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# Erewash Borough Council

# Contract Procedure Rules

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## Overview of Contract Procedure Rules

Total Spend Value	Level of Competition	Advertising	Evaluation	Award approval	CPR Section	Pages
£0 to £2,000	For all requirements one written quotation must be obtained (e-mail acceptable).	None	Officer	Officer authorised by Head of Service	3	17
£2,001 to £9,999 (PROC1)	A minimum of three (3) written quotations from suppliers and a written record of the successful quotation maintained.	None	Minimum of two (2) Officers (including budget holder)	Head of Service	4	18 to 19
£10,000 to £24,999 (PROC1)	Following advertisement a minimum of three (3) written quotations from suppliers and a written record of the successful quotation maintained including any terms and conditions.	<a href="http://www.sourcederbyshire.co.uk">www.sourcederbyshire.co.uk</a>	Minimum of two (2) Officers (including budget holder)	Head of Service	5	20 to 21
£25,000 to £49,999 (PROC1) <b>Note</b> Pre-Qualification Questionnaires cannot be used	Following advertisement a minimum of five (5) suppliers invited to quote (including where possible one local Supplier) and a written record of the successful quotation maintained including any terms and conditions.	<a href="http://www.sourcederbyshire.co.uk">www.sourcederbyshire.co.uk</a> Advert <b>must</b> be published on Contract Finder	Officer and Head of Service	Chief Officer or officer authorised by him/her	6	22 to 23
£50,000 to below EU Threshold (PROC4) <b>Note</b> Pre-Qualification Questionnaires (PQQ) cannot be used	Following advertisement a minimum of five (5) suppliers invited to tender (including where possible one local Supplier) and a written record of the successful quotation maintained including any terms and conditions.	<a href="http://www.sourcederbyshire.co.uk">www.sourcederbyshire.co.uk</a> Advert <b>must</b> be published on Contract Finder	Evaluation panel including Procurement and Accountant	Director of Resources	7	24 to 28
Above EU Threshold Over £164,176 (Services & Supplies) £4,104,394 (Works)	Use Restricted/Open procedure to produce a compliant EU process to be issue to at least six (6) expressions of interest.	<a href="http://www.sourcederbyshire.co.uk">www.sourcederbyshire.co.uk</a> OJEU advert and Contract Finder	Evaluation panel shall include representatives from operational users, Legal, Procurement, and an Accountant nominated by the Chief Accountant	Director of Resources and Portfolio Member	8	29 to 40

## Part 1

### Introduction

The Local Government Act 1972 requires the Council to have standing orders for how it enters into Contracts. These Contract Procedure Rules are the standing orders required by the 1972 Act. They form part of the Council's Constitution and are, in effect, the instructions of the Council to officers and members for entering into Contracts on behalf of the Council.

The purpose of these Contract Procedure Rules is to set clear rules for the purchase of works, goods and services for the Council and to ensure a system of openness, integrity and accountability, in which the probity and transparency of the Council's procurement process will be beyond reproach or challenge. Accordingly, these Contract Procedure Rules must be followed for **all** Contracts for:

- the supply of goods to the Council;
- the supply of services to the Council; and
- the carrying out of works for the Council.

The Council is also subject to the EU and UK law with regard to public procurement, which requires all Contract procedures, of whatever value, to be open, fair and transparent. These Contract Procedure Rules provide a basis for true and fair competition in Contracts, by providing clear and auditable procedures, which, if followed, will give confidence that the Council has a procurement regime that is fully accountable and compliant with EU law.

Following the Contract Procedure Rules will also help to ensure that the Council obtains value for money when it buys works, goods or services.

These Contract Procedure Rules are to protect the interests of the Council, its officers and members and the communities of Erewash Borough Council.

## Part 1

### Definitions

<b>Authority</b>	means a decision by the Council Executive, the Portfolio Holder and or Chief Officer to spend money and award the Contract;
<b>Award a Contract</b>	means to accept an offer from a Supplier;
<b>Council Executive</b>	means the Leader of the Council and the other members of the Council's Executive, who are all Portfolio Holders;
<b>Chief Finance Officer</b>	means the officer designated under section 151 of the Local Government Act 1972. The Director of Resources.
<b>Chief Officer</b>	Means the posts designated as Chief Officers in Part 2 Article 12.3 of the Council's Constitution.
<b>Contract</b>	means the bargain or agreement between the Council and a Supplier for the supply of works, goods or services;
<b>Contract Document</b>	means the document setting out the Council's specific requirements to be delivered through the contract, together with the terms and conditions of the Contract. A Purchase Order is a Contract document. Although at law a verbal agreement may be a Contract, Contracts for Erewash Borough Council must always be supported by appropriate written Contract documents;
<b>Contractor</b>	see <b>Supplier</b> ;
<b>Contracts Finder</b>	means a web based portal provided by or on behalf of the Cabinet Office
<b>Corporate Contract</b>	means a Contract for the supply of works, goods or services to the Council as a whole rather than for an individual service area e.g. stationery. Corporate Contracts are generally procured and managed by the Shared Service Procurement Team;
<b>EU Regulations</b>	means the Public Contracts Regulations 2015 as amended from time to time;
<b>EU Threshold</b>	means the value in pounds sterling above which the EU Regulations apply to a proposed public Contract;
<b>Exception</b>	means a decision by Council Executive, the Council, a Portfolio Holder or a Chief Officer not to comply fully with these Contract Procedure Rules

<b>Framework Agreement</b>	means an agreement between one or more contracting authorities and one or more Suppliers which fixes the terms and conditions under which the Supplier will enter into one or more specific Contracts with an authority during the term of the framework agreement, which should be no more than 4 years;
<b>Goods</b>	see Supplies Contract;
<b>Lead Member</b>	Lead Member is a councillor who is a member of the Council Executive who has special responsibility for specific aspects of the council's work and/or services – called portfolios. Details of current Lead members portfolios may be found in Appendix 2 to Part 3 of the Constitution (responsibility for Functions).
<b>Lead Service Procurement Manager</b>	means the lead Procurement Officer based at Bassetlaw District Council and who is responsible for all procurement decisions
<b>Living Wage</b>	means an hourly wage rate, set independently and updated annually calculated according to the basic cost of living in the UK;
<b>Mandatory Reference bid</b>	This is a tender bid which fully complies with all of the specific requirements of the tender specification.
<b>Members of Staff</b>	means Officers who carry out the day to day work of the Council, either on a permanent or a temporary basis, and includes officers, interim post-holders and agency staff but not consultants or Suppliers;
<b>Monitoring Officer</b>	means the Officer designated under section 5 of the Local Government and Housing Act 1989 to monitor the Council's compliance with the law and rules of administration. The Head of Law and Corporate Governance and Monitoring Officer;
<b>Officer</b>	means an individual who holds a post on the Council's establishment;
<b>OJEU</b>	means the Official Journal of the European Union;
<b>PIN</b>	means the Prior Information Notice;
<b>PQQ</b>	means a Pre-Qualification Questionnaire, which Suppliers have to complete to provide evidence of their legal, financial and technical capacity (including but the not limited to their health and safety and equal opportunities policies) to undertake a Contract for the Council;



<b>Public Procurement Legislation</b>	includes the Public Contracts Regulations 2015, EU Directives relating to public Contracts, UK legislation affecting public sector Contracts and any amendment, re-enactment or replacement of any of them;
<b>Purchase Order</b>	means the Council's official order form for the purchase of works, goods or services;
<b>Quotation</b>	means an offer by a Supplier to undertake a Contract, below £50,000;
<b>Services Contract</b>	means a Contract for the provision of services to the Council;
<b>Shared Service Procurement Team</b>	means the Nottinghamshire and Derbyshire Shared Procurement Unit based at Bassetlaw District Council being a shared resource for the provision of procurement advice / guidance and Procurement Services for the constituent Councils and certain other public bodies as described in the legal agreement, a copy of which is held by each authority.
<b>Supplier</b>	means a Supplier of works, goods or services to the Council;
<b>Supplies Contract</b>	means a Contract for the sale or hire of goods to the Council and includes, where appropriate, installation of goods;
<b>Tender</b>	means an offer by a Supplier to undertake a Contract of £50,000 or more in value;
<b>Transparency Agenda</b>	This is a requirement that all procurement processes undertaken by an authority where the value of expenditure is over £5,000 it must be published on the authorities Open Data portal.
<b>TUPE Regulations</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any amendment, re-enactment or replacement of them.
<b>Value Engineering</b>	Value engineering (VE) is systematic method to improve the "value" of goods or products and services by using an examination of function. Value, as defined, is the ratio of function to cost. Value can therefore be increased by either improving the function or reducing the cost. It is a primary tenet of value engineering that basic functions be preserved and not be reduced as a consequence of pursuing value improvements.
<b>Voluntary Transparency Notice</b>	means a notice published in OJEU by the Shared Service Procurement Team on the request of the Chief Officer,

which contains the name and contact details of the Council; a description of the object of the Contract; a justification of the decision of the Council to award the Contract without advertising it in OJEU; the name and contact details of the Supplier to be awarded the Contract and any other information the Shared Service Procurement Team considers it useful to include;

**Works Contract**

means a Contract for the construction, repair or maintenance of a physical asset e.g. a building or a road.

