the proposed disposal. Disposals over £500,000 also require the approval of full Council.
- 11.2.3 The Localism Act requires the Council to maintain a register of Community assets. The register is maintained and kept by *The Head of Housing and Planning Services*. If there is interest in the disposal of any asset listed on the Register a set procedure needs to be followed and a full consultation needs to be undertaken. Any approach made to the Council with regards disposal of an asset listed on the register must go to the *Head of Housing and Planning Services* in the first instance.

## 11.3 Providing services to external purchasers

- 11.3.1 The *Deputy Managing Director* and the Legal Services Manager must be consulted where it is proposed to do work for organisations other than Wychavon District Council.

## 11.4 Collaborative and partnership arrangements

- 11.4.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these Contract Procedure Rules. If in doubt, *Authorised Officers* must seek the advice of the *South Worcestershire Procurement Manager* and the *Legal Services Manager*.

## 11.5 Appointment of consultants

- 11.5.1 *Consultants* will only be used if in the opinion of the appropriate *Service Manager* in consultation with the *Deputy Managing Director* the work cannot be handled by Council employees for regular flows of work (e.g. surveyors, engineers)
- 11.5.2 If the consultant is to be appointed to support a project, a note should be placed on the project file stating:
- (i) why it was necessary to use an external consultant;
  - (ii) the brief for the project;
  - (iii) the brief for selecting the consultant and how this was met;
  - (iv) the names of the members and officers involved in the selection process.
- 11.5.3 Consultants shall be selected in accordance with the value and thresholds shown at C on page 4 of the CPR.
- 11.5.4 The engagement of a *consultant* shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment. The appropriate *Service Manager* will ensure that the requirements of 11.5.5 below are written into the contract and are verified.
- 11.5.5 Any *consultant* working on behalf of the Council will:
- (i) comply in all respects with the Council's Contract Procedure Rules and Financial Regulations;
  - (ii) hold, where appropriate, an adequate level of professional indemnity insurance to cover any loss that may arise;
  - (iii) produce all records relating to the contract on request during the currency of the contract;
  - (iv) pass all relevant records to the *Service Manager* on completion of the contract, to be maintained in accordance with Rule 6.
- 11.5.6 There may be instances when the use of these Contract Procedure Rules to appoint a consultant would be inappropriate, for example when engaging a barrister or other consultant where quality of performance is more important than the lowest tender. In such instances, consultants will be engaged subject to the following estimated values:
- (i) up to £10,000: at the discretion of a *Service Manager*;
  - (ii) £10,001 - £50,000: at the discretion of the *Service Unit Manager* in consultation with the *Deputy Managing Director*;
  - (iii) over £50,000: subject to selection by a panel including the *Service Manager*, *Deputy Managing Director* and one appropriate elected Member.

11.5.7 For all types of *consultants*, the appropriate *Service Manager* will:

- (i) ensure that consultancies can be properly funded, within an approved budget and expenditure code;
- (ii) consider the type of contract and how payments will be made;
- (iii) draw up a written contract with any *consultants* engaged;
- (iv) appoint a project manager to manage and monitor each consultancy project;
- (v) ensure that all documentation relating to a proposed consultancy is collated by an experienced officer in consultation with the Legal Services Manager if appropriate.

11.5.8 When grants are awarded to outside bodies to fund *consultants* (for example to carry out feasibility studies) the organisation concerned will be responsible for appointing and monitoring the *consultants*.

## 11.6 Information Technology

11.6.1 The procurement of information technology should follow all other rules but in addition the following requirements apply.

11.6.2 For all information technology purchases, approval must be sought from the South Worcestershire ICT Shared Service (SWICTSS).

