

# Contracts procedure rules

## SECTION A - INTRODUCTION

1. These contracts procedure rules (issued in accordance with section 135 of the Local Government Act 1972) are intended to promote good purchasing practice, public accountability and to deter corruption. These contracts procedure rules are the rules that regulate council contracts.
2. The purpose of the rules is to ensure that works, supplies/goods, or services are appropriate for their purpose, provide the right balance between price and quality and are procured in an open way that demonstrates probity and compliance with the law, best practice and council policies.
3. Contracts procedure rules apply to **all** council contracts excluding contracts of employment and contracts with employment agencies for the engagement of temporary employees. Contracts include:

works contracts; the purchase of supplies/goods, services and computer hardware and software; leasing arrangements; hire of plant and equipment; consultancy services; the acquisition and disposal of land and the disposal of goods and materials
4. Contracts procedure rules apply irrespective of the size of the contract. A formal contract may not necessarily be involved e.g. the intention may be to issue an Order. The contract may involve expenditure by or income to the council.
5. The rules form part of the council's Constitution.
6. These contracts procedure rules should be read in conjunction with all other elements of the council's Constitution. These contracts procedure rules do not provide guidance on what is the best way to purchase works, supplies/goods, and services. They set out the minimum requirements to be followed. Further information and guidance are set out in the council's purchasing guide and procurement strategy and the council's tender evaluation policy available on the council's procurement intranet.

## SECTION B - DEFINITIONS

7. In these contracts procedure rules the following words and phrases mean as follows:

“Approved list”

A list of contractors, approved by the cabinet or relevant cabinet member or a committee, for types of works, supplies/goods or services with specified contract limits applicable to contractors from which limited lists of tenderers can be drawn.

“Award criteria”	The criteria by which the successful quotation or tender is to be selected.
“Cabinet member”	The member of the cabinet to whom the council has allocated responsibility for the service or in the cabinet member’s absence an alternative cabinet member.
“Cabinet or a committee”	The cabinet or committee with budget and service responsibility for a particular contract.
“Certified contract”	A contract which may be certified under the Local Government (Contracts) Act 1997.
“Competitive dialogue procedure”	An EU procedure as an alternative to the open, restricted, and negotiated procedures, designed for the award of “complex contracts” and which provides for open dialogue with short listed providers.
“Contract”	A legally binding agreement between two or more parties which is intended to be enforceable at law.
“Contract sum”	The amount of expenditure or income specified in the contract or order.
“Contract value”	The estimated total value of an individual contract or series of contracts (both income generating and involving expenditure) calculated in accordance with contract procedure rule 34.
“EU”	European Union.
“EU procedure”	The procedure required by the EU where the total value of the contract exceeds the relevant EU threshold.
“EU threshold”	The current threshold value at which the EU public procurement directives must be applied for advertisement under the EU public procurement rules.
“Framework agreement”	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, (in particular with regard to price and, where appropriate, the quantity envisaged).
“Gateway review”	A review of all compliant procurement options and contracts available to the council.

“Head of service”	The head of service with responsibility for the contract, or an officer with authority to act on behalf of that head of service in relation to the contract, or an officer with line management responsibility for the head of service and in the absence of the officer with line management responsibility, any strategic director or the chief executive.
“Land acquisition”	Any acquisition of land or buildings by the council by way of a freehold or leasehold purchase.
“Land disposal”	Any disposal of land or buildings by the council by way of a freehold sale or a lease for a term exceeding seven years.
“Most economically advantageous offer”	A tender or quotation which provides the best value for the council having regard to both price and other evaluation criteria relevant to the contract.
“Negotiated procedure”	An EU procedure where the council negotiates with one or more potential service providers and which may only be used in exceptional circumstances.
“Order”	A written priced and signed order authorised and issued in accordance with the council’s financial procedure rules.
“Open procedure”	A one-stage procedure where all contractors who respond to an advertisement are invited to complete a pre-qualification questionnaire and tender for the contract.
“Portal”	Any e-tendering portal that has been chosen by the council for the purposes of e-commerce.
“Procurement strategy”	The document setting out the council’s approach to procurement and key priorities and available on the council’s procurement intranet.
“Purchasing guide”	A suite of guidance documents, together with a number of standard documents and forms, which supports these contracts procedure rules and are available on the council’s procurement intranet.
“Quotation”	A price provided to the council as a contractor’s formal offer.
“Restricted procedure”	A two-stage procedure where contractors who respond to an advertisement are short listed by way of a pre-qualification assessment and then invited to tender.

“Select list”	A limited list of tenderers for a contract selected following advertisement, expression of interest, pre-qualification assessment and tender evaluation.
“Strategic director”	The strategic director responsible for the contract, an officer with authority to act on behalf of that director in relation to the contract and in the absence of the strategic director responsible for the contract, any strategic director or the chief executive.
“Tender”	A sealed bid submitted by a contractor by a specified date and time in accordance with terms specified by the council.
“Validator”	A person independent from the purchasing or audit process on the procurement, authorised to open the e-tenders on the Portal.

## SECTION C - GENERAL REQUIREMENTS

### Compliance with other rules, statutes, regulations and EC treaty and european directives

8. All contracts made by or on behalf of the council shall comply with these contracts procedure rules and
  - (a) The budget and policy framework
  - (b) Financial procedure rules
  - (c) The scheme of delegation
  - (d) All other parts of the council’s Constitution
  - (e) Statutes (including specific rules on advertising tenders)
  - (f) Regulations
  - (g) EC treaty and EU directives
9. Where there is any conflict between national law, European regulations and directives and these contracts procedure rules, national law and European regulations and directives shall prevail.