## Part 2

### All Contracts, whatever their value

#### 1. APPLICATION AND SCOPE

##### Apply to:

- 1.1 **All** Contracts for the supply of works, goods or services **to** the Council, regardless of value.

##### Do not apply to:

- 1.2 Contracts for the purchase or sale of any interest in land (including leasehold interests).
- 1.3 Contracts for the appointment of individual Members of Staff, including Members of Staff sourced through employment agencies under a Corporate Contract.
- 1.4 Grant agreements, either where the Council is giving or receiving a grant.
- 1.5 Supply of works, goods and services **by** the Council.
- 1.6 A Contract procured in collaboration with other local authorities where the Contract Procedure Rules of the lead authority shall apply. Assurance should be sought that the lead authority is in compliance with its own Contract Procedure Rules.
- 1.7 The obtaining of specialist legal services through counsel or external legal advisers
- 1.8 The obtaining of financial services in connection with the issue of sale, purchase or transfer of securities or other financial instruments and central bank services the obtaining of which shall be made by the Head of Finance.

#### 2. COMPLIANCE

- 2.1 Every Contract entered into on behalf of the Council must comply with
- these Contract Procedure Rules;
  - the Council's Financial Regulations; and
  - all relevant UK and EU legislation.
- 2.2 Each Chief Officer is responsible for ensuring that his/her directorate complies with these Contract Procedure Rules.
- 2.3 All Officers and consultants engaged in any capacity to manage or supervise the procurement of any works, goods or services for the Council **must** comply with these Contract Procedure Rules and failure to comply with these Rules may result in disciplinary action and legal proceedings against Officers and consultants concerned.
- 2.4 Generally, work must not begin under a Contract until the Contract document has been signed, and where appropriate sealed, by both parties (or, if the only Contract document is a purchase order, until the purchase order has been issued).

- 2.5 If a Chief Officer wishes to nominate a particular sub-Contractor to a main Contractor, the procedures in these Contract Procedure Rules must be followed to select the sub-Contractor as well as the main Contractor.
- 2.6 Where the value of the contract is above the threshold for tenders, i.e. £50,000 a PROC4 form **must** be submitted to the Director of Resources for approval prior to any contract award commitment being made by any Officer.

### **3. CONFLICTS OF INTEREST**

- 3.1 All Officers must avoid any conflict between their own interests and the interests of the Council. This is a requirement of the Employee Code of Conduct, to which all employees of the Council are subject and includes:
- exercising caution when accepting gifts or hospitality from organisations or Suppliers that the Council has dealings with and a requirement to follow the process set out in the Code;
  - not working for organisations or Suppliers that the Council has dealings with;
  - notifying the Chief Executive and relevant Chief Officer if an Officer has links with (e.g. a family member or close friend works for) an organisation or Supplier who is tendering or quoting for a Contract with the Council or already has a Contract with the Council.
- 3.2 All consultants engaged to act on behalf of the Council must sign a Consultant's Undertaking and declare that:
- they will avoid any conflict between their own interests or those of any of their other clients and the interests of the Council; and
  - they will notify the relevant Chief Officer if they have any links with (e.g. a family member or close friend works for) an organisation or Supplier who is tendering or quoting for a Contract with the Council or already has a Contract with the Council.
- 3.3 If an Officer has an interest, financial or otherwise, in a Contract or proposed Contract, he/she must declare it in writing to the Chief Officer as soon as he/she becomes aware of the interest. An elected Member must register any contractual interests in accordance with the Members' Code of Conduct. An elected Member or Officer who has an interest in a Contract must not take part in the procurement or management of that Contract.

### **4. PREVENTION OF CORRUPT ACTIVITY**

- 4.1 A Contract may be terminated when a breach has occurred as set out and detailed in the Contract Terms and Conditions, and any losses to the Council arising from the termination recovered from the Supplier, if the Supplier, or anyone acting on his behalf (with or without the Supplier's knowledge):
- offers or promises or gives a financial or other advantage to any elected Member of the Council, any Officer or any consultant in connection with the Contract; or
  - requests, agrees to receive or accepts a financial or other advantage so that some action in relation to the Contract is performed improperly; or

- is found to be convicted of a crime including but not limited to bribery, cheating the Revenue, conspiracy to defraud, conspiracy to participate in a criminal organisation, corruption, fraud, theft, fraudulent trading, fraudulent evasion of tax, offences under the Counter Terrorism Act 2008, offences under the Serious Crime Act 2007, money laundering, drug trafficking etc; or
- organisations found guilty of conducting fraud, such as ‘cover pricing’, will not normally be considered. Organisations shall be required to make declarations in regards to professional and business conduct, including Blacklisting, to the satisfaction of the Council before being invited to tender or tenders being assessed.
- The following clause must be put in every written council contract:  
*“The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:*
  - (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or
  - (b) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972, or
  - (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.*Any clause limiting the Contractor’s liability shall not apply to this clause.”*

A declaration to this effect must be included in all invitations to tender or quote.

- 4.2 Any elected Member of the Council, Officer or consultant who becomes aware or has reason to believe that a Supplier or potential Supplier has committed one of the corrupt acts referred to in CPR 4.1, must report that to the Head of Law and Corporate Governance and Monitoring Officer; and/or the Head of Finance immediately.
- 4.3 The attention of Officers is drawn to the Council's Employees' Code of Conduct and Disciplinary Rules and Procedures. **Non-compliance with these Contract Procedure Rules constitutes grounds for disciplinary action and may be considered gross misconduct.**

## 5. DUTIES OF CHIEF OFFICERS

- 5.1 Chief Officers are required to ensure that all Contracts within his/her directorate comply with Contract Procedure Rules, Financial Regulations and all applicable public procurement legislation. To plan the procurement of and manage Contracts within his/her directorate to ensure that Contracts
- deliver value for money;
  - are operated effectively, efficiently and economically; and
  - are operated within the terms of the Contracts themselves, so that the Council is not at risk of being in breach of Contract.
- 5.2 To provide details to the Finance Section of Contracts entered into by his/her directorate for inclusion into the Council’s Contracts Register and the requirement of the

Transparency Code 2014. Contracts for less than £5,000 need not be recorded in the Register.

- 5.3 Another Chief Officer or an Officer within his/her own directorate may be authorised via written delegation to carry out the Chief Officer's duties in respect of a particular Contract or Contracts generally.
- 5.4 To keep adequate records to show compliance with Contract Procedure Rules, Financial Regulations, European Legislation and all other relevant legislation in his/her directorate.

## **6. THE PUBLIC SERVICES (SOCIAL VALUE) ACT 2012**

- 6.1 Before beginning the commissioning process for the supply of any services Chief Officers must consider whether the Public Services (Social Value) Act 2012 applies to the services. This only applies to contracts where the value is greater than the EU threshold.
- 6.2 Where it does apply Chief Officers must make the following considerations at the pre-procurement stage:
- how what is proposed to be procured might improve the economic, social and environmental well-being of the "relevant area";
  - how in conducting a procurement process the Council might act with a view to securing that improvement; and
  - whether to undertake a consultation on these with appropriate customer or client groups to establish whether benefits are realistic and achievable.

## **7. VALUATION OF CONTRACTS**

- 7.1 The Chief Officer responsible for each Contract must record an estimated value for the Contract before any offers are sought.
- 7.2 The value of a Contract is the **total** amount that the Council expects to pay or receive for the Contract, including any Contract extension period. This may be a lump sum e.g. £250,000 or a periodic payment e.g. £50,000 per year for a 5 year Contract = £250,000.
- 7.3 The Chief Officer must not try to avoid compliance with these Contract Procedure Rules or the EU Regulations by splitting a procurement exercise for the same or similar works, goods or services into smaller, separate Contracts. If it will achieve better value for money, Contracts for the same or similar works, goods or services must be aggregated into a single Contract of greater value.

## **8. USE OF CORPORATE CONTRACTS**

- 8.1 If there is a Corporate Contract for the supply of any works, goods or services, the Chief Officer must buy through that Contract, rather than awarding a separate Contract for his/her own directorate. The Lead Service Procurement Manager's advice should be sought on these matters.

