

CONTRACT PROCEDURE RULES

- 1. The need for Contract Procedure Rules**
- 1.1 Every contract entered into by the Council shall be entered into pursuant to or in connection with the Council's functions and shall comply with:
 - (a) all relevant statutory provisions;
 - (b) the relevant European procurement rules (i.e. the Treaty of the Functioning of the European Union, the general principles of EU law and the EU public procurement directives implemented by the EU Regulations);
 - (c) the Council's Constitution including these Contract Procedure Rules, the Council's Financial Procedure Rules, the Access to Information Procedure Rules (in particular in respect of requirements relating to the publication of delegated decisions and any associated reports, and the publication of notice of any forthcoming key decisions) and the Council's Scheme of Delegation; and,
 - (d) the Council's vision, priorities and values, Social Value Statement, Procurement Strategy, and policies.
- 1.2 These Contract Procedure Rules are intended to ensure that all Council contracts are entered into following a transparent and fair procurement process and provide best value for the Council.
- 1.3 The highest standards of probity are required of all officers and Members involved in the procurement, award, and management of Council contracts. Members shall comply with the Code of Conduct for Councillors, and officers shall comply with the Code of Conduct for Officers.
- 1.4 At all times during the contract award procedure, the Council, through its Members and officers, shall consider and implement the principles of non-discrimination, equal treatment, and transparency.
- 1.5 The procurement guidance issued by the Executive Director (Resources) assists with ensuring the consistency of approach to procurement across the Council. All officers shall have regard to the procurement guidance when undertaking procurement.
- 1.6 Where in these Contract Procedure Rules there is a reference to the Executive Director (Resources) that function may be delegated by him/her to the Head of Exchequer Services.

2. Commissioning and Procurement

- 2.1 Commissioning is an on-going process which follows a standard cycle of analysis, plan, do and review. Commissioning takes places at different levels across the Council with its partners, key stakeholders, service users and service providers.
- 2.2 The Council's commissioning activities should be outcome-based and focus on the desired change or impact rather than on inputs or processes. In doing so the Council will be able to clearly demonstrate the link to the direction set out in the Council's key policies e.g. **Strategy for Knowsley** and the **Corporate Plan**. **The Council's Commissioning Strategy, together with the Commissioning Framework, provides guidance to provide for consistency of approach. The Commissioning Wheel below demonstrates the key elements of the Council's desired approach towards Commissioning activity across the whole organisation.**
- 2.3 The Council will encourage collaborative and innovative working in its commissioning activities and provide support and guidance through the Executive Management Team.
- 2.4 The Council will take into account the best available insight, evidence and analysis of the needs of our residents when undertaking any commissioning activities ensuring decisions are evidence-based.
- 2.5 The Council will where appropriate and relevant involve and engage with local people, service providers and partners early in the commissioning process beyond traditional consultation methods.
- 2.6 Procurement is a key stage of the commissioning cycle and represents just one of the ways the Council can deliver services to meet the needs of our residents. Prior to entering any tendering exercise it is the responsibility of the commissioning officer to fully engage with a procurement officer at an early stage of the commissioning process.
- 2.7 It is the responsibility of the commissioning officer to ensure that all Contract details are uploaded to the contract register in a timely fashion. This responsibility applies irrespective of the value of the Contract or whether or not the Contract was awarded after a competitive tender.
- 2.8 In all cases commissioning officers must follow the approach and guidance set out in the Commissioning Framework and supporting documentation made available on the BERTHA intranet site – *'Commissioning Support'*

- 2.9 Each Senior Officer shall inform the Head of Exchequer Services of any procurement intentions that arise during the year and include all known commissioning intentions on the Council’s Procurement Pipeline.
- 2.10 At the beginning of each financial year, the Head of Exchequer Services may publish a Prior Information Notice in the Official Journal of the European Union (OJEU). This notice will list the contracts for services and supplies which it expects to procure for the financial year. In relation to contracts for works, the Council may publish a Prior Information Notice in the OJEU when the works are approved.

KNOWSLEY COMMISSIONING WHEEL



3. Who has authority to carry out procurement on behalf of the Council?

3.1 Any procurement carried out on behalf of the Council may only be undertaken by officers within the scope of their delegated authority under the Council's Constitution. Officers with delegated authority may only sub-delegate to other officers who have the skills and knowledge appropriate to the task.

3.2 Senior Officers may authorise their officers to place orders against framework agreements which have been entered into by the Council or where the Council has the benefit of using the provisions of Contract Procedure Rule 31 (Framework Agreements).

4. What contracts do not require compliance with the Council's Contract Procedure Rules?

4.1 These Contract Procedure Rules do not apply to the seeking of offers in relation to a public contract, framework agreement or dynamic purchasing system which is exempt under the provisions of the EU Regulations including the following:-

- (a) employment or other contracts of service for Council employees;
- (b) the disposal (where this does not involve the Council imposing any requirements on a potential developer - see Land Procedure Rules) or acquisition of an interest in land (including buildings or other immovable property or concerning rights thereon).
- (c) arbitration or conciliation services contracts;
- (d) central bank services contracts; and,
- (e) contracts awarded pursuant to Regulation 12 of the Public Contracts Regulations 2015.

5. What is the pre-procurement procedure?

5.1 Before commencing a procurement exercise, it is essential that the Senior Officer leading the procurement has identified the need and fully assessed any options for meeting those needs including a risk assessment, which is part of the overall commissioning process. Reviews shall be undertaken at regular intervals both during the procurement phase and also after contract award. Consideration shall be given to the Council's Procurement Strategy and procurement plans.

- 5.2 Before undertaking a procurement exercise the Senior Officer shall:-
- (a) consider all other means of satisfying the need in accordance with fundamental commissioning requirements (including recycling and reuse where appropriate);
 - (b) consider whether there is an appropriate framework agreement (see Contract Procedure Rule 31 below) that could be used; and,
 - (c) ensure that resources have been identified to fund the potential cost of the procurement.
- 5.3 Any appropriate framework agreements in place shall be used by Senior Officers regardless of the potential value of a contract.

6. Social Value

- 6.1 Social Value is a means to increase the social value associated with contracting/procurement. All queries on the application of Social Value should be referred to the Head of Exchequer Services as the lead advisor for the Council.

Definition

- 6.2 Social Value is the additional benefit to the community from a commissioning and procurement process **over and above** the direct purchasing of goods, services and works.
- 6.3 The Council defines Social Value as outcomes, measures and activity that will create strong and well connected public, private and social sectors that enable communities to be more resilient. In particular outcomes, measures and actions that support the growth of the social market are considered important to the Council. The principles underpinning Social Value are not new. The interconnecting links between the economy, the environment and society and the benefits to be derived from Social Value are demonstrated in the diagram below.



