

# **OXFORDSHIRE COUNTY COUNCIL**

## **CONTRACT PROCEDURE RULES**

# **Contract Procedure Rules for the Supply of Goods, Services and Works**

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# **Contract Procedure Rules for the Supply of Goods, Services and Works**

## **CHAPTER ONE: BASIC PRINCIPLES**

### **1. Compliance with these Rules, Council Policies, Relevant Legislation and Legal Requirements**

#### **Introduction**

1.1 These Rules shall be regarded as standing Orders of the Council for the purposes of section 135 of the Local Government Act 1972 and aim to:

- Provide the foundation for achieving value for money in pursuit of the Council's strategic aims and objectives
- Promote transparency, non-discrimination and equal treatment in all of the Council's procurement activities

1.2 These Rules govern all Contracts let by the Council otherwise than specified in these Rules<sup>1</sup>. Further, these Rules apply to arrangements which the Council wishes to enter into in consequence of it having receive a grant funding from an outside body to procure a service, goods or works, or to receive an income in return for giving another body the right (a concession) to run a service.

1.3 These Rules must be read in conjunction with other parts of the Council's Constitution (for example, is a decision about a contract is also a "key decision" then the requirements set out in the Constitution in relation to key decisions will also have to be met.

1.4 Failure by and Officer to comply with these Rules could lead to disciplinary action being taken against them and in some cases may be referred to any relevant authorities. Any non-compliance with there Rules should be dealt with in accordance with Rule 20.

#### **What contracts must comply with**

1.5 All Contracts must comply with all of the following:

- (i) English law (including the Council's statutory duties and powers including the Council's fiduciary duty to safeguard public funds);
- (ii) these Rules, as supplemented by complementary rule in the Council's Constitution including it's Financial Procedure Rules;
- (iii) any relevant Council policies/regulations; and

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<sup>1</sup> See in particular Rules 1.12 and 1.13

- (iv) any legal requirement stipulated by the Director of Law & Governance.
- 1.6 The procurement and award of Contracts must comply with the principles of non-discrimination transparency equal treatment and proportionality.
- 1.7 Where the estimated value of a Contract dictates that the tender procedure is to be carried out under the Procurement Regulations (a “**PR Tender**”), additional rules applying to such tender procedures must be complied with. The Relevant Procurement Team should be consulted for advice.
- 1.8 In addition to Officers, these Rules must be complied with by all other persons who are authorised to carry out procurement and contracting on behalf of the Council (“**Agents**”). It must be a term of all Contracts between the Council and its Agents that the Agents comply with these Rules.
- 1.9 These Rules must be read in conjunction with the *Procurement Strategy* and the *Procurement Handbook* which provide guidance on compliance with these Rules.

### **Scope**

- 1.10 These Rules do not apply to:
  - (i) contracts which are not for the provision of goods, services or works (e.g. contracts of employment or contracts relating to land). Note, they do apply to consultancy contracts which are contracts for services.
  - (ii) contracts entered into by schools with delegated budgets (which should instead be awarded in accordance with the Scheme for Financing Schools).
  - (iii) low value purchases below the procurement threshold may be made from petty cash or procurement cards provided that they are in accordance with any operational instructions and financial limits issued by the Executive Director of Resources and S151 Officer.
  - (iv) Grant funding agreements save that all grant funding agreements with a value of £500,000 or more must be sealed. The Financial Procedure Rules and the Financial Regulations govern external arrangements including grants and therefore it is important to ascertain at the outset whether a proposed arrangement is a grant or a contract for services and which rules apply.

- 1.11 Certain Rules on tendering do not apply in certain situations or to certain specific contracts. Authorised Officers should refer to Rules 17 and 18 of this Part of the Constitution for details.
- 1.12 In exceptional circumstances, exemptions to these Rules may be granted. Authorised Officers should refer to Rule 19 of this Part, for details.

## **2. Where to get advice**

- 2.1 Officers requiring advice on procurement practice and the Procurement Regulations should contact the Relevant Procurement Team
- 2.2 Officers requiring Contracts, terms and conditions or legal advice should contact Legal Services.
- 2.3 Officers requiring support or advice relating to finance issues relating to these rules should contact the relevant Finance Business Partnering Team.