## 9. FRAMEWORK AGREEMENTS

- 9.1 The Shared Service Procurement Team must be consulted before joining or buying from a new Framework Agreement where the expenditure will be more than the EU Threshold. It **must** be confirmed by the lead authority and owner of the framework that it is open and available to Erewash Borough Council.
- 9.2 A Chief Officer may, subject to complying with EU requirements, authorise participation in a Framework Agreement, where it can be shown that the framework:
- offers value for money; and
  - offers savings in the costs of procurement.
- 9.3 This applies both to Framework Agreements set up by the Council alone and to frameworks set up by another public authority.
- 9.4 To select a Supplier for a specific Contract under a multi-Supplier framework agreement or to conduct a mini competition, the Chief Officer, in consultation with the Lead Service Procurement Manager, must follow the procedure set out in that Framework Agreement. This might include the use of *paper-based* procurement process for a mini-competition. This will have to be achieved through a procurement process not processed through the electronic tendering system.
- 9.5 Successful and unsuccessful Suppliers who participated in a mini-competition must be notified of the decision to award the specific Contract. The notification letter must be sent by Post and e-mail. Officers **must** verify whether a *standstill period* applies to the award process.
- 9.6 All Framework Agreements, and specific Contracts over the EU Threshold, must be executed as deeds, by affixing the Council's Common Seal. Guidance should be sought from the Head of Law and Corporate Governance and Monitoring Officer.
- 9.7 A Framework Agreement **must** not be longer than 4 years unless specifically agreed with Legal Services and the Lead Service Procurement Manager.

## 10. EQUALITY AND DIVERSITY LEGISLATION

- 10.1 The Council provides a wide range of services to the community and businesses in the Borough. In some cases these are provided directly by Officers employed by the Council, but in other cases, contractors and partners may provide them on its behalf. Therefore, the services provided to the community should be geared towards their diverse needs and requirements. Spending by the Council sustains and maintains a significant number of jobs within the Borough, and the Council has a statutory duty to ensure that public money is spent in a way that ensures value for money and does not lead to unfair discrimination and social exclusion.
- 10.2 The Equality Act 2010 sets out anti-discrimination law in the UK. It identifies 'protected characteristics' as age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, pregnancy and maternity and marriage and civil partnerships.
- 10.3 The Act sets out the public sector equality duty (PSED) which applies to most public authorities in England, such as local authorities, police, schools, universities and central government departments. It also applies to organisations carrying out a public function.

It therefore includes private companies or voluntary sector organisations that have been contracted to carry out public functions on behalf of a public authority. The duty only applies in respect of the public function being carried out and not the wider business of the contracted body.

- 10.4 The PSED requires public authorities to have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - Advance equality of opportunity between people who share a protected characteristic and those who do not; and
  - Foster good relations between people who share a protected characteristic and those who do not.



**Part 3 – BELOW QUOTATION LEVEL**  
**Contracts below £2,000**

**11. COMPETITION**

- 11.1 The Chief Officer need not obtain competitive quotations for Contracts of less than £2,000 in value.

**12. PURCHASE ORDERS**

- 12.1 All Contracts must be in writing and a purchase order must be issued for every Contract.

**Part 4 - QUOTATIONS**  
**Contracts from £2,001 to £9,999**

**13. COMPETITION**

- 13.1 A minimum of three (3) written competitive quotations must be sought for Contracts from £2,001 to £9,999 in value.
- 13.2 A written record of the bids received and a record of the successful quotation should be created through a PROC1 record.

**14. PURCHASE ORDER AND TERMS AND CONDITIONS OF CONTRACT**

- 14.1 All Contracts must be in writing and a purchase order must be issued for every Contract.
- 14.2 Refer to CPR 45.2 for terms and conditions.

**15. AUTHORITY TO INVITE AND EVALUATE QUOTATIONS**

- 15.1 The decision to invite quotations for a Contract and the decision to award the Contract must be separate decisions.

**16. INVITATIONS TO QUOTE**

The Head of Service must:

- 16.1 Obtain at least three written quotations, at least one of which should, whenever possible, be from a Supplier based in the local area and a written record maintained. This should be recorded through the use of a PROC1 record.

**17. AWARD OF THE CONTRACT**

- 17.1 As soon as practicable after the decision to award the Contract has been made, the Shared Service Procurement Team, where instructed, or the Head of Service in all situations must write to inform the successful and unsuccessful Suppliers of that decision.

**18. SIGNATURE OF THE CONTRACT**

- 18.1 Contracts for Quotations must be signed for and on behalf of the Council by the Head of Service or an Officer with written delegation from the Head of Service.
- 18.2 any Contract may be terminated immediately, when a breach has occurred as set out and detailed in the contract Terms and Conditions, and subject to the terms of the Contract, any losses to the Council arising from the termination recovered from the

Supplier, if the Supplier, or anyone acting on his behalf (with or without the Supplier's knowledge):

- (1) offers or promises or gives a financial or other advantage to any elected Member of the Council, any Member of Staff or any consultant in connection with the Contract; or
- (2) requests, agrees to receive or accepts a financial or other advantage so that some action in relation to the Contract is performed improperly.

**Part 5 - QUOTATIONS**  
**Contracts from £10,000 to £24,999**

**19. COMPETITION**

19.1 Competitive quotations must be sought for Contracts from £10,000 to £24,999 in value.

**20. PURCHASE ORDER AND TERMS AND CONDITIONS OF CONTRACT**

20.1 All Contracts must be in writing and a purchase order must be issued for every Contract.

20.2 Refer to CPR 45.2 for terms and conditions.

**21. AUTHORITY TO INVITE AND EVALUATE QUOTATIONS**

21.1 The decision to invite quotations for a Contract and the decision to award the Contract must be separate decisions.

**22. INVITATIONS TO QUOTE**

The Head of Service must:

22.1 The number of suppliers to be invited to quote will be dictated by the level of interest from the competitive market, and whenever possible at least one of whom should, be based in the local area.

22.2 The shortlist must be selected from responses to an advertisement through [www.sourcederbyshire.co.uk](http://www.sourcederbyshire.co.uk) and Contract Finder.

22.3 Be satisfied and keep a written record that the Suppliers invited to quote have the legal, financial and technical capacity (including their health & safety and equal opportunities policies) to undertake the Contract for the Council and that they will provide value for money.

22.4 State in the invitation to quote whether quotations will be evaluated on the basis of most economically advantageous to the Council or on the basis of price only.

22.5 Allow sufficient time for submission of quotations. The recommended minimum is fourteen (14) days from the date of the invitation to quote.

**23. AWARD OF THE CONTRACT**

23.1 As soon as practicable after the decision to award the Contract has been made, the Shared Service Procurement Team, where instructed, or the Head of Service in all situations must write to inform the successful and unsuccessful Suppliers of that decision.

## **24. SIGNATURE OF THE CONTRACT**

- 24.1 Contracts for Quotations must be signed for and on behalf of the Council by the Head of Service or an Officer with written delegation from the Head of Service.
- 24.2 any Contract may be terminated immediately, when a breach has occurred as set out and detailed in the contract Terms and Conditions, and subject to the terms of the Contract, any losses to the Council arising from the termination recovered from the Supplier, if the Supplier, or anyone acting on his behalf (with or without the Supplier's knowledge):
- (1) offers or promises or gives a financial or other advantage to any elected Member of the Council, any Member of Staff or any consultant in connection with the Contract; or
  - (2) requests, agrees to receive or accepts a financial or other advantage so that some action in relation to the Contract is performed improperly.

**Part 6 - QUOTATIONS**  
**Contracts from £25,000 to £49,999**

**25. COMPETITION**

- 25.1 Competitive quotations must be sought for Contracts from £25,000 to £49,999 in value.
- 25.2 In all cases these quotations **must** be advertised through the Contracts Finder portal. This should be achieved in conjunction with the Procurement Shared Service.

**26. PURCHASE ORDER AND TERMS AND CONDITIONS OF CONTRACT**

- 26.1 All Contracts must be in writing and a purchase order must be issued for every Contract.
- 26.2 Refer to CPR 45.2 for terms and conditions.

**27. AUTHORITY TO INVITE AND EVALUATE QUOTATIONS**

- 27.1 The decision to invite quotations for a Contract and the decision to award the Contract must be separate decisions.

**28. INVITATIONS TO QUOTE**

The Head of Service must:

- 28.1 Assess the number of suppliers to be invited to quote based on the level of interest from the competitive market, and, whenever possible, at least one of them should be based in the local area. The shortlist must be selected from responses to an advertisement through [www.sourcederbyshire.co.uk](http://www.sourcederbyshire.co.uk) and Contract Finder.
- 28.2 Be satisfied and retain a written record that the Suppliers invited to quote have the legal, financial and technical capacity (including their health & safety and equal opportunities policies) to undertake the Contract for the Council and that they will provide value for money.
- 28.3 State in the invitation to quote whether quotations will be evaluated on the basis of most economically advantageous to the Council or on the basis of price only.
- 28.4 Allow sufficient time for submission of quotations. The recommended minimum is fourteen days (14) from the date of the invitation to quote.

**29. AWARD OF CONTRACT**

- 29.1 As soon as practicable after the decision to award the Contract has been made, the Shared Service Procurement Team, where instructed, or the Chief Officer in all situations must write to inform the successful and unsuccessful Suppliers of that decision. This will be achieved as electronic communications through the e-Tendering system as this will ensure an Audit process of all communications.

