

SECTION G – CONTRACT PROCEDURE RULES

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SECTION G – CONTRACT PROCEDURE RULES

1. Introduction

Purpose of these Contract Procedure Rules

- 1.1. These Contract Procedure Rules are made pursuant to s135 of the Local Government Act 1972. They have been prepared in accordance with the Public Contracts Regulations 2015, the Council's policies and to facilitate small and medium enterprises in the local area the opportunity to enter the Council's supply chain.
- 1.2. These Contract Procedure Rules set out how the Council will invite tenders, obtain quotations and award contracts for supplies, services or works. Their role is to ensure that contracts are appropriate for their purpose, provide the right balance between price and quality and are procured in an open way that demonstrates probity and compliance with the Council's policies and the law. It is important that they are viewed as an aid to good management and compliance and not as a hindrance.

Contracts outside the scope of these Contract Procedure Rules

- 1.3. Where the Council is disposing of goods, Officers shall seek advice from the S151 Officer and have regard to the provisions of the **Financial Procedure Rules** in **Part 3**.
- 1.4. These rules do not apply to:
 - 1.4.1. contracts with local authorities for the joint delivery of services or discharge of functions, save the obligation to secure value for money for the Council;
 - 1.4.2. transactions for the sale, purchase or lease of land or property;
 - 1.4.3. contracts which benefit from any exemption to the Public Contracts Regulations 2015 contained in Regulation 10 and/or 12 of those regulations.

Probity and Compliance

- 1.5. Responsibility for compliance with these Contract Procedure Rules remains at all time with **Officers**. It shall be the responsibility of the **Strategic Director** to ensure that staff within his/her directorate comply with these Contract Procedure Rules.
- 1.6. No contract shall be entered into unless adequate budgetary provision has been made for the award of that contract.
- 1.7. Any Officer, whether a direct employee of the Council or engaged through an

external organisation or supplier who is engaged to work on behalf of the Council shall, if they become aware of any relationship (current or past), whether pecuniary or not, with any supplier or potential supplier, make a Declaration of Interest to the relevant **Head of Service** at the earliest opportunity. Where the relevant Officer is the Head of Service, a **Strategic Director** or the **Chief Executive**, the declaration shall be made to another Strategic Director or the Chief Executive.

- 1.8. An Officer with an interest in a contract shall take no part in advising on the Council's dealing with that contract without the authorisation of the **Head of Service, Strategic Director** or **Chief Executive** (as the case may be). Unless such authorisation is obtained, if the Officer is present at a meeting when the contract is discussed, he/she shall forthwith declare that interest and withdraw from the meeting while it is under discussion.
- 1.9. The **Chief Executive** shall record in a book, to be kept for the purposes of recording any notice given by an Officer of the Council, under 1.7 above and/or Section 117 of the Local Government Act 1972 and the book shall be open during office hours to the inspection of any **Councillor**.

2. Value for Money

Value of the Contract Opportunity and Aggregation

- 2.1. The Council is under a duty to ensure that funds are spent in a way that achieves "value for money" for the Council. Officers involved in procuring supplies, services or works should be mindful of this duty.
- 2.2. When an **Officer** has identified the need to procure supplies, services or works, the relevant **Head of Service** or their nominated Officer shall assess the value of the proposed arrangement. The value is the total amount that the Council expects to pay for the contract over a rolling period, either in a single sum or periodically over time. Unless the exact duration of a contract is known, Officers should use a 4 year period as the nominal duration of a contract when considering aggregating spend.
- 2.3. Purchases should be aggregated to make the best use of the Council's purchasing power. Where a recurring pattern of purchases can be identified for similar supplies, services or works across the Council, consideration shall be given to whether one contract would represent better value in terms of price, service, invoicing or other administrative costs. It is the **Head of Services'** responsibility to have due regard to the aggregation of contract values.
- 2.4. The principles of aggregation in procurement law are designed to ensure that authorities do not deliberately split contracts which have similar characteristics into separate contracts so that they fall below the relevant thresholds (unlawful disaggregation).