11.6.3 Any extension or additional modules to software may be procured without a Tendering process if:

- (i) the original system was procured through a full Tendering exercise;
- (ii) the contracts for the system and any support and maintenance contracts are still in term;
- (iii) the cost of additional modules does not exceed 25% of the original purchase price;
- (iv) the total cumulative price does not exceed the OJEU Threshold; and
- (v) the proposed purchase has had a technical sign off by the SWICTSS and the South Worcestershire Procurement Manager

## 12. PRE-TENDER MARKET RESEARCH AND CONSULTATION

12.1 The *Authorised Officer* responsible for the purchase:

- may consult potential suppliers prior to the issue of the *invitation to tender* in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential supplier or tenderer, but
- must not seek or accept technical advice on the preparation of an *invitation to tender or quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential suppliers/tenderers or distort competition, and
- should seek advice as appropriate, for example from the South Worcestershire Procurement Manager and the Legal Services Manager.

## 13. STANDARDS AND AWARD CRITERIA

13.1 The *Authorised Officer* must ascertain whether there are any relevant British, European or international standards which apply to the subject matter of the contract. The officer must include those standards which are necessary to properly describe the required quality. *The Legal Services Manager* must be consulted if it is proposed to use standards other than European standards.

13.2 The *Authorised Officer* must define award criteria that are appropriate to the purchase and designed to secure an outcome giving value for money for the Council. The basic criteria are:

- 'lowest price' where payment is to be made by the Council;
- 'highest price' if payment is to be received; or
- 'most economically advantageous' - where considerations other than price also apply.
- local training and employment opportunities

If the last criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters.

13.3 *Award criteria* must not include:

- *Non-commercial* considerations: (fully explained in definitions appendix);
- matters which discriminate against suppliers from the *European Economic Area* or signatories to the *Government Procurement Agreement*.

## 14. INVITATIONS TO TENDER/QUOTATIONS

**Please use standard documentation when possible**

14.1 All *invitations to tender* must state that no tender will be considered unless it is received by the date, place and time stipulated. Tenders delivered in contravention of this clause will not be considered.

14.2 All *invitations to tender* shall include the following:

- (i) a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- (ii) requirement for tenderers to declare that the *tender* content, price or any other figure or particulars concerning the *tender* have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose);
- (iii) requirement for tenderers to complete fully and sign all *tender* documents including a form of *tender* and certificates relating to canvassing and non-collusion;
- (iv) notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense;

- (v) a description of the *award procedure* and, unless defined in a prior advertisement, a definition of the award criteria in objective terms and if possible in descending order of importance;
- (vi) notification that no tender will be considered unless it is returned via the Council's E-procurement System;
- (vii) a stipulation that any *tenders* submitted by fax or other electronic means (excluding any formal electronic tendering arrangements) shall not be considered;
- (viii) the method by which any arithmetical errors discovered in the submitted *tenders* will be dealt with, in particular, whether the overall price prevails over the rates in the tender or vice versa.

14.3 All invitations to *tender* or quotations must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 16).

14.4 The invitation to *tender* or *quotation* must state that the Council is not bound to accept any *tender* or *quotation*.

14.5 The Council's E-procurement Portal will be used to advertise and manage the procurement process. Please contact the Procurement Team for further information.

14.6 All potential suppliers invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

14.7 A number of procurement guidance documents are available to assist with the procurement please click on links below.

**Please click [here](#) for a Guide to Specification Writing**

**Please click [here](#) for an Invitation to Quote template that may be used**

**Please click [here](#) for an Invitation to Tender template that may be used**

## 15. SHORTLISTING

15.1 Any *shortlisting* must have regard to the financial and technical standards relevant to the contract and the *award criteria*. Special rules apply in respect of the *EU Procedure*.

15.2 Where select lists are used, shortlisting may be done by the *Authorised Officer* in accordance with the shortlisting criteria drawn up when the select list was compiled (see Rule 7.2). However, where the *EU procedure* applies, select lists may not be used.

## 16. SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS

16.1 Potential suppliers must be given an adequate period in which to prepare and submit a proper *quotation* or *tender*, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of tenders. *The EU procedure* lays down specific time periods.