29.2 Any Contract may be terminated immediately, when a breach has occurred as set out and detailed in the contract Terms and Conditions, and subject to the terms of the Contract, any losses to the Council arising from the termination recovered from the Supplier, if the Supplier, or anyone acting on his behalf (with or without the Supplier's knowledge):

- (1) offers or promises or gives a financial or other advantage to any elected Member of the Council, any Member of Staff or any consultant in connection with the Contract; or
- (2) requests, agrees to receive or accepts a financial or other advantage so that some action in relation to the Contract is performed improperly.

### **30. SIGNATURE OF THE CONTRACT**

30.1 Contracts for Quotations must be signed for and on behalf of the Council by the Chief Officer or an Officer with written delegation from the Chief Officer.

## **Part 7 - TENDERS**

### **Contracts from £50,000 but less than the EU Threshold**

#### **31. COMPETITION**

31.1 Competitive Tenders must be sought for Contracts of £50,000 or more in value.

#### **32. PURCHASE ORDER**

32.1 All Contracts must be in writing and a purchase order must be issued for every Contract.

#### **33. SPECIFICATION**

33.1 A clear and comprehensive specification of the Council's requirements must be prepared with regard to the works, goods or services to be supplied.

33.2 The specification should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the Chief Officer to see whether the Council's requirements are being met by the Supplier.

33.3 Where Consultants assist in the preparation of a specification they **must** not be invited to Tender for the Contract.

#### **34. TERMS AND CONDITIONS OF CONTRACT**

34.1 Refer to CPR 45.2 and 45.3.

#### **35. AUTHORITY TO INVITE AND EVALUATE TENDERS**

35.1 Refer to CPR 46

#### **36. THE TENDER PROCEDURE**

36.1 The Tender procedure must be followed when letting Contracts of £50,000 or more in value.

36.2 The number of Suppliers to be invited to Tender will be dictated by the level of interest from the competitive market and, whenever possible, at least one of them should be based in the local area.

36.3 To ensure genuine competition, the recommended minimum number of Suppliers invited to Tender is five. If there are fewer than five expressions of interest then the minimum number of Suppliers to be invited to tender may be reduced as appropriate.

36.4 The invitation to tender must include:

- a covering letter, setting out the latest date and time for receipt of tenders;



- instructions to tenderers;
- the Council's specification;
- the terms and conditions of Contract;
- a form of tender for completion by the tenderer. The form of tender must acknowledge that the Council is not obliged to accept the lowest or any tender. The form of tender must also state that the tender will remain open for acceptance by the Council for a period of ninety days after the last date for receipt of tenders, or such other period as appropriate;
- if appropriate, a pricing document for completion by the tenderer; and
- (if the Contract may involve the transfer of employees, from the Council to a Contractor or from one Contractor to another) all relevant information relating to those employees in an anonymised format **provided** tenderers have signed a confidentiality undertaking. It is the responsibility of the Chief Officer to obtain full and accurate employee information in sufficient time to include it in the invitation to tender.

36.5 The instructions to tenderers must state that for submissions on paper these should only be allowed where a Framework Agreement is used and it is a condition of the Framework Agreement that any mini-competition should be achieved through a paper exercise, e.g. some Buying Consortia frameworks, e.g. ESPO:

- the latest date and time for receipt by the Council of tenders, which is 12:00 (noon) unless agreed otherwise by the Shared Service Procurement Team;
- Tenders must be returned to the Shared Service Procurement Team at Queen's Buildings, Potter Street, Worksop, S80 2AH in a sealed envelope or parcel, bearing only the address label provided by the Shared Service Procurement Team, which will identify the envelope or parcel as containing a tender, identify the Contract and the latest date and time for receipt of the tender by the Council;
- Tenders that arrive at the Shared Service Procurement Team after the latest date and time specified, **whatever the reason or circumstances**, will not be considered;
- Envelopes or parcels identifying the tenderer **in any way** (including identification placed on the envelope or parcel by a courier or postal service) will not be considered.
- any tender that does not comply with the instructions to tenderers or is conditional **in any way** will be rejected and will not be evaluated by the Council; and
- any Contract may be terminated immediately, when a breach has occurred as set out and detailed in the contract Terms and Conditions, and subject to the terms of the Contract, any losses to the Council arising from the termination recovered from the Supplier, if the Supplier, or anyone acting on his behalf (with or without the Supplier's knowledge):
  - (1) offers or promises or gives a financial or other advantage to any elected Member of the Council, any Member of Staff or any consultant in connection with the Contract; or

- (2) requests, agrees to receive or accepts a financial or other advantage so that some action in relation to the Contract is performed improperly.
- 36.6 Appropriate time must be allowed for submission of tenders. The minimum is fourteen (14) days from the date of the invitation to tender, however each tender process should be considered in the light of the complexity of the tender.
- 36.7 Amendments to invitation to tender documents, made after the invitations have been sent out must be clearly headed "**ITT Amendment**" and sent to all Suppliers who have been invited to tender. One or more amendments must be numbered consecutively. Amendments must be sent out in sufficient time to allow Suppliers to adjust their tenders before close of tenders. If necessary, the tender period must be extended to allow for this.
- 36.8 The Shared Service Procurement Team is responsible for keeping tenders in a secure place until after the latest date and time for receipt and for returning tenders that are received late or identify the tenderer.
- 36.9 Until the Contract has been awarded, the information obtained at the opening of tenders is confidential to those involved in the opening process and those directly involved in evaluation of the tenders. Confidentiality must be maintained and any breach reported to the Head of Law and Corporate Governance and Monitoring Officer.
- 36.10 Tenders must be opened after the time set by the Shared Service Procurement Team has lapsed
- 36.11 The Shared Service Procurement Team must number all tenders in the order they are opened and all persons present must initial the forms of tender.
- 36.12 A tender that does not comply with the instructions to tenderers or is conditional must be treated as non-compliant and rejected. **Non-compliant tenders must not be evaluated unless the Lead Service Procurement Manager advises otherwise.**
- 36.13 The Shared Service Procurement Team must keep a record of:
- the works, goods or services to be supplied;
  - the name of each tenderer;
  - the amount of each tender or such other information as may be relevant to the procurement;
  - the date and time of opening of each tender;
  - the names of all persons present at the time of opening and the person who removes the seal from the electronic tendering system.
  - All processes undertaken through the e-Tendering system are fully audited and recorded on the host system.
- 36.14 Negotiations with Suppliers who have tendered for a Contract are not permitted by EU law and are therefore unlawful, regardless of whether the value of the Contract is above or below the EU Threshold. After tenders have been opened, **and before the tenders have been scored**, the Chief Officer in consultation with the Shared Service Procurement Team may require one or more tenders to be clarified by the tenderer. Clarification questions and answers must be fully documented and the relevant clarifications incorporated in the Contract document. Clarifications must not make any substantive changes to the tender. Tenders must not be scored until clarifications have been completed.

## **37. ELECTRONIC TENDERS AND E-PROCUREMENT**

- 37.1 Requests For Quotations and Invitations to Tender **should** be transmitted by electronic means wherever possible. Further advice regarding this process should be sought from the Lead Service Procurement Manager.
- 37.2 The paper-based processes set out in CPR 36 must be followed unless the e-Tendering system is being used.

## **38. EVALUATION OF TENDERS**

- 38.1 Tenders should normally be evaluated on the basis of 'the most economically advantageous' to the Council. Exceptionally, and only with the permission of the Lead Service Procurement Manager, tenders may be evaluated on the basis of price only. The basis of evaluation must be stated in the invitation to tender. If the basis of evaluation is 'the most economically advantageous' the criteria for evaluation must be set out in the invitation to tender, in descending order of priority, with the weightings to be given to them.
- 38.2 If the basis of evaluation is price only, only the lowest tender (if payment is to be made **by** the Council) or the highest tender (if payment is to be made **to** the Council) may be accepted.
- 38.3 If the basis of evaluation is 'the most economically advantageous', the Chief Officer must arrange for an appropriate evaluation panel to consider the tenders and evaluate them against the criteria and weightings stated in the invitation to tender. The evaluation panel may include service users and/or external consultants.
- 38.4 All valid tenders received must be evaluated.
- 38.5 Tenders must be accepted in accordance with the outcome of the evaluation or not at all.
- 38.6 If no suitable tenders are received, the Shared Service Procurement Team must be consulted as to how the works, supplies or service concerned may be procured.
- 38.7 If a tender exceeds the budget allocated the Chief Officer must obtain an additional allocation of funds in accordance with Financial Regulations **before** the tender may be accepted.
- 38.8 If all valid tenders are too high to be accepted, and there is no further allocation of additional funds, the Chief Officer may delete part of the specification and ask all Suppliers invited to tender to re-price their tenders, by submitting a fresh form of tender. In such cases the Chief Officer must set out the deletion in a bill of reductions or other document, to be incorporated into the Contract document.
- 38.9 Tenders must not be value-engineered with one or more Suppliers except with the specific consent of and in consultation with the Shared Service Procurement Team and Legal Services. This is to ensure that no post-tender negotiations take place.
- 38.10 If the Contract will result in the application of the TUPE Regulations the Chief Officer must ensure that the successful tenderer has dealt with all employee matters, including pay, conditions of employment and pension rights and benefits, in his tender and will give all appropriate indemnities in the Contract. The Council will give appropriate

indemnities in respect of employee matters **only** if employees are transferring from Council employment to the successful tenderer and in no other circumstances.