- 2.5. Notwithstanding this, procuring Officers shall consider the sub-division of procuring supplies, services or works into lots, facilitating access for small and medium enterprises. Where the decision is taken not to sub-divide a procurement into lots, the reasons shall be recorded.

The Procurement Hierarchy

- 2.6. When an **Officer** has identified a need to procure new supplies, services or works, they shall first consider these options in turn (the Procurement Hierarchy):
- 2.6.1. any current arrangements in existence in-house;
 - 2.6.2. any existing contracts entered into by the Council; and
 - 2.6.3. any provision available through other third party contracts or framework agreements, including those provided by public sector buying consortia, where they can be shown to offer value for money for the Council.
- 2.7. Where the Officer determines that no provision is available from the sources in the Procurement Hierarchy or that in the circumstances they do not represent value for money, they shall have regard to these Contract Procedure Rules in determining which procurement option is the appropriate one to follow.
- 2.8. The S151 Officer is responsible for maintaining a schedule of the Council's planned procurements. Heads of Service shall be responsible for ensuring that all contracts proposed to be entered into by the Council in the coming financial year are notified to the Procurement Team for inclusion in the procurement plan.

3. Special Circumstances (Exemption and Waiver)

Exemption

- 3.1. Notwithstanding the provisions of these Contract Procedure Rules and subject only to the requirements of law:
- 3.1.1. an exemption from any of the other provisions of these Contract Procedure Rules may be granted by the **Council** acting through the **Chief Executive** (or where appropriate, a **Strategic Director**), in consultation with the **S151 Officer** and the **Monitoring Officer**, upon it being shown to their satisfaction that there are special circumstances justifying such exemption. Such **special circumstances** shall fall under at least one of the following two categories:
 - 3.1.1.1. only one supplier is available for technical or artistic reasons and no reasonable alternative or substitute exists and the

absence of competition is not the result of an artificial narrowing of the parameters of the procurement;

3.1.1.2. extreme urgency exists for unforeseen reasons which are not attributable to the Council and the various time limits cannot be met. Inadequate forward planning would not constitute special circumstances and an exemption shall not be permitted in such circumstances,

3.1.2. any request under 3.1.1 above shall be made in writing on the approved form which shall be certified by the Officers specified in 3.1.1 above; and

3.1.3. the Cabinet shall be informed of the exercise of any authority pursuant to this Standing Order by the **Strategic Directors** or **Chief Executive** and any such report will include confirmation that the Officers specified in 3.1.1 have been consulted and such exemption granted

Waiver

3.2. If, in exceptional circumstances, authority is sought from **Cabinet** to waive these Contract Procedure Rules, the report to Cabinet must give adequate reasons and specify precisely the procedures to be waived and must first be approved by the Monitoring Officer.

3.3. Where specific legislation requires the Council to let a contract differently from as set out in these Contract Procedure Rules, these Contract Procedure Rules shall be deemed waived without recourse to Cabinet, Council or the Statutory Officers.

4. Framework Agreements

4.1. Where it is determined to use a framework agreement to meet the identified need of the Council, the Officer shall seek the advice of the Procurement Team and Legal Services in relation to the use of such framework and the contractual arrangements.

4.2. When calling-off supplies, services or works under a framework agreement, the selection procedure, including award criteria, from within the framework agreement shall be used. Officers must comply with all rules and regulations set out within a framework agreement in relation to direct call-off of contracts (direct award) and re-opening of competition between providers appointed on to that framework (mini-competition).

5. Selecting a Procurement Route

Initial Considerations

5.1. In relation to any contract for the supply of supplies, services or works to the Council the functions described in Section 17(4) of the Local Government

Finance Act 1988 shall be exercised without any reference to any of those matters set out in Section 17(5) of that Act. (Section 17(4) describes the functions to which this legislation applies and Section 17.5 details what is regarded as non commercial issues that must be ignored when entering into a contract for the supply of supplies, services or works). This shall at all times be subject to the provisions of 5.2 below.

