

## **8 - Contract Rules**

### **1 Background and Purpose**

- 1.1 These Contract Rules (“the Rules”) are made under Section 135 of the Local Government Act 1972.
- 1.2 The Rules form part of the Council’s Constitution.
- 1.3 The purpose of the Rules is to:
  - 1.3.1 To achieve Best Value;
  - 1.3.2 be consistent with the highest standards of integrity and fairness;
  - 1.3.3 comply with all legal requirements;
  - 1.3.4 support the Council’s corporate aims and policies including a commitment to support a sustainable local economy;

### **2 Application**

- 2.1 The Rules shall apply to:
  - 2.1.1 Contracts (including Council set up Frameworks Agreements) for purchasing, commissioning, leasing or hire of goods, works or services for the Council;
  - 2.1.2 Sub-contracts where the Council specifies, names or nominates a sub-contractor to a Contractor or Supplier in a tender specification;
  - 2.1.3 (Unless the Council expressly agrees otherwise), contracts on behalf of any Partnership for which the Council is the accountable body;
  - 2.1.4 Schools, except statutory provisions require otherwise.
- 2.2 Where the Council is required to follow rules laid down by Central Government or other organisation that provides grant funding (“the Grantor”) to the Council, Officers shall follow the Grantor’s contract procedure rules where they are more stringent than the Council’s.
- 2.3 The Rules do not apply to:
  - 2.3.1 Contracts of employment for the Council’s Officers and contracts for interim or temporary Chief Officers, except in the making of contracts with recruitment and staffing agencies (other than for the appointment of interim or temporary Chief Officers); or
  - 2.3.2 Subject to Rule 22, Contracts relating to the purchase or sale of interests in land; or
  - 2.3.3 Contracts for treasury management and loans; or



- 2.3.4 The investment of assets belonging to charities and trusts for which an Officer acts as treasurer; or
- 2.3.5 Grants made by the Council; or
- 2.3.6 Purchases from Framework Agreements.

### **3 Compliance**

- 3.1 All procurements shall be conducted in accordance with the following:
  - 3.1.1 All relevant statutory provisions including the Public Contracts Regulations 2015 (“the Regulations”) or equivalent;
  - 3.1.2 The relevant EU Rules;
  - 3.1.3 The Council’s Constitution; and
  - 3.1.4 Any Corporate Procurement Strategy or Procurement Code, if the Council has one in place at the time of procurement.
- 3.2 Failure to comply with the Rules may leave the Council, or individual Officers or Members, open to risk of legal challenge. Breaches will be regarded as a serious matter which may be considered gross misconduct and could lead to disciplinary action and/or dismissal.
- 3.3 Officers must declare any interests which could bring them into conflict with the Council’s interests.
- 3.4 Members must disclose all relevant interests on their register of interest forms, and any meeting they attend.

### **4 Preparing to contract**

- 4.1 Authority for all contracts must be granted before they are entered into. Authority can be in the form of:
  - 4.1.1 A Cabinet resolution; or
  - 4.1.2 A decision made properly within the powers of Cabinet or Chief Officer under the Scheme of Delegations; or
  - 4.1.3 A decision by Cabinet delegating authority to an Authorised Officer.
- 4.2 Subject to Rule 9, the following conditions must be met:
  - 4.2.1 The contract must comply with the Rules and the Financial Regulations; and
  - 4.2.2 There must be enough budget to cover the financial commitment being made including ongoing revenue costs, Authorised Officers will need to seek approval for the power to offset any shortfall in budget.

- 4.3 Executive Directors have overall responsibility for the operation of the Council's functions. All requirements for goods, services or works that fall within those areas must first have been consulted on with the relevant Officer as set out in this rules as authorised to award a tender prior to the commencement of any procurement or commissioning exercise.

## **5 Use of Existing Contracts and Local Suppliers**

- 5.1 Existing Council contracts, EU Rules and UK procurement law compliant purchasing consortium arrangements or Framework Agreements shall be used wherever available unless a Chief Officer has agreed otherwise in which case these rules shall apply. Before any procurement is commenced, Authorised Officers shall establish whether:
- 5.1.1 The Council has existing contracts or beneficial arrangements for the future purchase of goods, works and services; or
  - 5.1.2 Items are to be found in any available Council's i-Procurement online purchasing system; or
  - 5.1.3 The Council is able to purchase through a public authority purchasing consortium; or
  - 5.1.4 Buying Solutions' or other Central Purchasing Bodies' Framework Agreements are available.
- 5.2 When proposing to purchase using a purchasing consortium arrangement or Framework Agreement, Officers shall conduct due diligence to determine it is EU and UK procurement law compliant.
- 5.3 When undertaking any form of procurement Officers should have regard to any potential local suppliers who can engage the chain of supply and or tender for the supply of goods, works and services.
- 5.4 Where potential local suppliers have been indentified, Officers should seek to inform those suppliers of the Council's intention to procure and how they can engage in the procurement process but Officers must not act in any way anti-competitively or disclose any information that is not readily available to the general public.