## **CHAPTER TWO: STEPS PRIOR TO PROCUREMENT**

### **3. Pre-Tender Authorisations, Requirements and Market Engagement**

- 3.1 Authorised Officers must ensure, before entering into any process which will or may result in the incurring of any expenditure for the supply of goods, services or works be it capital or revenue, that:
  - (i) Where it is a key decision, the requirements of Part 1.3, paragraph 3 (Decision Making), Part 4.2, para 2.3 (Cabinet Procedure Rules) and Part 8.1, para.13 (Access to Information Procedure Rules) of the Constitution have been complied with;
  - (ii) the provisions of the Financial Procedure Rules at Part 8.2 of the Constitution and Financial Regulations have been complied with (including ensuring that there is adequate budgetary provision);
  - (iii) and written authorisation has been obtained in accordance with Appendix 2, Table 1 of this Part (unless authorisation has been obtained under the Financial Procedure Rules, Part 8.2 of the Constitution)<sup>2</sup>:

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<sup>2</sup> See Rule 4 for details of establishing the value of a contract and see Rule 21 for details of Schemes of Delegation

- (iv) they have considered whether any consultation requirements apply, including whether the Public Services (Social Value) Act 2012 applies to any services, and have complied with any such requirements.

3.2 The Relevant Procurement Team and Legal Services (with the exception of (iv) below) must be notified before officers enter into any procurement process which will or may result in the incurring of any expenditure for the supply of goods, services or works, where:

- (i) the estimated value of the proposed contract is £25,000 or more; or
- (ii) the proposed Contract is for the benefit of two or more directorates or parties; or
- (iii) the Contract is considered complex, sensitive or high-risk for any other reason (e.g. an outsourcing involving a TUPE transfer of Council staff), or will involve the use of a third party Framework Agreement; or
- (iv) the proposed Contract is to be advertised and the estimated value of the Contract (exclusive of VAT) is £20,000 or more (please notify the Relevant Procurement Team (only), in compliance with statutory transparency requirements).

3.3 Prior to the commencement of any procurement exercise:

3.3.1 The Service Manager Pensions and the Director of Workforce and Organisational Development must be notified where the procurement:

- (a) will or may result in any transfers of staff under the Transfer of Undertakings (Protection of Employment) Regulations (“**TUPE**”) where any of the staff are or were previously Council employees; or
- (b) will or may result in any transfers of staff under TUPE who are members of the Local Government Pension Scheme.

3.3.2 The Director of Property Services as Corporate Landlord must be notified where the procurement will or may result (a) in a contract that confers exclusive possession of the Council’s premises or (b) in the acquisition by the Council of a property interest.

- 3.3.3 The Director of Digital and ICT must be notified where any procurement involves the purchase of IT products or services that are not listed in the ICT Service Catalogue in order to address any potential data security implications for the Council.
- 3.3.4 The Information Governance Manager must be notified where any procurement or contract involves the transfer of personal or sensitive data to ensure compliance with data protection.
- 3.3.5 As part of the options appraisal and business case (if appropriate) for the relevant procurement the Authorised Officer must undertake an appropriate risk assessment before entering into any process which will or may result in the incurring of any expenditure for the supply of goods, services or works to determine whether there are, or may be, financial, reputational, legal or other risks posed by the proposed contract.
- 3.3.6 The Authorised Officer must complete a risk assessment and consult with the Insurance Team where there is uncertainty about the levels of insurance required having first had regard to the Council's standard insurance requirements for contracts.  
<https://intranet.oxfordshire.gov.uk/cms/content/contract-requirements>. Any variance away from the standard insurance levels needs to be approved by the Executive Director of Resources and S151 Officer based on a risk assessment submitted by the Authorised Officer to the Insurance Team for appraisal. This process must also be followed at any other stage during the procurement process where a departure from the standard insurance requirements are proposed.
- 3.4 Where there is a corporate contract (i.e. a contract for the benefit of the Council as a whole) for the supply of goods, services or works, no other contract may be used for the supply of those goods, services or works unless this has been authorised in advance in writing by the Relevant Procurement Team.