- 5.2. In relation to any contract for the supply of services not through an existing framework or existing arrangement, the Officer shall have regard to the considerations set out in the Public Services (Social Value) Act 2012. Specifically, the Officer must consider how the services might (in addition to the service requirement) improve the economic, social and environmental well-being of the **District** and how the procurement itself might be conducted to secure that improvement.
- 5.3. All procurement documents (including business questionnaires, specifications and contracts) shall be completed prior to advertising the contract opportunity.

Procedures for Determining Which Procurement Option to Follow

- 5.4. Where an Officer has reasonably determined not to use any available options in the Procurement Hierarchy, the following provisions shall apply.
- 5.5. When the Officer has assessed the value of the proposed arrangement (see above), the appropriate procurement route shall be determined in accordance with the Threshold Table (below).
- 5.6. Notwithstanding the provisions in the Threshold Table, lower value procurements can be conducted using a more sophisticated process as long as it remains objectively reasonable and proportionate to do so and secures open, transparent and fair competition.

Threshold Table

Contract Value		Process	Award Procedure based on	Advertise Contract Opportunity	Documentation
From	To				
Minor Purchases					
£0	£999	No prescribed process	Officer's discretion	N/A	Purchase Order
Band A					
£999	£24,999	Quotation	Seeking a minimum of three written quotations	N/A	Purchase Order Budget holder to record details when authorising order

Band B					
£25K	£49,999	Quotation	Seeking a minimum of three written quotations using Invitation to Quote documentation	Contracts Finder for contracts £30k plus only	Purchase Order Budget holder to record details when authorising order
Band C					
£50K	FTS	Formal Tender	Full Tender Process	NWL Web site Contracts Finder	ITT documentation using NWL E- tendering portal
NOTE: the FTS threshold is a figure set out by the Government and the World Trade Organisation's (WTO) Government Procurement Agreement (GPA). These vary from time to time. Please seek advice from the Procurement Team.					
Band D					
FTS	Above	Formal Tender	Full Tender Process	Find a Tender Service (FTS) NWL Web site Contracts Finder	ITT documentation using NWL E- tendering portal

Authority to award contracts

- 5.7. Officers may only enter into a contract if they have sufficient authority to do so. Legal advice in respect of authority to award contracts can only be given to the extent that such authority is set out in the **Constitution**. Officers are responsible for knowing the extent of any delegated authority they may have and ensuring they do not exceed that.
- 5.8. The **Constitution** contains a scheme of delegation, which sets out what decisions can be made by which body, individual or group of individuals. For the purposes of awarding contracts, the following authorisation table provides an initial indication of where those decisions sit. However, Officers should take advice from Legal Services as to the appropriate source of authority to award where they are unsure.
- 5.9. Contracts under which the Council will not incur any costs (such as Information Sharing Agreements or grant documents where the Council is receiving the grant) and contracts for the provision of goods or services in return for a revenue payment may be authorised by any **Team Manager, Head of Service, Strategic Director** or the **Chief Executive**.

Authorisation Table and Signatories

- 5.10. It is for individual **Officers** to ascertain the limits of their authority to award contracts and orders. An Officer may award a contract provided that the value of that contract does not exceed their level of financial authorisation (see paragraph D.5 of the **Financial Procedure Rules in Part 3**). The below table provides a guide for Officers in salary bands A-I, who should check with their line managers and/or the finance department as to what they are and are not authorised to commit the Council to.
- 5.11. The authority to award a contract (i.e. decide that the contract should be given to a particular supplier) is separate from authority to sign the contract. Contracts under which the Council will be liable for sums up to £50,000 may be signed by any Officer (or awarded by issuing a purchase order) provided that the contract value does not exceed their financial authorisation. All contracts above £50,000 must be signed by the **Head of Legal and Support Services** or their appointed nominee.

