

# Section 9

## Procurement Regulations

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## Glossary of terms

Term	Definition / Explanation
<b>Chief Officer</b>	This means all Members of Leadership Team
<b>Competitive dialogue procedure</b>	This can be used when we cannot provide a precise specification and where there is scope to negotiate about what services companies can provide. The purpose of this procedure is to negotiate on the specification of the project and not on the price.
<b>Consortium</b>	An association of several business organisations who are legally bound together to work towards a commonly held aim. Or, it can mean two or more economic operators (UK Public Contract Regulations 2015).
<b>Contract</b>	Any agreement where we agree to carry out or to buy or sell any goods, work, services or utilities for payment or otherwise.
<b>Contracts Finder</b>	Contracts Finder is a government backed website offering a central point for organisations interested in bidding for work over £10,000 with the government, its agencies and other public sector bodies.
<b>Contract Lots</b>	A contract may be split into discrete aspects (lots) which tenderers may bid for separately or combined, as specified in the tender.
<b>Crown Commercial Services</b>	<p>This is the central procurement service run by HM Government for the public sector. The website address is <a href="https://ccs.cabinetoffice.gov.uk">ccs.cabinetoffice.gov.uk</a></p> <p>This will allow you access to Framework Agreements, Catalogues, etc</p>

Term	Definition / Explanation
<b>Electronic procurement and e-tendering</b>	The use of bespoke procurement software products. E-tendering systems allow all aspects of the tendering process to be carried out electronically including the despatch of tender documents, receipt of and responding to clarification questions and return of completed tenders. You can take advantage of reduced minimum time periods when you arrange your contracts under the EU procurement regime and send your documents electronically. You can get advice and guidance on this from a procurement advisor.
<b>EU procurement regulations</b>	The Public Contract Regulations 2015 together with relevant EU directives, case law and guidance issued.
<b>Framework agreement</b>	An agreement or other arrangement which sets the terms (in particular the price and, where appropriate, quality) under which the provider will enter into one or more contracts or a series of contracts with us. This may also be referred to as a call-off contract, a continuous contract or a standing offer.
<b>Open procedure</b>	This means an advert will be placed and the tender will be open to anyone who shows an interest.
<b>Procurement Advisor</b>	This will be the Head of Governance or staff from Staffordshire County Council or any other organisation providing professional support to the delivery of procurement exercises
<b>Public organisation</b>	Any organisation which may award a public contract under the Public Contract Regulations 2015.
<b>Public services contract</b>	One under which we employ a person or other legal entity to provide services.
<b>Public Supply contract</b>	A contract to buy goods (not land or the product of an activity); or hire goods, whether or not we install them.

Term	Definition / Explanation
<b>Public Works Contract</b>	<p>A contract for carrying out work under which we employ a person or other legal entity to do the work. Works are defined as including:</p> <ul style="list-style-type: none"> <li>• building and civil engineering work;</li> <li>• installing, for example, heating and electrical equipment or ICT equipment;</li> <li>• carrying out work such as tiling and papering; and</li> <li>• maintaining buildings.</li> </ul> <p>We may also treat the following activities as a contract for <b>work</b>:</p> <ul style="list-style-type: none"> <li>• A contract where we employ a provider to act as our agent when letting works contracts.</li> </ul> <p>An agreement where a developer constructs a building on their own land (according to our needs) and then transfers the land and structure to us at a later date.</p>
<b>Restricted procedure</b>	<p>An advert will be placed and organisations which express an interest will have to fill in a pre-qualification questionnaire (PQQ). We will evaluate the PQQs and produce a shortlist of suitable organisations which we will then invite to tender.</p>
<b>Signing a contract</b>	<p>A contract includes arrangements for formally accepting a tender. Contracts can only be awarded and signed/sealed by Authorised Officers. A purchase order will in effect be the contract for lower value purchases and so the rules for signing a contract will apply. See 10.5 for more details</p>
<b>Standstill period</b>	<p>The period of time between giving notice of our plan to award the contract and the confirmation of the award of the contract which is needed under the EU procurement regulations. This gives unsuccessful companies the chance to ask for a debriefing and to challenge an award of a contract.</p>
<b>Tendering</b>	<p>A formal procedure for getting written offers (tenders) for supply</p>

Term	Definition / Explanation
<b>Third sector</b>	Non-governmental organisations that are driven by value and which mainly reinvest any profit to further social, environmental or cultural aims. The sector includes voluntary and community organisations, charities, social enterprises, faith groups, housing associations and co-operatives and mutuals.
<b>Value for money</b>	This is not the lowest price but the best combination of whole-life costs and quality to meet users' needs. You should always assess value for money over the whole life of the contract and you should take into account all costs and benefits to society as a whole including the environmental and social benefits and costs, not just those directly relevant to us. (OGC 2008).