### Collaborative partnerships and joint working

10. Collaborative and partnership arrangements are subject to all United Kingdom and EU procurement legislation and must follow these contracts procedure rules.
11. Any partnerships or joint procurement arrangements with other local authorities or public bodies including membership or the use of purchasing consortia for procurements the aggregated contract value of which exceeds the relevant EU threshold shall be approved by the cabinet member prior to the commencement of any procurement on behalf on the council.

### Agency arrangements

12. Where the council acts as an agent for another local authority, these contracts procedure rules shall apply unless that authority specifies the use of alternative procedures, or has chosen the contractor using its own selection procedures in accordance with contracts procedure rule 146.

### **Working with other partners**

13. These contracts procedure rules apply to contracts in partnership with other bodies unless authorised as an exception under section J.

### **Contract documentation**

14. The formal advice of the head of legal and democratic services must be sought for the following contracts:
- (a) where the contract value exceeds £75,000;
  - (b) those involving leasing arrangements;
  - (c) where it is proposed to use a supplier's own terms;
  - (d) those involving the purchase of application software;
  - (e) those that are complex in any other way.
15. Every contract made by or on behalf of the council shall be evidenced in writing. Where the contract value does not exceed £75,000 the contract may be by an order or an alternative method of recording the arrangements where permitted under financial procedure rules or, if the head of service considers appropriate, a formal written contract signed by the head of service.
16. Where the contract value exceeds £75,000 the contract shall be in writing in a form approved by the head of legal and democratic services and shall be sealed with the common seal of the council unless the head of legal and democratic services considers that the contract need not be made under seal.
17. Where appropriate the council's standard terms and conditions shall be used.
18. Every formal written contract for any contract value shall include the following provisions unless the head of service and head of legal and democratic services considers it inappropriate to do so. **The contract shall** state:
- (a) the purpose and basis of the contract
  - (b) the nature of the works, supplies/goods or services to the council
  - (c) the amount to be paid by the council including any terms for deductions and discounts
  - (d) the duration of the contract
  - (e) delivery arrangements
  - (f) the council's requirements in respect of relevant council policies (e.g. health and safety)
  - (g) such additional conditions as the head of service or head of legal and democratic services shall determine
  - (h) a requirement that works, supplies/goods and services shall comply with any relevant international or European standard or where these do not exist any relevant British standard

- (i) the provisions for the parties to terminate the contract.

19. Where the contract value exceeds £75,000 the contract shall unless the head of service and head of legal and democratic services consider it inappropriate to do so state:

- (a) any insurance requirements
- (b) health and safety requirements
- (c) data protection requirements, if relevant
- (d) that charter standards are to be met if relevant
- (e) equality and diversity requirements
- (f) environmental requirements
- (g) freedom of information requirements
- (h) that the contractor must comply with the council's policies relevant to the delivery of the contract
- (i) where agents are engaged to let contracts, that agents must comply with the council's contracts procedure rules
- (j) a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant
- (k) that if the contractor fails to perform the contract, the council may cancel all or part of the contract or may terminate the contract and recover from the contractor any additional sums incurred
- (l) that the contractor shall be liable to liquidated damages if it fails to meet the terms of the contract
- (m) that the contract may not be assigned or otherwise transferred by the contractor without the written permission of the council
- (n) that the council may terminate the contract and recover any loss resulting from such cancellation if the contractor, its employees or anyone acting on the contractor's behalf do any of the following:
  - (i) offer, give or agree to give any person a gift or consideration of any kind as an inducement or reward for any action to show favour or disfavour to any person in relation to the contract or any contract with the council;
  - (ii) if the act or like acts have been undertaken by any person or party employed or acting upon the contractor's behalf (whether with or without the contractor's knowledge);
  - (iii) do anything improper to influence the council in the award of the contract; or
  - (iv) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117 (2) of the Local Government Act 1972 or the Bribery Act 2010
  - (v) commit any fraud in connection with this or any other council contract whether alone or in conjunction with councillors, contractors or employees.
- (o) that the contractor must comply with the comments and complaints procedure or an equivalent procedure agreed between the council and the contractor to serve the same purpose, and
- (p) whether and how the contractor must publicise or advertise the fact that the contract works being carried out or the services delivered are being carried out or delivered by the contractor on behalf of the council.

20. Where there is a standard form of contract recognised by a professional institution or body for a particular type of contract, the relevant head of service shall following consultation with the head of legal and democratic services use the standard form

of contract subject to any variations or additions agreed by the head of service and the head of legal and democratic services.

### **Certified contracts**

21. In the case of certified contracts, every relevant contract shall be accompanied by a certificate under the 1997 Act and Regulations certified by the head of legal and democratic services.
22. There shall be inserted in every certified contract a clause which states on the part of the council that the contract is a certified contract under the Local Government (Contracts) Act 1997 Act and that the certification requirements under the 1997 Act are intended to be satisfied by the council within six weeks of the signing of the contract.

### **Management and supervision of contracts**

23. All council employees and anyone engaged by the council to manage and supervise a council contract shall comply with the requirements of these contracts procedure rules.
24. Heads of service shall appoint a named contract manager for the entirety of any contract for which they are responsible.