Authorisation Table

	Approval
Contracts that are: 1. More than £250,000 in total; 2. more than £100,000 in any one contract year; OR 3. more than 5 years long	Cabinet (Financial Key Decision)
Contracts that are: (a) less than £250,000 in total; (b) Less than £100,000 in any one contract year; AND (c) less than 5 years long	Chief Executive or Strategic Director
Up to £99,999	Chief Executive or Strategic Director
Up to £49,999	Heads of Service
Up to £24,999	Team Managers
Up to £9,999	Officers in salary bands G, H and I, at the request of their Strategic Director or Head of Service
Up to £4,999	Officers in salary bands D, E and F, at the request of their Strategic Director or Head of Service

Up to £2,000	Officers in salary bands A, B & C, at the request of their Strategic Director or Head of Service
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6. Conducting a Procurement Exercise

Band A Contracts

- 6.1. For any single contract, not related to or part of any larger procurement, whose value is between £1,000 and £24,999, three written quotations shall be obtained.
- 6.2. Where Officers are seeking written quotations:
 - 6.2.1. Heads of Service shall ensure that the selection process used is fair and equitable and in accordance with these Contract Procedure Rules;
 - 6.2.2. Officers must select the quotation which offers value for money for the Council. In Band A contracts, value for money will normally be shown by choosing the most economically advantageous quotation and in assessing this Officers should be mindful of price, quality and the added economic, social and environmental benefits that could be obtained by procuring supplies, services or works in a particular way;
 - 6.2.3. The **Head of Service** shall be responsible for keeping a record for audit purposes of:
 - 6.2.3.1. all those contractors that were requested to provide a quotation;
 - 6.2.3.2. the reasons why those particular contractors were selected to provide a quotation; and
 - 6.2.3.3. the reason for selecting the winning quote;
 - 6.2.4. notwithstanding where the supplies, services or works sought are a repetition of a previous procurement, subject to the rules above in relation to aggregation, new quotations should be obtained each time, to ensure the prices paid represent value for money for the Council.
- 6.3. Subject always to the Council's duty to obtain value for money, where the relevant **Head of Service** is satisfied that there are sufficient reasons for three quotes not being obtained in respect of a Band A contract, that Head of Service may authorise the award of a Band A contract even though fewer

than three quotes have been obtained.

Band B Contracts

- 6.4. For any single contract, not related to or part of any larger procurement, whose value is between £25,000 and £49,999, three written quotations sought using a formal Invitation to Quote and provided using a Response to Invitation to Quote, shall be obtained. Template Invitation and Responses shall be provided by the Procurement Team.
- 6.5. Where Officers are seeking formal Responses to Invitation Quotes:
 - 6.5.1. the opportunity shall be advertised on the Source Leicestershire website, Contracts Finder (only for contracts worth £30,000 or more) and the Council's website, by the Procurement Team;
 - 6.5.2. Heads of Service shall ensure that the selection process used is fair and equitable and in accordance with these Contract Procedure Rules;
 - 6.5.3. Officers must select the quote which offers value for money for the Council. In Band B contracts, value for money will normally be shown by choosing the most economically advantageous quotation and in assessing this Officers should be mindful of price, quality and the added economic, social and environmental benefits that could be obtained by procuring supplies, services or works in a particular way;
 - 6.5.4. The **Head of Service** shall be responsible for keeping a record for audit purposes of:
 - 6.5.4.1. all those contractors that were requested to provide a quotation;
 - 6.5.4.2. the reasons why those particular contractors were selected to provide a quotation; and
 - 6.5.4.3. the reason for selecting the winning quote.
 - 6.5.5. Notwithstanding where the supplies, services or works sought are a repetition of a previous procurement, subject to the rules above in relation to aggregation, new tenders should be obtained each time, to ensure the prices paid represent value for money for the Council.
- 6.6. Subject always to the Council's duty to obtain value for money, where the relevant **Head of Service** is satisfied that there are sufficient reasons for three formal Responses to Invitation to Quotes having not been obtained in

respect of a Band B contract, that **Head of Service** may authorise the award of a Band B contract even though fewer than three formal Responses to Invitation to Quotes have been obtained.

- 6.7. All Band B contract awards, worth £30,000 or more, shall be published on Contracts Finder.

