

## **PART 11 – CONTRACT REGULATIONS**

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## **1 INTRODUCTION**

- 1.1 The purpose of these Contract Procedure Rules is to set out the principles, roles and processes involved in procurement at the Council. All procurements must comply with these rules, the Council's Financial Regulations, English law and European law in force in England.
- 1.2 All procurements must realise value for money through the optimum combination of whole life costs and quality of outcome.
- 1.3 These rules seek to protect the Council's reputation by minimising the risk of allegations of corruption, dishonesty and failure to meet legal obligations, as such they must be followed in all procurement activity.
- 1.4 These rules are supported by detailed, practical guidance available in the Procurement Toolkit.
- 1.5 These Rules do not apply in the following circumstances:
- The purchase or lease of property, land acquisition, interest in land, transaction in land or disposal. This does not extend to any service, supplies or works contracts that may be required to make the land, existing buildings or immovable property ready for acquisition, disposal or leasing.
  - Direct employment of permanent or fixed term employees, for the avoidance of doubt these Rules do apply to consultancy and employment agency contracts.
  - Instructing barristers or solicitors and those costs do not exceed the relevant EU Threshold.
  - The lending or borrowing of money by the Council.

## **2 OFFICER RESPONSIBILITIES**

### **Officers**

- 2.1 The Officer responsible for the procurement must comply with these Contract Procedure Rules and the Financial Regulations. The Officer is also responsible for ensuring that any Agents acting on behalf of the Council do so in compliance with these Rules and should seek written confirmation of their agreement.
- 2.2 The Officer must have regard to the guidance in the Procurement Toolkit.

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- 2.3 The Officer must check whether a suitable Corporate Contract or other Publicly Available Contract exists before seeking to let another Contract. Where such a contract does exist, its use should be considered.
- 2.4 The Officer must keep the records detailed in these Rules.
- 2.5 Where the EU Procedure is required, the Officer **must** contact Welland Procurement before embarking on the procurement.
- 2.6 Officers should take all necessary legal, financial and other professional advice.
- 2.7 Where any employee of the Council or of a Supplier may be affected by any transfer arrangement, the Officer must ensure that the Transfer of Undertaking (Protection of Employment) issues are considered and obtain advice from the Strategic Director (Section 151) before proceeding with any procurement.
- 2.8 Officers must ensure that the contracts for which they are responsible are effectively managed and monitored to ensure they deliver the requirement as intended.
- 2.9 Where an Officer has a potential conflict of interest within a procurement, the Officer must declare this immediately to the relevant Director and Monitoring Officer. The Officer may be required to withdraw from the procurement process. Any Officer who fails to declare such a conflict of interest may be subject to disciplinary proceedings and sanctions and risks being prosecuted under the Bribery Act 2010.

### **Senior Leadership Team**

- 2.10 The Senior Leadership Team must ensure that they and their Officers comply with these Rules at all times.
- 2.11 The Senior Leadership Team must ensure that Value for Money is achieved in all procurements.
- 2.12 The Senior Leadership Team must ensure that they have in place a scheme of delegation that records in writing what action Officers are authorised to take under these Rules.
- 2.13 In the interests of forward planning, the Senior Leadership Team should prepare, maintain and review a rolling schedule in respect of procurement activities valued over £50,000.
- 2.14 The Senior Leadership Team are responsible for ensuring that the Council's central Contract Register is updated as required following purchasing activity within their service area.

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- 2.15 Where an officer within the Senior Leadership Team has a potential conflict of interest within a procurement, the officer must declare this immediately to the relevant Director and Monitoring Officer. The Officer may be required to withdraw from the procurement process. Any Officer who fails to declare such a conflict of interest may be subject to disciplinary proceedings and sanctions and risks being prosecuted under the Bribery Act 2010.