### **Bonds and guarantees**

25. If the contract value exceeds £75,000 the contract manager for that contract shall carry out a risk assessment for the procurement and send this with suggested mitigation measures including the need for a performance bond or parent company guarantee and the level of such bond/guarantee and the need for a liquidated damages provision to the head of finance and the head of legal and democratic services for their approval prior to commencing the procurement.
26. The terms of any performance bond or parent company guarantee required including provisions for its release shall be approved by the head of legal and democratic services

### **Signing/sealing of documents**

27. A decision of the cabinet, an individual cabinet member, or a committee, or the exercise of any power delegated to an officer in relation to any contract will be sufficient authority for signing or sealing any document necessary to give effect to the decision.
28. The common seal of the council shall be affixed to those documents, which in the opinion of the head of legal and democratic services should be sealed. The affixing of the common seal shall be attested by the head of legal and democratic services or by the chief executive, a strategic director or a senior lawyer.

### **Commencement of contract**

29. No works, services or supplies shall be commenced until a contract has been completed or an order has been issued to the contractor unless the strategic director approves otherwise.

### **Declaration of interests**

30. Officers of the council shall declare to their head of service their direct or indirect pecuniary interest in contracts, which have or are proposed to be entered into by the council. An officer with an interest in a contract whether declared or not shall take no part in the procurement process or advise on the council's dealing with that contract.
31. Officers shall declare their interest if a contract in which they have an interest arises at a meeting at which they are present, and if appropriate withdraw from the proceedings.

### **Nominated sub-contractors and suppliers**

32. Where a sub-contractor or supplier is to be nominated to a main contractor, the head of service shall follow the requirements of these contracts procedure rules when inviting quotations or tenders in order to select a sub-contractor or supplier.

## **SECTION D - FINANCIAL LIMITS FOR QUOTATIONS OR TENDERS**

33. The contract value determines which quotation or tendering requirements apply.
34. The contract value is calculated (exclusive of VAT) in the following way:
- (a) the estimated total value of a fixed term contract or a series of contracts;
  - (b) for contracts for an indefinite period by multiplying the estimated monthly value by 48;
  - (c) the total contract value for the purposes of clarifying whether or not the contract exceeds the relevant EU threshold means the total value of the contract to all councils participating in the procurement calculated over the lifetime or term of the contract ( including any provision for extension of the term specified in the contract documents)
35. These calculation methods apply to contracts involving both expenditure by and income generated for the council and a record shall be kept of the calculation.
36. If the contract value calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) does not exceed £10,000 one written quotation shall be obtained as a minimum, although the head of service may choose to seek additional written quotations if this is likely to obtain better value for money. The procedure for obtaining quotations is set out in section F.
37. If the contract value calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) exceeds £10,000 but does not exceed £75,000, three written quotations shall be



invited as a minimum **using the Portal**, unless an exception set out in section J applies. The procedure for obtaining quotations is set out in section F. However, the head of service may instead choose to seek tenders if this is likely to obtain better value for money. The procedure for obtaining tenders is set out in section G.

38. If the contract value calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) exceeds £75,000, tenders shall be invited in accordance with the procedure set out in section G.
39. A summary of the financial limits and the application of contracts procedure rules are set out in appendix A.
40. If an officer knowingly and deliberately disassembles a contract or series of contracts to avoid the requirements of contracts procedure rules, which would apply to the complete scheme, this will amount to misconduct and may lead to disciplinary action.
41. No individual external contractor shall be awarded work totalling more than £75,000 (excluding any contracts awarded as an exception under section J) in any financial year by the same head of service on the basis of single written quotations. Allocation of work above this total shall only be made on the basis of a minimum of three written quotations or tenders being invited in accordance with these contracts procedure rules.

## **SECTION E - STEPS PRIOR TO LETTING CONTRACTS**

### **General requirements / Gateway review**

42. The head of service shall appraise the contract, in a manner commensurate with its complexity and value, and take into account any guidance on the council's procurement intranet by:
  - (a) taking into account the requirements from any relevant review
  - (b) appraising the need for the expenditure and its priority
  - (c) defining the objectives of the contract
  - (d) assessing the risks associated with the contract and how to manage them
  - (e) considering what procurement method is most likely to achieve the contract objectives, including internal or external sourcing, partnering, relevant packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium
  - (f) consulting users as appropriate about the proposed procurement method, contract standards, performance and user satisfaction monitoring
  - (g) setting out these matters in writing and by confirming that:
    - (i) there is a cabinet/committee individual cabinet member or delegated approval in accordance with the scheme of delegation as set out in the council's constitution for the contract and expenditure
    - (ii) if the contract is a key decision, all appropriate steps required by the Constitution have been taken.

## **Procurement procedure**

43. Before engaging in a tender exercise officers shall establish whether any contracts including framework agreements placed by other public authorities (e.g. Office of Government Commerce, buying consortia) are available for the council's use, potentially saving time and money.
44. Where tenders are required to be invited any of the methods specified in these contracts procedure rules may be employed as well as any other method permitted under the EU Procedure.
45. The Office of Government Commerce (OGC) approved e-procurement technology may be used for tendering purposes.

## **Project management**

46. Procurements which are of sufficient value or complexity should also be considered as projects and as such the head of service and relevant officer must follow the council's project management system including the completion and agreement of key project documents.