## Summary of Options Available for the Procurement Process

Category	Value	Process
Minimal value transactions	Up to £1,000	No requirement to obtain written quotations but still have a duty to obtain value for money
Low Value transactions	From £1,000 up to £10,000	Two written / evidenced quotations must be obtained. This can be done by undertaking price comparisons on websites e.g. for goods.
Intermediate Value Transactions	From £10,000 up to £25,000	Three written quotations must be obtained. Alternatively a framework agreement can be used.
Medium Value Transactions	Over £25,000 and up to £50,000	Three written quotations, obtained through formal process, where providers must comply with a specification. Alternatively a framework agreement can be used.  An advert must be placed on the Council's website. For services, a contract should be issued rather than relying on the general terms and conditions included in a purchase order
High Value transactions	Over £50,000 and up to EU transactions limit	A tendering process should be followed, with support from a Procurement Advisor. Alternatively it may be agreed that a framework agreement can be used.  As a minimum an advert must be placed on the Council's website and Contracts Finder. Consideration should also be given to advertising in an appropriate trade/professional journal
EU transactions	Goods and Services over EU Procurement Regulation thresholds (incl. VAT): Goods and Services - £214,904; and Works - £5,372,609	Special rules apply - speak to a Procurement Advisor

# 1 Introduction

- 1.1 These regulations are part of our constitution and are our procedural regulations for buying items for the Council (the Regulations). They do not apply to buying items or services from within the Council. Where services such as printing and graphic design are provided internally, these services should be used unless agreement is reached with the internal service that a particular piece of work needs to be sourced externally.
- 1.2 These regulations apply to all contracts for goods, or for work, services or utilities for us or which we provide unless paragraphs 1.5 and 1.6 apply or you have a valid waiver under regulation 12 (section headed 'Exceptions from the regulations').
- 1.3 The regulations apply to any contract that result in us making a payment and some types of contract where a service is being provided for us which results in some income being generated for us.
- 1.4 The regulations also apply if we are acting as the lead organisation in partnership or other joint arrangement or if we appoint a subcontractor in connection with any contract.
- 1.5 The regulations do not cover grants which we may receive or make.
- 1.6 The regulations do not apply to:
  - contracts of employment;
  - Investment transactions placed by the Head of Finance for treasury management;
  - contracts placed by the Council Solicitor for external legal services; and
  - contracts relating to interest in land (also known as property) - this primarily relates to the purchase and disposal of land;
  - contracts relating to selling or otherwise disposing of our assets.
- 1.7 If you are in any doubt about whether the regulations apply, you must always check with the Head of Governance or the Head of Law and Administration.
- 1.8 Our 'best value duty' is very important. It means that we must always consider how each procurement meets our duty to secure continuous improvement in what we do after taking account of economy, efficiency, effectiveness and outcomes. As a result, we need to question whether we should be buying anything at all and, if we do, whether we can buy it best ourselves or jointly, or if we should rely on someone else to get better value.



- 1.9 Government and EU public procurement regulations require that we must allow, and be seen to be allowing, freedom of opportunity to trade and to be open and clear about how we do things.
- 1.10 If we fail in this duty, a provider could challenge the Council which could result in them claiming damages and even suspension of the contract.
- 1.11 The most important principles are being clear, open and providing fair competition. Whenever we are buying goods and services for the council, we must always act to promote competition and to achieve value for money.
- 1.12 The regulations have three main aims. These are to:
- keep to the obligations that govern spending public money, such as the EU Public Procurement Regulations;
  - get best value in the way we spend money, so that we may in turn offer better and more cost-effective services to the public; and
  - protect people who follow the regulations.
- 1.13 These regulations may be waived if the Monitoring Officer, the s151 Officer or the Head of Governance decides:
- you are buying something jointly with one or more public organisations and you are following their procurement processes;
  - a contract or subcontract which is governed by nationally negotiated conditions of contract from one or more professional institutions, for example Institute of Civil Engineers (ICE ) building contracts and any condition of these regulations, does not match a condition in those conditions of contract; and
  - we are working in line with procurement regulations entering into a framework agreement negotiated by another public organisation.
- 1.14 **These regulations must be complied with by all employees involved in the procurement of goods, services or works. Failure to comply may result in Disciplinary action.**
- 1.15 Any interim contractor or consultant who is responsible to us for preparing or supervising a contract on our behalf must do the following. They must:
- keep to these regulations as though they were an employee, though the procedure for inviting, opening and accepting tenders will need to be agreed with the Head of Law and Administration or the Head of Governance
  - produce all the records they keep in relation to the contract, if requested by the Council; and

- at the end of a contract, send all records, documents and so on relating to the contract to the Chief Officer concerned and
  - always deal with the ownership of intellectual property rights, generally these should belong to the council
- 1.16 An employee will not, without approval from the Head of Finance, enter into a contract for supplying goods or services under any operating or finance lease, rental or any other credit arrangements.

## 2 Context

- 2.1 The European Union sets down (through a treaty) what obligations are placed on us when we are buying. EU directives, UK law and Government policy says that we **must** always make sure that we are offering the opportunity to provide goods, work or services to the whole market to make sure there is fair competition.
- 2.2 We all now need to think about the way we arrange this, for example, e-auctions, e-tendering, or setting up a framework or placing a supply contract. More and more, councils are working collaboratively through joint procurements (in other words, buying the goods and services you need with another department or another council or councils and sometimes other public organisations).
- 2.3 If you are buying larger or expensive goods, work or services, remember that the regulations for higher value orders and contracts are stricter than for those of lower value. This is so that the benefits of a more thorough, complicated process are not outweighed by the price compared to the value of the goods, work or services in question.
- 2.4 At the highest end of the value scale, we **must** follow full EU public procurement directives, which say that we must keep to certain other procedures. In these cases, you **must** consult a Procurement Advisor before you start buying what you need.

