

**CONTRACT PROCEDURE RULES****GENERAL****1. Interpretation**

Words and expressions used in these Rules are to be interpreted in accordance with the provisions of Schedule 1.

**2. Application**

These Rules apply to every procurement contract made by or on behalf of the Council except contracts:

- 2.1. for the acquisition of any interest in land;
- 2.2. for the lending or borrowing of money;
- 2.3. of employment (making an individual a direct employee of the Council).

**3. Exceptions**

3.1. Subject to the requirements of EU Directives, EU Treaties, Acts of Parliament and UK Regulations the following contracts may be placed by direct negotiation with one or more suppliers, contracts:-

- 3.1.1. for supplies or materials which are available only as proprietary or patented articles from one contractor or supplier and for which the Appropriate Chief Officer, on the advice of the Category Manager, decides that there is no reasonably satisfactory alternative available in the European Union and for repairs to, or the supply of, parts of existing proprietary or patented articles, including machinery or plant; a note of that decision and the reasons for it must be retained on the appropriate file and where the contract exceeds £50,000, a copy of the note and reasons must be provided to the Director of Corporate Resources.
- 3.1.2. for works of art, museum specimens or historical documents;
- 3.1.3. which constitute a variation or extension of an existing contract, as permitted by the contract and/or the Council's Standard Financial Instructions subject to the provisions of Rule 27 (Contract Variations), Rule 28 (Contract Extensions) and Rule 29 (Novation of Existing Contracts);
- 3.1.4. for residential placements sought for an individual with a registered care provider of their choice under the National Health Service and Community Care Act 1990, or for individual school placements sought for a child with Special

Educational Needs (SEN), or where the particular needs of an individual (either an adult or a child) require a particular social care package, which is only available from a particular provider in the opinion of the Appropriate Chief Officer. In each case the Appropriate Chief Officer must ensure that the provider meets the relevant national minimum standards (for example those standards set by the Care Homes Regulations 2001, OFSTED and HMI) and that a record of the reasons for the choice of provider is maintained on the individual's case notes. A record of the annual cumulative expenditure with each provider will be maintained by each directorate and made available for audit.

In the above circumstances, the Procuring Officer must retain on file a record of the negotiations surrounding the contract awards and notify the appropriate Category Manager.

3.2. Other exceptions to these Rules may only be made within the relevant law and with the authority:-

3.2.1. of the Appropriate Chief Officer where the Estimated Value of the proposed contract is under £50,000. The Appropriate Chief Officer shall maintain a record specifying the reason for all such departures; or

3.2.2. of the Executive where it is satisfied that an exception is justified on its merits. In an urgent case the Chief Executive in consultation with the Council Leader or Deputy Leader (save where this is not practicable) may direct that an exception be made subject to this being reported to the next meeting of the Executive.

#### **4. Financial Thresholds and Delegation**

4.1. Financial limits and thresholds within these Rules may be varied from time to time by the Corporate Governance Committee.

4.2. Arrangements for delegation of functions to officers within these Rules may be varied from time to time by the Chief Executive.

#### **5. Annual Reporting**

The Director of Corporate Resources in consultation with the County Solicitor shall at least once in each financial year submit a report to the Corporate Governance Committee in relation to the operation of these Rules including among other things any departures from or proposed revisions to these Rules and/or changes required to

accommodate the requirements of UK and EU procurement law as may be necessary from time to time.

## **6. Prevention of Corruption / Conflict of Interest**

6.1. The Employee Code of Conduct (Part 5b) of the Constitution applies to any Procurement Exercise.

6.2. The following clause will be included as a standard term and condition in every written contract in accordance with Rule 21.1:

"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:

(a) offer, give or agree to give to anyone any personal inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or

(b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or

(c) commit 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".

## **PROCUREMENT PRINCIPLES**

### **7. General Requirements**

7.1. Every contract or official order for works, supplies or services made by the Council shall be for the purpose of implementing the Council's policies and must be made in accordance with the Council's duty of Best Value and Corporate Procurement Strategy.

7.2. The Procuring Officer must ensure that whenever Centrally Negotiated Contracts have been approved by a Category Manager that supplies, services and works are ordered via these.

7.2.1. The Procuring Officer must notify the appropriate Category Manager in all cases where he believes better value for money can be clearly demonstrated outside of these approved Centrally Negotiated Contracts identified in 7.2. The Category Manager will take a decision as to the appropriate course of action.

All such instances involving ESPO must be notified to ESPO by the Category Manager.