### **39. BONDS AND PARENT COMPANY GUARANTEES**

- 39.1 For Contracts of £50,000 or more in value the Chief Officer must decide, taking appropriate advice from the Director of Resources and Head of Finance, whether the circumstances justify the Council requiring the Supplier to provide a parent company guarantee. If the Supplier does not have a parent company or the parent company is not approved under CPR 53.2 the Supplier may in those circumstances be required to provide a bond. If a bond is required the amount of the bond must be not less than ten per cent of the total Contract value or the whole of the annual Contract value, unless otherwise agreed by the Head of Finance.
- 39.2 The parent company or the surety for a bond must be approved by the Head of Finance.
- 39.3 All parent company guarantees and bonds must be in a form approved by the Director of Resources. A specimen of the parent company guarantee must be included in the invitation to tender documentation.

### **40. AWARD OF THE CONTRACT**

- 40.1 Before any contract over £50,000 can be awarded the PROC4 form must be completed and submitted to the Director of Resources for written approval.
- 40.2 As soon as practicable after the decision to award the Contract has been approved as set out above the Shared Service Procurement Team must write to inform the successful and unsuccessful tenderers of that decision.

### **41. SIGNATURE OF CONTRACT**

- 41.1 The Contractor must not be allowed to begin work on the Contract until the Contract documents have been signed or sealed as appropriate by both parties.
- 41.2 Contracts for over £100,000 must be sealed by the Council

## Part 8 – EU TENDERS

### Contracts over the EU Threshold

#### 42. COMPETITION

42.1 Competitive tenders **must** be sought for Contracts over the EU Threshold.

#### 43. SELECTING THE PROCUREMENT ROUTE

43.1 The Head of Service and the Shared Service Procurement Team will consider the following principles before inviting tenders:

- Analysis and evaluation of all practical options for Contract packages and methods of procurement, with the object of selecting the option that most effectively ensures best value and provides full, fair and open competition;
- Taking into account the goals and objectives in the Sustainable Community Strategy and the priorities of the Corporate Plan;
- Consultation with stakeholders within and outside the Council about service standards and specifications;
- Market investigation;
- Analysis of performance under any current Contract and consideration of prospective performance in the light of consultations and investigations;
- Stimulation of diversity and innovation, enhancement of choice for service users and attraction of new Suppliers;
- Promotion of sustainability;
- Partnerships between the public, private and voluntary sectors should be sought, which demonstrate a shared commitment to objectives that benefit users of the Council's services;
- Value for money should be applied, with the objective of achieving a Contract that best serves the needs of service users.

43.2 **At the same time** as submitting the procurement request to engage the Shared Service Procurement Team in developing a procurement plan the Head of Service must give full instructions to the Legal Services section to draft or approve terms and conditions of Contract where non-standard terms are being used.

#### 44. SPECIFICATION

44.1 An appropriate specification must be prepared, which sets out a clear and comprehensive description of the Council's requirements with regard to the works, goods or services to be supplied.

- 44.2 All works, goods and services must be specified by reference to European standards, or national standards if no European standards are set. Named products, part numbers or manufacturers names **must** not be specified.

*Advisory note: Named products can be specified if the words “or equivalent” are added after the named product, but it is better to describe the features that you are looking for in the product.*

- 44.3 The specification should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the Chief Officer to see whether the Council’s requirements are being met by the Supplier.
- 44.4 All necessary professional and technical advice and assistance must be obtained in preparing the specification, to ensure a comprehensive document that expresses the Council's requirements and protects its interests. Consultants who assist in the preparation of a specification must not be invited to tender for the Contract. The people who prepare the specification should, as a rule, be part of the panel that evaluates tenders.
- 44.5 Generally the OJEU Contract notice or other advertisement inviting tenders must not be published until the specification has been drafted.

## **45. TERMS AND CONDITIONS OF CONTRACT**

- 45.1 For Contracts over the EU Threshold, full instructions must be given at the earliest opportunity and in any event not later than submitting the procurement request to the Shared Service Procurement Team and to Legal Services to draft the terms and conditions of Contract e.g. JCT, NEC or similar or to approve non-standard terms and conditions of Contract.
- 45.2 **All Contracts**, whatever their value, must include: a clear and comprehensive description of the works, goods or services to be supplied (the specification);
- the price to be paid by the Council as required through Contracts Finder;
  - the time or times within which the Contract is to be performed;
  - a provision allowing the Council to use information gained from the Contract for preventing and detecting fraud;
  - a provision requiring the Supplier to comply with requests under the Freedom of Information Act 2000 for information relating to the Contract; and
  - a right for the Council to terminate the Contract immediately in the event of corrupt activity and for the Council to recover its losses arising from the termination.
- 45.3 For all Contracts over the EU Threshold the following terms and conditions must be included, where appropriate:
- the mechanism (which includes timing) by which the price is to be paid;
  - other indicators by which the Supplier's performance is to be measured, linked to the payment mechanism;
  - provisions for monitoring the Contract and for achieving continuous improvement in service;

- a provision for the Supplier to report whatever performance indicators that may be required from time to time by the Council, including the requirements of regulations or other Government requirement;
- a provision for making changes to the Contract to take account of changes in circumstances;
- if the Supplier's failure in performance would cause the Council financial loss, a provision for payment of liquidated damages;
- other provisions for termination;
- an appropriate dispute resolution procedure;
- a requirement for the Supplier to comply with current legislation regarding Health & Safety at Work and all other statutory requirements applicable to the works, goods or services to be supplied;
- a requirement for the Supplier to comply with current legislation and Council policies regarding discrimination, equal opportunities and sustainability. Failure to comply with this requirement is likely to lead to termination of the Contract.
- a requirement for the Supplier to comply with anti-money-laundering legislation and the Council's Counter-Fraud and Corruption, Whistle-blowing and Anti-Money Laundering Policies. Failure to comply with this requirement is likely to lead to termination of the Contract.
- a requirement for the Supplier to observe other relevant Council policies;
- a requirement for the Supplier to maintain appropriate insurance cover;
- a requirement for the Supplier to maintain a business continuity plan and to provide the Council with a copy on request;
- a prohibition on the Supplier assigning, sub-letting or novating the Contract without the Council's consent;
- a provision requiring the Supplier to co-operate with the Council in legal proceedings and in enquiries by the Council's Scrutiny Committee or the Local Government Ombudsman;
- if appropriate, a warranty by the Supplier that his employees are suitable persons to be employed in that Contract and, notwithstanding the provisions of the Rehabilitation of Offenders Act 1974, have disclosed all charges, cautions and convictions of criminal offences. This may include obtaining disclosures by the Disclosure and Barring Service;
- a provision requiring the Supplier to employ sufficient numbers of appropriately trained, skilled and competent staff and allowing the Council to require the removal of any member of the Supplier's staff from the Contract if his/her behaviour justifies it;
- a mechanism for dealing with complaints about the Contract;
- where transfer of staff may be involved provisions dealing with rights and obligations regarding employee matters, including pensions;
- a requirement for the Supplier to maintain records concerning the Contract and to give the Council access to such records and to the Supplier's premises and personnel for the purpose of internal or external audit;

- a provision regarding tax deductions under the Construction Industry Scheme;
- intellectual property rights;
- the Freedom of Information Act 2000, the Data Protection Act 1998, the Human Rights Act 1998 and the Crime and Disorder Act 1998;
- other relevant statutory provisions

45.4 The Head of Service must:

- Require the Supplier to maintain appropriate and adequate levels of insurance cover, in consultation with the Council's Head of Finance, for employer's liability, public liability, product liability, all risks / Contract works and professional indemnity insurance. Unless otherwise agreed by the Head of Finance and the Lead Service Procurement Manager, the minimum levels of cover shall be
  - £5 million for employer's liability insurance
  - £5 million for public liability and products liability insurance
  - £1 million for professional indemnity insurance.

All policies must contain an indemnity of principals clause.

- Ensure that the Supplier holds the required insurance cover at the start of the Contract, renews the policies as necessary during the Contract period and, following each renewal, provides details verified by his insurer or broker of his insurance for the Council's records.

45.5 As a general rule **all** Contracts, whatever their value, must provide for payment by the Council **after** supply of the works, goods or services. Exceptionally, and only with the consent of the Head of Finance, a Contract may provide for payment in advance.