Legal framework

6.4 The Public Services (Social Value) Act 2012 requires public bodies to **consider** how the services they commission and procure might improve the economic, social and environmental well-being of the area. The Act places a **statutory duty** on local authorities to **consider** the following:-

- (a) how proposed procurement activity can improve the economic, social and environmental wellbeing of the relevant area;
- (b) how in conducting the procurement process, these economic, social and environmental improvements can be secured; and,
- (c) whether to consult with stakeholders and service users about this.

6.5 This consideration must take place before activity to procure begins. In most cases, it is Council officers as commissioners who will be best placed to do this.

Application only in law to Services over the EU financial threshold

6.6 The Act only applies to contracts for public services which are over the EU procurement threshold. This includes all public service markets, from health and housing to transport and waste. Council officers as commissioners are required to factor in Social Value at the **pre-procurement phase**, allowing Social Value to be demonstrably embedded in the design of the service from the outset.

- 6.7 The Act does not require Social Value to be considered in contracts for public works and public supply (goods), or in contracts for services below the EU procurement threshold. Knowsley Council, however, does require that all commissioning must consider Social Value.

Relevance, proportionality and reasonableness

- 6.8 A key consideration in applying Social Value is whether it is **relevant and proportionate** to what is actually to be achieved through the specifics of the contract being let. Social Value cannot be wholly unconnected with the service to be contracted. In order to avoid any potential legal challenges, the approach being proposed must be reasonable.

Scoring Social Value and evaluation against the specification

- 6.9 The Council has determined that the weighting to be allocated to Social Value within the overall quality scoring evaluation should reflect the social value that can be derived from the goods/services/works contract being commissioned. Council officers as commissioners should also consider whether Social Value can be embedded within the core specification for the service contract being commissioned.

7. Using Procurement Information Technology

- 7.1 In order to reduce bureaucracy and promote more efficient working, all commissioning via contractual arrangements should be conducted using existing IT systems. This will allow recording and reporting of procurement activity on a consistent basis across the whole organisation.
- 7.2 Requests for support for the Procurement Team should be conducted via the available SharePoint site.
- 7.3 All contractual commitments must be informed to the Procurement Team to allow the Procurement Pipeline (Contract Database or Contract Register) to be maintained to allow accuracy of record keeping and inform corporate reporting on contractual matters including:-
- (a) Total spending against contracts and financial performance against budgets at a corporate level;
 - (b) Details on Social Value (budgeted outcomes against delivered) to allow corporate reporting across the whole Council; and,

- (c) Impact on the local economy (including growth in contracts awarded to local suppliers, and different sectors in the local supply chain including SMEs and the Social Sector).

8. How does the Council estimate the contract value?

- 8.1 The Council should make the best use of its purchasing power by aggregating purchases wherever possible. Particular supplies, services, or works shall not be split in an attempt to avoid the applicability of these Contract Procedure Rules or the EU Regulations.
- 8.2 The timing and method of calculating the estimated value of a contract for supplies, services, or works is set out in Appendix 1.
- 8.3 The choice of method used to calculate the estimated value of a contract may not be made with the intention of excluding it from the scope of the EU Regulations.

9. Procurements for low value contracts

- 9.1 Procurements that are valued below £5,000 (excluding day to day purchases of consumables) for supplies and services and £10,000 in respect of works shall be classed as low value. A minimum of two quotes should be sought in line with the guidance of the Head of Exchequer Services and received in writing (which includes by electronic means). It is at the discretion of each Senior Officer whether or not to conduct this procurement through the Procurement Team. Nothing prevents a Senior Officer seeking more than two quotes to improve competition. For low value procurements officers should seek to buy locally to maximise the impact of the Council's spending on the locally economy and therefore where possible quotes should be obtained from suitable local suppliers within Knowsley. If the local Knowsley market cannot meet the Council's requirements then officers should seek quotes from other suitably qualified suppliers ideally within the Liverpool City Region.

10. Procurements for intermediate and high value contracts

- 10.1 Procurements that are valued between £5,000 and the prevailing EU threshold for supplies concessions and services, or between £10,000 and £2,000,000 in respect of works, shall be classed as intermediate value procurements.
- 10.2 These procurements shall be requested through the Procurement Pipeline to be conducted by the Procurement Team with a minimum of three quotations invited via the Council's electronic quotation and tendering system (The Chest). Nothing prevents a Senior Officer inviting more than three quotes to improve competition. For intermediate value procurements where the Council does not

advertise the contract opportunity, officers should seek to buy locally to maximise the impact of the Council's spending on the locally economy and therefore where possible quotes should be obtained from suitable local suppliers within Knowsley. If the local Knowsley market cannot meet the Council's requirements then officers should seek quotes from other suitably qualified suppliers ideally within the Liverpool City Region. For intermediate value procurements where the Council does advertise an award opportunity officers should seek to make suitably qualified suppliers within the Liverpool City Region aware of the contract opportunity.

- 10.3 Procurements that are valued above the prevailing EU threshold for supplies and services, or above £2,000,000 in respect of works, or which may involve a transfer of staff, shall be classed as high value procurements, and a tender process shall be conducted by the Executive Director (Resources) in accordance with one of the contract award procedures set out in Appendix 3 as appropriate for the particular procurement, i.e. open, restricted, competitive procedure with negotiation, competitive dialogue, innovation partnership or negotiated procedure without prior publication.
- 10.4 The awards of all procurements at or above £25,000 shall be notified to Contracts Finder by the Procurement Team.

11. Joint procurement

- 11.1 These Contract Procedure Rules shall apply to any procurement where tenders are invited by the Council on behalf of any partnership, consortium, association or similar body of which the Council is a member, unless such tenders are invited in accordance with the method prescribed by such consortium, association or body and where necessary with the requirements of the EU Regulations.

12. Contract terms and conditions

- 12.1 Contracts shall be entered into on the Council's terms and conditions, which shall be included with each purchase order and Request for Quotation, Invitation to Tender, Invitation to Negotiate or Invitation to take part in Competitive Dialogue. Contracts for framework agreements, where the framework was not directly procured by the Council (see Contract Procedure Rule 31) shall be entered into on the terms and conditions of the central government agency, other local authority, or other public body that procured the framework. Exceptions to this rule must be approved in advance by the Head of Exchequer Services.
- 12.2 Where contracts are subject to the EU Regulations, the rules relating to technical specifications shall be followed and any reference to a technical standard, make or type shall be prefaced with the words "or equivalent".