## **6 Special Contracts**

### **Schools**

- 6.1 Where the Rules apply to the Council's schools, each school's governing body shall:
- 6.1.1 Act as the Head of Service for all procurement, commissioning, leasing, purchasing or sale of any goods, works or services over which the school has authority under the delegation of schools management or other legislation;

- 6.1.2 Delegate to the school's head teacher or other senior members of the school's staff such authority as it sees fit to take actions on its behalf; and
- 6.1.3 Seek authority of the Council's Executive or Assistant Directors or Cabinet wherever the Rules require.

### **Social Care Contracts**

- 6.2 The Chief Officers responsible for providing Social Care for Children and Adult Services shall:
  - 6.2.1 Consult with the Head of Legal and Democratic Services to create a set of rules governing the procurement of services relating to Social Care, which are awards of contracts for social and other specific services pursuant to Section 7 and Schedule 3 of the Regulations;
  - 6.2.2 Ensure such rules reflect the structure of the market for Social Care services; and
  - 6.2.3 Balance the need to achieve Best Value with that to make contracts rapidly to meet individual service users' needs.
- 6.3 Except where a set of rules have been created Officers shall procure services only in accordance with the Rules.

### **Consultants**

- 6.4 Chief Officers who wish to appoint consultants shall ensure:
  - 6.4.1 The Council has a genuine need for consultants;
  - 6.4.2 The nature and extent of the work is clearly defined;
  - 6.4.3 Suitably qualified and experienced consultants provide quotations or tenders;
  - 6.4.4 A written contract is made with the consultant who is appointed in a form approved by the Head of Legal and Democratic Services;
  - 6.4.5 Consultants provide insurance cover to a level approved by the Council's Insurance and Loss Control Manager; and
  - 6.4.6 The consultant shall formally accept the appointment before the work is commenced.

### **Appointments of Legal Advisors and Experts**

- 6.5 Where a Chief Officer seeks to appoint external legal advisors and experts, following consultation with the Head of Legal and Democratic Services, the following rules shall apply:
  - 6.5.1 Where the Council is a member of a pre procured legal services framework or consortium that should be the first selection point

for external legal advisers except on grounds of expediency and or specialism in which case rules 6.5.2 and 6.5.3 shall apply.

6.5.2 Tenders shall not be required for the engagement of counsel, medical experts, the clergy or experts at court proceedings; and

6.5.3 Tenders shall not be required for the instruction of legal advisers, who shall be appointed in consultation with the Head of Legal and Democratic Services.

## **7 Electronic Tendering, Advertising on Contracts Finder and Approved Lists**

7.1 Unless agreed by the Council's Head of Procurement or Head of Legal Services, all procurement must be undertaken using the Council's electronic procurement portal except where a compliant pre procured framework or consortium arrangement is being used.

7.2 All contracts to be tendered with a value in excess of £25,000 must be also advertised on Contracts Finder, unless agreed otherwise by the Council's Head of Procurement or Head of Legal and Democratic Services; or purchasing is proposed by using EU Rules-complaint purchasing consortiums or Framework Agreements.

7.3 Authorised Officers shall ensure that where proposed contracts, irrespective of their total contract value, might be of interest to potential tenderers located in other states of the European Union, a sufficiently accessible advertisement is published. Generally the greater the interest of the contract to potential tenderers from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

7.3.1 The Council's website;

7.3.2 Portal websites specifically created for contract advertisements;

7.3.3 National official journals; and

7.3.4 The Official Journal of the European Union (OJEU)/Tenders Electronic Daily (TED) (even if there is no requirement within the Regulations).

7.4 Approved Lists should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot be aggregated and priced in a single tendering exercise. Approved Lists cannot be used where the Regulations apply.

## **8 Contract Value and Mixed Contracts Procedure**

- 8.1 The total contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made or potentially to be made under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions and options). Wherever possible, estimates shall be based on previous purchases, catalogue prices or Contractor's or Suppliers' estimates. There shall be no artificial splitting of a contract to avoid the application of the provisions of the Regulations and/or the Rules.
- 8.2 Where the need is for a mixture of works, goods and/or services, then the relevant procurement process will be determined having regard to the characteristics of the main subject matter in question.
- 8.3 The Appendix to these Rules set out in summary which procurement process should be used, dependent upon the total contract value as calculated in accordance with Rule 8.1.