## 3 Before we start

### Before you buy goods and services

- 3.1 You must ensure that you have:
- (i) the appropriate authority to procure goods and services, especially for those over £50,000. Authority may come from the Council's Scheme of Delegations or a specific Cabinet or Council decision; and
  - (ii) Sufficient revenue and or capital budget to fund the purchase (please refer to the Council's Financial Regulations).

3.2 You will need to determine the value of the contract early in the process as this will affect the procurement route that you will need to follow. The value of a contract means the estimated total value over the length of time it will apply, including any extension options (**not the yearly value**), before VAT.

- If the contract is for buying a single item, which is not related to buying other items, the contract is worth the price, or estimated price, referred to in that contract.
- If the contract is for buying a related group of items, the contract is worth the total price, or estimated total price, of the group.
- If there is no set length of time for the contract, this is the estimated value of the contract over a period of four years.
- You should not split contracts to avoid the values, either by item or length. This is particularly relevant for invoice/purchase led expenditure which over time becomes a Contract, ie regular purchases of similar items over a period of time. There are however circumstances where it is appropriate to split a contract into “lots”.

3.3 Before starting a procurement process, you need to make sure that you have carefully identified the need and fully assessed the options for meeting it, ie think carefully about what you are commissioning and how best to do this. Before you start, you **must** consider the following:

- Is there a clear business need, supported by appropriate evidence and a budget in place?
- What is important to the Council in this procurement? Do you just need the goods, work or services? Or are there other things you want to bring about (for example, improved environmental performance, new jobs) or added social value. In certain cases the procurement process can help achieve this wider social value by meeting a particular social, environmental or economic aim. In respect of public service contracts, the Public Services (Social Value) Act 2012 requires you to consider how your proposal might improve the economic, social and environmental well-being of the Council’s area, and how the contract might secure that improvement.
- Can you buy what you need with another service or another council? If you think you could save us money or achieve other advantages if you bought what you need with someone else, consider whether there is an existing framework arrangement, in-house provider or contract you can use. This framework or contract could be one we have already set up or one set up by another council or joint-purchasing organisation or run centrally by the Government (such as Crown Commercial Services).

- Is there some kind of recognised purchasing group in place (often referred to as a buying consortium) where members can use the purchasing arrangements to buy goods or services? If there is a group in place, you do not have to keep to these regulations. However, you can only buy the goods or services that are covered by the group arrangements. If the goods or services are outside the scope of the group arrangements, you must use some other method of procurement in line with these regulations. A Procurement Advisor can give you more advice on this.

You need to be able to evidence that you have fully considered what you need to buy, why and how this is to be done.

- 3.4 If after considering other buying solutions you are going to use a joint procurement with another council, the relevant Chief Officer in consultation with the Head of Law and Administration or the Head of Governance may determine that the procurement regulations for another public authority should be followed rather than these regulations.
- 3.5 If you decide that you or your partners are likely to need to buy the goods or services again in the future, it may be that the best way to buy them is by setting up a framework agreement. A framework agreement allows a number of providers to sell you the goods, work or services you need when you need them. There are many types of contracts which will be suited to a framework agreement and it is important that you agree this with a Procurement Advisor before you start to make sure that the type of contract being used is most suitable.

### **Purchase of ICT hardware, software and services**

- 3.6 If you are planning to buy any ICT hardware, software or services, you must consult the Head of Technology to make sure that the procurement is compliant with the Council's ICT policy/strategy and existing software or equipment where relevant.

### **Employment issues and TUPE (Transfer of Undertaking Protection of Employment Regulations)**

- 3.7 Entering into new contractual arrangements or changing existing contractual arrangements can give rise to TUPE implications. It is not always obvious that there are TUPE implications (for example, when a contract with another supplier comes to an end and is to be put out to tender again). So, **if in any doubt**, you **must get the** advice of an HR or Legal specialist to make sure that any relevant TUPE arrangements are in place.
- 3.8 Where it has been decided that goods, work or services should be bought from an external source, you **must** consider the effects this may have on the existing in-house team and the possibility of staff transferring to the new provider under TUPE.

3.9 These contracts **must** contain conditions to make sure appropriate workforce (and other) information will be made available in enough time when that contract is due to end to make sure that we can fulfil TUPE obligations.

3.10 TUPE situations will almost always give rise to pensions issues.

HR will support you in getting the advice you need on this from the Pensions Section. You will need an actuarial statement on pension information for any proposed TUPE transfers. HR will arrange to get this from the Pensions Section. It is the responsibility of the person managing the tender process to liaise with HR on TUPE matters.

### **Making sure we keep to law and policies**

3.11 When making or proposing a contract on our behalf, the procuring officer will:

- keep to all relevant legal requirements including EU procurement regulations, relevant health and safety, environmental and equalities, diversity and discrimination law;
- keep to these regulations; and
- keep to our financial regulations.

### **Honesty and conflicts of interest**

3.12 Every officer who takes any decision or has any influence about a

contract must keep to our code of conduct for employees and must comply with the Bribery Act 2010. They must also complete and sign the Declaration of Interest and Confidentiality document.

3.13 Every officer who has a financial interest in a contract must advise their Head of Service and contact the Monitoring Officer who will make a record in a book we will keep for the purpose, under Section 117 of the Local Government Act 1972.