12.3 Every formal contract in writing within the meaning of Contract Procedure Rule 12 shall specify or contain (as a minimum):

- (a) the services, supplies, or works to be provided;
- (b) the price to be paid, with a statement of discounts or other deductions;
- (c) the time or times within which the contract is to be performed;
- (d) that all relevant health and safety legislation and codes of practice must be complied with and that any specific health and safety requirements set out in the Invitation to Tender or Invitation to Negotiate required prior to contract award have been satisfied;
- (e) a clause to secure that, should the Supplier fail to deliver the services, supplies or works within the time or times specified in the contract, the Council shall be entitled to terminate the contract either wholly or in part and recover from the Supplier any additional costs arising from the obtaining of any suitable replacement;
- (f) a clause empowering the Council to terminate the contract and recover from the Supplier the amount of any loss resulting from such termination, if the Supplier or any person acting on their behalf, in relation to the obtaining or execution of the contract or any other contract with the Council, have committed any offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) and (3) of the Local Government Act 1972;
- (g) a clause requiring the Supplier to provide information to the Council in order for the Council to fulfil its obligations under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004;
- (h) a clause setting out how, in respect of a service contract to which the Public Services (Social Value) Act 2012 applies, the Council's social value duty will be achieved by the Supplier;
- (i) such special conditions relating to the performance of the contract which had been set out in the procurement documents relating to economic, innovation-related, environmental, social or employment-related considerations; and
- (j) a clause empowering the Council to terminate the contract and recover from the Supplier the amount of any loss resulting from such termination, if:

- (i) the contract has been subject to a substantial modification which would have required a new procurement procedure under the EU Regulations; or
 - (ii) the Supplier has, at the time of contract award, been in one of the situations referred to in the EU Regulations requiring the Supplier to have been excluded from the procurement procedure; or
 - (iii) the contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the relevant European procurement rules (see paragraph 1.1(b) above) that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty; or
 - (iv) the Supplier has been convicted of an offence under the Blacklisting Regulations; or
 - (v) the Supplier is involved in any activity associated with Modern Day Slavery;
- (k) a clause that invoices submitted for payment are considered in a timely fashion by the Council and that payment shall be made to the Supplier under the contract within the minimum period of 30 days from the date when the relevant invoice is regarded as valid and undisputed or such other shorter period as may be agreed by the Supplier in accordance with the Early Payment Service or as required by any Council policy;
- (l) a clause in which the Supplier is obliged to impose similar terms to those in (k) above in any sub-contract for part of the public contract which it has with the Council; and,
- (m) in respect of works contracts, a clause confirming that the Supplier has agreed to comply with the terms of the Council's Construction Charter.

12.4 Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution or an equivalent European or International Standard is current at the date of the tender, every contract shall require that services supplies or works used or supplied and all workmanship shall be of a standard at least in accordance with the standard, or such higher standard as may be specified in the contract.

13. Bonds, guarantees and insurance

- 13.1 For high value procurements, the Senior Officer responsible for the procurement, in consultation with the Head of Exchequer Services, shall consider, as part of the pre-qualification assessment and evaluation process, whether security, and if so of what form, shall be required from the preferred Supplier. The Senior Officer responsible for the procurement shall consult with the Head of Exchequer Services as to the acceptability of the form of security agreed with the preferred Supplier.
- 13.2 The Council shall require and take sufficient security for the due performance of every contract for works with an estimated value in excess of £500,000 (excluding VAT), unless the Head of Exchequer Services considers it is in the interests of the Council not to do so.
- 13.3 The Senior Officer responsible for the procurement shall consider the appropriate type (employee liability, public liability, professional indemnity, product liability etc.) and level of insurance requirements for each contract. The Senior Officer shall consult with the Head of Exchequer Services when determining the appropriate levels of insurance for that procurement.

14. Contracts subject to the EU Regulations

- 14.1 Where an estimated value of a contract exceeds the current EU threshold, the contract shall be tendered in accordance with the EU Regulations. Under the EU Regulations, the contract may be tendered under one of the procedures set out in the EU Regulations. A contract notice in the prescribed form shall be published by the Senior Officer in the OJEU in order to invite tenders or expressions of interest or to participate for services contracts, supplies, and works contracts subject to the EU Regulations. The OJEU thresholds are revised by the EU every two years. The Head of Exchequer Services will inform Senior Officers of the new OJEU thresholds when they are revised.
- 14.2 The EU Regulations set out the minimum timescales for receipt of expressions of interest and tenders (bids for the negotiated procedure). Where the Council has published a Prior Information Notice announcing its forthcoming contracts for the year ahead, it may rely on reduced timescales if appropriate.
- 14.3 The EU Regulations apply to works concessions and to service concessions (a concession contract is an agreement with a contractor/supplier for the right to exploit works or services whereby it receives some or all of the consideration from third parties). Specific legal advice should therefore be obtained as to the appropriate procurement process to be followed in compliance with any

applicable legislation and regulations in force at the time and following these Contract Procedure Rules where appropriate and applicable to any such process.

Where required under the EU regulations an advertisement shall be placed on the “Contracts Finder” website in addition to the requirement to advertise in the OJEU.

14.4 Suppliers shall have unrestricted electronic access to the contract documents from the date of publication of the OJEU notice.

15. Pre-qualification (see Appendix for definition)

15.1 Where the EU Regulations apply the Council shall exclude a Supplier from participation in a procurement procedure where it has been established that that Supplier has been convicted of an offence set out in the EU Regulations and which is a mandatory exclusion.

15.2 Where the EU Regulations apply the Council may exclude a Supplier from participation in a procurement procedure where it has established that that Supplier has been convicted of an offence set out in the EU Regulations and which is a discretionary exclusion. If a supplier is to be excluded it must be in accordance with the exclusion period stated in The Public Contracts Regulations. This shall include the situation where a Supplier has been convicted of an offence under the Blacklisting Regulations.

15.3 The Council shall only invite to tender or enter into a contract with a Supplier if it is satisfied as to the Supplier's:

- (a) suitability to pursue a professional activity;
- (b) economic and financial standing; and,
- (c) technical and professional ability.

15.4 Technical and professional ability includes:

- (a) that the Supplier possesses the necessary human and technical resources and experience to perform the contract to an appropriate quality standard;
- (b) that the Supplier has a sufficient level of experience demonstrated by suitable references from contracts performed in the past;
- (c) that there are no conflicting interests of the Supplier which may negatively affect the performance of the contract; and,

- (d) in relation to supplies requiring siting or installation work, or for services or works, the professional ability of the Supplier may be evaluated with regard to their skills, efficiency, experience and reliability.