Band C Contracts

- 6.8. For any single contract, not related to or part of any larger procurement, whose value is between £50,000 or more, but less than the relevant FTS threshold, the Officer shall conduct a formal tender using a template to be provided by the Procurement Team and accompanied by terms and conditions prepared with advice from Legal Services.

- 6.9. Where Officers conduct a formal tender:

6.9.1. the opportunity shall be advertised on the Source Leicestershire website, Contracts Finder and the Council's website, by the Procurement Team;

6.9.2. Heads of Service shall ensure that the selection process used is fair and equitable and in accordance with these Contract Procedure Rules;

6.9.3. Officers must select the quote which offers value for money for the Council. In Band C contracts, value for money will normally be shown by choosing the most economically advantageous quotation and in assessing this Officers should be mindful of price, quality and the added economic, social and environmental benefits that could be obtained by procuring supplies, services or works in a particular way;

6.9.4. Notwithstanding where the supplies, services or works sought are a repetition of a previous procurement, subject to the rules above in relation to aggregation, new tenders should be obtained each time, to ensure the prices paid represent value for money for the Council.

- 6.10. The FTS threshold is an amount set out by the Government and the World Trade Organisation's (WTO) Government Procurement Agreement (GPA) and can vary year to year. The cabinet office confirms the amounts in Sterling. Please seek advice from the Procurement Team as to the current FTS thresholds.

7. Contracts to which the Public Procurement Regulations Apply (Band D – FTS)

- 7.1. For any contract whose value is more than the threshold amounts set out the

Public Contracts Regulations 2015 (as amended from time to time), tenders shall be sought in accordance with those regulations.

- 7.2. The procuring Officer must note that the Public Contracts Regulations 2015 contain minimum timescales for a procurement exercise and therefore it is imperative that advice is sought from both the Procurement Team and Legal Services well in advance of the commencement of the procurement exercise.
- 7.3. The provisions of these Contract Procedure Rules shall continue to apply to such a contract only to the extent that they do not conflict with the provisions of the Public Contracts Regulations 2015.

8. Types of Tender for Band C Contracts

Open Tendering

- 8.1. This is a procedure by which a contract is let following publication of an advertisement inviting all those expressing an interest in the contract to submit a bid at the same time. This is a one stage procedure.
- 8.2. The advertisement shall:
 - 8.2.1. specify details of the supplies, services or works the Council is procuring;
 - 8.2.2. specify the contract duration and proposed commencement date;
 - 8.2.3. specify any other requirements for participating in the procurement;
 - 8.2.4. specify a contract reference number;
 - 8.2.5. specify a reasonable (in the circumstances of the contract opportunity) date and time, being not less than 21 days from the date of the advertisement, by which such expressions of interest are to be received by the Council;
 - 8.2.6. specify the criteria against which submissions are to be evaluated; and
 - 8.2.7. specify the appropriate electronic tender box code and details of how to access documentation.

Restricted Tendering

- 8.3. This is a two stage procedure by which a contract is let following publication of an advertisement seeking expressions of interest from tenderers to participate. Following evaluation of the pre-qualifying submissions, no fewer than three qualified bidders shall be invited to tender for the contract. This route to the market is particularly suitable where a large response is

anticipated. In relation to works, this procedure may only be used for where the value of the works exceeds the threshold in the Public Contracts Regulations 2015 for services. This procedure may not be used for procuring services or supplies save to the extent that such services fall within the scope of Schedule 3 (Social and Other Specific Services) of the Public Contracts Regulations 2015.

8.4. The advertisement shall:

8.4.1. specify details of the supplies, services or works the Council is procuring;

8.4.2. specify the contract duration and proposed commencement date;

8.4.3. specify any other requirements for participating in the procurement;

8.4.4. specify a contact reference number;

8.4.5. specify a time limit, being not less than 21 days from the date of the advertisement within which such expressions of interest are to be received by the Council;

8.4.6. specify a time limit, being not less than 21 days from the date of inviting shortlisted bidders to submit their tender, within which such tenders are to be received by the Council;

8.4.7. specify the criteria against which submissions are to be evaluated; and

8.4.8. specify the appropriate electronic tender box code and details of how to access documentation.