## **Market Engagement**

- 3.5 The Officer responsible for any procurement may consult potential suppliers in general terms about the nature, level and standard of the contract packaging and other relevant matters, provided this does not prejudice any potential bidder. The Officer must not adopt any technical advice in the preparation of an Invitation to Tender or Request for Quotations from anyone where this may prejudice the equal treatment of bidders or distort competition.

When considering undertaking any pre-tender market engagement, the Relevant Procurement Team must be consulted.

- 3.6 Authorised Officers must keep and maintain records in respect of each contract in order to demonstrate compliance with these Rules and the Procurement Regulations where they apply. Authorised officers must work with the Procurement Hub to ensure that the contract management system is updated to hold the relevant contract information and updates throughout the life of contract. A Contract must be retained for 6 years after the end of the Contract where it has been signed and for 12 years after the end of the contract where it has been sealed.

#### **4. Establishing the Value of the Contract/Expenditure per Contract**

- 4.1 The value of a contract (that is, the expenditure per contract) means the actual or estimated amount payable by the Council to the supplier for the goods, services or works over the entire possible length of the contract (including, if the contract confers an option to extend, with the exercise of that option, e.g. a three-year contract with an option to extend for two years under which £20,000 is payable per annum has a value of £100,000). The estimated value of a contract below the Procurement Regulation Threshold is to be calculated exclusive of VAT (where applicable). The estimated value of a contract above the Procurement Regulation Threshold is to be calculated inclusive of VAT (where applicable). Table 1 in Rule 5.4 (iii) of this Part below, shows the Procurement Regulation Thresholds expressed both as inclusive and exclusive of VAT in order to assist calculation
- 4.2 The value of a Framework Agreement means the estimated amount payable by the users of the framework for the goods, services or works under Call-off Contracts entered into over the entire possible duration of the framework. The estimated value of a Framework Agreement below the Procurement Regulation Threshold is to be calculated exclusive of VAT (as applicable). The estimated value of a Framework Agreement above the Procurement Regulation Threshold is to be calculated inclusive of VAT (as applicable). Table 1 in Rule 5.4 (iii) of this Part below, shows the thresholds expressed both as inclusive and exclusive of VAT in order to assist calculation.
- 4.3 Contracts must not be split into smaller contracts in order to avoid any of these Rules.
- 4.4 For contracts of an indefinite length the value must be established on the basis that the contract will last for a period of 48 months. See also Rule 9.2 of this Part.
- 4.5 Where the award of a contract to a particular supplier creates circumstances where any reasonably foreseeable future additional work could only be awarded to the same supplier (e.g. because of the supplier's ownership or exclusive rights in relation to a product or



service) the value of the contract for the purpose of this Rule 4, should include the likely value of such additional work.

## CHAPTER THREE: THE PROCUREMENT PROCESS

### 5. Procurement Thresholds

- 5.1 Please refer to Appendix 2, Table 2 of this Part, for the procurement thresholds and the process to be followed.
- 5.2 Requests for Quotation or Invitations to Tender are not required to be sought, Authorised Officers must take practicable steps to secure value for money in accordance with the Procurement Handbook.
- 5.3 Where Requests for Quotation or Invitations To Tender are required, Authorised Officers must take practical steps to secure value for money through a combination of cost, quality and competition. Competitive quotations or tenders must be sought in consultation with the Relevant Procurement Team following the requirements set out in the Procurement handbook.
- 5.4 Where the total value of:
- (i) a Contract;
  - (ii) all contracts to meet a single requirement for goods or services; or
  - (iii) all successive contracts of the same type<sup>3</sup>

is equal to or exceeds the Procurement Regulation Threshold set out below, the Authorised Officer shall contact their Relevant Procurement Team to establish whether the relevant Procurement Regulations Threshold has been met or exceeded.