45.6 Generally, the OJEU Contract notice or other advertisement inviting tenders must not be published until the terms and conditions of Contract have been drafted.

## **46. AUTHORITY AND DELEGATION TO INVITE AND EVALUATE TENDERS**

46.1 The OJEU Contract notice or other advertisement inviting tenders must not be published until the Chief Officer, Portfolio Holder or the Council Executive (as appropriate) has made the decision to invite and evaluate tenders and the decision has been recorded in writing.

## **47. THE TENDER PROCEDURE**

47.1 The Chief Officer, in consultation with the Shared Service Procurement Team and Legal Services, must follow the tender procedure when letting Contracts over the EU Threshold.

47.2 The Chief Officer and the Lead Service Procurement Manager must first establish whether the EU Regulations apply to a proposed Contract. The Chief Officer must use an open or restricted procedure unless the Director of Resources agrees the use of another procedure. Whenever possible, a competitive procedure must be adopted.



- 47.3 Generally the tender procedure must not start until the specification and terms and conditions of Contract and evaluation criteria and matrix have been drawn up. This will enable a smooth, timely and lawful tender procedure.

*Advisory note: To ensure the best response to an advertisement the Chief Officer may alert appropriate Suppliers in advance to the appearance of the advertisement.*

- 47.4 The selection of Suppliers to be invited to tender for the Contract must follow the requirements of the Public Contract Regulations 2015. The Contract Notice must be advertised in OJEU. OJEU notices must be placed by the Shared Service Procurement Team only. Chief Officers or consultants must not place OJEU notices themselves. The potential contract **must** be published on Contract Finder at the same time at which the Council becomes entitled to publish the notice at national level, i.e. not later than 48 hours after receipt of the OJEU Notice from OJEU.
- 47.5 Suppliers expressing an interest in being invited to tender in response to an OJEU Contract notice or an advertisement must complete a PQQ in a form approved by the Shared Service Procurement Team. PQQs must be evaluated separately from, and before, any tenders are evaluated. Any PQQ that is received after the latest date specified for return must not be considered.

*Advisory note: The criteria on which PQQs are evaluated must be designed to establish the capability of the Supplier to undertake the Contract. They **will** be different from the criteria on which tenders are evaluated. Tender evaluation criteria must address the qualities of the tender proposals, not the capability of the tenderer. PQQs look backwards at the Supplier's qualities; tenders look forwards at the tender proposals' qualities.*

- 47.6 A sufficient number of Suppliers must be invited to tender to ensure genuine competition. The minimum number is five. If there are fewer than five expressions of interest in being invited to tender or fewer than five satisfactory PQQs then the minimum number of Suppliers to be invited to tender may be reduced, with the approval of the Shared Service Procurement Team and Legal Services.
- 47.7 As soon as possible after the selection of the shortlist of Suppliers to be invited to tender, the Shared Service Procurement Team must write to any Suppliers who submitted a PQQ but who were not selected informing them why they were not selected. If a Supplier who was not selected asks for further information on why he was unsuccessful the Chief Officer must immediately (i.e. the same day) contact the Shared Service Procurement Team to make arrangements for the de-briefing.
- 47.8 The invitation to tender must include:
- a covering letter setting out the latest date and time for receipt of tenders and an acknowledgement of receipt of the tender documents, for completion and return by the Supplier;
  - the criteria and sub-criteria against which tenders will be evaluated, in descending order of priority, the weightings that will be attached to the criteria and sub-criteria and the method of scoring to be used;
  - instructions to tenderers;
  - the Council's specification;

- declarations in relation to professional and business conduct, including Blacklisting;
- the terms and conditions of Contract, in a form drafted by or approved by Legal Services;
- a form of tender for completion by the tenderer in a form approved by Legal Services. The form of tender must acknowledge that the Council is not obliged to accept the lowest or any tender. The form of tender must also state how long the tender will remain open for acceptance by the Council after the last date for receipt of tenders. If a performance bond is required the form of tender must require the tenderer to state the amount, if any, by which his price will be increased for the provision of the bond;
- if appropriate, a pricing document for completion by the tenderer; and
- If the Contract may involve the transfer of employees from the Council to a contractor or from one contractor to another all relevant information relating to those employees in an anonymised format provided the tenderers have signed a confidentiality undertaking. It is the responsibility of the Chief Officer to obtain full and accurate employee information in time to include it in the invitation to tender.

47.9 The instructions to tenderers must state that:

- The latest time for receipt of tenders is 12.00 p.m. unless agreed otherwise by the Shared Service Procurement Team and noted in the tender OJEC notice;
- tenders must be returned to the Shared Service Procurement Team via the electronic tendering system or [www.eastmidstenders.org](http://www.eastmidstenders.org)
- tenders that arrive at the Shared Service Procurement Team by whatever means after the latest date and time specified, **whatever the circumstances**, will not be opened and will not be evaluated.
- any tender that does not comply with the instructions to tenderers or is conditional **in any way** will be rejected and will not be evaluated by the Council; and
- any Contract will be terminated immediately, and any losses to the Council arising from the termination recovered from the Supplier, if the Supplier, or anyone acting on his behalf (with or without the Supplier's knowledge) :
  - (1) offers or promises or gives a financial or other advantage to any elected Member of the Council, any Member of Staff or any Consultant in connection with the Contract; or
  - (2) requests, agrees to receive or accepts a financial or other advantage so that some action in relation to the Contract is performed improperly.

47.10 The Chief Officer must allow sufficient time for submission of tenders. The minimum is fourteen days from the date of the invitation to tender but larger value or more complicated Contracts will require a longer period.

47.11 Amendments by the Chief Officer to invitation to tender documents, made after the invitations have been sent out, must be clearly headed "**ITT Amendment**" and sent to all Suppliers who have been invited to tender. If there are is than one amendment they must be numbered consecutively. Amendments must be sent out in sufficient time to allow Suppliers to adjust their tenders and in any event no later than five clear working

days before close of tenders. If necessary, the tender period must be extended to allow for this.

47.12 The Shared Service Procurement Team must record:

- the works, goods or services to be supplied;
- the name of each tenderer;
- the amount of each tender or such other information as may be relevant to the procurement;
- the date and time of opening of each tender;
- the names of all persons present at the time of opening,
- the Chief Officer's representative.

47.13 The Lead Service Procurement Manager must keep securely one clean, archive copy of each tender submission (that is to say the original form of tender signed by hand on behalf of the tenderer and all of the tenderer's documents accompanying the form of tender as submitted, not photocopies).

## **48. ELECTRONIC TENDERS AND E-PROCUREMENT**

48.1 Refer to CPR 37

## **49. CLARIFICATION OF TENDERS**

49.1 Negotiations with Suppliers who have tendered for a Contract are not permitted by EU law and are therefore unlawful. After tenders have been opened, **and before the tenders have been scored**, the Chief Officer **must** discuss with the Shared Service Procurement Team whether they require one or more tenders to be clarified by the tenderer.

49.2 Clarifications must be designed to ensure that the Council has fully understood the tender submitted. Clarifications must not make any substantive changes to the tender.

49.3 Clarification questions and answers must be fully documented in a form approved by Legal Services and the relevant clarifications incorporated in the Contract document.

49.4 Tenders must not be evaluated and scored until clarifications have been completed.

## **50. EVALUATION OF TENDERS**

50.1 Tenders should normally be evaluated on the basis of which is the most economically advantageous to the Council. Exceptionally, and only with the permission of the Lead Service Procurement Manager, tenders may be evaluated on the basis of price only. The basis of evaluation must be stated in the Contract notice published in OJEU and in any other advertisement. The basis of evaluation must also be stated in the invitation to tender. If the basis of evaluation is 'the most economically advantageous' the criteria for evaluation must be set out in the invitation to tender, in descending order of priority, with the weightings to be given to them and the method of scoring.

*Advisory note: Criteria for evaluation may include quality, price, technical merit,*

*aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales services, technical assistance, delivery date, delivery period, and period of completion.*

- 50.2 If the basis of evaluation is price only, only the lowest tender (if payment is to be made **by** the Council) or the highest tender (if payment is to be made **to** the Council) may be accepted.
- 50.3 If the basis of evaluation is 'the most economically advantageous' the Chief Officer must arrange for an appropriate evaluation panel to consider the tenders and evaluate them against the criteria and weightings stated in the invitation to tender. The evaluation panel may include service users and/or external Consultants. The evaluation panel should, as a rule, comprise those people who have had significant input into drawing up the specification and as set out in the table on page 5, under Section 8 , i.e. Legal officer, Procurement and Accountant.