8.5. After the expiry of the period specified in the advertisement and following proper evaluation of the returned Standard Selection Questionnaire (SSQ), in accordance with the criteria specified, invitations to tender for the contract shall be sent to:

8.5.1. not less than three of the persons or bodies who returned a satisfactorily completed SSQ and has been shortlisted, selected by the Council; or

8.5.2. where fewer than three persons or bodies have applied or have satisfactorily completed the SSQ, those persons or bodies which the Council consider suitable.

9. Specifications

- 9.1. Full tenders shall be accompanied by an appropriate specification, clearly setting out the Council's requirements for the goods, works or services to be supplied.
- 9.2. Specifications should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the contract to be monitored and managed.
- 9.3. Where appropriate, Officers shall take all necessary professional advice to ensure the specification sufficiently expresses the Council's requirements and ensure the output of the contract represents value for money. Any third party engaged to support the preparation of the specification shall not be invited to bid for the substantive contract.

10. Submission of Tenders and Evaluation Criteria

Submission of Tenders for Band C Contracts

- 10.1. Where in pursuance of these Contract Procedure Rules invitation to tender is made, every invitation shall state the process for registering and submitting tenders and the signed Form of Tender using the NWL E-tendering portal.
- 10.2. No tender received after the time and date specified in the invitation shall be considered, unless the relevant **Head of Service** thinks it is reasonable to do so in the circumstances.
- 10.3. Every invitation to tender shall state:
 - 10.3.1. that the Council is not bound to accept any tender, including the lowest;
 - 10.3.2. the tender evaluation criteria, with full explanation;
 - 10.3.3. a statement that the Council is obliged to comply with the Freedom of Information regime;
 - 10.3.4. closing date and time for receipt of tenders and the web address to which tenders should be sent; and
 - 10.3.5. a requirement that the tenderers accept full responsibility for ensuring compliance with the terms of these Contract Procedure Rules and that any failure to do so may render that tender liable to disqualification.

Evaluation Criteria

- 10.4. Evaluation criteria must be designed to secure an outcome providing value for money for the Council on the basis of the Most Economically Advantageous Tender, expressed as the price/quality balance in percentage

terms. Appropriate sub-criteria should also be included referring to relevant considerations and guidance should be given to tenderers on how their responses will be scored. Further advice can be provided by the Procurement Team.

10.5. Evaluation criteria must not include:

10.5.1. non-commercial considerations, save as expressly set out in these Contract Procedure Rules;

10.5.2. matters which discriminate against suppliers from the European Economic Area; and

10.5.3. a general provision allowing for the highest mark to be awarded for tenders which exceed the specification.

10.6. Within every invitation to tender there shall be reference made to the requirements on public bodies with regard to the Freedom of Information Act 2000. Such a reference shall include notice to the tenderer that:

10.6.1. the Council has a duty of 'openness' under the act;

10.6.2. it is the Council and not the tenderer who makes the decision on the release of information within a tender;

10.6.3. any claim by the tenderer that information within a tender is exempt under the act will be considered by the Council. However, a simple assertion that any disclosure would prejudice commercial interests is not sufficient. The assertion must be supported by reasoned argument and where practical, by empirical evidence. Any decision to treat all or some information within a tender as exempt may be reviewed if any further requests are received over time;

10.6.4. the Council will consult with them before making any disclosure; and

10.6.5. the Council has a system for dealing with any appeals under the act.

Submission of Tenders for Band D (FTS) Contracts

10.7. Tendering processes shall comply with the Public Contracts Regulations 2015. In the event of a conflict between these Contract Procedure Rules and the Public Contracts Regulations 2015, the latter shall take precedence.

11. Opening and Acceptance of Tenders

11.1. This Rule shall apply to Band C and Band D (FTS) contracts

11.2. Tenders received under these Contract Procedure Rules shall be opened at one time and only following the date on which the receipt of tenders closed.