- 7.3. Procedures set out in the relevant EU Directives, EU Treaties, Acts of Parliament and UK legislation must be complied with at all times.
- 7.4. Based on criteria laid down by the Executive, the Director of Corporate Resources will be responsible for evaluating the financial status of Tenderers and suppliers.
- 7.5. The Procuring Officer must ensure that sufficient budget provision has been agreed with the budget holder prior to any Procurement Exercise being undertaken.
- 7.6. Procurement Exercises may be undertaken by electronic means provided that:-
  - 7.6.1. the requirements of these Rules are followed with only such modifications as may be necessary to allow for procurement by such means; and
  - 7.6.2. any electronic tendering system has been approved by the County Solicitor in consultation with the Director of Corporate Resources.
- 7.7. Subject to the provisions of Rule 25.2 (Framework Agreements) contracts shall not be longer than 5 years (including extensions) or of indeterminate length without the written approval of the Director of Corporate Resources on advice of the appropriate Category Manager. Any such approval shall be sought prior to the commencement of the Procurement Exercise.

## **PROCUREMENT EXERCISE**

### **8. Pre-Estimate**

- 8.1. Before any Procurement Exercise is begun the Procuring Officer must calculate its Estimated Value in accordance with this clause.
- 8.2. The Estimated Value shall be calculated as follows:
  - 8.2.1. Where the contract period is fixed the Estimated Value shall be the total estimated maximum value of the supplies, services or works to be supplied over the period covered including any extensions to the contract;
  - 8.2.2. Where the contract period is indeterminate the Estimated Value shall be calculated by multiplying the estimated average monthly value by 48;
  - 8.2.3. For feasibility studies the Estimated Value shall be the value of the scheme or contracts which may be awarded as a result;
  - 8.2.4. For Concessions the Estimated Value shall be the estimated gross value of the service before income over the contract period.

8.2.5. All estimates must exclude Value Added Tax (VAT) but must include all other taxes and duties.

8.2.6. Periodic purchases for the same requirement, whether that is from the same or different suppliers, must be aggregated over a minimum of a 12 month period.

8.2.7. Where the Council may be contributing only part of the total value of a contract, it is nevertheless the total Estimated Value that should be applied in determining the correct procedures to be applied under these Rules.

8.3. Where there is any doubt as to the Estimated Value then the procedure for the higher threshold in Rule 9 must be used.

8.4. For all estimates of £50,000 or more the Procuring Officer must notify in writing the appropriate Category Manager of the Estimated Value before proceeding. A written record of that Estimated Value must then be kept on file by the Procuring Officer.

## **9. Procurement Exercise Process**

9.1. Based on the Estimated Value, as identified in Rule 8, Table 1 below makes provision for the minimum requirements for the subsequent Procurement Exercise.

9.2. All contracts with an Estimated Value of £50,000 or more must be referred to ESPO prior to the commencement of the Procurement Exercise by the Procuring Officer unless the Procuring Officer acting on advice of the Category Manager considers that the Council can better comply with its duty of Best Value by not using ESPO. All such cases must be confirmed in writing to the Director of Corporate Resources.

Table 1: Minimum requirements for a Procurement Exercise:

| Estimated Contract Value |              | Procurement Process   | Minimum Contract Opportunity Publication   | Documentation   |
|--------------------------|--------------|---|--|---|
| From                     | Up To        |   |  |   |
| £0                       | £1,000       | Obtain a minimum of one oral/written Quotation  | None   | Record details  |
| £1,000                   | £5,000       | Seek three oral/written Quotations (where practical)  | None   | Record details.<br>(If three Quotations were not obtained a record of the reasons for this must maintained) |
| £5,000                   | £50,000      | Seek three written Quotations<br><br>(to be based on a Request for Quotation document where practical)<br><br>For exceptions see Rule 3.2 | Where practical and appropriate contracts with an Estimated Value of £25,000 or more should be advertised on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market. | Request for Quotation issued by the Procuring Officer and Quotations received.                              |
| £50,000                  | EU Threshold | Formal Tender Process   | Website approved by the Director of Corporate Resources for the purpose of notifying the supply market   | Formal Tender and sealed bids (may be submitted via an electronic tendering system, see 7.6)                |
| EU Threshold             | Above        | Formal Tender Process   | OJEU and on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market   | Formal Tender and sealed bids (may be submitted via an electronic tendering system, see 7.6)                |

9.3. Details of oral Quotations must be recorded appropriately.

9.4. Where any Centrally Negotiated Contracts have been set up for supplies, services or works then these Rules are deemed to have been satisfied when the arrangement was set up and do not have to be further applied. When the Centrally Negotiated Contract is a Framework Agreement then the Procuring Officer must comply with clause 25.3.