3.14 You should not accept any gifts or hospitality from anyone tendering for a contract we are leading on or from any current supplier. If you do, this may be a disciplinary offence. You **must** tell the Monitoring Officer if you are dealing with a contract for the Council and have been offered such a gift or hospitality and advise your Head of Service. Further details on Gifts and Hospitality can be found in the Employee's Code of Conduct.

## 4 Commissioning the Procurement

### Defining the Need

- 4.1 At the least, you **must** clearly and carefully:
- (i) specify the goods, work or services to be supplied;
  - (ii) the agreed programme for delivery;
  - (iii) the terms for payment together with all other terms and conditions; and
  - (iv) ensure that you will have the funds in the budget to pay for them.
- 4.2 This means you **must** decide before beginning the procurement process the size, scope, and specification of the goods, work or services needed. If you are buying with someone else, you **must** decide this scope with your partners first.
- 4.3 When identifying and defining the need, you should make sure you have involved an appropriate wider range of organisations relevant to the goods, work or services to be supplied. By knowing the market and encouraging a wider supply base, you have more chance to find the right providers and achieve the right services at the right price.

### Contract strategy

- 4.4 Once you have decided on the need, you **must** decide on a contract strategy for buying the goods, work or services.
- 4.5 This means taking a step back from the traditional procurement process and assessing the purchasing options particularly when purchasing services. For example, using a grant may be appropriate for a highly specialised service, if you know there is only one provider, or a very few suspected providers, or the project is of a low financial value. This is because it would not make financial sense for one specialist provider to go through a full tendering process.
- 4.6 You **must** consider options for delivering goods, work or services. The options for goods, works or services are:
- not buying the goods, having the work done or providing the services at all;
  - providing the goods, work or services ourselves (ie appropriate use of in-house support services eg printing and design work);
  - getting someone else to provide the ongoing goods, work or service (using the 'third sector' or another local authority or public organisation); or

- providing the goods, work or services with someone else (the private or 'third' sector or another local authority or public organisation).

4.7 If you are in any doubt about the above, you should get advice from a Procurement Advisor.

## 5 How we buy the goods and services we need

5.1 Choosing the procurement route to be followed is largely dependent on the value of the contract. The options are outlined in the table at the beginning of these Regulations and are summarised below:

Category	Value	Process
Minimal value transactions	Below £1,000	No quotations required
Low value transactions	£1,000 up to £10,000	2 written quotations required
Intermediate value transactions	£10,000 up to £25,000	3 written quotations required
Medium value transactions	£25,000 up to £50,000	3 quotations to be obtained via a formal process, which must be advertised on the Council's website
High value transactions	£50,000 and up to the EU thresholds	Tendering process in accordance with these Regulations
EU transactions	Check current EU thresholds	Tendering process required in accordance with EU Directives/legislation

5.2 Framework agreements may be used instead of obtaining quotations or tendering for goods, works and services.

5.3 Details on each of these processes is explained in more detail in the sections on Quotations (section 6) and Tenders (section 7).

5.4 If you need to purchase goods or services urgently and do not have sufficient time to follow the relevant process, please refer to the Section on Exceptions (section 12).

## 6 Quotations Process

### Minimal Value Transactions (below £1,000)

- 6.1 For transactions valued below £1,000 (not including VAT), you still have a duty to ensure best value in terms of economy, efficiency and effectiveness is obtained. There is no specific requirement to obtain alternative quotations but if you think that the first quotation you obtain is expensive then you should consider obtaining at least one further quotation.

### Low-value transactions

- 6.2 For transactions valued at or over £1,000 but below £10,000 (not including VAT) you **must** get two written/evidenced quotations before you issue a purchase order specifying the goods, work or services. Price comparisons undertaken via the Internet will be acceptable providing evidence is retained (eg screen prints) - this will generally apply to the purchase of goods.

### Intermediate-value transactions (ie £10k to £25K)

- 6.3 For transactions valued at or over £10,000 but below £25,000 (not including VAT), you **must** get three written quotations before you issue a purchase order or contract (for services and works), specifying the goods, work or services.

### Medium Value Transactions / Formal Quotes Process (ie £25k to £50k)

- 6.4 For all transactions valued at or over £25,000 but below £50,000 (not including VAT), you will need to follow a Formal Quotes Process.
- 6.5 You must:
- Advertise the goods, services or works required on the Council's website;
  - Seek to obtain a minimum of three written quotations;
  - Maintain a record of the quotations received;
  - Issue a purchase order to the provider of the successful quotation.
  - For services or works you should obtain legal advice as to whether it is necessary to issue a contract - advice should be sought at the outset of the procurement process so that contract details can be issued to interested parties as part of the quotations process.

### Receiving Quotations

- 6.6 For quotations below £25,000 the only requirement is that they must be evidenced in writing and you should retain this evidence for a minimum of 24 months.



6.7 For quotations of £25,000 up to £50,000 you need to have a formal process for accepting quotations. The quotations must be:

- opened at a set time;
- opened by an officer nominated by the Head of Service or Service Manager as appropriate ;
- logged under the price given; and
- kept on the relevant file.

6.8 Electronic quotations can be accepted. They should be sent to a specific email address, preferably a generic service email address for the service.