**Table 1**

	<b>Threshold (from 1 January 2024) (incl. VAT)</b>
Goods & Services	<b>£214,904</b>  (£179, 086.67 excl VAT @ 20%)
Works & Concessions	<b>£5,372,609</b>  (£4,477,174.17excl VAT @ 20%)

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<sup>3</sup> Authorised Officers should consult the Relevant Procurement Team for advice on calculating this amount.

Social and other specific services under Schedule 3 of the Public Contracts Regulations 2015	<b>£663,540</b> <i>(£552,950 excl of VAT @20%)</i>
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- 5.5 Call-off Contracts must be entered into in accordance with the terms of the relevant Framework Agreement and a mini-competition (the tender process required by the Framework Agreement) must be held where relevant. Where a Framework Agreement has been set up following an EU Tender, there must be full compliance with Procurement Regulations when awarding Call-off Contracts under it.

## **6. Pre-Qualification Requirements/Minimum Standards for Suppliers**

- 6.1 Authorised Officers are responsible for ensuring that all Suppliers awarded Contracts for the supply of goods, services or works to the Council have met the Council's minimum standards of suitability, capability, legal status and financial standing as advised by the Relevant Procurement Team.
- 6.2 Where the Contract is not subject to a PR Tender, Authorised Officers must not carry out a separate pre-qualification stage unless approved by the Relevant Procurement Team.

## **7. Invitations to Tender/Request for Quotations**

- 7.1 An Invitation to Tender/Request For Quotation must be sent out for all procurement processes listed in Appendix 2, Table 2 of the Part.
- 7.2 All Invitations to Tender must:
- (i) Clearly specify the goods, services or works that are required (subject to appropriate adjustment applicable to the procedure being used);
  - (ii) list the criteria on which the tender(s) will be evaluated (see Rule 8) showing the weighting of the various evaluation criteria unless otherwise advised by the Relevant Procurement Team and Legal Services;
  - (iii) include a requirement for tenderers to declare that the tender content, price and all other figures or particulars concerning the tender have not been disclosed by the Bidder to any other party;

- (iv) include a requirement for Bidders to complete fully and sign all tender documents including certificates confirming that no canvassing or collusion has taken place; and
  - (v) include the Council's written conditions of contract and state that the contract will be subject to these.
- 7.3 The list of requirements in Rule 7.2 of this Part, is not exhaustive and any and all additional requirements of the Relevant Procurement Team must also be met.

## **8. Evaluation Criteria**

- 8.1 In determining the relevant evaluation criteria on which quotations and tenders are to be assessed, Authorised Officers, in consultation with their Relevant Procurement Team where appropriate, must consider all factors relevant to their requirement, including environmental and social considerations, so far as this is lawful.
- 8.2 The evaluation process must clearly demonstrate that the Council is seeking to identify the quotation or tender which offers the best value for money i.e. the Most Economically Advantage Tender (MEAT) (see Rule 5 of this Part).

## **9. Terms and Conditions of Contracts**

- 9.1 Terms and conditions for all contracts for goods, services and works with a value of £25,000 or more (and preferably all other contracts, particularly consultancy contracts to ensure that all intellectual property rights are transferred to the Council and no employee or worker rights are acquired by the consultant) must be in accordance with terms and conditions prepared or approved by the Director of Law & Governance and Monitoring Officer, unless otherwise agreed by the Director of Law & Governance and Monitoring Officer.
- 9.2 Any contract of less than £25,000 which is of indefinite duration must be in accordance with any terms and conditions prepared or approved by the Director of Law & Governance and Monitoring Officer so as to ensure that the termination provisions are satisfactory. Other contracts under £25,000 should also be on terms and conditions prepared or approved by legal services where there are specific legal issues arising such as ownership of intellectual property rights or the processing of personal data.
- 9.3 All written contracts (whatever their value) shall require that:
- (i) any payment due from the Council is made no later than 30 days from the date on which the relevant invoice is regarded as valid and undisputed;