## 10. Award Methodology and Evaluation Criteria

10.1. The award methodology must be either:

- the most economically advantageous Tender based on a range of predetermined evaluation criteria which must be set out in the Invitation to Tender; or
- the lowest price (where the Council is to pay the supplier); or
- the highest price (where the supplier is to pay the Council).

- 10.2. In the case of a Procurement Exercise with an Estimated Value of £50,000 or more the award methodology and short-listing methodology must be agreed in consultation with the appropriate Category Manager and recorded in writing by the Procuring Officer in advance of the issue of the Invitation to Tender and a copy retained on file.
- 10.3. In all cases where the Estimated Value is equal to or exceeds the EU threshold the evaluation criteria for a most economically advantageous Tender must be prepared in consultation with the Category Manager in advance of the issue of the Invitation to Tender and a copy retained on file.
- 10.3.1. The Procuring Officer must notify all Tenderers of the award methodology and evaluation criteria being used in the case of the contract in question. If weightings are to be applied to the criteria then the Procuring Officer must ensure that these are also incorporated into the Invitation to Tender.

## **11. Contract Opportunity Publication**

- 11.1. Unless otherwise agreed by the Director of Corporate Resources the Procuring Officer must ensure, for all Procurement Exercises with an Estimated Value of £50,000 or more but less than the relevant EU threshold, that public notice is given on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market.
- 11.1.1. The publication of the notice must be made at least fifteen working days before the last date for receipt of Tenders or Quotations.
- 11.1.2. The notice must express the nature and purpose of the Procurement Exercise, stating where further details may be obtained and inviting Tenders or Quotations in response to the notice.
- 11.2. If the Estimated Value exceeds the relevant EU threshold the Procuring Officer must ensure that notice is first published in the OJEU and then on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market. Except for services classed as Part B services which need only be advertised on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market.
- 11.2.1. Under no circumstances must a public notice appear in any form before publication in the OJEU and neither should any advertisement contain any more information than that published in the OJEU.

- 11.3. Rule 11 is a minimum requirement and does not preclude further contract opportunity publication where appropriate (e.g. in the local newspaper, trade or professional journal, the Council website).

## **FORMAL TENDER PROCESS**

### **12. Open Tendering**

- 12.1. Under Open Tendering, Procuring Officers must send Invitations to Tender to all those Persons who respond to the public notice and who meet the requirements stated in the Contract Opportunity Publication.

### **13. Restricted Tendering**

- 13.1. Under Restricted Tendering, Procuring Officers need only send Invitations to Tender to:
- 13.1.1. not less than four of the Persons who respond to the public notice and who best meet the short-listing methodology agreed in Rule 10; or
  - 13.1.2. where fewer than four Persons have applied or are considered suitable, to all those Persons who equal or exceed the minimum requirements for the short-listing methodology agreed in Rule 10.
- 13.2. In addition to Rule 11 Procuring Officers may also invite Tenders from all or a selected number of Persons included in any relevant Standing List (Rule 24).
- 13.2.1. In the case of a Procurement Exercise for a Part A service where the Estimated Value is equal to or more than the EU threshold, Procuring Officers may only consider Persons from a Standing List where they have been subject to the same short-listing methodology as those Persons who responded to the Contract Opportunity Publication (Contract Notice).

### **14. Negotiated Procedure and Competitive Dialogue Procedure**

- 14.1. Where the Negotiated Procedure or Competitive Dialogue Procedure is used the requirements of the EU Directive and these Rules shall be followed.
- 14.2. The Negotiated Procedure or Competitive Dialogue Procedure must only be used with the prior approval of the Director of Corporate Resources.



## 15. Invitations to Tender

- 15.1. Every Invitation to Tender must specify the latest day and hour and the place appointed for the receipt of Tenders and must state the effect of Rule 16.
- 15.2. Procuring Officers must give all Tenderers the same information about the Procurement Exercise and in particular information relating to the tender process, specification, award methodology and evaluation criteria.
- 15.3. Procuring Officers must also give all Tenderers the same information relating to questions, answers and clarifications raised during the Procurement Exercise unless they relate solely to another Person's Tender.
- 15.4. Tenders where the Estimated Value is below £50,000 may be returned directly to the Procuring Officer.
- 15.5. All Tenders, where the Estimated Value is £50,000 or more, must be addressed to and opened by the Chief Executive or handled via an electronic tendering system approved in accordance with Rule 7.6.
  - 15.5.1. Where Tenders are to be received by the Chief Executive, the Procuring Officer must send to the Chief Executive a note of the subject and the closing date and time and (where appropriate) a list of the Persons invited to tender together with the Estimated Value before the closing date for receipt of Tenders.