*Advisory note: It is recommended that Chief Officers ask the Shared Service Procurement Team for advice on preparing a comprehensive and objective evaluation scoring matrix for completion by the evaluation panel.*

- 50.4 All valid tenders received must be evaluated. Each member of the evaluation panel must make full notes of his/her evaluation and pass the notes to the Shared Service Procurement Team for retention as part of the record of the procurement.
- 50.5 Tenders must be accepted in accordance with the outcome of the evaluation or not at all.
- 50.6 If no suitable tenders are received the Head of Service must consult Legal Services as to how the works, supplies or service concerned may be procured.
- 50.7 If a tender exceeds the budget allocated the Head of Service must obtain an additional allocation of funds in accordance with Financial Regulations **before** the tender may be accepted.
- 50.8 If all valid tenders are too high to be accepted and there is no further allocation of additional funds the Chief Officer may delete part of the specification and ask all those who tendered to re-price their tenders by submitting a fresh form of tender. In such cases the Chief Officer must set out the deletion in a bill of reductions or other document to be incorporated into the Contract document.
- 50.9 Tenders must not be value-engineered with one or more Suppliers except with the specific consent of and in consultation with the Shared Service Procurement Team and Legal Services. This is to ensure that no post-tender negotiations take place.
- 50.10 If the Contract will result in the application of the TUPE Regulations the Chief Officer must ensure that the successful tenderer has dealt with all employee matters, including pay, conditions of employment and pension rights and benefits in his tender and will give all appropriate indemnities in the Contract. The Council will give appropriate indemnities in respect of employee matters **only** if employees are transferring from Council employment to the successful tenderer and in no other circumstances.

## 51. AMENDMENTS AND ALTERATIONS TO TENDERS

- 51.1 A Supplier's tender is his offer to the Council which the Council may accept as it stands. Once he has submitted his tender, and it has been clarified if necessary, a tenderer is not permitted to make any alteration to the amount of the tender or any of his tender proposals.
- 51.2 If a tenderer attempts to alter his offer after the last date for receipt of tenders he must be given the opportunity to stand by or withdraw his original offer. Correction of an obvious arithmetical error in a fixed price tender which would reduce the price to be paid by the Council may be accepted.

*Advisory note: e.g. £2,000 + £2,000 = £5,000 can be corrected to £4,000, but £2,000 + £2,000 = £3,000 cannot be increased to £4,000.*

- 51.3 A tender that is qualified or expressed to be conditional upon the Council's acceptance of alterations to the specification or the terms and conditions of Contract must be treated as non-compliant and rejected. **Non-compliant tenders must not be evaluated.** This does not prevent the Council inviting variant bids. If variant bids are invited tenderers must be required to submit a mandatory reference bid based on the specification and terms and conditions included in the invitation to tender, so that all bids may be compared fairly.
- 51.4 Before a tender has been accepted a Chief Officer may ask all tenderers to hold their tenders open for a longer period. Tenders should in any event remain open for acceptance for a period of ninety days from the latest date for receipt of tenders, or such other period as the Chief Officer considers appropriate, and the form of tender must make this clear.

## 52. AWARD OF THE CONTRACT

- 52.1 Before any contract over £50,000 can be awarded, the PROC4 form must be completed and submitted to the Director of Resources for written approval of award. This also includes the approval of the appropriate Portfolio Holder.
- 52.2 A full, confidential tender report **must** be produced, which must:
- state the date of the decision to invite and evaluate tenders and the authority to award a Contract, together with the decision-maker;
  - state where and when the Contract was advertised;
  - list the PQQs received, with their scores (where applicable);
  - list the names and job titles of those who evaluated the PQQs;
  - list the tenders invited;
  - list the evaluation criteria, weightings and scoring methodology;
  - state the date of the invitation to tender and the latest date for return of tenders;
  - list the tenders received;
  - list any tenders rejected as late or non-compliant;
  - show the scoring of tenders on evaluation;
  - list the names and job titles of those who evaluated the tenders;

- confirm that the tender procedure has complied with these Contract Procedure Rules; and
  - Be marked 'NOT FOR PUBLICATION'.
- 52.3 The decision to award the Contract must include the name of the successful tenderer, the length of the Contract and any options for extension and the price or estimated price of the Contract.
- 52.4 As soon as possible after the decision to award the Contract has been made and taking call-in procedures, the Alcatel standstill period and requirements of Remedies Directive into account, the Lead Service Procurement Manager must write to inform the successful tenderer of that decision. The letter **must** state that award of the Contract is subject to sealing by both parties of the Contract document, which will be sent to the tenderer by Legal Services. The letter must be sent by e-mail through the e-tendering system and through the Post.
- 52.5 At the same time as the notification in CPR 52.4 the Lead Service Procurement Manager must write to each unsuccessful tenderer informing them of:
- the name of the successful tenderer;
  - the number of PQQs received (if appropriate);
  - the number of Expressions of Interest received;
  - the number of tenders received;
  - the reasons for the decision to award, including the characteristics and relative advantages of the successful tender;
  - the award criteria, any sub-criteria, the weightings applied to them and the scoring methodology;
  - the score obtained by the successful tenderer in the evaluation;
  - the score obtained by the unsuccessful tenderer being notified (but no others);
  - the date the decision to award was made;
  - the effect of the standstill period and the date before which the Council will not enter into the Contract; and
  - the date the letter is being sent.
- The notification letter to the unsuccessful tenderers must be sent via the e-tendering system or by e-mail or fax.
- 52.6 At the same time as the notification in CPR 52.4 the Lead Service Procurement Manager must write to each Supplier who was invited to tender but who did not submit a tender, informing him of:
- the name of the successful tenderer;
  - the number of PQQs received;
  - the number of invitations to tender issued;
  - the number of tenders received;
  - the reasons for the decision to award, including the characteristics of the successful tender;

- the award criteria, any sub-criteria, the weightings applied to them and the scoring methodology;
- the score obtained by the successful tenderer in the evaluation;
- the date the decision to award was made;
- the effect of the standstill period and the date before which the Council will not enter into the Contract; and
- the date the letter is being sent.

The notification letter to the Suppliers who were invited but who did not submit a tender must be sent by e-mail or fax.

- 52.7 If an unsuccessful tenderer asks for further information on why he was unsuccessful the Chief Officer must arrange for the de-briefing as soon as possible.
- 52.8 The Contract document **must** not be sealed before the expiry of the standstill period following the date the notification of the decision to award the Contract was sent.
- 52.9 A voluntary transparency notice (other than for an extension or variation as defined in CPRs 55 and 56) may be published in OJEU only with the prior permission of the Director of Resources. If a voluntary transparency notice is published the Contract document must not be signed or sealed (as appropriate) before the expiry of the standstill period after the date on which the notice was published in OJEU.

### **53. BONDS AND PARENT COMPANY GUARANTEES**

- 53.1 For Contracts of £50,000 or more in value the Chief Officer must decide, taking appropriate advice from the Director of Resources and Head of Finance, whether the circumstances justify the Council requiring the Supplier to provide a parent company guarantee. If the Supplier does not have a parent company or the parent company is not approved under CPR 53.2 the Supplier may in those circumstances be required to provide a bond. If a bond is required the amount of the bond must be not less than ten per cent of the total Contract value or the whole of the annual Contract value, unless otherwise agreed by the Head of Finance.
- 53.2 The parent company or the surety for a bond must be approved by the Head of Finance.
- 53.3 All parent company guarantees and bonds must be in a form approved by the Director of Resources. A specimen of the parent company guarantee must be included in the invitation to tender documentation.

### **54. SIGNATURE OF THE CONTRACT**

- 54.1 All Contracts executed as deeds must have the Council's Common Seal impressed on them.
- 54.2 All bonds and guarantees, and Contracts of £50,000 or more must be executed as deeds. Legal Services may direct that other Contracts must be executed as deeds.

### **55. CONTRACT AWARD NOTICE**

55.1 For Contracts over the EU threshold the Shared Service Procurement Team shall arrange for publication of a Contract award notice in OJEC, this is subject to a time limit of 30 days.



## Part 9

### For Contracts that have commenced

#### 56. CONTRACT MANAGEMENT

- 56.1 A Contract **must** not start until the Contract documents have been signed or signed and sealed and dated. Chief Officers must allow time for this in the Contract programme.
- 56.2 Within ten days of the date of the Contract, if the Contract is worth £5,000 or more, the Head of Service must notify the Shared Service Procurement Team and the Head of Finance of the following:
- the Contract reference number
  - the title of the agreement
  - the local authority responsible
  - the works, goods or services to be supplied;
  - the procurement procedure adopted;
  - the name of the Supplier,
  - the Contract value; and
  - the commencement and completion dates;
- 56.3 The Chief Officer shall be the Contract manager for the Contracts for which he/she is responsible up to the EU Threshold, but he/she may authorise another Officer by written delegation to have day-to-day responsibility for managing the Contract. For Contracts over the EU Threshold the Chief Officer must appoint a dedicated Contract manager with appropriate skills and experience.
- 56.4 The Chief Officer is responsible for:
- managing the Contract and ensuring that it is carried out in accordance with its terms and conditions;
  - monitoring the Supplier's performance;
  - making the Supplier aware that he is expected to comply with the Council's equal opportunities, counter-fraud and corruption, whistle-blowing and anti-money laundering policies;
  - ensuring that the Supplier maintains the insurance policies required by the Contract;
  - agreeing any minor changes to the Contract (but not changes to prices) before they are carried out;
  - keeping a record of all valuations, payments, claims, monitoring, changes and certificates under the Contract;
  - deducting liquidated damages, if appropriate;
  - in consultation with Legal Services consenting to sub-Contracts, assignments to new Suppliers and novation's to new Suppliers; and

- managing the transition between the ending of one Contract and the beginning of another

56.5 The Chief Officer **must** consult Legal Services for consideration of the Council's legal position:

- before any Contract is to be terminated or suspended;
- in the event of a claim for payment not clearly within the terms and conditions of Contract;
- before making any deduction from payments due to a Supplier or withholding payment from a Supplier;
- before making any extension to a Contract or variation of the scope of a Contract.