### **3 EXEMPTIONS**

- 3.1 The exemptions listed in this Section do not apply to procurements valued above the relevant EU Threshold.
- 3.2 The relevant Group Manager or Strategic Manager, with approval from either the Monitoring Officer or the Section 151 Officer, may grant formal exemptions upon completion of the Approval Form subject to one of more of the following criteria being fulfilled.
- 3.2.1 No genuine competition: proprietary or patented goods or services; requirement of such a specialist nature that it can genuinely only be fulfilled by one person or organisation; compatibility with existing goods or services is required and where those existing goods or services can only be sourced from the same supplier.
- 3.2.2 Genuine emergencies: critical preventative remedial work where there is a real and imminent risk to the safety or people or property arising from hitherto unforeseen 'catastrophic' event or incident such as fire, bombing, flood, major landslide etc.
- 3.2.3 Urgent situations not of the Council's own making: the urgency must have been reasonably unforeseeable (e.g. an existing supplier going into liquidation, urgently imposed statutory changes etc.) and genuinely be a case of 'time is of the essence'. However, urgency arising through problems of the Council's own making (whatever the cause and regardless of whether it involved previous delays or shortage of resources, etc.) shall not in itself justify exemption.
- 3.2.4 Collaborative/Joint Procurement: where another authority/public body is acting as the 'lead buyer' and provided that the Officer can demonstrate those arrangements comply with relevant Regulations and best practice.
- 3.2.5 Grants which the Council may receive or make: except where the grant is the form of payment for a contract for services where the Council specifies the output or outcomes to be delivered. The awarding of grants by the Council or on behalf of the Council must be carried out under the principles of openness, fairness, non-discrimination and

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value for money. Officers cannot choose to treat procurement as a grant in order to avoid conducting a competitive process.

- 3.2.6 Contracts for the execution of either mandatory works or provision of goods or services which must be provided by Statutory Provider other than the Council. This includes but is not limited to public utility companies and other legal authorities.
- 3.3 Exemption requests made under this Section 3 must be submitted to the S151 Officer for central logging, in the format detailed in the Procurement Toolkit. Wherever possible completed Exemption Request Forms should be submitted by email.
- 3.4 An Exemption will either:
- 3.4.1 Be approved by the relevant Group or Strategic Manager in consultation with the Monitoring Officer or the S151 officer and confirmed with the requesting Officer; or
  - 3.4.2 Held pending a request for further information; or
  - 3.4.3 Rejected stating the reasons; or
  - 3.4.4 Referred to Cabinet for determination if in the opinion of the Monitoring Officer or S151 Officer this is required.

#### **4 PROCUREMENTS VALUED UNDER £10,000**

- 4.1 Where the contract is valued below £10,000, Officers are required to seek at least one written quotation. Value for money remains a primary objective and so Officers may decide to seek more than one quotation to ensure that objective is achieved.
- 4.2 Quotations can be submitted via email but should be PDF documents to prevent tampering or accusations thereof.
- 4.3 The quotation must be received before any order is processed and must include the following information:
- a) A description of the goods, services or works to be supplied;
  - b) When and where they will be supplied;
  - c) The value of the requirement'
  - d) Payment terms.
- 4.4 The contract award must be authorised by a member of the Senior Leadership Team.

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- 4.5 The contract or terms and conditions must be signed by a member of the Senior Leadership Team.
- 4.6 Where the value of the contract is more than £5,000, the resultant contract must be added to the Contract Register to ensure compliance with Transparency Regulations.

## **5 PROCUREMENTS VALUED BETWEEN £10,000 AND £49,999**

- 5.1 Where the contract is valued between £10,000 and £49,999 at least 3 written quotations must be obtained. Those quotations must be invited from identified suppliers as no procurement advertising can take place.
- 5.2 It is recommended that the Request for Quotation template document is used. In any case the criteria for selecting the most advantageous quotation must be established before the quotations are invited and be made clear in the procurement documentation.
- 5.3 At least one of the suppliers invited to submit a quotation should be local, where local means in the sub-region or region.
- 5.4 Where fewer than three potential suppliers can be identified, the Officer must keep a written record of the reason and all potential suppliers should be invited to quote. It is accepted that the Officer may receive fewer than three quotations even where three or more suppliers have been invited to quote.
- 5.5 Quotations can be submitted via email but should be PDF documents to prevent tampering or accusations thereof.
- 5.6 The Officer must keep copies of the Council's procurement documentation as well as copies of all quotations received and any communication between the Council and the successful bidder.
- 5.7 Evaluation of the quotations received must be carried out using the evaluation criteria identified in the procurement documentation. Clarification questions may be asked where responses would not result in a material change of the bid received.
- 5.8 The contract award must be authorised by a member of the Senior Leadership Team.
- 5.9 The contract or terms and conditions must be signed by a member of the Senior Leadership Team
- 5.10 The resultant contract must be added to the Council's Contract Register to ensure compliance with Transparency Regulations.

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- 5.11 If the contract is valued over £25,000, an award notice on Contracts Finder is required. Welland Procurement is responsible for such award notices.