## 16. Irregular Tenders

- 16.1. An Irregular Tender must not be accepted by either the Chief Executive or the Procuring Officer, other than in accordance with this Rule.
- 16.2. A Tender is not valid unless it has been delivered to the place appointed in accordance with Rule 15 and not later than the appointed day and hour.
- 16.3. Tenders where the Estimated Value is £50,000 or more are not valid unless they are received in a plain sealed envelope or parcel addressed to the Chief Executive. The envelope or package must bear the word "Tender" followed by the subject to which it relates.
- 16.4. Where a Tender has been received which is an Irregular Tender in that it does not fully comply with the instructions given in the Invitation to Tender and/or because it is received after the appointed time for receipt or does not comply with Rules 16.2 and 16.3, the provisions of Rules 16.5 and 16.6 apply.
- 16.5. A Tender received after the closing date and time may be opened and evaluated in accordance with Rule 17 if there is clear evidence of it having:-

- a) been posted by first class post at least a day before the closing date; OR
- b) been posted by second class post at least two days before the closing date;  
OR
- c) been placed in the custody of a courier who has provided written assurance of delivery prior to the closing date and time.

16.6. If in other cases of Irregular Tenders the Chief Executive considers that there are exceptional circumstances and that the Tenderer who submitted the Irregular Tender has gained no advantage from its irregularity he may determine to accept the Irregular Tender and authorise that it be opened and evaluated together with any other Tenders in accordance with Rule 17. The Chief Executive shall record in writing the reasons why each Irregular Tender has been accepted or rejected.

16.7. Irregular Tenders that the Chief Executive has rejected under this Rule must be returned to the Tenderer by the Chief Executive with a covering letter stating the reason for their rejection.

#### **17. Receipt and Opening of Tenders**

17.1. Rule 17 applies to Tenders where the Estimated Value is £50,000 or more.

17.2. On receipt, envelopes containing Tenders must be date and time stamped by the Chief Executive and shall remain in his custody until they are opened. The Chief Executive must keep a record of all Tenders received.

17.3. Tenders must be opened at one time in the presence of not less than two Officers one of whom is not involved in the Procurement Exercise and who is designated by the Chief Executive. Each Officer must initial each Tender once opened which must also be date stamped.

17.4. Particulars of all Tenders opened must be entered by the Chief Executive upon the record which must be signed by the Officers present at the opening, together with a note of all irregular Tenders.

17.5. The Chief Executive must forthwith send a copy of the record to the appropriate Procuring Officer (with the Tenders) and must retain a copy himself.

#### **18. Errors or Discrepancies in Tenders**

18.1. Tenderers are not allowed to alter their Tenders after opening save in accordance with this Rule or Rule 19.

18.2. Where it is apparent that there has been an error in a Tender and following the closing date for receipt of Tenders but before acceptance of any Tender discussions may take place with Tenderers in order to:

- a) ensure that the Tender is constructed correctly; or
- b) ensure that the Tenderer has fully understood the specification; or
- c) seek clarification from Tenderers of cost, quality and performance indicators.

18.3. A written note of the discussions must be made to record the apparent error, date, time, detail of the discussion and any agreement reached.

### **19. Discussions and Post Tender Negotiations**

19.1. In the case where the Estimated Value was below the EU threshold, and following the closing date for receipt of Tenders but before acceptance of any Tender, the Procuring Officer may carry out Post Tender Negotiations in an attempt to secure improvements in the price or economic advantage in one or more of the following circumstances:

19.1.1. where the most competitive Tender (according to the pre-determined award methodology and evaluation criteria) submitted exceeds the Estimated Value;

19.1.2. where it is considered that the price of the most competitive Tender submitted does not represent the best value for money that can reasonably be obtained;

19.1.3. where Tenders have been invited only on the basis of unit prices or a schedule of rates and the lowest in aggregate is not the lowest on all items;

19.1.4. where the most competitive Tender contains conditions, trading terms, guarantees, or provisions relating to performance or service delivery less favourable than in other Tenders, or than stipulated for and this defect appears capable of being remedied by Post Tender Negotiations.

19.2. As a minimum in such Post Tender Negotiations, the Tenderers submitting the most competitive Tender in accordance with the award methodology and evaluation criteria (Rule 10) and all those whose Tender is within 5% of the most competitive Tender or, if there is no such Tender, the Tenderer submitting the second most competitive Tender, will be invited to participate in Post Tender Negotiations unless the Procuring Officer in consultation with the County Solicitor decides not to do so.