16. The Invitation to Tender Invitation to Participate or Invitation to Negotiate

16.1 The Invitation to Tender, Invitation to Participate or Invitation to Negotiate shall include details of the Council's requirements for the particular contract including:

- (a) a description of the services, supplies, or works;
- (b) the procurement timetable including the tender return date and time, which shall allow a reasonable period for the applicants to prepare their tenders;
- (c) a specification and instructions on whether any variants are permissible;
- (d) the Council's terms and conditions of contract;
- (e) the evaluation criteria including any relative or range of weightings assigned to each;
- (f) pricing mechanism and instructions for completion;
- (g) where appropriate, whether the Council has determined that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any succeeding legislation may apply;
- (h) form and content of method statements to be provided;
- (i) rules for submitting of tenders;
- (j) any minimum levels of technical and professional ability required of Suppliers;
- (k) any further information which will inform or assist tenderers in preparing tenders; and,
- (l) an offer to the Supplier to participate in the Council's Early Payment Scheme to establish whether they would be willing to participate and if so, what level of rebate/discount they would offer the Council for early payment of their invoices.

16.2 Any reservation to qualifying organisations of the right to participate in procedures for the award of reservable public contracts when permitted by the EU Regulations must be approved by the Head of Exchequer Services.

17. Submission and opening of quotations and tenders

17.1 Quotations and tenders shall be submitted in accordance with requirements set out in the Invitation to Quote, Invitation to Tender or Invitation to Negotiate, and via the Council's electronic tendering system in accordance with Contract Procedure Rule 18. The deadline for the return of quotations or tenders is to be agreed with the Head of Exchequer Services.

17.2 The Head of Exchequer Services shall be notified by the Senior Officer responsible for the procurement immediately quotations or tenders are invited of:

- (a) the time and date (or of any revision thereof) by which tenders or quotations should be received by the Head of Exchequer Services; and
- (b) the names of the persons invited to quote or the names of persons invited to tender where tenders have been invited following public notice pursuant to Contract Procedure Rule 14 or from a framework pursuant to Contract Procedure Rule 31.

17.3 Quotations and tenders shall be opened in the presence of the Head of Exchequer Services or a designated representative.

17.4 The Head of Exchequer Services or their designated representative shall unlock the secure system for the receipt of electronic quotations or tenders and record them on a form provided for the purpose and will verify that the quotations or tenders are opened and recorded correctly.

17.5 No quotation or tender shall be opened which is received after the deadline for that contract or which in any way contravenes the requirements of this Contract Procedure Rule 17. Any such quotation or tender that is not considered will remain unopened. This will remain unopened by the Head of Exchequer Services until a quotation or tender is accepted.

18. Electronic tendering and quotations

- 18.1 All documents required for procurement under these Contract Procedure Rules including a Request for Quotation, Invitations to Tender/Negotiate/Participate shall be made available on the Council's electronic tendering system on the date the Invitation is sent. Except in exceptional circumstances the Senior Officer responsible for the procurement shall ensure that all procurement documents are accessible and there is unrestricted and full direct access free of charge to such documents.
- 18.2 Responses to a Request for Quotation, an Invitation to Tender, an Invitation to Participate or an Invitation to Negotiate shall be submitted onto the Council's electronic tendering system, recorded, kept securely, and not opened until the deadline has passed for receipt of the quotation or tender.

19. Tender evaluation and the use of electronic auctions

- 19.1 Tenders subject to the EU Regulations shall be evaluated in accordance with the relevant regulations and the evaluation criteria set out in the Invitation to Tender or Invitation to Negotiate. All other tenders shall be evaluated in accordance with the evaluation criteria notified to tenderers in the contract notice and/or Invitation to Tender, Invitation to Participate or Invitation to Negotiate. All contracts shall be awarded on the basis of the offer which represents the most economically advantageous offer to the Council. It may in certain circumstances be possible to request a fixed priced bid as part of the price evaluation. The evaluation criteria shall be predetermined and listed in the Invitation to Tender or Invitation to Negotiate. In addition, the evaluation criteria shall be strictly observed at all times throughout the contract award procedure by any person involved in the tender evaluation.
- 19.2 It may be appropriate to evaluate tenders by use of an electronic auction provided that:
- (a) where the EU Regulations apply, the Senior Officer responsible for the procurement shall comply with the requirements set out those regulations;
 - (b) the means and procedures for carrying out the electronic auction have been agreed in advance of the issuing of the notice required by Contract Procedure Rule 14.1;

- (c) before proceeding with an electronic auction, the Senior Officer responsible for the procurement shall make a full initial evaluation of the tenders in accordance with the agreed contract award criterion/evaluation criteria and with the weighting fixed for them to determine which are admissible tenders;
- (d) all tenderers who submit admissible tenders shall be invited simultaneously by electronic means to offer new prices and/or new values;
- (e) the invitation shall contain all relevant information concerning individual connection to the system being used, stating the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out;
- (f) the invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with Contract Procedure Rule 19.2(c);
- (g) the invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the evaluation criteria fixed to determine the Most Economically Advantageous Offer, as indicated in the contract notice or in the tender documents;
- (h) the invitation shall specify the manner in which the electronic auction is to close; and,
- (i) after closing an electronic auction the Senior Officer responsible for the procurement shall award the contract on the basis of the results of the electronic auction.

20. Post-tender negotiation

- 20.1 Where procurement is conducted using either the open or restricted procedures, no post tender negotiations are permitted. However, to avoid confusion, the Council is entitled to seek clarification from Suppliers where appropriate.
- 20.2 Negotiation is a key element of the other EU procurement procedures, namely, competitive procedure with negotiation, competitive dialogue, innovation partnership or negotiated procedure without prior publication.

21. Evaluation team

- 21.1 The Senior Officer responsible for the procurement shall form an evaluation team with responsibility for evaluating tenders with representation from other services as they consider appropriate in the circumstances.
- 21.2 No evaluation team shall include a person who has a conflict of interest resulting from an association and/or relationship with any Supplier, unless the conflict has been fully declared and considered appropriate by the Monitoring Officer for the individual concerned to continue to participate in the evaluation process. A conflict of interest includes where a person has a direct or indirect financial economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure. Where the circumstances make it unclear whether or not a conflict of interest arises any final decision as to whether a person can be a member of an evaluation team will be determined by the Monitoring Officer. Prior to commencing the procurement each member of the evaluation team shall sign a declaration form confirming that they have no conflict of interest in respect of the procurement which they are to evaluate or if they do have an interest giving details of that interest.
- 21.3 All evaluation panel members should have the relevant knowledge, competency, and skills and the ability to exercise judgment in relation to nature of the procurement. Where training is required, it will be provided by the Procurement Team. All panel members will be briefed by the Procurement Team prior to the commencement of any evaluation exercise on what the evaluation exercise involves and the standards of behaviour expected of the panel members.
- 21.4 Where a conflict of interest arises during the procurement process the evaluation team member shall immediately declare the conflict of interest and notify the Head of Exchequer Services and shall immediately withdraw from the procurement process if required to do so after consultation with the Monitoring Officer.
- 21.5 Individuals participating in any evaluation process must:
- (a) declare any potential conflicts of interest as detailed in the section above;
 - (b) score any bids and documentation in isolation without collusion or communication with other evaluators; and
 - (c) commit to maintaining clear and accurate written records of the reasons to justify all scores awarded; no score should be given without written justification referring back to the bid, the specification and relevant criteria associated with the

evaluation process (this is of critical importance to provide assurances that scores can be fully justified in the event of any challenges that may arise as evidence may be required to be given by panel members in the event of legal proceedings being issued to challenge the contract award).