## **Identifying and assessing potential contractors**

47. Officers shall ensure that, where proposed contracts, irrespective of their total value, might be of interest to potential candidates located in other member states of the EU, a sufficiently accessible advertisement is published.
48. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be.
49. The head of service is responsible for ensuring that all candidates for a relevant contract are suitably assessed. The assessment process shall establish that the potential candidates have sound:
- (a) economic and financial standing
  - (b) technical ability and capacity
- to fulfill the requirements of the council.

## **Pre-tender market research / Gateway review and consultation**

50. The head of service:
- (a) may consult potential suppliers prior to the issue of the invitation to tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential candidate, but
  - (b) must not seek or accept technical advice on the preparation of an invitation to tender or quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential candidates or distort

competition, and must seek advice from the head of legal and democratic services **and from the procurement team.**

## Records

51. Where the contract value calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) is less than £75,000 the following records must be kept by the officer responsible for the purchase:
- (a) invitations to quote and quotations **(where the work is conducted through the Portal this will automatically be held)**
  - (b) a record:
    - (i) of any exemptions and the reasons for them
    - (ii) of the reason if the lowest price is not accepted
  - (c) written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.
52. Where the contract value calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) exceeds £75,000 the officer must record:
- (a) the method for obtaining tenders
  - (b) any contracting decision and the reasons for it
  - (c) any exemption together with the reasons for it
  - (d) Tender documents sent to and received from candidates
  - (e) pre-tender market research
  - (f) clarification and post-tender negotiation (to include minutes of meetings)
  - (g) the contract documents
  - (h) post-contract evaluation and monitoring
  - (i) communications with candidates and with the successful contractor throughout the period of the contract.
53. Records required by this rule must be kept for six years after the end of the contract. However, written documents which relate to unsuccessful candidates need only be retained for 12 months from award of the contract, provided there is no dispute about the award.
54. A business case must be prepared for all procurements with a potential value over the EU threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
55. For all contracts with a value over the relevant EU Threshold Contract managers must maintain a risk register during the contract period, undertake appropriate risk assessments and for identified risks ensure contingency measures are in place.

## SECTION F - QUOTATIONS

56. Unless otherwise required by law or an exception set out in section J applies, the financial limits relating to quotations are:

- (a) up to £10,000 calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) - minimum of one written quotation to be obtained.
- (b) £10,001 to £75,000 calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) - minimum of three written quotations to be invited.

57. Quotations **may** be invited from **any of the following**:

- **open invitation via the Portal**
- contractors on approved lists
- in the absence of an approved list or where the head of service considers it appropriate from identified providers of the required works, supplies/goods or service.

**58. Requests for written quotations shall be made in writing. If the lifetime value of the contract exceeds £5,000 then any open invitation to quote must be published via the Portal.**

59. The written quotations need not be received **at the same time** but should be considered **according to the same evaluation criteria**.

60. Quotations shall not be divulged to other contractors.

61. A quotation shall only be accepted if it is within an approved revenue or capital budget.

62. All relevant circumstances shall be taken into account when evaluating and accepting quotations. Where the accepted quotation is not the lowest (or highest in the case of income) the reasons for acceptance shall be recorded. quotations may be accepted as follows:

63. Up to £75,000 calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) by the head of service.

64. Where a minimum of three written quotations have been invited but fewer than three have been received, the head of service, in consultation with the cabinet member, may accept one of them if satisfied that the quotation is suitable and inviting additional quotations is unlikely to achieve greater value for money.

65. Where written quotations have been sought based on a genuine estimate, but the one recommended for acceptance exceeds £75,000, it may be accepted by the cabinet member if seeking Tenders is unlikely to provide greater value for money.

66. A quotation up to £75,000 shall be accepted by an order unless a formal written Contract is entered into or an alternative method of recording the arrangements is permitted under financial procedure rules. If a quotation above £75,000 is accepted under contracts procedure rule 65, the contract shall be in writing in a form approved by the head of legal and democratic services and shall be sealed with the common seal of the council at the discretion of the head of legal and democratic services.
67. A written record shall be kept of all requests for, receipt and acceptance of quotations (this will be automatic if the procurement is conducted via the Portal).
68. No individual external contractor shall be awarded work totalling more than £75,000 (excluding any contracts awarded as an exception under section J) in any financial year by the same head of service on the basis of single written quotations. Allocation of work above this total shall only be made on the basis of three written quotations or Tenders being invited in accordance with these contracts procedure rules.

## SECTION G - TENDERS

### General

69. Tenders must be invited if the contract value exceeds £75,000 calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) unless an exception under section J applies.
70. Tenders may also be invited for contracts below this amount where this would be in the best interests of the council e.g. it is likely to provide better value for money and wider competition.
71. Tenders may also be preferred to quotations where it is known that the contract value is likely to be close to the £75,000 limit.
72. Unless a decision of the council or law requires otherwise, heads of service in consultation with the head of HR IT and technical services and the cabinet member shall select which of the following Tender procedures is in the best interests of the council:
- (a) Approved list
  - (b) Select list
  - (c) EU open/restricted/competitive dialogue procedure
  - (d) EU negotiated procedure (if the use of this procedure is approved by the strategic director, the monitoring officer and the chief finance (section 151) officer
  - (e) EU framework agreements
  - (f) Crown Commercial Service buying consortia agreements

This will constitute a contract Gateway review.

73. In selecting contractors invited to tender or awarding a contract, heads of service shall assess and evaluate the suitability of contractors.