- 19.3. At no time during the negotiations must a Tenderer be informed of the detail of any other Tender submitted or as to whether or not the Tender he submitted was the lowest.
- 19.4. In cases where the Estimated Value is between £50,000 and the relevant EU threshold the following additional Rules shall apply:
- 19.4.1. Post Tender Negotiations may only be authorised by the Appropriate Chief Officer with the consent of the County Solicitor who must be advised of:-
- a) the reasons for conducting such negotiations in a particular case
  - b) the details of the Tenderers to be invited to attend
  - c) if it is proposed not to comply with rule 19.2, the reasons for that proposal
  - d) the process to be followed in the negotiations.
- 19.4.2. Negotiations with the Tenderer may be in writing or in person provided that:
- a) During negotiations in writing the Appropriate Chief Officer shall approve the contents of any communication and shall send a copy to the County Solicitor prior to communicating to the Tenderer; Or
  - b) During negotiations in person there must always be present at least two officers of the County Council. The County Solicitor must be notified by the Procuring Officer of the time and venue of all negotiations to be carried out and has the right to be present at any such negotiations.
- 19.4.3. A note of the negotiations will be made by one of the Officers present recording those present, the time and location of the negotiations, detail of the discussion and any agreement reached. The note shall be signed by all Officers present and a copy will be sent to the County Solicitor.
- 19.4.4. Acceptance of Tenders following Post Tender Negotiations must be in accordance with Rule 20 except that the Appropriate Chief Officer must also inform the County Solicitor of the name of the successful Tenderer and of the Tender price.
- 19.4.5. The County Solicitor will maintain a record of all Post Tender Negotiations showing the date of the Tender, the date of any Post Tender Negotiations, the names of Tenderers involved in negotiations, the original price, the revised price, the revised specification, the names of the officers involved and details of the contract awarded.
- 19.4.6. Post Tender Negotiation shall not enable any material departure from the published specification. The County Solicitor shall determine whether any

proposed change to the specification constitutes a material departure and whether as a consequence other Tenderers shall be permitted to participate in Post Tender Negotiations and/or whether new Tenders should be invited, to avoid any potential allegations of competition being distorted.

19.5. Except to the extent permitted under the EU Negotiated Procedure, Post Tender Negotiations are not allowed in the case of contracts with an Estimated Value exceeding the relevant EU threshold. However, in the case of such contracts, (following the closing date for receipt of Tenders but before acceptance of any Tender) discussions may take place with Tenderers in order to:

- a) ensure that the Tender is constructed correctly; or
- b) ensure that the Tenderer has fully understood the specification; or
- c) seek clarification from Tenderers of cost, quality and performance indicators.

No other discussions may take place. Where such discussions are held, the procedures in this Rule will apply with the necessary consequential amendments so as to refer to "discussions" rather than "negotiations".

## **AWARD OF CONTRACT**

### **20. Acceptance of Tenders or Quotations**

20.1. A Tender or Quotation can only be accepted in accordance with the initial award methodology and evaluation criteria as set out in Rule 10. Any evaluation sheets completed during the Procurement Exercise must be signed by the officer carrying out the evaluation and the signed copy must be maintained on file in accordance with clause 32.

20.2. Any other Tender or Quotation may only be accepted with the prior written approval of:

20.2.1. the Director of Corporate Resources where the value of the Tender is less than the relevant EU Threshold or where the difference between the lowest Tender and that which it is proposed to accept is less than 1%.

20.2.2. the Executive in all other circumstances.

20.3. If the Tender or Quotation to be accepted exceeds the budget which was agreed in accordance with Rule 7.5 the Procuring Officer must ensure that sufficient funds are available and approved by the appropriate budget holder, Appropriate Chief Officer or Executive prior to accepting the Tender or Quotation.

- 20.4. An abnormally low Tender or Quotation may not be rejected without first giving the Tenderer the opportunity to explain the tendered price.
- 20.5. In the case where the Estimated Value of the contract was £50,000 or more the Procuring Officer must notify the appropriate Category Manager of the name of the successful Tenderer and a summary of the evaluation procedure.
- 20.6. The Appropriate Chief Officer shall have the authority to accept any Tender or Quote but in any particular circumstance may decline to give approval and refer the decision to the Executive.