## **9 Waiver of or Exemption from the Contract Rules**

- 9.1 If a Chief Officer believes that goods, works or services are needed urgently by the Council, he or she may in writing waive or suspend the requirement to follow the Rules and other instructions to the extent necessary to remedy the urgent situation. Such waiver or suspension shall only apply where:
- 9.1.1 A situation of genuine urgency is perceived to exist; or
  - 9.1.2 A breach of statutory duty will occur; or
  - 9.1.3 Action is required to safeguard the Council's assets or interests; or
  - 9.1.4 Grants or other funding will be lost unless urgent action is taken.
- 9.2 The Chief Officer responsible for waiving or suspending any part of these rules or procedures shall provide a written report to the Corporate Management Team as soon as practicable detailing the Rules or procedures they have set aside and the reasons requiring these actions.
- 9.3 **Please note** that the waiver of these Rules under Rule 9.1 above or exemption under Rule 9.4 below is: (i) not a waiver or exemption from the EU Rules, the Regulations and UK procurement law requirements, as these cannot be waived or exempted from; and (ii) is subject to the following restrictions:
- 9.3.1 The waiver under Rule 9.1 or exemption under Rule 9.4 from the Rules cannot be used or seen to be used as an attempt to avoid or circumvent compliance with EU Rules and UK procurement law including the Regulations and the legal duty to obtain Best Value.
  - 9.3.2 Any waiver under Rule 9.1 must be for the shortest period of time possible to permit a short term contract to be put in place to enable a fully Rule compliant procurement process to be undertaken.

- 9.4 A Chief Officer shall not be required to seek quotations or tenders where goods, works or services:
- 9.4.1 must be purchased from a supplier holding exclusive rights of manufacture, supply, authorship, editorial, publication or distribution and where no generic equivalent exists;
  - 9.4.2 are required by the Council as a partial replacement for or in addition to existing goods, works or services already purchased by the Council and to obtain them from a supplier other than the supplier which supplied the existing goods would oblige the Council to acquire goods, works or services having different technical characteristics which would result in:
    - 9.4.2.1 Technical incompatibility between the existing goods, works or services and the goods, works or services to be purchased; or
    - 9.4.2.2 Significant disproportionate technical difficulties in the operation and maintenance of the existing goods, works or services.
  - 9.4.3 have a price that is controlled Central Government regulations;
  - 9.4.4 are repairs or parts for existing plant or machinery provided by the original supplier and no equivalent exists;
  - 9.4.5 are the hiring of performance artists or other suppliers of fine art exhibits; and
  - 9.4.6 to be obtained at a public auction, fair or market.
- 9.5 Before an Authorised Officer procures using any of the exemptions set out in Rule 9.4 above, they must seek advice from the Head of Procurement and/or Head of Law as to the application of the Regulations.

## **10 Significant Contracts**

- 10.1 "Significant Contracts" are contracts for goods, works or services which exceed £50,000 but for goods and services do not exceed the current EU threshold and for works do not exceed £250,000.
- 10.2 An Authorised Officer shall take responsibility for the procurement of Significant Contracts. This Officer shall report regularly to a Chief Officer.
- 10.3 Tenders shall be invited in writing from at least two Contractors or Suppliers for Significant Contracts by inviting or directing potential tenderers to the means of submitting a tender. In the event that less than two Contractors or Suppliers show interest in submitting or do submit a tender following compliance with the requirements to advertise in Rule 7, then a tender shall be obtained from the Contractor or Supplier who is willing and able to submit a tender.



- 10.4 Tenders shall be sought, evaluated and awarded in accordance with Rules 16 and 17 below.
- 10.5 Tenders shall be returned to the Council as required by any Invitation to Tender and shall be held securely in the custody of the Authorised Officer and remain unopened until the time set for their opening.
- 10.6 Tenders for Significant Contracts shall be opened by the relevant Authorised Officer or by a Procurement Officer.
- 10.7 The relevant Head of Service or more senior Authorised Officer may accept one or more of the tenders received and award the contract(s).
- 10.8 Significant Contracts shall be evidenced by a written contract in a form approved by the Head of Legal and Democratic Services which, except for where the Council's Purchase Order Terms and Conditions of contract are used, shall be signed by the Head of Service responsible for the service on the Council's behalf and by an authorised signatory of the Contractor or Supplier.

## **11 Major Contracts**

- 11.1 "Major Contracts" are contracts for goods, works or services which exceed the Significant Contracts threshold but do not exceed £500,000.
- 11.2 The procurement of Major Contracts for goods and services shall follow the Regulations.
- 11.3 An Authorised Officer shall take responsibility for the procurement of Major Contracts in respect of works. This Officer shall report regularly to a Chief Officer.
- 11.4 Tenders shall be invited from at least three Contractors or Suppliers In the event that less than three Contractors or Suppliers show interest in submitting or do not submit a tender following compliance with the requirements to advertise in Rule 7, then tenders shall be obtained from those Contractors or Suppliers who are willing and able to submit a tender.
- 11.5 Tenders shall be sought, evaluated and awarded in accordance with Rules 15 and 16 below.
- 11.6 Sealed tenders shall be returned to the Tenders – Postal/Courier and Filing Services Civic Centre and shall be held securely in the custody of the Authorised Officer and remain unopened until the time set for their opening.
- 11.7 Tenders for Major Contracts shall be opened by the relevant Head of Service or by two Procurement officers.
- 11.8 The relevant Assistant Director or more senior Authorised Officer may accept one or more of the tenders received and award the contract(s).
- 11.9 Contractors or Suppliers appointed are to confirm acceptance of their appointment in writing. No work, other than the Contractor's or Supplier's off-

site preparations should be commenced, nor any delivery of goods, materials or services accepted, until the Contractors or Supplier appointed has:

- 11.9.1 Formally accepted their appointment;
  - 11.9.2 Provided evidence of insurances to the satisfaction of the Council's Corporate Risk and Project Manager; and
  - 11.9.3 Provided any agreed surety or bond to the Council.
- 11.10 Major Contracts shall be evidenced by a written contract, in a form approved by the Head of Legal and Democratic Services, which shall be signed by Executive Director responsible for the service on the Council's behalf and by an authorised signatory of the Contractor or Supplier.
- 11.11 The Authorised Officer should be regularly informed the Assistant or Executive Director or Project Board responsible for the contract on the contract's performance and expenditure to date and the predicted out-turn including any areas of difficulty and propose remedial action.

## **12 Strategic Contracts**

- 12.1 "Strategic Contracts" are contracts for goods, works or services which exceed £500,000.
- 12.2 The procurement of Strategic Contracts for goods and services shall follow the Regulations.
- 12.3 The procurement of Strategic Contracts for works over the EU Threshold (for works) shall follow the Regulations.
- 12.4 An Authorised Officer shall take responsibility for the procurement of Strategic Contracts in respect of works up to the EU Threshold (for works). This Officer shall report regularly to a Chief Officer.
- 12.5 Tenders shall be invited from at least four Contractors or Suppliers by inviting or directing in writing potential tenderers to the means of submitting a tender. In the event that less than four Contractors or Suppliers show interest in submitting or do not submit a tender following compliance with the requirements to advertise in Rule 7, then tenders shall be obtained from those Contractors or Suppliers who are willing to submit a tender.
- 12.6 Tenders shall be obtained, evaluated and awarded in accordance with Rules 15 and 16 below.
- 12.7 Sealed tenders shall be returned to the Tenders – Postal/Courier and Filing, Civic Centre and shall be held securely in the custody of the Authorised Officer and remain unopened until the time set for their opening.
- 12.8 Tenders for Strategic Contracts shall be opened by the relevant Executive Director or Assistant Director in the presence of a Procurement Officer.

- 12.9 One or more tenders shall be accepted following a resolution of the Cabinet. Cabinet may resolve to delegate acceptance of tenders for individual contracts to a Chief Officer.
- 12.10 The Executive or Assistant Director responsible shall sign all letters of appointment but note that Rule 12.12 below the contract shall be sealed by the Council.
- 12.11 Contractors or Suppliers appointed are to confirm acceptance of their appointment in writing. No work, other than the Contractor's or Supplier's off-site preparations should be commenced, nor any delivery of goods, materials or services accepted, until the Contractors or Supplier appointed has:
- 12.11.1 formally accepted their appointment;
  - 12.11.2 Provided evidence of insurances to the satisfaction of the Council's Corporate Risk and Project Manager; and
  - 12.11.3 Provided any agreed bond or surety to the Council.
- 12.12 Strategic Contracts shall be evidenced by a written contract in a form approved by the Head of Legal and Democratic Services. All Strategic Contracts exceeding £500,000 shall be made under the Council's seal.
- 12.13 The Authorised Officer should create a regular monitoring report for the Assistant or Executive Director and any Project Board responsible for the contract. This report should include up-to-date information on the contract's performance and expenditure to date and the predicted out-turn. The report should highlight any areas of difficulty and propose remedial action.

### **13 Contracts subject to the Regulations**

- 13.1 Where the total contract value of any Major or Strategic Contract exceeds EU Threshold the Regulations must be complied with.
- 13.2 The Regulations are lengthy and detailed and only the principal requirements are set out in the Rules. Advice must be sought from the Head of Procurement and/or the Head of Law before starting any procurement which is likely to be subject to the Regulations.
- 13.3 The Regulations specify how the contract shall be advertised, the types of the procedure to be used, timescales, evaluating the tender and how the contract shall be awarded (including mandatory debriefing and a standstill period). Failure to adhere correctly to the Regulations may result in legal proceedings being taken against the Council.
- 13.4 The Rules shall apply to contracts subject to the Regulations in so far as they do not conflict with the Regulations.
- 13.5 For the avoidance of doubt, it is not possible to waive all or any part of the Regulations.