**Please click [here](#) for Timescales guidance**

**Please click [here](#) for a Guide to EU Tenders and thresholds**

16.2 The majority of Tenders will be submitted via the Council's E-Procurement Portal. Please contact the Procurement Team for further information.

Tenders shall;

- i. include the price(s) requested for the goods, services or works and all other information requested in the invitation to Tender.
- ii. be sent to arrive via the E-Procurement Portal by the stated deadline.

16.3 Should the Council's E-Procurement portal not be used Tenders should be submitted as follows;

16.3.1 Tenders must be returned to the Council's *Authorised Officer*. The tender envelope will be marked "Tender for..." the name of the contract to which the tender relates.

16.3.2 Tenders received by fax or other electronic means (e.g. email) must be rejected,

16.3.3 *Authorised Officers* must not disclose the names of potential suppliers to any staff involved in the receipt, custody or opening of tenders.

16.3.4 *The Legal Services Manager* shall be responsible for the safekeeping of *tenders* until the appointed time of opening. Each *tender* must be:

- suitably recorded so as to subsequently verify the date and precise time it was received;
- adequately protected immediately on receipt to guard against amendment of its contents;
- recorded immediately on receipt in the *tender register*.

16.4 All Tenders received via the Council's E-Procurement Portal shall be;

16.4.1 opened at one time after the deadline in the presence of two *Authorised Officers* of the Council.

16.4.2 recorded in the register of Tenders

16.5 Should the Council's E-Procurement Portal not be used The Legal Services Manager must ensure that all *tenders* are opened at the same designated time when the period for their submission has ended. *Tenders* must be opened in the presence of at least:

- the Legal Services Manager or his official representative;
- the appropriate *Service Manager*, or their official representative;
- (for high value and *EU contracts*) the Leader of the Council or his official representative.

16.6 Upon opening, a summary of the main terms of each *tender* (i.e. significant Issues that are unique to each *tender* submission and were not stated in the *tender* invitation documents such as *tender* sum, construction period, etc) must be recorded in the *tender register*. The summary must be signed by those present at the *tender* opening.

16.7 Late *tenders* will not be considered unless there is conclusive evidence of Posting, in time for delivery by the due date/time, and the other tenders have not been opened. Late *tenders* will be opened in the presence of the Legal Services Manager's official representative, to ascertain the name of the tenderer so that the tender may be promptly returned.

## 17. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

17.1 Providing clarification of an *invitation to tender* to potential or actual tenderers, or seeking clarification of a *tender*, whether in writing or by way of a meeting is permitted. However, discussions with tenderers after submission of a *tender* and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-*tender* negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an *EU procedure* where this might distort competition, especially with regard to price.

17.2 If post-tender negotiations are necessary, then such negotiations shall only be undertaken with tenderer(s) identified as having submitted the best *tender(s)*. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the tender documents. *Authorised Officers* appointed to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

17.3 Whenever it is proposed to enter into post-tender negotiation, the *Legal Services Manager* must be consulted for advice. Negotiations must be conducted by a team of at least two officers.

17.4 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

## 18. TENDER EVALUATION, AWARD OF CONTRACT, AND DE-BRIEFING TENDERERS

18.1 Apart from the debriefing required or permitted by these contract procedure rules, the confidentiality of quotations, *tenders* and the identity of tenderers must be preserved at all times and information about one tenderer's response must not be given to another tenderer.

18.2 Tenderers must complete all tender documentation. Any omissions may render a tender null and void, with no further consideration given.