22. Awarding contracts

22.1 Subject to Contract Procedure Rule 22.2, the Council shall only award a contract where at the time of contract award this represents the Most Economically Advantageous Offer on contract award criteria chosen by the Senior Officer responsible for the procurement. The cost element may take the form of a fixed price or cost on the basis of which Suppliers will compete on quality criteria only.

22.2 This Contract Procedure Rule sets out the procedures that shall apply to the acceptance of tenders and quotations. The Senior Officer responsible for the procurement shall have authority to accept (as appropriate):

- (a) the lowest quotation or tender if payment is to be made by the Council;
- (b) the highest quotation or tender if payment is to be received by the Council; or,
- (c) the quotation or tender which represents the Most Economically Advantageous Offer to the Council.

This is provided that the amount of the quotation or tender does not exceed or fall short as the case may be of an estimate approved by the Council, or Executive Director (Resources) as the case may be, in accordance with the procedure set out in Contract Procedure Rule 8.

22.3 Where the value of the quotation or tender selected by the Senior Officer responsible for the procurement exceeds the approved estimate by no more than 5% or £50,000 (excluding VAT) (whichever is the lower), the Senior Officer responsible for the procurement, in consultation with the Executive Director (Resources), shall have authority to accept the selected quotation or tender following details submitted to the Executive Director (Resources), which identifies and addresses the financial implications.

22.4 Where the value of the quotation or tender selected by the Senior Officer responsible for the procurement exceeds the approved estimate by more than 5% or £50,000 (excluding VAT) (whichever is the lower), a report must be submitted by the Senior Officer responsible for the procurement to the Executive Director (Resources), which addresses the financial implications arising

from approving the selected quotation or tender. The Senior Officer responsible for the procurement shall only have authority to accept the selected quotation or tender if approval is given by the Executive Director (Resources).

- 22.5 Any significant error made by a supplier in a quotation or tender in arithmetic, pricing or other matter relating to the performance of the proposed contract, discovered in a quotation or tender or accompanying documents before a contract has been executed, shall be reported by the Senior Officer responsible for the procurement concerned to the Executive Director (Resources). The Senior Officer responsible for the procurement, in consultation with the Executive Director (Resources), shall then decide whether or not the Supplier shall be given the opportunity of confirming his quotation or offer/tender or of amending it to take account of any such error before any quotation or tender for the contract is unconditionally accepted.
- 22.6 Suppliers shall be required to explain the price or costs proposed in the quotation or tender where the tender appears to be abnormally low and Senior Officers shall comply with the requirements of the EU Regulations in relation to such tenders. Any decision to reject a quotation or tender where it is established that the quotation or tender is abnormally low must be approved by the Executive Director (Resources).

23. Notification of Contract Award and Debriefing

- 23.1 The Procurement Team shall send to each Supplier submitting a tender a notice communicating the decision to award a contract. The content of the notice shall comply with requirements of the EU Regulations.
- 23.2 The Senior Officer responsible for the procurement shall not enter into a contract with a Supplier until the end of the standstill period as set out in the EU Regulations.
- 23.3 The Procurement Team will provide any necessary feedback to the successful and unsuccessful tenderers initially in writing and may provide any additional debrief information as appropriate.

24. Contract award notice

- 24.1 Where a contract has been tendered pursuant to the EU Regulations, the Procurement Team shall publish a contract award notice in the OJEU no later than 30 days after the award of the contract or the conclusion of a framework agreement. Within a reasonable time thereafter the Procurement Team shall publish the contract award on Contracts Finder. In addition, notice of the contract award shall be given by the Procurement Team via the Contracts Register on the Council's website.

24.2 Where the EU Regulations do not apply and the contract value is greater than £25,000 the Procurement Team shall publish the contract award on Contracts Finder and on the Contracts Register on the Council's website.

25. Execution of contracts

25.1 Any contracts valued at or above the EU procurement threshold shall be formal, made in writing and executed as a deed by the affixing of the Council's common seal or signed by the Monitoring Officer or other person duly authorised in this regard (as considered appropriate). The exception is where the Monitoring Officer and the Senior Officer responsible for the procurement agree beforehand that such a formal contract can be dispensed with. All other contracts may be signed by the Senior Officer responsible for the procurement.

25.2 All payments and or variations shall be made in accordance with the terms of the executed contract and also the requirements of the Financial Procedure Rules.

26. Contract extension (where provided for within the contract terms)

26.1 Any contract may be extended in accordance with its terms by a Senior Officer provided that they shall always be satisfied that any extension will achieve value for money for the Council and is reasonable in all the relevant circumstances. Such extensions shall be reported in writing, after consultation with the Head of Exchequer Services. Where possible a proposed extension to the contract shall be notified to the Head of Exchequer Services for consultation not less than three months before any contract is due to expire.

26.2 In order to report in a consistent manner, the Head of Exchequer Services should be consulted on any proposed contract extension.

26.3 Prior to approval of any extension, discussion should take place with the Supplier about the availability of the Council's Early Payment Scheme (if they are not already participating in it) to establish whether or not the Supplier would be willing to participate and if so, what level of rebate they would offer for early payment of their invoices.

27. Contract modification (including contract extensions where not provided for within the contract terms, novation of contracts, or any other variations deemed to require a recorded decision)

27.1 Modifications to contracts and framework agreements may only be approved by a Senior Officer where such modifications are permitted under the EU Regulations.

- 27.2 Where the terms of a contract do not expressly provide for extension, and in exceptional circumstances and where it is necessary in order to comply with these Contract Procedure Rules, the Senior Officer, in consultation with the Executive Director (Resources), may extend the contract for such period and on such terms as shall be agreed with the Supplier provided that the Senior Officer shall always be satisfied that any extension will achieve value for money for the Council and is reasonable in all the relevant circumstances. A proposed extension to the contract shall be notified to the Executive Director (Resources) not less than three months before any contract is due to expire. For absolute clarity, a contract cannot be extended when it has already expired.
- 27.3 In order to report in a consistent manner, the Head of Exchequer Services should be consulted on any proposed contract modification / novation having due regard to the requirements of the Public Contract Regulations 2015.
- 27.4 No extension shall be entered into by a Senior Officer with the specific intention of avoiding the application of the EU Regulations to the procurement or where such extension would be in contravention of the EU Regulations. The Senior Officer shall take legal advice before entering into any extension under Contract Procedure Rule 27.2.
- 27.5 Prior to approval of any variation/modification, discussion should take place with the Supplier about the availability of the Council's Early Payment Scheme (if they are not already participating in it) to establish whether the Supplier would be willing to participate and if so, what level of rebate they would offer for early payment of the Supplier's invoices.