## **21. Notification of Contract Award**

- 21.1. The Procuring Officer must notify the successful Tenderer of the acceptance of their Tender or Quotation and for all Procurement Exercises with an Estimated Value of £5,000 or more this notification must be in writing.
- 21.2. In the case where the Estimated Value was £50,000 or more the Procuring Officer must notify in writing all Tenderers who submitted a Tender or applied to be included in the list of Persons selected to tender, whether invited to tender or not, of the decision as soon as possible after the decision has been made.
- 21.3. In the case where the Estimated Value was equal to or above the appropriate EU threshold the following additional Rules shall apply:
- 21.3.1. the notice in 21.2 shall include the name of the Person to whom it is proposed to award the contract, the criteria for the award of the contract and the outcome of the application of the evaluation criteria to the Person being notified.
- 21.3.2. a period of 10 days must elapse between the date of despatch of the notice in 21.2 and the date on which the Council enters into a contract. Any Tenderer requesting in writing the reasons why they were unsuccessful shall be informed by the Procuring Officer of the reasons for the Council's decision. This information must be supplied at least 3 working days prior to the expiry of the 10 day period or that period must be extended to allow at least 3 working days between the provision of the information and the date the Council enters into a contract.
- 21.3.3. the Procuring Officer shall ensure that an OJEU contract award notice is placed within 48 days of the contract award.

## 22. Form of Contract

- 22.1. A contract shall be formed:
- 22.1.1. by exchange of letter accepting the successful Tender or Quotation and incorporating the Invitation to Tender or Request for Quotation and the outcome of any subsequent negotiations and discussions; or
  - 22.1.2. by completion of a formal contract incorporating the Invitation to Tender or Request for Quotation, the Tender or Quotation and the outcome of any subsequent negotiations and/or discussions; or
  - 22.1.3. by placing an order in accordance with Rule 23.
- 22.2. In determining and negotiating the terms and conditions of contract, the Procuring Officer must ensure that the Standard Terms and Conditions are incorporated unless the Procuring Officer having consulted the appropriate Category Manager considers it inappropriate to do so.
- 22.3. All contracts with an Estimated Value of £50,000 or more must be in writing and where appropriate the Appropriate Chief Officer shall:
- 22.3.1. ensure that the contract includes a definition of the circumstances that will be considered to constitute a default on the terms of the contract by the supplier. The contract must provide for notice of default to be given to the supplier and for any resulting losses to be recovered from the supplier if the default is not rectified.
  - 22.3.2. decide whether it is necessary to require suppliers to provide a Performance Bond with a third party. The need for this will depend on an assessment of the risk associated with the contract or the supplier.
  - 22.3.3. ensure that the contract provides for the supplier to have an insurance policy, which can be inspected during the contract period. The Director of Corporate Resources shall be consulted on the insurance requirements.
  - 22.3.4. consult the Director of Corporate Resources on the appropriate VAT requirements.
- 22.4. Every contract must be signed by the Appropriate Chief Officer or an Officer designated by him and in cases determined by the County Solicitor shall be under seal in the form prepared or approved by him or her.
- 22.4.1. Except after consultation with the County Solicitor, work or services must not be authorised to commence or goods to be supplied where such works, services or goods are to be the subject of a contract under seal entered into between

the Council and the supplier, until the County Solicitor has advised that the contract has been signed by the supplier.

### **23. Orders for work, goods and services**

- 23.1. Orders for work, goods and services must only be placed in accordance with Instruction 19 of the Standard Financial Instructions.

### **STANDING LISTS**

#### **24. Standing Lists**

- 24.1. Standing lists must not be created or added to without the prior written approval of the Appropriate Chief Officer in consultation with the appropriate Category Manager.
- 24.2. Procuring Officers must not use a Standing List where the total value of contracts to be awarded using the Standing List is estimated to exceed the relevant EU threshold.
- 24.3. The Standing List must contain the names of all Persons who are approved and indicate the categories of contract and the values or amounts in respect of those categories for which those Persons are approved.
- 24.4. At least four weeks before a list is first compiled, the Procuring Officer must publish on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market a notice inviting applications by a specified date for inclusion in it.
- 24.5. Procuring Officers must renew all Standing Lists at intervals not exceeding three years. At least four weeks before each renewal, each Person whose name appears in the list must be notified by the Procuring Officer of the intention to review the list. If they wish to remain on the list they must re-apply for inclusion. Procuring Officers must ensure that notices inviting applications for inclusion in the list are published in the manner provided by Rule 24.4.
- 24.6. In the case where the use of a Standing List has been authorised the Procuring Officer must send Invitations to Tender to not less than four of the Persons from among those approved for a contract of the relevant category and amount or value. Where fewer than four Persons are approved for a contract of the relevant category and amount or value Invitations to Tender shall be sent to no fewer than three Persons. Where there are fewer than three Persons the procedure



for Standing Lists must not be used unless the appropriate Category Manager advises otherwise.