### **Approved list** - (see section K on compilation and maintenance)

74. Approved lists should be used where recurrent transactions of similar types are likely but not where such transactions need to be individually priced and cannot easily be aggregated and priced in a single tendering exercise.
75. Tenders shall be invited from at least five contractors on the approved list for contracts of the type and value in question.
76. The five contractors shall include:
- (a) at least one contractor from the approved list selected by rotation;
  - (b) up to two contractors from the approved list who have satisfied the head of service that they have previously provided value for money to the council for a similar Contract, taking into account overall performance and the final Contract cost.

### **Select list**

77. Invitation for inclusion on a select list shall be by way of an open or restricted non EU or EU open restricted or competitive dialogue procedure and shall be advertised:
- (a) on the council's website **or Portal** which is linked to Contracts Finder
  - (b) in a local newspaper, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and
  - (c) in an appropriate professional or trade journal, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and
  - (d) on appropriate portal websites specifically created for public contract advertisements e.g. the South East Improvement and Efficiency Business Portal, My tenders, Contracts Finder, Constructionline.
  - (e) in the Official Journal of the European Union (OJEU)/tenders Electronic Daily (TED) where the head of service considers this appropriate or required by law.
78. Contractors responding to the advertisement may be required to complete a pre-qualification questionnaire to provide a basis for selection, **unless they already have passed PAS91 or e-certis certification to a sufficient level for the tender.**
79. Tenders shall be invited from at least five contractors who respond to the advertisement under contract procedure rule 77
80. Where fewer than five contractors express an interest, the head of service shall repeat the select list procedure, follow an alternative tender procedure or seek instructions from the cabinet or relevant cabinet member or a Committee.

### **Open procedure**

81. The Contract shall be advertised:
- (a) on the council's website **or Portal**
  - (b) in a local newspaper, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and

- (c) in an appropriate professional or trade journal, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and
- (d) on appropriate portal websites specifically created for public contract advertisements e.g. the South East Improvement and Efficiency Business Portal, My tenders, Contracts Finder, Constructionline.
- (e) in the Official Journal of the European Union (OJEU)/Tenders Electronic Daily (TED) where the head of service considers appropriate or required by law.

82. Tenders shall be invited from all contractors responding to the advertisement.

83. Where fewer than five contractors express an interest, the head of service shall repeat the open procedure, follow an alternative procurement procedure or seek instructions from the cabinet or relevant cabinet member or a committee.

### **Restricted procedure**

84. This is a two stage procedure where contractors who respond to an advertisement or notice are short listed by way of a pre-qualification assessment and then invited to tender. Candidates must be selected on the basis of published pre-qualification criteria.

85. The advertisement/notice will specify a time limit within which interested parties must submit requests to be selected to tender. The head of service must send invitations in writing to all contractors selected to tender. The invitation will include the specification and contract documentation.

86. If the publication of a notice in the OJEU is not required the advertising requirements are the same as in the open procedure except that the advertisement/notice shall state that the restricted procedure is being used.

### **Competitive dialogue procedure**

87. The competitive dialogue procedure may be used where the council wishes to award a particularly complex contract and the EU open or restricted procedure does not provide for the award of that contract (particularly complex contract and where it is not possible objectively to define the technical means capable of satisfying the council's requirements or objectives or objectively to specify the legal or financial makeup of a project or both).

88. The advertising requirements are the same as in the open procedure and the restricted procedure except that the advertisement/notice shall state that the competitive dialogue procedure is being used.

89. The head of service will send invitations in writing simultaneously to each candidate selected via a pre-qualification questionnaire to participate in the dialogue. The invitation will include the outline specification and Contract documentation.

90. The competitive dialogue procedure may take place in successive stages by applying the award criteria in the contract notice or tender documents and number of contractors invited to participate in the final stage must be sufficient to ensure

genuine competition. The competitive dialogue procedure may continue until it can identify one or more solutions capable of meeting the council's needs.

91. When the head of service declares that the dialogue is concluded she/he must inform each participant, and request that each participant submit a final tender containing all elements required and necessary for the performance of the contract.

### **Negotiated procedure**

92. The negotiated procedure may be used in limited circumstances and only where the EU Open, Restricted or competitive dialogue procedure is not appropriate.
93. This procedure applies when the head of service, with the approval of the strategic director, the monitoring officer and the chief finance (section 151) officer considers it appropriate to consult and negotiate with one or more potential service providers and specifies the conditions under which work, supplies/goods and services shall be provided.
94. The head of service will publicise the council's intention to seek offers in relation to the contract by sending a notice to OJEU inviting requests to be selected to negotiate. In certain limited circumstances the negotiated procedure may be used without prior publication of a contract notice.
95. The Contract shall be advertised:
- (a) on the council's website **or Portal**
  - (b) in a local newspaper, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and
  - (c) in an appropriate professional or trade journal, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and
  - (d) on appropriate portal websites specifically created for public contract advertisements e.g. the South East Improvement and Efficiency Business Portal, My tenders, Contracts Finder, Constructionline.
  - (e) in the Official Journal of the European Union (OJEU) / Tenders Electronic Daily (TED) where appropriate or required by law.

96. The notice will specify a time limit in which the contractor must return a request to be selected to negotiate and the head of service must send invitations in writing to all contractors selected to tender. The invitation will include the contract documentation.

97. On receipt of expressions of interest the cabinet or relevant cabinet member or a Committee shall select and invite a contractor to negotiate.