### **Evaluation of Quotations and the Decision to Award**

6.9 All written quotations for contracts valued below £50,000 (not including VAT), **must** be evaluated on the basis of the lowest price, unless other conditions are shown in the document used to invite quotes. If this is the case, the contract should be awarded on that basis. For guidance on the use of quality evaluation criteria, please see 7.36 to 7.40.

6.10 The decision to award will be taken as follows:

- Quotations from £1,000 up to £10,000 - Service Manager or officer authorised by them;
- Quotations of £10,000 up to £50,000 - Service Manager or above

6.11 For quotations of £25,000 and above, the award decision should be publicised on the Council's website and recorded in the Contracts Register.

### **Exceptions to the Quotations Process**

6.12 If you receive less than the specified number of quotations, you must try and get other quotations or an exemption from the regulations in line with Section 12 (section headed Exceptions from the Regulations).

## **7 Tendering Process**

7.1 You **must never** deliberately split down the value of contracts to avoid tendering. Wherever possible, we should make our purchases in the form of a single large contract rather than a series of smaller contracts.

7.2 However, there will be circumstances where splitting contracts into "lots" is appropriate. A Procurement Advisor will guide you on whether this is appropriate.

### Full tender procedures below EU thresholds

7.3 For transactions valued at over £50,000 (not including VAT) but below the EU thresholds, you must carry out a formal tender process in line with the following principles.

- Openness
- Transparency
- Visibility
- Value for money
- In the best interests of the council
- Competition

7.4 Generally, you will not be allowed to use a Pre-Qualification Questionnaire (PQQ) stage and should follow the Open procedure for tenders over £50,000 but below the EU threshold. You should seek advice from a Procurement Advisor on all tenders

### Full tender procedures (over the EU thresholds)

7.5 If your contract has a value over the EU thresholds shown in the table below, you **must** follow the Public Contracts Regulations 2015.

	Thresholds from January 2024 (incl. VAT)
For goods and services (including goods and consultancy services)	£214,904
For works	£5,372,609

These limits are changed in January every two years. You **must** check the latest limits before you go ahead.

7.6 If you are inviting tenders for contracts over EU procurement thresholds, you **must** decide on the procedure to follow before you advertise and it **must** be one of the following.

- Open procedure (all interested providers send us a tender in response to an advertisement).
- Restricted procedure (expressions of interest from interested providers in response to an advertisement, with us inviting a selection of those providers to send us a tender).

- Competitive procedure with negotiation (expressions of interest from interested providers in response to an advertisement, with us inviting a selection of those providers to negotiate). This may only be used in exceptional circumstances.
- Competitive Dialogue procedure (where the purpose of the procurement is known but not the solution).

You must discuss and agree the appropriate route to use for your tender with a Procurement Advisor.

- 7.7 EU directives and the UK's Public Contracts Regulations are very detailed and we can only give details of the main ones here. If in doubt, you should get the advice from a Procurement Advisor.
- 7.8 The 2015 Public Contracts Regulations contain conditions relating to providing notices and other documents electronically.
- 7.9 For each contract, unless we say differently below, you must publish a contract notice in the Supplement to the Official Journal of the European Union (OJEU). Advertisements you publish as well as this **must not**:
- appear in any form before we have sent a contract notice to OJEU; and
  - contain any information on top of that in the contract notice in OJEU.

See also 7.20 and 7.21 regarding advertising tenders

- 7.10 You **must** always follow the minimum timescales relating to tender procedures governed by the EU directives. The timescales given for completing and returning tenders are only the minimum, so there is flexibility to extend timescales to encourage bids from smaller providers or consortiums. If procurement falls under the EU procurement limits, there is no formal time limit. Similarly, when faced with short timescales within which to use the funds, you should still make sure the process used is fair, clear and accessible to all.
- 7.11 If you have sent a prior information notice (PIN) announcing a forthcoming contract notice to OJEU between 35 and 365 days before you have sent the contract notice, reduced timescales may apply.

### **Using the competitive dialogue or competitive procedure with negotiation governed by EU directives**

- 7.12 You **must** get advice from a Procurement Advisor as soon as possible before starting a tender process governed by EU directives, particularly when using either the competitive dialogue or the competitive procedure with negotiation.
- 7.13 Under EU directives, you can use the competitive dialogue procedure or the competitive procedure with negotiation for contracts valued at or over EU limits in certain circumstances if:

- The Council's needs can't be met without some adaptation of available solutions;
- The Council's needs require a design or some other innovative solution;
- The contract can't be awarded without some prior negotiation because of specific circumstances relating to the nature, complexity, legal or financial makeup or because of risks associated with the circumstances;
- The technical specifications can't be established with any precision with reference to an industry standard, common technical specification or technical reference; or
- In response to an open or restricted procedure that has already been conducted, no acceptable tenders were submitted.