## **6 PROCUREMENTS VALUED BETWEEN £50,000 AND THE CURRENT GOODS AND SERVICES OJEU THRESHOLD**

- 6.1 For contracts valued between £50,000 and the current goods and services OJEU Threshold a single stage/open tender process must be completed. This means that all interested suppliers are eligible to submit a Tender.
- 6.2 The procurement must be advertised on Contracts Finder, Welland Procurement is responsible for managing this advertising.
- 6.3 The procurement will be managed using an electronic tendering system, the Officer must therefore contact Welland Procurement to access that system.
- 6.4 It is recommended that the Open Tender template documents are used, in any case the Officer must ensure that the required Standard Suitability Questions are used. The Officer must ensure that all relevant procurement documents are finalised before the procurement is advertised, these will include at least the Specification, Terms and Conditions of Contract and weighting evaluation criteria.
- 6.5 Tenders will be received via the electronic tendering system. The Officer, a representative of Welland Procurement and a duly appointed independent Council officer will be responsible for opening and logging the tenders to meet Internal Audit requirements.
- 6.6 Tenders must be evaluated in accordance with the advertised weighted evaluation criteria, clarification questions may be asked as long as the response would not have the affect of materially changing the tender received.
- 6.7 The bidder with the highest evaluation score will be awarded the contract. If this is not the case, the advice of Welland Procurement must be sought prior to award.
- 6.8 Contract award must be approved in writing by a member of the Senior Leadership Team.
- 6.9 All bidders must be notified of the Award decision simultaneously in writing (via email) by the Officer, whether or not their bid was successful.
- 6.10 The contract must be signed by a member of the Senior Leadership Team. In certain circumstances the contract may require sealing, please see Section 10.6 below.

- 6.11 The resultant contract must be added to the Council's Contract Register to ensure compliance with Transparency Regulations. The Officer is responsible for the subsequent storage and safe keeping of the signed contract.
- 6.12 The Officer must keep the following records:
- The method of obtaining tenders.
  - Tender documents produced by the Council.
  - Tenders received from bidders. The successful tender should be retained for at least the life of the contract. Unsuccessful tenders should be retained for the first 12 months of the contract.
  - A written record of the evaluation.
  - A record of the Award approval.
  - A signed copy of the Contract which should be retained for the life of the contract and in normal circumstances for 6 years thereafter.
  - Communications to and from bidders during the procurement process.
- 6.13 An award notice is required to be published on Contracts Finder, Welland Procurement is responsible for such award notices

## **7 PROCUREMENTS FOR WORKS CONTRACTS VALUED BETWEEN THE GOODS AND SERVICES OJEU THRESHOLD AND THE WORKS OJEU THRESHOLD**

- 7.1 For Works contracts valued between the Goods and Services OJEU Threshold and the Works OJEU Threshold, the Officer can choose either a single stage/open tender or two stage/restricted process.
- 7.2 The procurement must be advertised on Contracts Finder, Welland Procurement is responsible for managing this advertising.
- 7.3 The procurement will be managed using an electronic tendering system, the Officer must therefore contact Welland Procurement to access that system.
- 7.4 It is recommended that the Open Tender template or Restricted Tender template is used. In any case, the Officer must ensure that all relevant procurement documents are available at the time the procurement is advertised, these will include at least the Specification, Terms and Conditions of Contract and weighting evaluation criteria.
- 7.5 Tenders will be received via the e tendering system. The Officer, a representative of Welland Procurement and a duly appointed independent Council officer will be responsible for opening and logging the tenders to meet Internal Audit requirements.

- 7.6 Tenders must be evaluated in accordance with the advertised weighted evaluation criteria, clarification questions may be asked as long as the response would not have the affect of materially changing the tender received.
- 7.7 The bidder with the highest evaluation score will be awarded the contract. If this is not the case, the advice of Welland Procurement must be sought prior to award.
- 7.8 Contract award must be approved by a member of the Senior Leadership Team.
- 7.9 All bidders must be notified of the Award decision simultaneously in writing (via email) by the Officer, whether or not their bid was successful.
- 7.10 The contract must be signed by a member of the Senior Leadership Team. In certain circumstances the contract may require sealing, please see Section 10.6 below.
- 7.11 The details of the resultant contract must be added to the Council's Contract Register to ensure compliance with Transparency Regulations. The Officer is responsible for the subsequent storage and safe keeping of the signed contract.
- 7.12 The Officer must keep the following records:
- The method of obtaining tenders.
  - Tender documents produced by the Council.
  - Tenders received from bidders. The successful tender should be retained for at least the life of the contract. Unsuccessful tenders should be retained for the first 12 months of the contract.
  - A written record of the evaluation.
  - A record of the Award approval.
  - A signed copy of the Contract which should retained for the life of the contract and in normal circumstances for 6 years thereafter.
  - Communications to and from bidders during the procurement process.
- 7.13 An award notice is required on Contracts Finder, Welland Procurement is responsible for such award notices.