28. Termination of contract

- 28.1 For any contract resulting from high value procurement, termination shall be approved by the Senior Officer only with the approval of the Executive Director (Resources). Contracts of a lesser value may be terminated early by agreement prior to the expiry date or in accordance with the termination provisions set out in the contract. Legal advice should be sought as appropriate.

29. Records of tenders and contracts

- 29.1 The Head of Exchequer Services shall maintain a list of all tenders received.

29.2 A Contracts Register of all contracts (the Procurement Pipeline), of whatever value, shall be maintained by the Head of Exchequer Services. The Contracts Register will be available on the Council's website.

29.3 For every individual contract, of whatever value, a contracts file shall be maintained by the appropriate Senior Officer responsible for the procurement unless such file is maintained by the Procurement Team.

30. Nominated and named sub-contractors

30.1 If a sub-contractor, Supplier or sub-consultant is to be nominated or named to a main contractor, quotations or tenders must be invited in accordance with these Contract Procedure Rules and the terms of the invitation shall be compatible with the main contract.

30.2 Suppliers may be asked to give information in its tender of the proposed sub-contract arrangements in accordance with procedures contained within the EU Regulations (including any contract share to be awarded to them).

31. Framework agreements and dynamic purchasing systems

31.1 Framework agreements are used where the Council wishes to contract for the supply of supplies, services or works without conducting a new procurement exercise. However, the framework agreement may include within its terms a requirement for a mini competitive exercise between those Suppliers who are parties to the framework agreements. Any framework agreement shall be tendered in accordance with these Contract Procedure Rules. Where the Council has entered into a framework agreement through procurement or is able to place orders from existing framework agreements procured by central government agencies, other local authorities, or other public bodies, then the Council may benefit from using those contracts without entering into a separate procurement. A framework agreement shall not last for more than four years. Legal advice should be sought before considering the award of a contract using a framework agreement not procured directly by the Council.

31.2 A dynamic purchasing system shall be tendered in accordance with Appendix 3 using the restricted procedure. Where a dynamic purchasing system is established, the Council must offer unrestricted, direct and full access to procurement documents by electronic means from the date of publication of the contract notice to the date when the dynamic purchasing system ceases.

- 31.3 Any Supplier interested in joining a dynamic purchasing system, and which meets the selection criteria, can submit an indicative tender setting out terms for supplying the requirements. The Senior Officer responsible for the procurement shall evaluate the indicative tender within 15 days of the date of its submission and must admit to the dynamic purchasing system any Supplier if the indicative tender complies with the specification and any additional documents. Once admitted to the dynamic purchasing system a Supplier may improve an indicative tender at any time.
- 31.4 Any appropriate framework agreements or dynamic purchasing systems in place shall be used regardless of value.

32. Letters of intent

- 32.1 Letters of intent shall only be used in exceptional circumstances as follows:
- (a) where a Supplier is required to provide services, supplies, or works prior to formal written acceptance by the Council; or,
 - (b) where the Council's form of tender does not include a statement that until such time as a formal contract is executed, the Council's written acceptance of a tender or quotation shall bind the parties into a contractual relationship.
- 32.2 Any such letters of intent shall be issued by the Executive Director (Resources), which may allow a start upon the works or the ordering of services or supplies but shall not permit any payments to be made thereunder except where such payment shall not exceed a sum to be determined by the Executive Director (Resources) in each instance and that such payment shall only be payable if the formal contract is not entered into. Where the formal contract is entered into any such payment made under the letter of intent shall be treated as a payment made under the formal contract.

33. Appointment and Role of consultants

- 33.1 Any consultants used by the Council shall be appointed in accordance with these Contract Procedure Rules and any guidance issued by the Executive Director (Resources). Where the Council uses consultants to act on its behalf in relation to any procurement, then the Senior Officer responsible for the procurement shall ensure that the consultants carry out any procurement in accordance with these Contract Procedure Rules and any guidance issued by the Executive Director (Resources). No consultant shall make any decision on whether to award a contract or to whom a contract should be awarded. A consultant may however form part of the Council's evaluation team and may score tenders and/or quotations

as if they were an officer of the Council; any consultant shall comply with the Council's evaluation and training procedures as detailed in section 21 above. The Senior Officer responsible for the procurement shall ensure that the consultant's performance is monitored and appropriate records are kept.

- 33.2 Any intention to commission a consultant shall be approved by the relevant Senior Officer in consultation with the Head of Exchequer Services, who, where appropriate, will refer the matter to the Executive Director (Resources) for consideration and approval. The Head of Exchequer Services will monitor and report on Consultancy to the Executive Director (Resources) and other officer groups as appropriate.

34. Statistical returns

- 34.1 The Council shall make any statistical returns to government departments for onward transmission to the European Commission concerning the contracts awarded during the year under the EU Regulations.

- 34.2 The Head of Exchequer Services is responsible for these statistical returns and will make the necessary arrangements for information to be collected annually. Senior Officers shall provide all information which the Head of Exchequer Services requires in order to make such statistical return.

35. Damage to Council property

- 35.1 In the event of Council property being damaged by fire or other insured peril and it is expedient in the Council's interests not to proceed to effect reinstatement of the property using normal procedures under these Contract Procedure Rules, then upon the approval of the loss adjuster acting for the Council's insurers, the appropriate Senior Officer, in consultation with the Executive Director (Resources), shall be authorised to proceed to carry out any necessary works taking into account the requirements of the EU Regulations including the use of the urgency procedures if appropriate.

36. Emergency procedures

- 36.1 In the event of circumstances rendering emergency measures necessary which cannot expediently be approved through normal Council procedures, the appropriate Senior Officer and the Executive Director (Resources) are authorised, notwithstanding anything contained in the Council's Contract Procedure Rules or Financial Procedure Rules, to carry out or contract for the immediate carrying out of any necessary works or to do anything else necessary on behalf of the Council.

36.2 In a continuing emergency any action taken or contract entered into shall be reported to a Special Council Meeting which shall take such action as necessary to deal with the situation.

36.3 Prior to reference to the Council, such exercise of emergency measures shall be subject to a total limit of expenditure which must be less than £250,000.

37. Waivers of Contract Procedure Rules

37.1 Waivers of any of these Contract Procedure Rules shall only be given in exceptional circumstances. Waivers may not be made retrospectively. A Senior Officer empowered to let a particular contract shall consult with the Executive Director (Resources) prior to making any proposal to waive these Contract Procedure Rules. Waivers shall be reported in writing by the Senior Officer to the Executive Director (Resources) for approval and the written report shall specify why the waiver is justified. Any waiver of these Contract Procedure Rules is subject to approval by the Executive Director (Resources).