11.3. Tenderers shall be notified of the acceptance or rejection of their tenders.

11.4. Detailed feedback shall be provided to all unsuccessful bidders.

12. Tender Evaluation and Award of Contracts

12.1. All tenders shall be properly evaluated by a **Strategic Director** or their nominated Officer in accordance with the published award criteria and in accordance with any specific requirements of any relevant legislation. The Procurement Team shall be notified of any evaluations being conducted by procuring Officers and a member of the Procurement Team may participate in the evaluation process if they consider it appropriate.

12.2. A tenderer's error in the computation of the pricing of their tender will be corrected and the tenderer asked to stand by the corrected tender or to withdraw the tender.

12.3. Post tender negotiations shall only be by exception and in accordance with the Public Contracts Regulations 2015. Authority to enter into post tender negotiations may only be granted by the **Chief Executive** or a **Strategic Director**. Officers who are authorised to carry out post-tender negotiations shall ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

12.4. Where award is based on lowest or highest price, a tender other than the lowest tender if payment is to be made by the Council or the highest tender if payment is to be received by the Council shall not be accepted except where there are justifiable reasons for doing so, for instance:

12.4.1. the procurement of a named product required to be compatible with an existing product, i.e. computer software;

12.4.2. an alternative pre-tender evaluation criteria has been determined;

in such circumstances the Statutory Officers shall be consulted and written confirmation of their agreement retained for audit purposes.

12.5. If a **Strategic Director** considers the lowest priced tender, highest priced tender or most economically advantageous tender (as appropriate) to be abnormal given the nature of the contract, the tenderer shall be asked to clarify in writing the reasons for its tender and the Strategic Director shall take that explanation into account in deciding whether the tender will be accepted.

12.6. All contract awards shall be notified promptly to the Procurement Team in order that the details can be recorded in the Contracts Register and inform the Procurement Plan.

13. Contract Conditions

- 13.1. Every procurement which exceeds £50,000 in value shall be a formal contract in writing and signed by the **Head of Legal and Support Services** or his/her nominee. The procuring Officer should seek the advice of Legal Services at the earliest opportunity in this regard.
- 13.2. Such contract shall, unless the **Head of Legal and Support Services** deems it disproportionate:
 - 13.2.1. specify the supplies, services or works to be supplied or executed; the price to be paid together with a statement as to the amount of any discount(s) or other deduction(s); the period(s) within which the contract is to be performed and such other conditions and terms as may be agreed between the parties or specified in these Contract Procedure Rules;
 - 13.2.2. where a contract exceeds £200,000 and the S151 Officer deems appropriate, contain a requirement that a contractor give sufficient security for the due performance of the contract provided that this shall not apply where the goods and materials are supplied and payment is not made until completion of works;
 - 13.2.3. include provisions for the termination and recovery of any sums paid where there has been evidence of bribery or corruption or any breach of the Bribery Act 2010 or section 117(2) Local Government Act 1972;
 - 13.2.4. include provisions entitling the Council to terminate part or all of the contract or to obtain substituted provision of the supplies, services or works to be supplied under the contract in the event of a breach of contract by or the insolvency of the contractor;
 - 13.2.5. include prohibitions on the contractor from sub-contracting, assigning or otherwise transferring the contract without the prior written consent of the Council and providing that the contractor shall remain liable to the Council for any part of the contract that may be sub-contracted;
 - 13.2.6. include provisions securing the contractor's compliance with relevant legislative requirements, including as a minimum in relation to:
 - (a) Health and Safety;
 - (b) Human Rights;
 - (c) Freedom of Information;
 - (d) Data Protection;
 - (e) Confidentiality;
 - (f) Bribery and corruption;
 - (g) Modern Slavery; and
 - (h) Equalities and discrimination.
 - 13.2.7. provide for indemnities in favour of the Council for any breach of the

above and for the acts and omissions of the contractor in carrying out the contract;