### **Tender documents**

7.15 A Pre-Qualification Questionnaire (PQQ) can only be used for OJEU procurements. The PQQ should include:

- the nature and purpose and, if it applies, the proposed length of the contract;
- an outline of the goods, work and/or services to be supplied or carried out;
- a statement on our procedures for getting tenders;
- a requirement for the applicant to provide information about their technical, commercial and financial standing if we do not already have the information;
- a closing date for receiving applications;
- the evaluation criteria (with weightings) to include in any tender process;
- an outline process and timetable;
- a statement that we do not have to accept the lowest or any tender; and
- Contact Point - this will generally be a Procurement Advisor

7.16 Unless we change it under 7.15, every invitation to tender should include:

- the nature, purpose, start date and period of the contract;
- the detailed specification and quantities of goods, work or services to be supplied or carried out;
- the times at, or within which, and the places at which the goods, work or services are to be supplied or performed;

- a copy of the conditions of contract which the successful contractors will have to keep to (see section 10 for details);
- a requirement for the tenderer to provide information about their technical, commercial and financial standing if we do not already have the information;
- information on TUPE, where applicable;
- the evaluation criteria (with weightings) for awarding the contract;
- a statement that we do not have to accept the lowest or any tender;
- the closing time and date, and address for receiving tenders; and
- a named procurement advisor.

### **Insurance Requirements**

- 7.17 Insurance conditions must be contained in the tender specification and the conditions of contract. The type and level of insurance cover must be discussed and agreed with the Risk and Resilience Manager.
- 7.18 The insurance limits advised will relate to each claim. For public liability and employers' liability, the cover must be in place throughout the period covered by the contract. For professional indemnity, the conditions are more complicated. Not only must the cover be in place throughout the period covered by the contract but also for another six years after the end of the contract (or 12 years if the contract is under seal). For certain types of services, for example, financial advice, the amount of professional indemnity insurance cover will need to be higher to protect us in case anyone gives inappropriate advice.

### **Advertising**

- 7.19 As a minimum you must advertise the goods, services or works required on the Council's website and on Contracts Finder. You should also consider whether it is appropriate to advertise the tender in an appropriate trade/professional journal or a local newspaper.
- 7.20 For all tenders over the OJEU threshold you will also be required to place a notice in the European public procurement journal **Tenders Electronic Daily (TED)**.

### **Issuing and return of tenders**

- 7.21 You should always aim to use electronic procurement (or e-procurement) systems rather than paper systems. All tenders should be sent out and returned electronically via an approved e-tendering system where possible.

- 7.22 All tenderers should be informed that the Council will not accept or consider tenders sent in by fax or email.
- 7.23 The procuring officer must send to every person who wants to give us a tender any documents which meet the requirements of regulations 7.15 and/or 7.16. This includes a returnable tender form or other document which tells each company wanting to tender to:
- include their offer price (or prices) for the goods, work, services or utilities;
  - include their signature or seal;
  - return the filled-in tender form by a certain date and time by the method stated in the tender documents.
- 7.24 Where a PQQ is issued as part of the tender process then the rules for the issue, return and opening of tenders should be followed.

### **Receiving and opening tenders and PQQs (pre-qualification questionnaires)**

- 7.25 Every response to an invitation to tender should be delivered no later than the date and time stated for the return of tenders in the invitation to tender. Generally, we will not open a tender if it is received late. In exceptional circumstances where a tender is received late but before the tenders are opened, this may be accepted subject to the relevant Chief Officer and either the Monitoring Officer, the s151 Officer or the Head of Governance being satisfied that there is a valid reason for the tender arriving late and that this was beyond the control of the tenderer.
- 7.26 If the circumstances mean it is appropriate eg there has been by a delay by the Council in providing clarification response, the Service Manager or Chief Officer may postpone, for a reasonable period, the closing time and date for receiving tenders. This applies as long as we have let everyone know (ie everyone we have asked for tender from), in the same way, and this must be before the closing date and time for the return of the tenders.

### **Electronic Procurement**

- 7.27 All tenders returned via the e-tendering system will be opened on or shortly after the specified date and time, via officers authorised to use the e-tendering system.
- 7.28 The e-tendering system will maintain a record of the tenders received, opened and the officer(s) undertaking the opening of the tenders.
- 7.29 Once opened, the tender documents will be sent electronically to the lead officer for the procurement. The lead officer will arrange for the tender documents to be stored securely on the network and arrange for those officers involved in the evaluation process to have access to them.

## Paper/Hard copy

- 7.30 If there is authorisation to use a non e-procurement procedure, all tenderers should:
- be asked to provide both a paper copy of their tender and a copy on a read-only CD-ROM, securely packaged and clearly labelled with the tenderer's name and contract reference, and
  - be provided with a tender envelope, which bears the word 'TENDER' followed by the subject the tender relates to and the closing date and time for receiving tenders;
  - advised that the tender envelope should not be labelled or marked in any way that identifies who is providing the tender.
- 7.31 The Head of Law and Administration will ensure that there is an appropriate system in place for the secure storage of tenders until the time we have given for their opening. We will not open tenders before the closing date and time.
- 7.32 Two officers authorised by the Head of Law and Administration **must** open all tenders at the same time. They **must** not be involved in the tender evaluation and award.
- 7.33 Any tender envelope which is labelled or marked in such a way that identifies who is providing the tender will be rejected.
- 7.34 The authorised officers will list the opened tenders in the tenders record book. Tenders must be signed and dated by the people opening them. Pages with prices in them do not need to be signed, only the total price page.
- 7.35 Once opened, arrangements will be made for the lead officer for the procurement to collect the tenders. The lead officer will arrange for the tender documents to be stored securely and arrange for those officers involved in the evaluation process to have access to them.