## **14 Minor Contract Quotations**

- 14.1 Authorised Officers shall seek to obtain written quotations from at least two Contractors or Suppliers for all Minor Contracts whose value is anticipated to be up to £50,000. Authorised Officers shall:
- 14.1.1 Seek to obtain quotations only from Contractors or Suppliers known to be able to provide the goods, works and/or services required;
  - 14.1.2 Seek all quotations at a similar time, providing a written specification;
  - 14.1.3 Allow a reasonable time for Contractors or Suppliers to provide quotations;
  - 14.1.4 Receive quotations by letter, facsimile or email; and
  - 14.1.5 Evaluate all quotations received.
- 14.2 Subject to the Regulations, Authorised Officers shall retain quotations in accordance with document disposal guidelines, ensuring they remain available for inspection by the Head of Internal Audit or any representative of the Council's external auditor.
- 14.3 The relevant Service Manger or more senior Authorised Officer may accept one or more of the tenders received and award the contract(s).

## **15 Tenders**

- 15.1 Tenders shall be sought from Contractors or Suppliers who have responded to any advert placed by the Council in accordance with Rule 7 of the Rules and may be capable of being awarded the tender.
- 15.2 All Contractors or Suppliers invited to tender for Significant, Major or Strategic contracts shall be provided at no cost to themselves with identical Invitation to Tenders which shall specify and include:
- 15.2.1 The date and time by which tenders are to be received, and the address to which they are to be delivered;
  - 15.2.2 All documents to be completed, which shall include health and safety and equality and diversity questionnaires;
  - 15.2.3 A copy of the contractual terms and conditions to which the tenderer will be bound if they are awarded the tender;
  - 15.2.4 Instructions for the tender's return including where electronic tendering is unavailable or chosen to not be used a label which contains the name of the proposed contract and the Council Directorate to which the contract relates;
  - 15.2.5 The summary form of tender to be completed and signed by the tenderer; and

- 15.3 Information supplied shall include but not be limited to:
  - 15.3.1 Full specification of all goods works or services to be provided;
  - 15.3.2 Intended duration of the proposed contract;
  - 15.3.3 Evaluation criteria to be used in assessing tenders; and
  - 15.3.4 The method by which any errors in tenders will be treated.
- 15.4 Each tender shall be informed that the Council:
  - 15.4.1 does not bind itself to contract with the Contractors or Supplier offering the cheapest tender or with any Contractor or Supplier;
  - 15.4.2 will not be liable for any costs or expenses whatsoever incurred by the tenderers in respect of the preparation and submission of their tender and that the Council shall be at liberty to cancel the tender process at any time and shall not be liable for any costs or expenses whatsoever incurred by the tenderer as a result of such cancellation;
  - 15.4.3 will not consider any tender which is not accompanied by all tender documents;
  - 15.4.4 may not consider any tender received after the latest date and time;
  - 15.4.5 may not consider any tender bearing any mark or label identifying the tenderer, whether made by the sender, an agent or carrier;
  - 15.4.6 will not consider any tender offering a variant offer, except where it accompanies a compliant offer unless stated otherwise; or
  - 15.4.7 will not consider any tender requiring a form of contract other than that approved by the Council's Head of Legal and Democratic Services.
- 15.5 Subject to the Regulations, Authorised Officers shall retain tenders in accordance with document disposal guidelines, ensuring they remain available for inspection by the Head of Internal Audit or any representative of the Council's external auditor.

## **16 Evaluation and Award of Tenders**

- 16.1 Tenders shall be assessed:
  - 16.1.1 As soon as possible after they have been opened;
  - 16.1.2 In line with evaluation criteria set out in the Invitation To Tender; and
  - 16.1.3 By Authorised Officers or duly appointed consultants.

- 16.2 Assessment shall be restricted to:
  - 16.2.1 Information contained within the tenders;
  - 16.2.2 Further information requested from tenderers following initial assessment of tenders and any clarification required; and
  - 16.2.3 Material provided at an interview or presentation (if available).
- 16.3 The Authorised Officer responsible for assessment of the tenders shall:
  - 16.3.1 Examine all compliant offers and variant or alternative offers where applicable;
  - 16.3.2 Deal with errors in tenders using the method set out in the tender specification;
  - 16.3.3 Seek clarification and additional detail from each tenderer;
  - 16.3.4 Undertake financial evaluation of each tenderer; and
  - 16.3.5 Where appropriate invite tenderers to attend interviews and make presentations.
- 16.4 The Authorised Officer may also:
  - 16.4.1 Seek additional information from tenderers in writing where that is relevant or needed to remove ambiguities from tenders. Where this is provided by telephone, Officers should keep a log of the questions asked and answers given;
  - 16.4.2 Create a small panel of appropriate Officers to interview some or all tenderers; and
  - 16.4.3 Interview tenderers following proper planning. Tenderers to be called should receive adequate details of what is required and sufficient time to prepare answers and presentations. Questions, answers and marks awarded should be written and retained.
- 16.5 The Authorised Officer shall produce an evaluation report to the Chief Officer who is to accept one or more tenders. In respect of Strategic Contracts this report shall be made available to the Cabinet, or any Project Board prior to their accepting one or more tenders.
- 16.6 The evaluation report shall offer clear, costed recommendations, to the Chief Officer responsible for accepting the tender.