18.3 *Tenders* must be evaluated impartially in accordance with the award criteria. Particular attention will be given to rates and prices, percentage adjustments, balancing items, ambiguities, qualifications and alternative offers. The following must also be included in the evaluation:

- comparison of submitted *tender* prices with pre-tender estimates, and resolution of any discrepancies;
- overall *value for money* assessment;

- quality of performance on any previous Council contracts;
- previous experience;
- views of referees;
- financial standing;
- capability of EU compliance, where appropriate;
- proposals for health and safety, equality and diversity, and dealing with complaints;
- any significant environmental features of goods and services such as life expectancy, energy efficiency, recyclability.
- Contribution to delivering the priorities and goals in our corporate strategy

**Please click [here](#) for a Guide to Evaluating Tenders**

- 18.4 Compliant *tenders* must be checked for arithmetic accuracy, including the correct extension and summation of rates tendered in the bill of quantities. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their *tender*. Alternatively, if the rates in the tender, rather than the overall price, were stated within the *tender* invitation as being dominant, an amended tender price may be requested to accord with the rates given by the tenderer.
- 18.5 No amendments to *tender* rates after submission of tenders will be permitted. If a tenderer withdraws or the revised tender is no longer the most competitive, the next most competitive will be examined and dealt with in the same way.
- 18.6 *Authorised Officers* may accept quotations and tenders received in respect of proposed contracts, provided they are within the approved estimate and have been sought and evaluated fully in accordance with these contract procedure rules. In respect of proposed High Value and EU contracts, the approval of the relevant *Portfolio Holder* will be obtained, and the awarding of the contract will be reported to the next Executive Board and minuted.
- 18.7 For EU contracts, the *Authorised Officer* must notify all tenderers simultaneously and as soon as possible of the intention to award the contract to the successful tenderer. The *Authorised Officer* must provide unsuccessful tenderers with a period of at least ten calendar days (Standstill Period) in which to challenge the decision before awarding the contract. If the decision is challenged by an unsuccessful tenderer then the *Authorised Officer* shall not award the contract and shall immediately seek the advice of the *Legal Services Manager*
- 18.8 Once the contract has been let, all unsuccessful tenderers will be notified of the results, and may be informed of the successful price on request. The letter of acceptance will not seek to qualify the terms and amounts previously tendered by the contractor.
- 18.9 If a tenderer requests in writing the reasons for a contracting decision, the *Authorised Officer* must give the reasons in writing within reasonable time frame of the request.

## CONTRACT AND OTHER FORMALITIES

### 19. CONTRACT DOCUMENTS

#### 19.1 Relevant contracts

- 19.1.1 All *relevant contracts* that exceed the High Value threshold shall be in writing.
- 19.1.2 All *relevant contracts*, irrespective of value, shall clearly specify:
- what is to be supplied (i.e. the work, goods, materials or services to be delivered or undertaken);
  - a defined quality of provision, requiring where appropriate that all works carried out or goods supplied will conform to current British Standards or Codes of Practice;
  - the provisions for payment (i.e. the price to be paid and when, including details of any discounts or deductions, and where appropriate a means of defining price adjustments for any subsequent amendment of requirements);
  - the time, or times, within which the contract is to be performed, and any other conditions and terms as may be agreed between the parties;
  - the provisions for the Council to terminate the contract.
- 19.1.3 The Council's ordering procedures, as laid down in Financial Regulations, must be used wherever possible.
- 19.1.4 The formal advice of the *Legal Services Manager* must be sought in the following instances:
- where the *total value* exceeds £50,000;
  - those involving leasing arrangements;
  - where it is proposed to use a supplier's own terms;
  - those that are complex in any way.
- 19.1.5 Every relevant contract over the High Value threshold must, where applicable, also state clearly:
- any insurance requirements. This will include, where appropriate, Professional Indemnity insurance, which will protect the Council's interests and cover any potential losses. An adequate level of insurance will be determined in consultation with the Council's insurers;
  - health and safety requirements;
  - performance and complaints monitoring requirements;
  - data protection requirements, if relevant;
  - any professional, quality or EU standards that must be met;
  - any Council expectations regarding environmentally sustainable working practices;
  - equalities and diversity requirements;
  - freedom of information requirements;
  - that when *agents* are used to let contracts, they must comply with the Council's contract procedure rules;

- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes;
- that the contractor may not assign or sub-contract without prior written consent from the Council's *Authorised Officer*.
  - requirement to supply relevant TUPE information.