24.6.1. The Procuring Officer in consultation with the Category Manager shall determine the criteria for selecting Persons from the list.

24.7. In such circumstances as the Director of Corporate Resources shall determine, Procuring Officers shall provide such information as shall reasonably be necessary of the extent to which Standing Lists have been utilised.

## **FRAMEWORK AGREEMENTS**

### **25. Framework Agreements**

25.1. Procuring Officers must establish all Framework Agreements in accordance with these Rules.

25.2. Framework Agreements must not be awarded for more than 4 years, including any extensions without the prior written consent of the Director of Corporate Resources.

25.3. All suppliers on the Framework Agreement must be invited to tender for each Procurement Exercise unless it is clear from the terms of the Framework Agreement which supplier best meets the award methodology set out in the Framework Agreement in which case that supplier may be selected.

### **26. Dynamic Purchasing Systems**

26.1. Procuring Officers must only establish Dynamic Purchasing Systems with the prior written approval of the Director of Corporate Resources and in accordance with the requirements of the EU Directives and these Rules where appropriate.

## **CONTRACT AMENDMENTS**

### **27. Contract Variations**

27.1. Prior to any extra or variation being agreed the Procuring Officer must ensure that sufficient additional budget provision has been approved by the budget holder.

27.2. In the case of a contract with a Total Value of £5,000 or more every extra or variation must be authorised in writing by the Appropriate Chief Officer and in the case of contracts with a Total Value of £50,000 or more this shall be done in consultation with the appropriate Category Manager. This authorisation must be

issued before the work is carried out, or in the case of an emergency immediately thereafter.

- 27.3. In the case of a contract which was originally approved by the Executive and where any extras or variations are considered significant then the Executive must be informed as soon as practicable.

## **28. Contract Extensions**

- 28.1. The Appropriate Chief Officer shall be authorised to extend a term contract if the original contract so provides and in consultation with the Category Manager where the Total Value is £50,000 or more.
- 28.2. If the contract does not provide for an extension and where the Total Value of the contract is £50,000 or more the Appropriate Chief Officer must gain the prior approval of the Director of Corporate Resources.
- 28.3. In the case where a term contract was originally approved by the Executive and where the duration of the planned extension is more than three months then the Executive must be informed as soon as practicable.
- 28.4. In the case of contracts tendered in accordance with the EU Directives any extension will only be permissible if this was properly described in the original OJEU notice.

## **29. Novation of Existing Contracts**

- 29.1. The Appropriate Chief Officer shall be authorised to novate a contract to a new provider subject to the prior written approval of the Director of Corporate Resources.

## **30. Early Termination of Contracts**

- 30.1. Unless a provision for early termination is clearly stated in the contract and takes effect, Procuring Officers shall seek advice from the County Solicitor where it is intended to terminate a contract early. In all such circumstances where the Total Value of the contract is £50,000 or more the prior written approval of the Director of Corporate Services shall be obtained.

## **MISCELLANEOUS PROVISIONS**

### **31. Application of these Rules to ESPO**

- 31.1. Where acting solely on behalf of the Council ESPO must comply with these Rules where applicable.
- 31.2. In cases where ESPO is acting on behalf of the Council:
- 31.2.1. ESPO is authorised to act as agent of the Council in place of the Chief Officer or Procuring Officer for the purposes of Rules 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 24, and 25 and these Rules shall be construed accordingly.
- 31.2.2. ESPO is authorised to act as agent of the Chief Executive for the purposes of Rules 15, 16 and 17.
- 31.2.3. For the avoidance of doubt, decisions under Rule 20 shall remain the responsibility of Procuring Officers who may receive advice from ESPO.

### **32. Document Retention**

- 32.1. All documents that might be required in court proceedings must be retained for at least six years and any under seal for at least twelve years.

### **33. Supervision of Contracts by Third Parties**

- 33.1. The Procuring Officer shall ensure that it is a condition of any contract between the Council and any Person (not being an Officer of the Council) who is required to supervise a contract on behalf of the Council that in relation to that contract he must comply with the requirements of these Rules and other requirements of the Council.
- 33.2. Such person must:
- (a) at any time during the carrying out of the contract produce to the Appropriate Chief Officer or his representative or Council Auditor on request all records maintained by him in relation to the contract; and
  - (b) on completion of the contract transmit all records to the Appropriate Chief Officer.

### **34. Nominated Sub-Contractors and Suppliers**

- 34.1. Where a sub-contractor or supplier is to be nominated by the Council to a main contractor, the provisions of these Rules shall have effect.