## Evaluating tenders

- 7.36 For contracts valued over £50,000 (not including VAT) and for all contracts governed by EU directives, we **must** use the 'best value' tender evaluation procedure based on identifying the most economically advantageous tender (MEAT). However, there are some situations where using MEAT will not be an appropriate method of evaluation. This is usually if the only obvious difference between products or solutions will be that of price (for example, if you are buying stationery or other standard items).

It is unlikely that you could choose providers for services or work on price alone as these will often need wider evaluation techniques. When deciding on how we evaluate tenders, we need to be careful that using a lowest-price method of evaluation rather than MEAT is appropriate for the procurement.

- 7.37 The evaluation process involves scoring tenders fairly by a panel of officers or independent experts using criteria which **must**:
- be already set out in the invitation to tender documents in order of importance;
  - be strictly kept to at all times throughout the tender process;
  - reflect the principles of best value;
  - include price;
  - consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance and so on should be taken into account;
  - be able to be assessed independently;
  - be weighted according to importance;
  - show wider social value if this has been included in the specification; and
  - avoid any discrimination, or other cause which goes against any of our policies.
- 7.38 The panel of evaluators should review and score the submissions independently. A moderation process should then take place to consider the scores and comments of each officer and to reach a consensus on each tenderers score.
- 7.39 A record should be maintained by each officer involved in the evaluation process of their scores and notes to support their scores. Notes can be of positive attributes of the tender, any omissions or concerns. This information will be used to feedback to unsuccessful tenderers. A comprehensive record should be maintained as this may be needed as evidence if the contract award is challenged.
- 7.40 If you use this evaluation method, a decision to award the contract must be in favour of the company which sends us the most economically advantageous tender. (In other words, the tender that achieves the highest score in the independent assessment.)
- 7.41 At the end of the evaluation process, prior to making the final award decision a financial appraisal will need to be conducted on the preferred bidder .This will generally be in the form of a company credit check and will be arranged by the Procurement Advisor.



7.42 In certain circumstances you may decide not to award the contract to any of the tenderers. You will need to advise all tenderers of the decision and the reasons for this. If you intended to revise the specification and re-start the procurement process then it may be appropriate to advise the unsuccessful tenderers of this.

### **Awarding contracts**

7.43 The decision to award a tender of over £50,000 will be taken by the relevant Chief Officer. Please refer to Section 10 for details on who can sign contracts.

7.44 You **must** make sure that the appropriate budget holder has the funds in place before you make the award.

7.45 You **must** record in writing the results of the tender-evaluation process and the decision to award a contract.

7.46 All contracts awarded should be publicised on the Council's website and the Contracts Register updated accordingly.

7.47 For all contracts awarded under the EU directive we must place a contract award notice in OJEU which must be sent no later than 30 calendar days after the date we award the contract.

7.48 We cannot accept any tender which breaks EU procurement regulations.

### **Standstill period (for EU tenders only)**

7.49 For all contracts tendered under EU directives, we **must** have a 10-15 day 'standstill period' between notification of the decision to award and the start of the contract. Once we have made the decision to award a contract, we must write to each company that provided a tender with the outcome of the tender process. This notice **must** include:

- details of the criteria for awarding the contract;
- if possible, the score or ranking the company achieved against those criteria;
- if possible, the score or ranking the winning company achieved; and
- the name of the winning company/ies

7.50 There **must** be at least 10 calendar days (15 days if notice is sent by post) between sending this notice and the start of the contract. Special rules apply if a company asks us for a debrief on the tender process. Even if a company asks for a debrief outside of the standstill period, we **must** still provide this. In this instance, you must get advice from a Procurement Advisor as soon as possible.

## Tender Records and Audit Trail

- 7.51 The Lead Officer for the tender shall keep adequate records of the procurement process. Such records should include:
- invitations to quote/tender
  - quotations/tenders
  - details of any exceptions and reasons for them
  - award criteria used
  - tender documents
  - reasons for selecting the successful contractor and for not selecting unsuccessful contractors
  - details of communications with tenderers
  - any decisions to suspend these regulations and use of any delegated powers.
- 7.52 Records relating to the successful tenderer should be kept for six years after the end of the contract to which they relate. However, documents relating to unsuccessful tenderers may be destroyed after 12 months from the award of the contract provided there is no dispute about the award.

## 8 Framework agreements (including Crown Commercial Services, ESPO, WMS)

- 8.1 You **must** always consider use of framework agreements for goods, work and services, **if they exist**, for all procurements over £25,000.
- 8.2 Framework agreements (also known as call-off contracts) are arrangements with providers for providing goods, work or services on agreed terms for a set period for estimated quantities against which orders may be placed if and when needed during the contract period. They offer benefits of bulk-buying, improved services and reduced administration costs over the period of the arrangement.
- 8.3 A framework agreement may have the option for you to hold a mini-competition with all the capable providers on the framework when you come to buy for us. You **must** get advice from a procurement advisor on carrying out a mini-competition.
- 8.4 You should seek advice from a procurement advisor on whether call-off contracts or frameworks are relevant in your own case. You will also need to check if legally you can use a particular framework agreement.

- 8.5 If there isn't a framework already in place (or if one does not exist with partners which you can use), you **must** consider if it would be better value to set up a framework. This is likely if you are going to need to buy the same or similar goods and services again in the future. You can get guidance on how to set up a framework from a procurement advisor.