## 19.2 Contract formalities

19.2.1 Agreements shall be completed by the following as a minimum:

Total Value (Rule 11.1.1)	Method of Completion	By
Low value	Signature	Authorised Officer
Medium value	Signature	Service Manager
High value	Signature/Sealing	See Rule 19.3.1

19.2.2 The contract letting process must allow sufficient time for the legal documentation to be completed prior to the start of the contract. All contracts should be concluded in writing before the supply, service or construction work begins, except in exceptional circumstances where it is essential that the contract starts before formal contract signing. In such cases reasons will be clearly noted on the contract file.

19.2.3 The *Authorised Officer* responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

## 19.3 Sealing

19.3.1 Where it is appropriate for contract documents to be sealed by the Council, this will be done in accordance with the Council's constitution.

19.3.2 Copies of all contracts entered should be stored with the Legal Section and electronic copies forwarded to the South Worcestershire Procurement Manager to enable compilation of the Contracts Register as set out in the Transparency Code.

19.3.3 Details of all contracts should be added to and maintained on the Contracts Register maintained by the Legal Section.

## 20. BONDS, PARENT COMPANY GUARANTEES AND LIQUIDATED DAMAGES

20.1 *Authorised Officers* must consult the *Deputy Managing Director* about whether a parent company guarantee is necessary when it is proposed to appoint a contractor who is a subsidiary of a parent company and:

- the *total value* of the proposed contract exceeds £1 million; or
- award is based on evaluation of the parent company; or
- there is concern about the stability of the contractor.

20.2 *Authorised Officers* must consult the *Deputy Managing Director* about whether a bond is needed:

- where the total value of the proposed contract exceeds £1 million; or
- where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the contractor.

20.3 If a *bond* is deemed necessary, the amount will be at least 10% of the contract sum (or its annual value where the contract relates to continuing service). Any decision not to require a bond will be recorded on the appropriate file.

20.4 Provision should be made for liquidated damages to be paid by the contractor if the contract is not completed within the time specified. This will normally be the case for contracts over £500,000 but may also be appropriate for lesser value contracts. The amount of liquidated damages will be determined by the appropriate *Service Manager* in consultation with the *Deputy Managing Director*.

20.5 In certain circumstances, both a *parent company guarantee* and a *bond* may be required.

## 21. PREVENTION OF CORRUPTION

21.1 Officers and Members must not invite or accept any gift or reward in respect of the award or performance of any contract. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal in the case of Officers and a reference to the Standards Committee in the case of Members. Where appropriate a matter may be referred to the Police.

21.2 The following clause must be put in every written Council contract:

*“The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:*

- offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or*
- commits an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or*
- commits any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.*

*Any clause limiting the Contractor’s liability shall not apply to this clause.”*

## 22. BRIBERY ACT 2010

- 22.1 The Bribery Act 2010 sets out a number of prohibited acts which, if committed, carry criminal sanctions. Specifically the Council is covered by the offences in the following sections of the Act:
- Section 1: the offence of bribing another person;
  - Section 2: the offences relating to being bribed;
  - Section 6: the offence of bribing a foreign public official.
- 22.2 Government guidance highlights as the main example of how an employee of a public authority may commit an offence under the Act is if they accept a payment in return for manipulating the process or outcome of a public procurement in favour of a particular bidder.
- 22.3 The Council has an overriding duty to prevent and eliminate bribery not only in the way that it affects employees but also by ensuring that no contractors have been involved in any bribery offences. The Government has confirmed that a conviction for an offence under the Act will trigger discretionary not mandatory exclusion from competing for public contracts under regulation 23 of the Public Contracts Regulation 2015
- 22.4 If you have any concerns in respect of bribery by another *officer* and/or a contractor/tenderer then please inform the *Deputy Managing Director* or the *Legal Services Manager* immediately. Failure to do so could result in criminal proceedings against you personally.