37.2 Waivers should only be applied in exceptional circumstances such as where uniqueness of provision applies; expediency or an emergency; to avoid service disruption; or any such other requirement to make a direct award of contract.

38. Non-compliance and ratification

38.1 If it comes to the notice of a Senior Officer that there has been non-compliance with these Contract Procedure Rules in respect of any contract for which they are responsible as the Senior Officer with responsibility for the procurement, they shall without delay notify the Executive Director (Resources), who shall take such action as they deem necessary.

38.2 Where these Contract Procedure Rules have not been complied with, the decision to award a contract may be ratified by the Executive Director (Resources). Requests for ratification shall be reported in writing by the Senior Officer to the Executive Director (Resources), and the report shall specify the circumstances relating to the non-compliance with these Contract Procedure Rules and why ratification is requested. The Council's internal auditor shall be supplied with a copy of any report seeking ratification.

Definitions

“Blacklisting Regulations”

The Employment Relations Act 1999 (Blacklists) Regulations 2010 (SI 2010 No 493).

“Contracts Register”

A register held and maintained by the Procurement Team containing details of contracts entered into by the Council of whatever value.

“Constitution”

The constitution of the Council.

“Dynamic Purchasing System”

A completely electronic process for making commonly used purchases, the characteristics of which are generally available on the market and meet the requirements of the Council. Throughout its validity it is open to any supplier which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.

“Early Payment Scheme”

The Council scheme whereby Suppliers obtain early payment of its invoices in return for a rebate on the invoice price payable by the Council.

“Electronic Auction”

A process involving an online auction presenting new prices, revised downwards, and/or new values concerning certain elements of tenders, which occur after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

“EU Regulations”

The UK regulations implementing the EU public procurement directives, currently the Public Contracts Regulations 2015 (SI 2015 No 102) and the Concession Contracts Regulations 2016 (SI 2016 No 273).

“Executive Director”

An Executive Director of the Council with appropriate delegated authority to act on the Council’s behalf in accordance with the Constitution (and for the avoidance of doubt includes other officers acting under delegated powers from an Executive Director for this purpose).

“Framework Agreement”

An agreement which allows the Council to place orders with a supplier to provide supplies, services, or works in accordance with the terms of the agreement. The framework agreement itself usually constitutes a non-binding offer with no obligations on the Council to place orders with the supplier. If the Council places an order with the supplier a binding contract comes into being. A framework agreement can be a binding agreement where it is executed as a deed.

“Modern Day Slavery”

The Council has adopted the Co-operative Party’s “Charter Against Modern Slavery”.

“Most Economically Advantageous Offer”

From the Council’s perspective the most economically advantageous offer from a Supplier assessed by reference to relevant evaluation criteria linked to the subject matter of the contract in question for example, quality, price, life cycle costs, technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions, organisation, qualification and experience of staff assigned to performing the contract, after sales service and technical assistance, delivery date, delivery process and delivery period or period of completion.

“Senior Officer”

All references to Senior Officers includes the Chief Executive, Executive Directors, the Assistant Chief Executive, Assistant Executive Directors, Heads of Service and all Senior Officers with responsibility for a budget.

“Supplier”

Any person or body of persons providing, or seeking to provide, supplies, services, or works to the Council or awarded a concession by the Council and includes economic operators as defined in the EU Regulations.

Estimating the Contract Value

The timing and method for calculating the estimated value of contracts shall be as follows:

1 Timing of estimating the contract value

The calculation of the estimated value of a contract shall be based on the total amount payable, net of VAT, as estimated by the Senior Officer. This calculation shall take account of the estimated total amount, including any form of option, extension, and any renewals of the contract:

- (i) where the EU Regulations apply the estimate must be valid at the moment at the contract notice is sent, or, where such notice is not required, at the moment at which the Senior Officer commences the contract awarding procedure; or,
- (ii) where the EU Regulations do not apply the estimate must be valid at the moment at the Senior Officer commences the contract awarding procedure.

2 Framework agreements and dynamic purchasing systems

For framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value, net of VAT, of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

3 Innovation Partnerships

For innovation partnerships, the value to be taken into consideration shall be the maximum estimated value, net of VAT, of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.

4 Works contracts

For works contracts, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies necessary for executing the works and placed at the contractor's disposal by the Council.

5 Treatment of Lots

Where a proposed work or a proposed provision of services may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots. Where the aggregate value of the lots is equal to or greater than the relevant threshold the EU Regulations applies to the awarding of each lot.

Provided that the aggregate value of the lots awarded shall not exceed 20% of the aggregate value of all the lots proposed to be awarded, contracts for individual lots may be awarded without applying the procedures set out in the EU Regulations provided the estimated value, net of VAT, of the lot concerned is less than:

- (a) 80,000 euro for supplies or services, or
- (b) 1 million euro for works.

6 Supply or service contracts which are regular in nature

For supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the estimated value shall be calculated as follows:

- (i) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, if possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract; or,
- (ii) the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year if that is longer than 12 months.

7 Leasing, hire, rental, or hire purchase

For contracts relating to the leasing, hire, rental, or hire purchase of products, the estimated value shall be calculated as follows:

- (i) in the case of fixed term contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, if the term of the contract is greater than 12 months, the total value including the estimated residual value; or,
- (ii) in the case of contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

8 Insurance, banking, and design service contracts

For contracts for the following types of services, the value to be taken as a basis for calculating the estimated contract value shall, where appropriate, be the following:

- (i) insurance services: the premium payable, and other forms of remuneration;
- (ii) banking and other financial services: the fees, commissions, interest, and other forms of remuneration; or,
- (iii) design contracts: fees, commission payable and other forms of remuneration.

9 Service contracts where there is no total price

For service contracts which do not indicate a total price, the value to be taken as a basis for calculating the estimated contract value shall, where appropriate, be the following:

- (i) in the case of fixed-term contracts, if that term is less than or equal to 48 months: the total value for their full term; or,
- (ii) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.

Appendix 2

Minimum timescales for receipt of expressions of interest and tenders subject to the EU Regulations

Procurement Type	Procurement Procedure	Minimum days for receipt of applications/requests to participate +	Minimum days for receipts of offers ++
Goods, Works and Services	Open	N/A	35#
	Open (with Prior Information Notice)	N/A	15#
	Restricted	30	30#
	Restricted (with Prior Information Notice)	30	10#
	Accelerated Restricted (for matters of urgency)	15	10
	Competitive Procedure with Negotiation (with OJEU notice)	30	30#
	Competitive Procedure with Negotiation (with Prior Information Notice)	30	10#
	Accelerated Competitive Procedure with Negotiation (for matters of urgency)	15	10
	Competitive Dialogue	30	N/A
	Innovative Partnership	30	N/A
	Negotiated Procedure (without prior publication)	N/A	N/A

+ Means, for example, requests to be selected to tender/expressions of interest/pre-qualification questionnaires.