## 57. EXTENSIONS TO CONTRACTS

57.1 An extension to a Contract is an additional period at the end of the Contract during which the works or the services to be carried out are a repetition of the works, supplies or services under the original Contract.

57.2 Unless a Contract specifically includes an option to extend its term that Contract may not be extended. The Contract **will** cease to exist at the end of its term.

57.3 If a Contract specifically includes an option to extend its term **and**:

- the OJEU notice or other advertisements for the Contract stated that an extension Contract may be awarded; and
- the estimated value of the Contract in the OJEU notice or other advertisements took account of the potential extended Contract; and
- the extension represents good value for money for the Council,

then the Chief Officer may make a decision to award the extension to the Contract if the value of the extension is below £50,000 per annum. If the value of the extension is over £50,000 per annum the decision to award the extension Contract must be made by the Council Executive.

Once the extension has expired, that Contract will cease to exist.

## 58. VARIATIONS TO THE SCOPE OF CONTRACTS

58.1 Provided that a budget has been allocated for that expenditure and value for money can be demonstrated the Chief Officer may agree with a Supplier for him to carry out additional works or services that were not included in the original Contract but which through unforeseen circumstances have become necessary and which either cannot for technical or economic reasons be carried out or provided separately from those included in the original Contract without major inconvenience to the Council or could be carried out or provided separately but are strictly necessary to the later stages of the Contract. The additional works or services must not exceed 50% of the value of the original Contract and authorisation must be obtained from the appropriate decision-maker.

## Part 10

### Exceptions to Contract Procedure Rules (PROC forms)

- 59.1 An exception to Contract Procedure Rules is a permission to let a Contract without complying with one or more of the Rules. An exception to Contract Procedure Rules may be granted subject to conditions.
- 59.2 Permission to use an exception to Contract procedure Rules will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not be a permitted exception to the Rules.
- 59.3 If an exception is granted, the Chief Officer responsible for the Contract must demonstrate that the price obtained is not in excess of the market price and that the Contract represents value for money.
- 59.4 An exception to Contract Procedure Rules is not required in the following circumstances:
- placing an order under an existing Corporate Contract or single Supplier Framework Agreement;
  - as part of a partnering Contract that contemplates a series of Contracts with a single Supplier, provided the entire series has been duly authorised as appropriate for its value;
  - legislation requires the Council to let a Contract differently from these Contract Procedure Rules;
  - placing an order through the Shared Service Procurement Team under an arrangement, of which the Council is an affiliate, which has gone through an EU compliant competitive process;
- 59.5 Exceptions under this Rule shall be notified to the Lead Service Procurement Manager.
- 59.6 Exceptions may be granted in the following circumstances:
- a. The Contract is for the execution of works or the supply of goods or services certified by the Chief Officer to be required so urgently as to preclude the invitation of tenders. The appropriate Portfolio Holder shall be kept informed of such decisions and a record of the decision shall be retained by the Chief Officer and a copy sent to the Lead Service Procurement Manager.
  - b. Where there is no (or insufficient) marketplace to tender for the supply of goods, services or works required because of the specialist nature of the proposed Contract permission to apply an exception will be sought from the Portfolio Holder or the Council Executive to either deal with a single contractor or to vary the quotation/tender requirements.
  - c. The Chief Executive and/or Director of Resources also have the authority to waive any requirements within the CPRs, subject to the following requirements:
    - (i) The likely value of the contract is below £50,000; or
    - (ii) Where the value of the contract is likely to exceed £50,000 that the Chief Executive and/or Director of Resources have consulted with the

Leader or Deputy Leader and Portfolio Holder prior to any exception being granted; or

- (iii) Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services and that they have consulted each other if practical. The Leader/Deputy Leader to be advised at the earliest opportunity.

59.7 All requests for exemptions, and the reasons for them, must be recorded using the approved form (Form PROC3 held on ERNIE) signed by the relevant Chief Officer and passed to the Chief Executive and/or Director of Resources for appropriate action. The Director of Resources may at his discretion, delegate this authority to another Officer in appropriate circumstances. The Director of Resources shall maintain a register of all approved exemptions.

## **60. STANDING EXCEPTIONS TO REQUIREMENTS TO INVITE TENDERS**

60.1 Nothing in these CPRs shall require competitive tenders to be invited if in the opinion of the Chief Executive or Director of Resources:

- (a) The work to be executed or the goods or materials to be supplied consists of upgrades and/or repairs to or the supply of parts of existing proprietary machinery, plant or software;
- (b) The contract is for the instruction of Counsel, external legal advisers or medical experts;
- (c) The price of the goods or materials is wholly controlled by trade organisations or government rules and no reasonable satisfactory alternative is available.

61.2 All such exceptions must be authorised in writing (using the approved Form PROC3 held on ERNIE) by the Chief Executive or Director of Resources and a record kept. No exception is available for contracts or purchases subject to UK and EU public procurement legislation and which exceed the EU threshold.

## **60.3 EXEMPTIONS**

60.3.1 The Council Executive has the authority to waive any requirements within these CPRs for specific purchases. An exemption made under this CPR 60 may, for example, allow a contract to be placed by direct negotiation with one or more suppliers rather than in accordance with the requirements of Rule 7. There are no exemptions available for purchases with a value above the EU Threshold.

60.3.2 The Chief Executive and/or Director for Resources also have the authority to waive any requirements within the CPRs, subject to the following requirements:










- (a) The likely value of the contract is below £50,000; or
- (b) Where the value of the contract is likely to exceed £50,000 that the Chief Executive and/or Director for Resources have consulted with the Leader or Deputy Leader and Portfolio Holder prior to any exception being granted; or
- (c) Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services and that they have consulted each other if practical. The Leader/Deputy Leader to be advised at the earliest opportunity.

- 60.3.3 Where a proposed contract is likely to exceed the EU Threshold (see Definitions), there is no scope for applying an exemption to the requirements of UK and EU Public Procurement legislation.
- 60.3.4 All requests for exemptions, and the reasons for them, must be recorded using the approved form (Form PROC3 held on ERNIE) signed by the relevant Chief Officer and passed to the Chief Executive and/or Director for Resources for appropriate action. The Director for Resources may at his discretion, delegate this authority to another Officer in appropriate circumstances. The Director for Resources shall maintain a register of all approved exemptions.
- 60.4. **STANDING EXCEPTIONS TO REQUIREMENTS TO INVITE TENDERS**
- 60.4.1 Nothing in these CPRs shall require competitive tenders to be invited if in the opinion of the Chief Executive or Director for Resources:
- (a) The work to be executed or the goods or materials to be supplied consists of upgrades and/or repairs to or the supply of parts of existing proprietary machinery, plant or software;
  - (b) The contract is for the instruction of Counsel, external legal advisers or medical experts;
  - (c) The price of the goods or materials is wholly controlled by trade organisations or government rules and no reasonable satisfactory alternative is available.

## **61. ENGAGEMENT OF CONSULTANTS**

- 61.1 A Chief Officer may only appoint external consultants or advisors providing professional or consulting services if such services are not available within the Council or if Officers providing them do not have the resources to meet the needs of the service. Where such services are available in-house, the Chief Officer must consult with the Portfolio Holder before taking any decision to make an external appointment.

## Appendix 'A'

Forms	Guidance	Template	Use
PROC1	 PROC1_Guidance Notes_17Feb'11.doc	 PROC1_Quotation Record Sheet_v1.4 2	For procurement exercises > £2,001 but <£49,999
PROC2	 PROC2_Guidance Notes_17Feb'11.doc	 PROC2_Tender Plan v1.1a 26Feb'16 HL Ct	Tender Plan
PROC3	 PROC3_Guidance Notes_17Feb'11.doc	 PROC3_Request for Exception_v4_09Oct'	Dispensation to Contract Procedure Rules
PROC4	 PROC4_Guidance Notes_17Feb'11.doc	 PROC4_Approval of Contract Award v8.1	Contract Award for Tenders, i.e. >£50,000
PROC5		 Procurement Checklist - Part 1 v5 t	Procurement Approval Pro-forma