## 23. DECLARATION OF INTERESTS

- 23.1 Officers and Members must have regard to their relevant codes of conduct.
- 23.2 Officers must declare to their *Service Manager* any interests which could bring about conflict with the Council's interests.
- 23.3 Members must disclose all relevant interests on their register of interest forms, and at any meetings they attend.

## CONTRACT MANAGEMENT

### 24. MANAGING CONTRACTS

- 24.1 All contracts must have a named Council *contract manager* for the entirety of the contract. This will normally be the appropriate *Service Manager* or a named deputy.
- 24.2 All contract managers will comply with these *Contract Procedure Rules* and any associated Council guidance.

### 25. RISK ASSESSMENT AND CONTINGENCY PLANNING

- 25.1 A business case must be prepared for all procurements with a potential value over the *EU threshold*. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

25.2 For all High Value contracts, contract managers must:

- maintain a risk register during the contract period;
- undertake appropriate risk assessments;
- for identified risks, ensure contingency measures are in place;
- undertake and record such checks as are necessary to ensure that the contractor's insurance policies remain in force for the duration of the contract.

## 26. CONTRACT MONITORING, EVALUATION AND REVIEW

26.1 During the life of a contract, the *contract manager* must monitor the contractor in respect of:

- performance;
- risk management;
- compliance with specification and contract;
- cost;
- any value for money requirements;
- user satisfaction.

26.2 In the case of High Value contracts, the *Deputy Managing Director* will be responsible for budget monitoring and reporting any particular areas of concern to the Senior Management Team and the appropriate Executive Board member.

## **DEFINITIONS**

### **APPENDIX**

#### **Agent**

A person or organisation acting on behalf of the Council, or on behalf of another organisation.

#### **Authorised Officer**

The officer designated to deal with the contract in question. This is usually the Service Manager or their nominated deputy.

#### **Award criteria**

The criteria by which the successful quotation or tender is to be selected .

#### **Award procedure**

The procedure for awarding a contract .

#### **Best value**

The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council.

This terminology has now in many instances been superseded by value for money.

#### **Bond**

An insurance policy intended to protect the Council against a level of cost arising from the contractor's failure. If a contractor does not fulfil their contractual obligations, the Council can claim the sum of money specified in the bond (often 10% of the contract value).

#### **Cabinet**

See Executive Board.

#### **Chief Finance Officer**

The Deputy Managing Director or such other officer as may be designated by him.

#### **Chief Officer**

The Officers defined as such in the constitution.

#### **Code of conduct**

The code regulating conduct of Officers. See Council Personnel Policy C4 on the Council Intranet. A national code of conduct is also in the course of preparation.

#### **Committee**

A committee which has power to make decisions for the Council, for example a joint committee with another local authority, but not a scrutiny committee.

#### **Constitution**

The constitutional document approved by the Council which:

- allocates powers and responsibility within the Council and between it and others;
- delegates authority to the Executive Board, Committees, Portfolio Holders and Officers;
- regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

**Consultant**

Someone engaged for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work.

**Contract Manager**

The named Council officer, usually a Service Manager, who is responsible for sponsoring a contract from inception to completion.

**Contracting decision**

Any of the following decisions:

- composition of approved lists;
- withdrawal of invitation to tender;
- whom to invite to submit a quotation or tender;
- Shortlisting;
- award of contract;
- any decision to terminate a contract.

**Corporate contract**

A contract let to benefit all sections of the Council, to support the Council's aim of achieving value for money.

**Deputy Managing Director**

As defined in the constitution.

**EU procedure**

The procedure required by the EU where the total value exceeds the EU threshold.

**EU threshold**

The contract value at which the EU public procurement directives apply. The values usually change every 2 years.

**European Economic Area**

(EEA) provides for the free movement of persons, goods, services and capital through three of the four member states of the European Free Trade Association (EFTA) – Iceland, Liechtenstein and Norway – and 27 of the 28 member states of the European Union (EU)..