## **8 PROCUREMENTS VALUED OVER THE RELEVANT OJEU THRESHOLD**

- 8.1 Where the anticipated value of the contract exceeds the relevant OJEU threshold, the formal advice of Welland Procurement must be sought as early as possible and in any case before any procurement activity takes place.

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## **9 PROCURING VIA A FRAMEWORK AGREEMENT OR DYNAMIC PURCHASING SYSTEM (DPS)**

- 9.1 A contract of any value can be procured via a framework agreement or DPS, compliance with these Rules and relevant national and EU law is achieved through compliance with the framework agreement/DPS terms and conditions.
- 9.2 For the avoidance of doubt, a framework agreement or DPS is considered a compliant procurement route where:
- It has been entered into by the Council in compliance with these Rules; or
  - Another contracting authority, purchasing consortium or Central Government has tendered the framework agreement or DPS in compliance with national and EU procurement law and the Council is named as a potential user of the arrangement.
- 9.3 Contract award must be approved by a member of the Senior Leadership Team.
- 9.4 The contract must be signed by a member of the Senior Leadership Team.
- 9.5 The resultant contract must be added to the Council's Contract Register to ensure compliance with Transparency Regulations. The Officer is responsible for the subsequent storage and safe keeping of the signed contract.
- 9.6 Where the contract is valued over £25,000 an award notice is required on Contracts Finder, Welland Procurement is responsible for such award notices.

## **10 OTHER MATTERS TO CONSIDER**

### **10.1 Conflict of Interest**

- 10.1.1 Clause 2.9 and 2.15 define when a conflict of interest must be declared.
- 10.1.2 All officers, Members and other stakeholders involved in procuring for the Council must sign a Declaration of Interest form at the start of the procurement process. This form is available from [www.wellandprocurement.org.uk](http://www.wellandprocurement.org.uk)
- 10.1.3 This form must be kept on file during the procurement itself and the contract term.

### **10.2 Abnormally Low Bids**

- 10.2.1 Under the Public Contract Regulations 2015, the Council is required to request an explanation of the price or costs proposed in a tender where that price or those costs appear to be abnormally low in relation to the requirement.

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- 10.2.2 Advice should be sought from Welland Procurement during this investigation process to ensure that the requirements of the Public Contract Regulations 2015 are adequately complied with.

### 10.3 GDPR Requirements

- 10.3.1 The General Data Protection Requirements impose greater obligations on the Council to protect individual's information.
- 10.3.2 Officers conducting a procurement should ensure that GDPR screening questions, available from Welland Procurement, are completed as early as possible in the planning stages of that procurement.
- 10.3.3 Should any of the GDPR screening questions be answered positively, further advice must be sought from Welland Procurement and the Council's General Data Protection Officer before any further action is taken.

### 10.4 Impact of Organised Crime

- 10.4.1 In 2016 a pilot study was undertaken which found links between organised crime and specific categories of public sector procurement.
- 10.4.2 Areas particularly at risk of involvement with organised crime are taxis/transport, waste, and areas of low level spend (e.g. property maintenance)
- 10.4.3 If an officer is seeking to procure in one of these higher risk categories further advice should be sought from Welland Procurement.

### 10.5 Financial Sanctions Legislation

- 10.5.1 Financial sanctions are imposed by government and may apply to individuals and entities in the UK and abroad. In most cases it is illegal to contract with individuals and entities subject to financial sanctions.
- 10.5.2 Any officer concerned about whether the individual or entity they wish to enter into a contract with may be subject to financial sanctions should visit:  
<http://hmt-sanctions.s3.amazonaws.com/sanctionsconlist.htm>

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## 10.6 Sealing A Contract

- 10.6.1 A contract must be sealed where:
- 10.6.1.1 The Council wishes to enforce the contract for more than twelve years following its expiry (e.g. for land or construction works); or
  - 10.6.1.2 The price paid or received under the contract is a nominal price and does not reflect the value of the goods, services or works; or
  - 10.6.1.3 There is any doubt about the authority of the person signing for the other contracting party; or
  - 10.6.1.4 A Bond is established on behalf of the Supplier(s) or their guarantors; or
  - 10.6.1.5 Required by the Parties to the agreement; or
  - 10.6.1.6 Any contract with a value over £200,000.
- 10.6.2 Where contracts are completed by each side adding their common seal, the affixing must be attested by or on behalf of a relevant Director. The relevant Director is responsible for the process of sealing contract.