### **Framework agreements**

98. The term of an EU Framework Agreement must not exceed four years and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three.



99. Contracts based on Framework Agreements may be awarded by either:

- (a) applying the terms set out in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or
- (b) where the terms set out in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
- (c) inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit tenders
- (d) fixing a time limit which is sufficiently long to allow tenders for each specific Contract to be submitted, taking into account factors such as the complexity of the subject of the contract.
- (e) awarding each Contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the tender documents of the Framework Agreement.

#### **Standards and award criteria**

100. The head of service shall ascertain the relevant British, European or international quality standards which apply to the subject matter of the contract. The head of service shall include those standards which are necessary to describe the required quality. The head of legal and democratic services and the head of HR IT and **technical** services must be consulted if it is proposed to use standards other than British or where appropriate European quality standards.

101. The head of service shall define award criteria that are appropriate to the contract and designed to secure an outcome giving value for money for the council. The basic criteria shall be:

- (a) a lowest price provided the tender/quotation meets the specification and any stated minimum standards where payment is to be made by the council or
- (b) Most Economically Advantageous Offer with **weighting** as specified in the council's tender evaluation policy unless for a particular contract an exception to the weighting has been considered and agreed by the relevant head of service in consultation with the relevant cabinet member prior to invitations to quote/tender have been sought.

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

102. **Award criteria must not include matters which** discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement.

### **Invitations to tender**

103. Invitations to tender shall:

- (a) include copies of all Contract documents;
- (b) give instructions to tenderers, including the latest day, time and place for the delivery of tenders;
- (c) if the tender is submitted in hardcopy, state that it must be submitted in the tender envelope supplied by the council or in a packet marked in the same manner sealed and addressed to the Head of HR, IT, and **Technical** Services and bearing the words “tender – Do Not Open” and the name of the project but with nothing on the envelope to identify the tenderer;
- (d) if the tender is submitted electronically, state that it must be submitted to the council’s specified email address for tenders and must include in the subject a specific key word relating to the tender as notified in the tender documentation.
- (e) state that the council shall not be bound to accept a late or any tender.

104. The head of service may respond to requests from tenderers for supplementary information or clarification of tender documentation provided that this does not provide a tenderer with a competitive advantage.

105. The head of service, in relation to contract procedure rule 102 shall use discretion to send information to all tenderers to ensure that they are not disadvantaged.

### **Receipt and opening of tenders (including late tenders)**

106. **Tenders opened from the Portal will be opened by the Validator at the appointed time on the system.**

#### **Hard copy/ envelopes received shall:-**

- (a) not be opened on receipt (and if opened shall be reported to the monitoring officer);
- (b) be marked at the time of receipt or as soon as practical with the date and time of receipt and initials of the officer receiving the tender;
- (c) be retained by the Head of HR, IT and technical services who shall be responsible for the tenders until they are opened.

107. Tenders shall be opened at a meeting convened by the head of service and only in the presence of the following:

- (a) the head of service and / or a member of staff representing him / her;
- (b) a member of staff from HR, IT and technical services.

108. **Electronic tenders shall be retained in a secure portal area until opened by the Validator.**

109. Hard copy tenders shall be recorded in the council's standard schedule of tenders opened with the full names of the contractors tendering and the amounts of the tenders submitted.
110. Any hard copy tender not delivered to the council's offices by the due date and time for tendering or not received in the envelope supplied by the council or in a sealed packet marked in the same manner shall be returned promptly to the tenderer by the head of service. The tender may be opened to ascertain the name of the tenderer, but no details of the tender shall be disclosed.
111. Any tender delivered electronically but after the due date and time for tendering shall be placed in the late tenders folder and shall be returned promptly to the tenderer by the head of service.
112. In exceptional circumstances a strategic director in consultation with the monitoring officer and the Chief Finance (Section 151) Officer may decide to include and assess/evaluate a late tender.

### **Alteration to the tender sum and post tender negotiations**

113. Providing clarification of an invitation to tender to potential or actual candidates or seeking clarification of a tender, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post- tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an EU Procedure where this might distort competition, especially with regard to price.
114. If post-tender negotiations are necessary after a single-stage tender or after the second stage of a two-stage tender, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best tender and after all unsuccessful candidates have been informed.
115. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the tender documents. Officers appointed by the head of service to carry out post-tender negotiations must ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
116. The head of legal and democratic services together with the head of HR, IT and technical services must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by at least two officers or one officer with a consultant engaged by the council.
117. Where post-tender negotiation results in a fundamental change to the specification (or Contract terms) the contract must not be awarded but re-tendered.

### **Acceptance of tenders**

118. Before accepting any tender, the head of service must consider whether the contractor seems sufficiently capable and financially sound to undertake the contract.

### **Up to £75,000**

119. Where the contract value does not exceed £75,000 calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) and does not relate to the disposal of land and property with an estimated value exceeding £10,000 (see section H), the head of service shall have authority to accept the tender which is the lowest where payment is to be made by the council or highest where payment is to be received by the council or is the Most Economically Advantageous Offer provided that the following conditions are met:

- (a) no fewer than three valid tenders were submitted. If fewer than three valid tenders were submitted in response to the invitation, the head of service in consultation with the cabinet member may decide to include and assess/evaluate the tender.
- (b) the amount of the tender does not exceed by 10 per cent or £10,000, whichever is the less, the estimated tender sum for the scheme where one exists, and does not exceed the overall budget provision available. If the amount of the tender exceeds the above limits, the head of service shall either re-tender the contract or seek instructions from the cabinet or relevant cabinet member or a committee.
- (c) there have been no post tender negotiations. Acceptance of tenders following post tender negotiations is dealt with in contract procedure rule 120.
- (d) unless otherwise approved by the strategic director, any Government consents, planning and financial approvals have already been granted.
- (e) where no specific sum has been agreed by the council the cabinet or relevant cabinet member or a Committee, subject to consultation with the strategic director and the cabinet member where the contract value exceeds £10,000.