- (ii) any invoices submitted by the contractor are considered and verified by the Council in a timely fashion and undue delay in doing so is not to be regarded as sufficient justification for failing to treat an invoice as valid and undisputed;
  - (iii) any subcontract imposes obligations similar to those which (i) and (ii) require and an obligation that the subcontractor is required to impose such obligations in any further subcontract.
- 9.4 All contracts with a value of £25,000 or more must include a clause empowering the Council to terminate the contract for bribery or corruption and to recover from the supplier the amount of any loss resulting from such termination in a form approved by the Director of Law & Governance and Monitoring Officer.
- 9.5 All contracts with a value of £500,000 or more and any other contract requiring the additional limitation period of 12 years rather than 6 years for court proceedings in the event of default must be drafted as a deed. This is particularly relevant to construction contracts in the case of latent defects.
- 9.6 Framework Agreements subject to the Procurement Regulations must not be entered into for more than four years (including options to extend) unless otherwise advised by the Director of Law & Governance and Monitoring Officer and the Relevant Procurement Team.

## **10. Receipt of Tenders (including under Framework Agreements) and Opening of Tenders**

- 10.1 All tenders/quotations must be submitted online via the Tendering Portal No.
- 10.2 Paper copies are acceptable.

## **11. Evaluation of Tenders or Quotations**

- 11.1 Authorised Officers must ensure that all tenders are evaluated by procurement including those in mini-competitions under Framework Agreements, in accordance with the evaluation criteria specified in the Invitation to Tender or in the Requests for Quotations.
- 11.2 The arithmetic in compliant tenders, including those in mini-competitions under Framework Agreements, must be checked. If arithmetical or clerical errors are found they should be notified to the tenderer, which should be requested to confirm the correct figures/wording or withdraw its tender.
- 11.3 Authorised Officers must compare submitted tender prices with any project appraisal or pre-tender estimates. Where tender prices are above the estimated value of a contract, Authorised Officers must ensure that sufficient budget is available prior to proceeding to award.

- 11.3 Where the submitted tender price of any Bidder in response to a PR Tender is an Abnormally Low Tender, the requirements set out in Regulation 69(1) of the Procurement Regulations must be followed. Where the submitted tender price of any Bidder in response to a non-PR Tender is an Abnormally Low Tender, advice must be sought from the Relevant Procurement Team.

## **CHAPTER FOUR: CONTRACT AWARD**

### **12. Authorisation for the Award of Contracts**

- 12.1 Contracts may only be awarded by the Council if there has been full compliance with these Rules and the *Financial Procedure Rules*.
- 12.2 Tenders may be evaluated and recommended for acceptance as follows<sup>4</sup>:
- 12.3 No tender can be accepted or contract awarded unless this is on the basis of the evaluation criteria sent out with the Invitation To Tender or Requests for Quotation.
- 12.4 Where a key decision was required to authorise the entering into of the procurement process under Rule 3, the contract must not be awarded unless that decision has been complied with (for example, a new decision may be required prior to award or the risk factors may have changed).
- 12.5 Where a key decision was not required to authorise the entering into of the procurement process under Rule 3 but due to the price of the winning bid it has become a key decision, the requirements of Part 1.3, paragraph 3 of the Constitution must be complied with before the contract is awarded.

### **13. Procedure for Award of Contracts**

- 13.1 Following contract award, successful and unsuccessful tenderers (and, for PR Tenders, those persons who expressed an interest in the contract unless they have already been rejected and have been informed of that rejection and the reasons for it) must be notified of the award of the contract for which they bid. This notification letter will be issued by the Relevant Procurement Team.
- 13.2 Where there has been a PR Tender, the Relevant Procurement Team will adhere to the relevant Standstill Period. Where there is a court challenge prior to completion of the contract then the contract must not be completed without the authorisation of the Director of Law & Governance and Monitoring Officer, Executive Director of Resources

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<sup>4</sup> Note that "Director" and "S151 Officer" includes any officer to whom the Director and S151 Officer may have delegated their function pursuant to the relevant Scheme of Delegation (see Part 7.1)

and S151 Officer, the Relevant Procurement Team and the relevant Executive Director or Director.