## **17 Form of Contract**

- 17.1 The Council shall make contracts with Contractors or Suppliers appointed in accordance with the Rules and with the requirements of the Financial Regulations.

- 17.2 For all purchases of goods and services only the Council's Purchase Order Terms and Conditions shall be used for purchases up to the relevant EU Threshold in value unless agreed otherwise by the Head of Procurement or Head of Law.
- 17.3 Every contract made by the Council, whether by way of official purchase order, or by formal written agreement, shall require:
  - 17.3.1 Goods, works or services to comply with any relevant British Standard or equivalent European Union standard wherever these exist;
  - 17.3.2 Evidence that Contractors or Suppliers maintain sufficient insurance as may be required by the Council's Risk and Insurance Department;
  - 17.3.3 Compliance with the relevant Construction (Design and Management) Regulations wherever these apply;
  - 17.3.4 An appropriate health and safety policy;
  - 17.3.5 An acceptable equality policy compliant with the provisions of the Equalities Act 2010;
  - 17.3.6 A signed statement agreeing that the Council may revoke the contract in the case of corrupt activity or behaviour by the Contractor or Supplier; and
  - 17.3.7 Where applicable a clause setting out when any bond or surety shall be returned and retention monies released.
- 17.4 All official purchase orders and written contracts shall:
  - 17.4.1 Describe the goods, works or services to be provided;
  - 17.4.2 State the price to be paid and when it shall be paid, along with any discounts or other deductions;
  - 17.4.3 Indicate the time or times, within which the contract is to be performed, including any terms and conditions under which the contract may be extended;
  - 17.4.4 Include or refer to any terms and conditions set out by the Council or agreed with the Contractor or Supplier;
  - 17.4.5 Fulfil the requirements of the Council's Financial Regulations; and
  - 17.4.6 Comply with the requirements of the Council's ORACLE accounts payable system.
- 17.5 In all cases the official purchase order or written contract document shall be in a form approved by the Head of Legal and Democratic Services except where:
  - 17.5.1 A contract is to be made with a statutory undertaking or utility company; or

- 17.5.2 Government purchasing agreement terms and conditions are to be used; or
- 17.5.3 Terms and conditions are agreed by a purchasing consortium which includes the Council; or
- 17.5.4 A Central Government office requires their terms and conditions are followed, or
- 17.5.5 The Head of Legal and Democratic Services agrees use of the Contractor's or Supplier's terms and conditions.

## **18 Execution of Contracts under seal**

- 18.1 Authorised Officers requiring a written contract to be made under the Council's seal shall provide the following:
  - 18.1.1 Written confirmation of compliance with the Rules and the exercise of authority by a Chief Officer;
  - 18.1.2 For Strategic Contracts a copy of the Cabinet decision accepting the tender and awarding the contract or delegated authority to an Officer to accept the tender and award the contract;
  - 18.1.3 Any other documents required by the Head of Legal and Democratic Services, to enable a contract to be sealed.
- 18.2 The seal is applied by the Head of Legal and Democratic Services or his or her nominated Officer. **Please note:** The application of the seal is an administrative function and not a legal review of the contract or the tendering exercise.
- 18.3 Where a contract has no consideration (i.e. no discernible money is being spent by the parties) the Council's seal shall be used.

## **19 Register of Contracts**

- 19.1 Executive Directors shall keep a register of all contracts subject to the Rules 10, 11 and 12 entered into by that Directorate ("the Register of Contracts"). Authorised Officers shall ensure contracts for which they are responsible are entered into this Register of Contracts: this includes any amendments or variations. The Register of Contracts shall be available for inspection by the Head of Internal Audit at all reasonable times.
- 19.2 A copy of every signed contract and every subsequent amendment and/or variation to it entered into by the Council will be retained by the service area to which it relates.
- 19.3 The original contract and any subsequent amendments and/or variations to it shall be forwarded to the Head of Law, and then kept securely in the Council's Central Records.