**Executive Board**

The Council's Executive Board as defined in the constitution.

**Financial Regulations**

The financial regulations outlining Officer responsibilities for financial matters issued by the Deputy Managing Director in accordance with the constitution.

**Framework Agreement**

An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

**Government Procurement Agreement**

The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.

**Legal Services Manager**

As identified in the constitution.

**High profile**

A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong.

**High risk**

A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.

**High Value contract**

Where the value exceeds the threshold as stated in the summary of essential requirements in the introduction to these contract procedure rules. Formal written tenders are required. See also EU threshold.

**Invitation to tender**

Invitation to tender documents in the form required by these contract procedure rules.

**Key decision**

Decisions that are defined as key decisions in the constitution.

**Line Manager**

The Officer's immediate superior or the Officer designated by the Service Manager to exercise the role reserved to the line manager by these contract procedure rules.

**Low Value contract**

As defined in the summary of essential requirements in the introduction to these contract procedure rules. Verbal estimates are required, confirmed in writing over a particular value.

**Managing Director**

The Council's Chief Executive Officer, as defined in the constitution.

**MEA**

Most Economically Advantageous.

**Medium Value contract**

As defined in the summary of essential requirements in the introduction to these contract procedure rules. Written quotations are required.

**Nominated suppliers and sub-contractors**

Those persons specified in a main contract for the discharge of any part of that contract.

## **Non-commercial considerations**

- (a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').
- (b) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.
- (c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.
- (d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').
- (e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.
- (f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.
- (g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.
- (h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984.

Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with best value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (TUPE) may apply.

## **Parent company guarantee**

A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails in its contractual obligations, the Council can require the parent company to rectify the situation.

## **Portfolio Holder**

A member of the Executive Board to whom political responsibility is allocated in respect of specified functions.

## **Potential Tenderer**

Any person who asks or is invited to submit a quotation or tender.

## **Priority services**

Those services required to be tendered as defined in the EU public procurement directives.

## **Procurement strategy**

The document setting out the Council's approach to procurement and key priorities for the next few years.

## **Quotation**

A quotation of price and any other relevant matter (without the formal issue of an invitation to tender).

## **Relevant contract**

Contracts to which these contract procedure rules apply (see Rule 4).

**Select Lists**

A list drawn up in accordance with Rule 7.2.

**Senior Management Team**

Collective name for Managing Director and Senior Managers.

**Senior Manager**

Heads of Service who report directly to the Managing Director, collectively known as the Senior Management Team.

**Service Manager**

Managers who report to the Senior Managers and have direct responsibility for a service.

**Shortlisting**

The process of selecting potential suppliers or contractors who are to be invited to quote or bid or to proceed to final evaluation.

**Statutory basis**

The Local Government Act 1972 (section 135) requires Local Authorities to introduce and implement standing orders (procedure rules) for contracts made “by them or on their behalf for the supply of goods and materials or for the execution of works”.

The Local Government Act 1988 (Part II) lays down general rules as to contracting practice. All contracts let by the Council will comply with these rules.

The Local Government Act 1999 and associated guidance requires local authorities to make arrangements to secure best value and continuous improvement in exercising current functions and also when considering procurement options for future service delivery.

**Tender**

A formal proposal submitted in response to an invitation to tender.

**Tenderer**

Any person who submits a formal quotation or tender in response to an invitation to tender.

**Tender register**

The register kept by the Legal Services Manager to record details of tenders (see Rule 19.3.3).

**Total value**

The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:

- (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period;
- (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;
- (c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48;
- (d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result;
- (e) for nominated suppliers and sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor.

## **TUPE**

### **Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246)**

Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting-out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

### **Value for Money**

Value for money is not just the lowest possible price: it combines goods or services that fully meet your needs, with the level of quality required, delivery at the required time, and at an appropriate price.