120. Where a head of service considers that a tender should be accepted other than the lowest, where payment is to be made by the council or highest, where payment is to be received by the council or not the Most Economically Advantageous Offer authority must be sought to accept an alternative tender from the cabinet or relevant cabinet member or a committee.

### **Between £75,001 and EU Threshold**

121. Where the contract value calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) exceeds £75,000 but does not exceed the EU Threshold the tender shall be referred to the cabinet member or a Committee for acceptance with full details of the evaluation procedure, unless acceptance in an alternative manner is authorised in advance.

### **Above EU threshold**

122. Where the contract value exceeds the EU Threshold the tender shall be referred to cabinet or relevant cabinet member or a Committee for acceptance with full details of the evaluation procedure, unless acceptance in an alternative manner is authorised in advance.
123. Officers may take a report to cabinet or relevant cabinet member at the start of the procurement in order to:
- (a) authorise the procurement
  - (b) authorise the head of service in consultation with the cabinet member to accept a tender in accordance with the evaluation criteria stated in the Invitation to tender

### **Post tender clarification**

124. Tender sums revised following post tender clarification may be accepted as follows:

Up to £75,000	by the strategic director, in consultation with the cabinet member.
£75,001 to EU Threshold	by the cabinet member or a committee.
Over EU Threshold	by the cabinet or relevant cabinet member or a committee.

### **Tender records and registers**

125. A written record shall be kept of all invitations and acceptance of tenders.
126. A record shall be kept of the receipt and opening of tenders.
127. The Head of HR, IT and technical services shall keep a tenders register which every councillor may inspect at any reasonable time. **This will generally be held on the Portal.**

## **SECTION H - LAND**

128. Contracts procedure rules apply to Land Disposals and Land Acquisitions except those:
- (a) under a statutory obligation;
  - (b) where a tenant has a right to renew a lease;
  - (c) under a confirmed compulsory purchase order;
  - (d) under a scheme for the disposal of more than one piece of land or more than one building which has been previously approved by the council.

129. Disposals of surplus land and property with an estimated value of up to £10,000 can be authorised by a head of service. Consultation evidenced in writing with the cabinet member is required for disposals of land and property with a book value between £5,000 and £10,000. Above that value disposals must be authorised by the cabinet member as a formal delegated decision up to a book value of £50,000 and by cabinet or relevant cabinet member if the value exceeds £50,000. Before deciding whether to dispose of land or property the head of service or cabinet or relevant cabinet member shall consider a report setting out all relevant information, including the planning position, potential use, current or proposed development restrictions and estimated value.
130. Unless otherwise agreed by the Chief Finance (Section 151) Officer and the monitoring officer all disposals with an estimated value over £5,000 shall be by way of a competitive tender process with bids invited from as many interested parties as is commensurate with the estimated value and intended use.
131. If land is sold by tender, the procedures in section G shall apply.
132. For all disposals, a qualified valuer must provide an initial written valuation. If the likely value exceeds £100,000 then this must be supplemented by a second external valuation.
133. All disposals shall be on the best financial terms unless otherwise agreed by the Chief Finance (Section 151) Officer in consultation with the cabinet member. Except where a general consent exists specific consent shall be obtained from the Secretary of State prior to an interest in land or property being disposed of for a price less than the reasonable market consideration.
134. Heads of Service may enter into negotiations for Land Disposals and Land Acquisitions provided that:
- (a) all necessary consents, budgetary approvals and cabinet or relevant cabinet member, Committee and Council decisions are obtained and financial procedure rules complied with before the council is legally committed; and
  - (b) any procedures adopted by the council for the disposal of Council-owned land are followed.
135. No officer shall allow a party to take up occupancy of Council-owned land until a transfer, lease, licence or other suitable document approved by the head of legal and democratic services has been completed.

## **SECTION I - SURPLUS GOODS**

136. Heads of service shall follow the requirements of these contracts procedure rules to obtain quotations or tenders and of financial procedure rules when disposing of any surplus goods or obsolete items of stock or stores or items on an inventory.

## **SECTION J - EXCEPTIONS**

### **General**

137. A Contract may be approved by or on behalf of the council without seeking quotations or tenders if there are special circumstances justifying an exception. There can be no exception if the EU Procedure applies.

### **Records of exceptions**

138. The head of service shall keep a record of every exception and the reasons for it.

139. Tenders or quotations need not be invited in the following circumstances:

### **Emergencies disasters and immediate action**

140. If immediate action is necessary to let a contract to prevent significant loss to the council or danger, injury or serious hardship to persons in the council's area, the best practicable means of obtaining value for money in the selection of the contractor shall be used, using an approved list wherever practical. If the contract value exceeds £10,000, the relevant cabinet member shall be consulted.