## **20 Contract Management and Variation**

### **20.1 An Authorised Officer shall:**

- 20.1.1 Take responsibility for communications between the Council and the Contractor or Supplier;**
- 20.1.2 Ensure that the Contractor or Supplier complies with the contract's terms, provides appropriate insurances, and complies with health and safety and other legislation;**
- 20.1.3 Represent the Council at meetings with the Contractor or Supplier and stakeholders;**
- 20.1.4 Report on the contract progress to Chief Officers, any Project Board or Cabinet as appropriate and its completion; and**
- 20.1.5 Examine the Contractor's or Supplier's final account.**

**20.2 The Authorised Officer shall ensure that there is in place adequate contract management and monitoring to ensure that the Council receives Best Value, that the contract terms are complied with and that supplies and services meet the required standards.**

**20.3 The Authorised Officer, or a duly appointed consultant acting on the Council's behalf, may instruct the Contractor or Supplier to vary the goods, works or services provided as follows:**

- 20.3.1 No variation can substantially or materially change the character of the contract and or goods, service or works originally procured;**
- 20.3.2 The Contract permits variation and the variation is included in accordance with the terms of the contract including the prices set out therein;**
- 20.3.3 All variation orders are created in writing, and are provided to the Contractor or Supplier, with a copy retained by the Authorised Officer;**
- 20.3.4 All variation orders are created at the time that the variation is instructed/agreed;**

**20.4 Chief Officers must approve all variations whose value exceeds £50,000. Where variations require additional funding or a change to the Council's capital programme, the Chief Finance Officer shall be consulted prior to the variation being approved.**

## **21 Trading externally and surplus assets**

- 21.1 Executive and Assistant Directors shall sell goods works or services only after consultation with the Head of Legal and Democratic Services.
- 21.2 Paragraph 21.1 is subject to:
- 21.2.1 The provision of such trading activities and the manner in which it is provided is lawful;
  - 21.2.2 The proposal to dispose of Council-owned assets, including surplus or obsolete furniture or equipment shall be approved by the relevant Head of Service with their agreement that there is no further need for such assets. Surplus assets shall first be offered to other service areas or directorates within the Council (including schools maintained by the Council). Any such asset which remains to be disposed of externally shall be offered for sale at the highest price attainable;
  - 21.2.3 When considering the sale of an asset and the process to be followed to secure offers to purchase due regard shall be had to the reasonably anticipated value of the item and the associated costs of seeking the sale when determining the process for sale;
  - 21.2.4 A written contract is entered into by the Council for the provision of the goods works or services;
  - 21.2.5 Where it is a legal requirement for full Council to approve the fees or charges such approval is sought; and
  - 21.2.6 Where the anticipated income to be raised exceeds £500,000 in any financial year the appropriate Executive Director will first seek approval of Cabinet.

## **22 Disposal of Land and Property**

- 22.1 The Executive Director for Regeneration shall be responsible for acquisitions and disposals of land, whether by way of purchase sale or lease.
- 22.2 Before land is offered for sale or lease, an Authorised Officer shall arrange land sales and leases so that the Council obtains best consideration. An Authorised Officer shall obtain a qualified valuer's estimate of the likely sale price shall be obtained.
- 22.3 Prior to the making of a compulsory purchase order in order to acquire any land or property, a written report shall be presented to the Cabinet.
- 22.4 Where there is no provision for the cost of acquisition or redevelopment of the land in the Council's approved capital programme, a Capital Finance Report shall be considered by the Cabinet and by the Council if appropriate.

- 22.5 The written approval of the Cabinet shall be obtained prior to any advertisement being placed or contract executed where in the reasonable opinion of a Council Surveyor:
- 22.5.1 the value of land to be acquired or disposed of by way of sale is estimated to exceed £500,000; or
  - 22.5.2 leases of land or property are proposed whose rental value is anticipated to exceed £50,000 during any complete year.
- 22.6 Where Cabinet authority is not required, the Executive Director for Regeneration shall approve in writing:
- 22.6.1 Any purchase or sale whose price is not anticipated to exceed £500,000 in value; and
  - 22.6.2 Proposed leases whose rental value is not anticipated to exceed £50,000 during any complete year.
- 22.7 Prior to disposal of land or property, the Executive Director for Regeneration in consultation with the Leader of the Council and in their absence the Deputy Leader and or relevant Cabinet portfolio holder, shall determine whether:
- 22.7.1 The land or property shall be disposed of to one particular person;
  - 22.7.2 Formal sealed tenders are to be obtained and the land transferred to the person providing the highest offer strictly in accordance with the terms of their tender;
  - 22.7.3 Sealed offers leading to negotiations for the sale to the person making the highest bid under mutually agreeable terms; or
  - 22.7.4 The land shall be sold by public auction.

## **23 Implementation, application and minor amendment**

- 23.1 The Head of Legal and Democratic Services shall compile and maintain the Rules and shall advise on their implementation and interpretation.
- 23.2 In the case of ambiguity regarding their interpretation the Head of Legal and Democratic Services shall determine the correct application and interpretation of the Rules.
- 23.3 Delegated Authority is given to Head of Legal and Democratic Services in consultation with the relevant Cabinet Member to amend and or update the Rules as appropriate to meet future and operational requirements to ensure the aims and principles of the Rules are given full effect.