- 13.3 All contracts must be in writing and should be held on the council's contract management system
- 13.4 Except where otherwise stated in Appendix 2 of this Part, contracts must be signed or sealed in accordance with Appendix 2, Table 1 (for the avoidance of doubt no elected or co-opted Member of the Council may sign any contract for or on behalf of the Council).
- 13.5 In relation to Contracts with a total value in excess of £5,000 which have not been supported by the Procurement Team, Authorised Officers must inform the Relevant Procurement Team of all contracts (including Call-off Contracts) awarded promptly (and preferably within 5 working days of the date of the award) so that the:
  - (i) details of the contract can be added to the Council's Contracts Management System; and Relevant Procurement Team can publish details of the contract award in accordance with any legal requirements and
  - (ii) comply with any reporting requirements.

## **14. Commencement of Contracts**

No supply of goods, services or works must commence until all contract documentation is duly completed (see Rule 13 above) except:

- 14.1 in cases of emergency falling under Rule 18.2 of this Part, in which case the contract documentation must be completed at the earliest opportunity;
- 14.2 where otherwise approved by the Director of Law & Governance and Monitoring Officer.

## CHAPTER FIVE: POST-AWARD

### 15. Contract and Risk Management

Contracts will be managed according to the principles laid out in the Procurement Handbook, with due note given to the differing roles and responsibilities according to the classification of the contract.

### 16. Variations of Contracts (including extensions)

16.1 Any variation to a concluded Contract for Works, Supplies or Services (including an extension to the length of any such Contract or a replacement of the original supplier) ('the Variation') is only permissible if the Variation IN PRINCIPLE:

- a) demonstrably represents Value For Money or is otherwise in the Council's best interest to progress;
- b) can be funded from an approved budget;
- c) entails no diminution in any Social Value identified at the commencement of the Contract;
- d) does not conflict with the provisions of the Procurement Regulations where they apply; AND
  - 1. it represents no more than 10% of the value of the original Contract (inclusive of VAT where applicable) for Services or Supplies, or 15% of the value of the Works contract (i.e. it is non-material); OR
  - 2. it is established with advice from the Relevant Procurement Team and Legal Services that a competitive process does not need to be followed.

16.2 Any variation outside these requirements would require the conduct of a new tender process for a new contract unless an Exception under Rule 18 or an Exemption under Rule 19 would apply

## CHAPTER SIX: GENERAL

### 17. Contracts to which Rules on Tendering (Rules 5 – 8 and 10 - 11) do not apply – Service Specific exceptions

Competitive quotes or tenders are not required for the following:

- 17.1 **Director of Law & Governance and Monitoring Officer:** contracts for the engagement of Counsel.
- 17.2 **Transport:** subsidised bus contracts not caught by Rule 5.4 of this Part and identified as meeting the de minimis requirements in the Service Subsidy Agreements (Tendering) (England) (Amendment) Regulations

2004 which must instead follow guidance issued by the Department for Transport, currently the “Guidance on New De Minimis Rules for Bus Subsidy Contracts” and the Tendering Road Passenger Transport Best Practice Guidance (October 2013).

### **17.3 Adult Services, Children’s Services and Public Health:**

17.3.1 Nominations Agreements<sup>5</sup> where the estimated Void Charges over a 48-month period are below the PR threshold for services under Schedule 3 of the Public Contracts Regulations 2015;

17.3.2 Spot contracts<sup>6</sup> provided they are below the Procurement Regulations Threshold and it is not possible to rely upon pre-existing procured tendering outlets such as frameworks and dynamic purchasing systems.

17.4 The exceptions in Rules 17.1 to 17.3 (inclusive) do not apply where the proposed course of action conflicts with the Procurement Regulations.

17.5 The rest of these Rules must still be complied with.

## **18. Contracts to which Rules on Tendering (Rules 5 – 8 and 10 - 11) do not apply – General exceptions**

Without prejudice to the Procurement Regulations, competitive quotes or tenders are not required for the following:

### **18.1 Extreme urgency**

18.1.1 where, in cases of extreme urgency brought about by events unforeseeable by the Council (e.g. a flood) a competitive procurement cannot be undertaken (for PR Tenders, within the time limits specified for open, restricted or competitive procedure with negotiation) a Director may verbally authorise and record in writing an exception from these Rules for goods, services or works.