## 10.7 Performance Bonds

- 10.7.1 For contracts above £250,000 the Council require the Supplier to provide a Bond or financial deposit where the contract is in relation to the acquiring, building or repair of an asset. The form of the bond or a suitable financial deposit must be authorised by a Director and the relevant portfolio holder. Advice must be sought from the S151 Officer and the Monitoring Officer to determine that the bond is acceptable and on which a claim may be made should the need arise. The requirement for a bond or deposit and the nature of this financial instrument must be reported to Cabinet.

## 11 **PREVENTION OF CORRUPTION/DECLARATION OF INTEREST**

### **Officers**

- 11.1 The Officer responsible for the contract must comply with the Council Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract.
- 11.2 Officers must avoid giving advice to Members on pecuniary or Code of Conduct interests either immediately before or during a meeting. If Officer advice is required, it is important that adequate time for consideration of that advice is given.

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- 11.3 Officers should have regard to and comply with the Council's Benefits and Anti-Fraud Policy when procuring goods, services and works.

### **Members**

- 11.4 The decision whether or not to declare an interest is the individual Member's responsibility. See Part 5, Section 1 of the Council's Constitution relating to Members' Code of Conduct.
- 11.5 If it comes to the knowledge of a Member that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council and in which respect his or her approval or decision is sought, he or she shall immediately give written notice to the Monitoring Officer.
- 11.6 Members shall have regard to and comply with the Council's Benefits and Anti-Fraud Policy when involved in the procurement of goods, services and works.

### **Contracts**

- 11.7 All contracts must contain an appropriate clause that provides protection and the right to terminate the contract in the event of a supplier offering any inducement, committing fraud or committing an offence under the Prevention of Corruption Acts.
- 11.8 All contracts must contain a clause requiring Suppliers to comply with the Council's Benefits and Anti-Fraud Policy.

## **12 CONTRACT MANAGEMENT**

### **12.1 Contract Management**

- 12.1.1 The named Contract Manager should be noted in the Contract Register. All contracts must have a named Contract Manager for the entirety of the contract and that Contract Manager is responsible for the application of these Rules.
- 12.1.2 For all contracts valued over £50,000, the Contract Manager must identify the risks by maintaining a suitable risk register and ensure that suitable contingency measures are in place.
- 12.1.3 During the life of the contract, the Contract Manager must monitor the overall performance of the contract closely in order to ensure any issues of under performance are addressed as soon as possible and any areas of added value are identified as soon as possible.

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## 12.2 Variation

- 12.2.1 In any case where a variation means that the value of a contract would exceed the relevant EU Threshold, or where there is any material change to the contract, the contract must be treated as a new procurement under these Rules.
- 12.2.2 A material change is one which:
- 12.2.2.1 Would have allowed the admission of other Bidders or the acceptance or another tender; or
- 12.2.2.2 Extends the scope of the contract considerably to goods, services or works not initially covered by the Specification; or
- 12.2.2.3 Changes the economic balance in favour of the contractor in a manner not provided for in the procurement documents.
- 12.2.3 For clarity, a change will be deemed immaterial if the value of the modification is both below the relevant EU Threshold and below 10 % of the original contract value (15% for works contracts).

## 12.3 Extension

- 12.3.1 A contract should not be extended beyond its initial term unless the contract documents allow.
- 12.3.2 A Framework Agreement shall only be extended if the contract documents allow and the original term and extension together should not exceed four years except in exceptional circumstances.
- 12.3.3 Where a business need has been identified which means that a contract is required to be extended beyond the term permissible in the original contract documents, advice must be sought from Welland Procurement in the first instance and authority sought from the Monitoring Officer or the S151 Officer if such an extension is proposed.
- 12.3.4 The Officer must be satisfied that such an extension would achieve value for money and be reasonable in all circumstances. The Officer must record the reasons for these conclusions in writing.