- ++ i.e. the period from the date of despatch of the contract notice, the invitation to tender or invitation to negotiate to the receipt of tender or response.

- * Provided (i) PIN included all information required for the contract notice in so far as the information was available at the time and (ii) the PIN was sent for publication between 35 days and 12 months prior to the date on which an invitation is sent for publication

- # Use of the Council's e-tendering system could reduce the tender stage by 5 days.

Appendix 3

Procurement Procedures set out in the EU Regulations

1 Open procedure

- 1.1 All Suppliers applying are invited to tender. If publication of a notice in the OJEU is not required then a notice shall be published in:
- (a) the Council's electronic tendering system;
 - (b) Contracts Finder and,
 - (c) where appropriate local newspapers and/or trade journals in order to target the appropriate market for the particular contract.
- 1.2 The notice shall contain details of the proposed contract and specify a deadline within which interested parties may apply. The Invitation to Tender shall specify the return date for tenders.

2 Restricted procedure

- 2.1 All Suppliers applying are invited to submit a pre-qualification / supplier selection questionnaire. Suppliers that meet the published pre-qualification criteria related to those matters set out in Contract Procedure Rule 13 shall be invited to tender.
- 2.2 If publication of a notice in the OJEU is not required then the notice requirements are the same as in the open procedure (see paragraph 1 above) except that the notice shall state that the restricted procedure is being used.
- 2.3 If the EU Regulations apply, a minimum of five Suppliers shall be invited to tender, or, where less than five Suppliers meet the selection criteria, such number as do meet the selection criteria.
- 2.4 Where the EU Regulations do not apply, a minimum of four Suppliers shall be invited to tender, or, where less than four Suppliers meet the selection criteria, such number as do meet the selection criteria.
- 2.5 The standard cabinet office pre-qualification questionnaire must be used for all goods and services contracts where the EU Regulations apply.
- 2.6 The construction industry standard PAS91 pre-qualification questionnaire must be used for all works contracts where the EU Regulations apply.

3 Competitive Procedure with Negotiation

- 3.1 The Competitive Procedure with Negotiation should only to be used where the use of the Open, Restrictive or Innovative Partnership procedures fail to produce an acceptable tender or a contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of risks attaching to them. Only those Suppliers selected by the Council are invited to negotiate. Suppliers are selected on the basis of published pre-qualification criteria relating to those matters set out in Contract Procedure Rule 13.
- 3.2 If a publication of a notice in the OJEU is not required, the notice requirements are the same as in the open procedure (see paragraph 1 above). Any notice shall state that the Competitive Procedure with Negotiation is being used.
- 3.3 A minimum of three Suppliers should be invited to negotiate following publication of a notice, or, where less than three Suppliers meet the selection criteria, such number as do meet the selection criteria.
- 3.4 At least two officers, at least one of whom shall be the Senior Officer responsible for the procurement or a person authorised by him/her, shall be present at all times during the negotiations.
- 3.5 The Senior Officer responsible for the procurement or a person authorised by him/her shall keep proper written records of all negotiations and, where appropriate, these shall be signed and/or approved as such by all participants.

4 Competitive dialogue

- 4.1 Competitive dialogue should only to be used where the use of the Open, Restrictive or Innovative Partnership procedures fail to produce an acceptable tender or a contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of risks attaching to them.
- 4.2 A contract notice should be placed and selection should be made of those who will be invited to take part in the dialogue. Suppliers are selected for dialogue on the basis of published pre-qualification criteria relating to those matters set out in Contract Procedure Rule 13.
- 4.3 The dialogue may embrace all aspects of the contract for the purpose of identifying one or more solutions to the purchasers needs before seeking bids from those remaining in the dialogue.

- 4.4 A minimum of three Suppliers should be invited to the dialogue or, where less than three Suppliers meet the selection criteria, such number as do meet the selection criteria.
- 4.5 Competitive dialogue is used to help define the means of achieving broad objectives and allows bidders to produce innovative solutions.
- 4.6 The award criteria may not be changed during the award procedure so that all parties are treated equally.
- 4.7 During the dialogue the Council shall ask participants to specify their proposals in writing. The Council can continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.
- 4.8 At the appropriate time the Council declares the dialogue concluded and informs the participants. The Council then asks the participants to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue.
- 4.9 During dialogue solutions or confidential information communicated by one participant shall not be revealed to another participant except with their agreement.
- 4.10 Prizes or payments may be made to the participants in the dialogue.

5 Innovation partnership

- 5.1 Innovation partnership can be used where there is a need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market and will generally relate to research and development activity.
- 5.2 A contract notice should be placed and selection should be made of those who will be invited to take part in the procedure.
- 5.3 A minimum of three Suppliers should be invited to the negotiation, or, where less than three Suppliers meet the selection criteria, such number as do meet the selection criteria.
- 5.4 The award criteria may not be changed during the award procedure so that all parties are treated equally.
- 5.5 Negotiations under the procedure may take place in successive stages in order to reduce the number of tenders to be negotiated in accordance with the EU Regulations.
- 5.6 At the appropriate time the Council declares the procedure concluded and informs the participants. The Council then asks the participants to

submit their final tenders on the basis of the solution or solutions presented and specified during the procedure.

6 Use of Negotiated Procedure without prior publication

6.1 The use of the Negotiated Procedure without prior publication is limited to the specific cases and circumstances set out in the EU Regulations including:

- (a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been received in response to an open or restricted procedure and the initial conditions of contract are not substantially altered, or
- (b) where the works; supplies or services can only be supplied by a particular Supplier for any of the following reasons:
 - (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance; or
 - (ii) competition is absent for technical reasons; or
 - (iii) the protection of exclusive rights, including intellectual property rights;

but only, in the case of paragraphs (ii) and (iii), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement; or

- (c) insofar as is strictly necessary, where for reasons of extreme urgency brought about by events unforeseeable by the Council, the time limits for open or restricted procedures or competitive procedures with negotiation cannot be complied with; or
- (d) where following a design contest, a contract is to be awarded to the winner or one of the winners of the design contest; or,
- (e) where new works or services repeat similar ones awarded to the same Supplier provided that they relate to a basic project for which the original contract was awarded and that any further award takes place within 3 years following the conclusion of the original contract.

6.2 The Senior Officer shall take legal advice before using the Negotiated Procedure without prior publication so as to ensure that the circumstances satisfy the requirements of the EU Regulations.