## 9 Concession contracts

- 9.1 You must use a concession contract if we want to hire someone to provide a service within the council area if they will be charging the public for the services being provided.
- 9.2 There are a number of exemptions if a public works concession contract is proposed.
- 9.3 If the company which plans to provide the services is going to subcontract the services, this may fall within EU procurement rules. In all cases, if the company is buying goods or services as part of the concession contract, any procurement should be carried out in line with these regulations.
- 9.4 You **must** get advice from a procurement advisor before carrying out any procurement relating to a concession contract.

## 10 Conditions of contract

- 10.11 There must be written evidence of every contract and all contracts must be in a form agreed with the Head of Law and Administration.
- 10.2 All transactions **must** use an appropriate model form of contract approved by the Head of Law and Administration (or a form decided by the Chief Officer after consulting the Head of Law and Administration).
- 10.4 For all contracts for services if the model conditions of contract are not suitable, you **must** consult Legal Services to produce a suitable set of conditions of contract (with other advisors if necessary) before inviting tenders.
- 10.5 The following officers are authorised to sign Contracts (or Purchase Orders where applicable):
- Quotations of £1,000 up to £10,000 - Service Managers or an officer nominated by them;
  - Quotations of £10,000 up to £50,000 - Service Managers;
  - Contracts of £50,000 up to £100,000 - Chief Officers
  - Contracts of £100,000 or above will be done under seal

- 10.6 If a contract is strategically important or politically sensitive, or if the extended limits would be valuable, for example, contracts for land or property, the contract **must** be in writing and an official seal must be placed on it.

## 11 Changes to Contracts

### Transferring contracts

- 11.1 In appropriate circumstances we may agree to transfer a contract to another contractor. You must ask for advice on how to transfer a contract from Legal Services, before any contract is transferred.

### Changing and extending contracts

- 11.2 Depending on any legal restrictions and the need to keep to these regulations, a Chief Officer may authorise the following extensions to an existing contract, if the budget has been confirmed.

- An extension for a particular period under the terms and conditions of the contract (but depending on the satisfactory performance when monitoring the contract).
- A single extension of the contract by up to 12 months as long as this would not place the contract over the EU limit or break any law.

Details of any extensions to contracts should be kept with the original contract.

- 11.3 Any changes (including variation orders, and if relevant a resulting change in price, decided in line with the contract terms may be authorised by the officer who signed the contract or a person nominated by them providing those changes are lawful, comply with these regulations and are within the approved budget for the contract.
- 11.4 Any extension to the contract period cannot be longer than the original length of the original contract.
- 11.5 You **cannot** extend or change contracts arranged under the EU regulations without consulting a Procurement Advisor and/or seeking Legal advice.

## 12 Exceptions from the Regulations

- 12.1 An exception to these regulations means we give permission to agree a contract without keeping to one or more of these regulations. We may grant an exception under conditions set out below. We cannot grant an exception if to do so would mean breaking any laws on public procurement or other relevant legislation.

12.2 The relevant Chief Officer in consultation with two of the following officers may grant an exception to these regulations for contracts under £100,000 (not including VAT):

- Monitoring Officer (Head of Law and Administration):
- Section 151 Officer (Head of Finance);
- Head of Governance.

For contracts over £100,000 approval will also be needed from the relevant Cabinet Member.

12.3 If you want an exception, you must apply in writing using the request for waiver form and send it to your Chief Officer in the first instance. Please include the exception you want and your reasons for it.

12.4 The Head of Law and Administration will keep a register of all exceptions to these regulations.

12.5 We will not agree an application for an exception unless you have a good reason. We do not consider a lack of time caused by poor forward planning as a good reason and so will not allow it.

#### **Exceptions which involve the request for waiver form**

12.6 We may grant an exception in the following circumstances:

- If there is an unexpected emergency involving danger to life or health or serious damage to property, if the goods, work or services are needed more urgently than would be possible if we followed the tender or quotation procedure.
- If, for technical reasons, the goods, work or services can be bought from only one provider and this can be justified.
- If you have attempted but have been unsuccessful in obtaining the required number of quotations or more than one tender.
- If the proposed contract is an extension or change to the scope of an existing contract with a value (including the change or extension) that is below the relevant EU limit. However, this does not apply if the existing contract provides for an extension.
- If you are buying works of art, museum artefacts, manuscripts or archive collection items.
- If there is a need to develop and influence the market by extending the range of services, as long as the contract is for a fixed term of no more than three years.

- If it is necessary so we can continue to provide a new service, which was developed using grant aid and as long as the contract is for a fixed term of no more than three years.
- If we can achieve value for money by buying used vehicles, equipment or materials.
- To develop our aims to develop the economy, without breaking public procurement rules.
- In line with Regulation 32 of the UK Public Contract Regulations 2015 regarding the use of the negotiated procedure without prior notice.

### **Exceptions which do not need you to fill in the request for waiver form**

12.7 We will grant an exception to these regulations and you will not need separate authorisation in the following circumstances:.

- If you place an order with a single provider under an existing corporate contract or framework agreement.
- If you place an order through a buying consortium of which we are a member.
- As part of a partnering contract that involves a series of contracts with one provider.
- If any law says we must contract differently from these Procurement Regulations.
- If you place an order under an arrangement, of which we are a member that has gone through a competitive process which meets EU conditions, for example, Crown Commercial Services.
- For goods, work or services which must be provided by a public utility or a local authority other than us under their legal powers.