## 24 Definitions and Interpretation

24.1 In the Rules the following terms shall have the following meanings:

Term	Meaning
"Approved List"	A list of Contractors or Suppliers of goods, works and services, drawn up or approved for use by Chief Officers, of persons ready and capable of supplying goods works and services.
"Authorised Officer"	An Officer who has the authority to deal with the contract in question given to the relevant Chief Officer in writing <u>and</u> who has received the required procurement training
"Best Value"	The duty, which Part 1 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 Council
"Cabinet"	The Council Executive
"Central Purchasing Bodies"	A contracting authority which acquires goods or services intended for one or more contracting authority in accordance with the Regulations
"Chief Officer"	The Council's Executive and Assistant Directors and Heads of Service
"Contract"	Any contract for the execution of works or the supply of goods and services and "contracts" shall be interpreted accordingly
"Contractor"	Any entity who is contracted by the Council to supply goods, works and/or services to the Council
"Contracts Finder"	The UK Government's online procurement service where details of live opportunities over certain financial thresholds are published
"Corporate Management Team"	As defined in the Constitution
"Constitution"	The constitution of the Council which sets out: (i) how it operates; (ii) how it makes decisions; and (iii) the procedures which it must follow
"E U Rules"	The European Union Directives which have been embodied in the Regulations

"E U Threshold"	<p>The contract value at which the EU Rules and the Regulations apply and which are set every two years on 1<sup>st</sup> January. The values as at 1<sup>st</sup> January 2014 are:</p> <ul style="list-style-type: none"> <li>• Goods and services - £172,514</li> <li>• Works - £4,322,012</li> </ul>
"Executive and Assistant Directors"	The relevant Chief Officers
"Financial Regulations"	The procedures to be followed when planning, undertaking or reviewing any matter relating to the management of the Council's finances which form part of 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 and which is compliant with EU and UK procurement law (and "Framework Agreements" shall be interpreted accordingly)
"Grant"	A gift or donation by the Council under which it has no right to receive anything in return but may attach terms and conditions specifying how the grant is to be spent
"Grantor"	The organisation giving a Grant to the Council
"Invitation to Tender"	The invitation to tender documents in the form required by the Rules
"Opening"	When used in connection with tenders, includes opening manually or electronically
"Partnership"	An agreement between the Council and any public or private organisation to deliver a specific project or services
"Project Board"	A board of Officers formed to oversee the tendering of Strategic Contracts
Purchase Order Terms and Conditions	The terms and conditions that are contained as part of and referred to in the Council's Purchase Orders
"Quotation"	A price quoted by a potential Contractor or Supplier without a formal issue of an Invitation to

	Tender
“Regulations”	The Public Contract Regulations 2015 (or any re-enactment thereof)
“Rules”	These contract rules
“Scheme of Delegations”	As defined in the Constitution
“Supplier”	Any entity who is contracted by the Council to supply goods, works and/or services to the Council
“Tender”	A formal proposal issued in response to an Invitation to Tender
“Tenderer”	Any person or organisation who submits a formal tender in response to an Invitation to Tender
“Total contract value”	<p>The whole value or estimated value (in money or equivalent value for a single purchase or disposal calculated as follows:</p> <ul style="list-style-type: none"> <li>• 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; or</li> <li>• Where the contract is for one year and may continue until terminate by notice the total price to be paid or which might be paid over the first three years</li> </ul>

## Appendix – Summary of provisions

### GOODS AND SERVICES

Total Contract Value (£)	Type of Contract	Minimum number of tenders to be sought	Decision to award	Rule no.
Up to £10,000	Not subject to the Rules	Recommended minimum 2 competitive quotations	Service Manager or above	
£10,001 to £50,000	MINOR	Recommended minimum 2 competitive quotations	Service Manager or above	14
£50,001 up to EU Threshold	SIGNIFICANT	At least 3 written tenders	Head of Service or above	10, 15, 16, 17
Above EU Threshold and up to £500,000	MAJOR	The Regulations apply At least 4 written tenders	Assistant Director or above	11, 13, 15, 16, 17
£500,001 and above	STRATEGIC	The Regulations apply At least 4 written tenders	Cabinet or Delegated Approval	12, 13, 15, 16, 17, 18

### WORKS

Total Contract Value £	Type of Contract	Minimum number of tenders to be sought	Decision to award	Rule no.
Up to £10,000	Not subject to the Rules	Recommended minimum 2 competitive quotations	Service Manager or above	
£10,001 to £50,000	MINOR	Recommended minimum 2 competitive quotations	Service Manager or above	14
£50,001 up to £250,000	SIGNIFICANT	At least 3 written tenders	Head of Service or above	10, 15, 16, 17
£250,001 up to £500,000	MAJOR	At least 3 written tenders	Assistant Director or above	11, 15, 16, 17
Above £500,001 and up to EU Threshold (for works)	STRATEGIC	At least 4 written tenders	Cabinet or Delegated Approval	12, 15, 16, 17, 18
EU threshold (for works) and above	STRATEGIC	The Regulations apply At least 4 written tenders	Cabinet or Delegated Approval	13, 15, 16, 17, 18