34.2. The terms of an Invitation to Tender under Rule 15 must require an undertaking by the Tenderer that, if selected, they will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main contract in relation to the work, supplies or services included in the sub-contract.

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**SCHEDULE 1****Interpretation**

1. “Appropriate Chief Officer” means the Chief Officer responsible for the function to which the contract relates except that, where another Chief Officer is responsible for the letting of the contract, it shall mean that Chief Officer in consultation with the Chief Officer on whose behalf the contract is to be let.
2. “Best Value” means the duty of the Council to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
3. “Category Manager” means the Officer authorised by the Director of Corporate Resources to manage the procurement of a category or categories of goods, services and/or works. Where there is no Category Manager for the goods, services and/or works being procured the Head of Procurement shall adopt this role.
4. “Centrally Negotiated Contract” means any contract or arrangement put in place by the Council itself, ESPO, or any other Public Sector Organisation (including other Local Authorities) or Consortium in which the Council is entitled to participate and which, where necessary, has been awarded in an EU compliant manner.
5. A “Concession” is an arrangement by the Council to allow an outside body, under contract, to run a service on its behalf wholly based on income derived from the service.
6. “Contract Opportunity Publication” is the means by which a Procurement Exercise is advertised.
7. “Council” means Leicestershire County Council.
8. “Dynamic Purchasing System” means a completely electronic process, which has a limited duration, for making commonly used purchases, as more particularly defined and described in the Public Contract Regulations 2006.

9. "ESPO" means the Eastern Shires Purchasing Organisation being a local authority purchasing and distribution consortium of which the council is a joint member authority.
10. "Estimated Value" means the value as estimated under Rule 8.
11. "Executive" means the executive or committee determined in accordance with the Council's constitution.
12. "Formal Tender Process" is a process following the requirements of Open Tendering, Restricted Tendering, Standing List, Negotiated Procedure or Competitive Dialogue
13. "Framework Agreement" is a general term for agreements with suppliers which set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. The framework agreement may, itself, be a contract to which the EU procurement directives apply.
14. "Invitation to Tender" means the document(s) containing the specification, proposed terms and conditions and other appropriate information as issued to the Tenderers to solicit Formal Tenders.
15. "Irregular Tender" means a Tender that does not fully comply with the instructions given in the Invitation to Tender.
16. "Official Order Form" means a form issued to Officers by a Chief Officer for the purpose of placing purchase orders or an order from an approved electronic system such as Oracle iProcurement.
17. "Officer" means an employee of the Council.
18. "OJEU" means Official Journal of the European Union.

19. "Part A Services" are defined in [The Public Contract Regulations 2006](#) as 'priority services'.
20. "Part B Services" are defined in [The Public Contract Regulations 2006](#) as 'residual services'.
21. "Person" includes a partnership, body corporate or unincorporated association.
22. "Post Tender Negotiations" means the ability to negotiate with a Tenderer after a Tender has been opened and evaluated in accordance with the published evaluation criteria for the purposes of securing an improvement in the delivery of the contract including but not limited to improvements in price.
23. "Procurement Exercise" means any process by which goods, services and/or works are to be procured including but not limited to Request for Quotations and Formal Tender Processes. For the purpose of these Rules a contract for a Concession shall be treated as a Procurement Exercise.
24. "Procuring Officer" means any Officer, acting under the delegated powers of a Chief Officer, who is responsible for the procurement of goods and services.
25. "Purchasing Guide" means a guide produced by the Council for use by those officers involved in the Council's operational procurement.
26. A "Quotation" is an offer to sell works, goods and/or services at a stated price under specified conditions. A Quote or Quotation may or may not be written.
27. "Request for Quotation" ("RFQ") means a document or documents containing the specification, and proposed terms and conditions issued to potential suppliers to solicit written Quotations.
28. "Standard Terms and Conditions" means the standard contractual terms used by Leicestershire County Council.

29. "Standing List" means a list of Persons which has been established in accordance with Rule 24.
30. "Tender" means the formal offer from a Tenderer, which is capable of acceptance by the Council, which is a response to an Invitation to Tender. It shall include all documents comprising the submission including pricing, technical specification and method statements as well as information about the Tenderer.
31. "Tenderer" or "Tenderers" means the Person or Persons invited to participate in a Procurement Exercise.
32. "Total Value" means the value of a contract which has been calculated in accordance with clause 8.2 (excluding 8.2.6) reading where appropriate Total Value for Estimated Value.
33. "In writing" or "written" for the purpose of interpreting these Rules includes transmission by any electronic means which have been approved by the County Solicitor in consultation with the Director of Corporate Resources.
34. Words imparting the masculine include the feminine gender.