### **Negotiations with an existing contractor**

141. If, after a contract has been let, circumstances arise which were not foreseen when the original tenders or quotations were invited, variations to, extension of or a further Contract with the original contractor may be made provided that:

- (a) it is permitted by law;
- (b) the terms and conditions of the original Contract apply;
- (c) the total value of the addition or modification does not exceed 25% of the original Contract Sum unless the strategic director in consultation with the relevant cabinet member is satisfied that value for money will be achieved;
- (d) the variation follows any method of variation specified in the original Contract;
- (e) if the value of the variation exceeds £75,000, the relevant cabinet member shall be consulted;
- (f) the cost is within the budget provision;
- (g) any changes to the contract period are agreed with relevant head of service, head of legal and democratic services and recorded in the contracts register.

### **Proprietary articles**

142. If supplies/goods, materials or services are proprietary articles, are sold by a single supplier or their prices are wholly controlled by Government Order or in the case of repairs to or the supply of parts of existing proprietary articles, tenders or quotations need not be invited if no reasonably satisfactory alternative is available.

### **Specialist contracts**

143. If the supplies/goods, services or works are of such a specialist nature that quotations or tenders cannot be obtained or can only be obtained from fewer contractors than normally required by contracts procedure rules or, can only be purchased under a trade name or description or, in the case of professional services, e.g. the use of barristers or external solicitors where a particular

individual or firm has specialist expertise in the field and the head of service is satisfied that value for money will be provided in all the circumstances.

### **Local authorities and statutory undertakers**

144. If the services are to be provided by another local authority, by a statutory undertaker or by a supplier of gas, electricity or water services.

### **Consortium**

145. If tenders have been invited by a consortium, collaboration or similar body of which the council is a member, the council may follow that body's procedures or the procedures set out in these contracts procedure rules. Also, the council may access Government catalogue-based procurement schemes, e.g. Office of Government Commerce buying solutions agreements under Customer Access Agreements subject to compliance with the contract financial limits and reporting requirements of these contracts procedure rules and the requirement to secure the Most Economically Advantageous Offer for the council.

### **Agency arrangements**

146. The council is acting as agent for another local authority and that authority specifies the use of alternative procedures or has chosen the contractor using its own selection procedures.

### **Exceptions authorised by the cabinet or relevant cabinet member or committee**

147. If any other exceptions are specifically authorised by the cabinet or relevant cabinet member or a Committee.

## **SECTION K - APPROVED LISTS – COMPILATION AND MAINTENANCE**

148. Heads of service may compile approved lists for use in relation to future contracts for works, supplies/goods and services (including consultancy).

149. Approved lists shall be available for corporate use.

150. Approved lists shall be compiled following advertisement in:

- (a) on the council's website **or Portal**
- (b) in a local newspaper, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and
- (c) in an appropriate professional or trade journal, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and
- (d) on appropriate portal websites specifically created for public contract advertisements e.g. the South East Improvement and Efficiency Business Portal, My tenders, Contracts Finder, Constructionline; and
- (e) in the Official Journal of the European Union (OJEU)/tenders Electronic Daily (TED) where appropriate or required by law.

151. A minimum period of four weeks shall be given to respond to the advertisement.



152. All contractors responding to the advertisement shall be invited to complete an application form, including where appropriate, a pre-qualification questionnaire, to provide the basis for inclusion on the approved list.
153. Approved lists shall be compiled on the basis of categories of works, supplies/goods or services and appropriate maximum contract values shall be applied to individual contractors.
154. The minimum number of contractors on an approved list shall be six.
155. Approved lists shall be submitted to the cabinet or relevant cabinet member or a Committee for approval.
156. Approved lists shall be reviewed at least every five years.
157. Heads of Service may add contractors to an existing approved list subject to suitability following assessment and evaluation.
158. Contractors on approved lists shall be required to advise the council of any changes in circumstances relevant to their inclusion.
159. Heads of service shall have discretion to remove contractors from an approved list because of changes in circumstances or poor performance.
160. Strategic directors shall provide an appeals procedure for contractors refused admission or excluded from an approved list.

## **SECTION L - CONTRACT MANAGEMENT**

### **Managing contracts**

161. Heads of Service shall name Contract managers for all contracts for the entirety of the contract period. Contract managers shall follow the contract management requirements agreed in the contract and information available on the procurement intranet.

### **Contract monitoring, evaluation and review**

162. All contracts which have a value higher than the EU Threshold limits, or which are considered high risk, shall be subject to monthly formal review with the contractor. The review may be conducted quarterly if permitted by the head of service and strategic director.
163. For all contracts with a value higher than the EU Threshold limits, or which are high risk, an annual report shall be submitted to a Scrutiny Committee.

**Appendix A**  
**Application of contracts procedure rules requirements**

Contract Value	One Written quotation	Three Written quotations	Tenders	Tenders Opened by officers or Validator	Acceptance of tenders by officers	Acceptance of tenders by relevant cabinet/member or Committee	Order / Contract Signed by head of service	Contract Approved and Sealed by HLDS	Bond Required
Up to £10,000	Yes	Optional	No	N/A	N/A	N/A	Yes	Optional	N/A
£10,001 - £75,000	No	Yes	Optional	Yes	If within Budget	If exceeds Budget	Yes	Optional	N/A
£75,001 - EUT	No	No	Yes	Yes	No	Cabinet member	No	Yes	Risk Assessment must be carried out
Over EUT	No	No	Yes/EU	Yes	No	Cabinet or relevant cabinet member or committee	No	Yes	Risk Assessment must be carried out