- 13.2.8. provide for compliance with those of the Council's policies relevant to the provision of the supplies, services or works;
- 13.2.9. provide for the protection of the Council's intellectual property rights, where appropriate;
- 13.2.10. provide for, where the supplies, services or works require it, appropriate restrictions or conditions precedent in relation to the protection of vulnerable persons, including requiring Disclosure and Barring Service checks;
- 13.2.11. provide for the Council's right to monitor and audit the supplies, services or works under the contract and for the contractor's provision of assistance in such monitoring and in securing improvements in economy, efficiency and effectiveness, as specified in Section 3 of the Local Government Act 1999, where appropriate. Such assistance may include setting performance indicators, benchmarking implementing performance plans and/or periodically reviewing the services;
- 13.2.12. be governed by the laws of England and subject to the exclusive jurisdiction of the Courts of England;
- 13.2.13. comply with the laws of England.
- 13.3. Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current at the date of the tender, every contract shall require that all goods and materials used or supplied, and all the workmanship shall be at least of the standard required by the appropriate British Standard Specification or Code of Practice.
- 13.4. Every contract which exceeds £250,000 shall be in writing and under the Common Seal of the Council and executed as a Deed.
- 13.5. Where a contract exceeds £50,000 in amount or value, provide for the payment of liquidated damages by the contractor where he fails to complete the contract within the time specified, where the appropriate **Head of Service** considers appropriate.
- 13.6. The provisions of these Contract Procedure Rules do not prevent the use of a formal contract for a procurement less than £50,000 where on receipt of advice from Legal Services the relevant **Head of Service** considers it appropriate.
- 13.7. It shall be a condition of any agreement between the Council and any person (not being an Officer of the Council) who is required to

supervise a contract between the Council and a third party on the Council's behalf that, in relation to such contract, he/she shall comply with the requirements of these Contract Procedure Rules as if he/she were an Officer of the Council.

- 13.8. In all areas of tendering, negotiating, letting or renewing, performing, reviewing, amending, discharging or terminating any contract to which the Council is either a party or of which it is a beneficiary, regard shall be had to the requirements of economy, efficiency and effectiveness specified in Section 3 of the Local Government Act 1999.
- 13.9. Ensure compliance with Risk Management Guidelines on insurance levels and require such insurances as the relevant **Head of Services** determines appropriate in consultation with the **S151 Officer**.
- 13.10. Where a main contractor indicates in their tender submission the use of sub- contractors, the Officer will ensure that:
 - 13.10.1. the main contractor verifies they have vetted the sub-contractor to ensure that they meet the standards in all areas that the main contractor has undertaken to meet in their submission;
 - 13.10.2. the supplies, services or works they have been sub-contracted by the main contractor to provide, remains the responsibility of the main contractor.
- 13.11. Where a framework agreement is used to meet the Council's need for supplies, services or works, this Standing Order shall only apply to the extent that the framework's call-off terms do not include these provisions and the framework agreement provides for a variation to such terms.

14. Contract and Performance Management

- 14.1. Contract management arrangements shall be set out in any invitation to tender and incorporated into any subsequent contract.
- 14.2. An identified contract manager shall be appointed for each Band C and D contract.
- 14.3. The **Head of Legal and Support Services** may agree the variation or novation of any contract originally awarded under delegated authority. The variation or novation of a contract originally awarded by the Cabinet shall only be agreed by the Cabinet, save to the extent that such variation is of a minor nature or accounted for in the contract.
- 14.4. No contract entered into by the Council may be extended by duration or value unless:

- 14.4.1. where the contract is a Band D (FTS) contract, such extension was provided for in the original FTS notice and contract documentation;
 - 14.4.2. where the contract is a Band C contract or of lesser value, such extension would not mean that, had it been included in the original contract, the overall value would have exceeded the FTS threshold; and
 - 14.4.3. alternative options have been considered and the relevant **Head of Service** is satisfied that this option represents value for money and is in the best interests of the Council in light of the contractor's performance.
- 14.5. All extensions to Band C and Band D (FTS) contracts shall be promptly notified to the Procurement Team.
- 14.6. A contract is a live document. Contract managers and Officers shall have regard to the provisions of the contract in observing and monitoring performance of the contract, handling disputes and terminating a contract. Where Officers are unclear of the provisions or operation of a contract they should promptly seek advice from Legal Services.