18.1.2 In these cases only goods, services or works necessary or appropriate to safeguard the Council’s position or protect life and property can be procured before formal approval is obtained.

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<sup>5</sup> A “Nominations Agreement” is an agreement between the Council and a housing provider whereby the housing provider may not permit occupation of its property by anyone other than a Council-nominated tenant with assessed care needs. In return for this restriction on occupation, the Council pays void charges (“Void Charges”) for periods where the property is not occupied.

<sup>6</sup> SPOT contracts are below Procurement Regulations Threshold contracts for services (that are classified as Schedule 3 services under the Procurement Regulations) to an individual service user (or sibling group in the case of fostering services) where there is an urgent need, and the specific circumstances mean that it is not possible to conduct a procurement process under these Rules.



- 18.1.3 Directors must at the earliest opportunity inform the Executive Director of Resources and S151 Officer and the Director of Law & Governance and Monitoring Officer of the action taken in dealing with the emergency. Directors must also submit a report to the Cabinet or the relevant Portfolio Holder that details the circumstances of and justifications for granting Exceptions made in accordance with this Rule.

## 18.2 No competitive market

- 18.2.1 Works, supplies or services can only be supplied by one particular provider for any of the following reasons:
- (a) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance
  - (b) competition is absent for technical reasons
  - (c) the protection of exclusive rights, including intellectual property rights,
  - (d) the works or services are of such a specialist nature that they can only be carried out by one person (for e.g. statutory undertakers);
- but in the cases of paragraphs (b) and (c), only where it can be demonstrated that no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement; or
- 18.2.2 The Authorised Officer can demonstrate that no genuine competition can be obtained in respect of the purchase of particular goods, services or works having received no tenders/quotes, no suitable tenders/quotes, no requests to participate in response to a competitive procurement procedure (for PR Tenders this is limited to open and restricted procedures only) provided that the initial conditions of contract are not substantially altered

## 18.3 Additional Grounds

### For supply contracts

- 18.3.1 Supplies proposed to be purchased are manufactured purely for the purpose of research, experimentation, study or development provided that such contracts shall not include quantity production to establish commercial viability or to recover research and development costs; or
- 18.3.2 Additional supplies are proposed to be purchased from the original supplier which are intended either as partial replacement of supplies or installations or as the extension of existing supplied or installations where a change of supplier would oblige the Council to acquire supplies having different

technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance provide that the duration of the contract, as well as that of recurrent contract, shall not, save in exceptional circumstances, exceed 3 years),or

- 18.3.3 Supplies are quoted and purchased on a commodity market, or
- 18.3.4 For the purchase of supplies or services on particularly advantageous terms, from either a supplier which is definitely winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or similar procedure under UK laws or regulations; or
- 18.3.5 For a service contract where the contract concerned is to be awarded to the winner or winners of a design contest (organised in accordance with the Public Contract Regulations where they apply); or

#### For Works or Services

- 18.3.6 For new works or services consisting of the repetition of similar works or services entrusted to the provider which the Council awarded an original contract, provided that such works or services are in conformity with the project for which the original contract was awarded following a competitive procurement (for contracts awarded pursuant to a PR Tender, the procedure must have been in accordance with regulation 26(1) and (2)). The original project must have indicated the extent of possible additional works or services and the cost of these must have been taken into account when determining the estimated value of the contract. For contracts awarded following a PR Tender, the requirements set out in regulation 32 (10)-(12) must be satisfied in full.

PROVIDED THAT in all these cases under Rules 18.2 and 18.3 (except for works which are primarily the responsibility of a utility or statutory undertaker<sup>7</sup>)

- (1) the Authorised Officer must prepare a report setting out:
  - (a) the reasons why the relevant circumstances apply;
  - (b) why it is in the best interests of the Council for the contract not to be tendered or re-tendered (as applicable);
  - (c) the process which is intended to be followed instead;

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<sup>7</sup> As defined in s329 Highways Act 1980

(2) the Authorised Officer receives written agreement to pursue the course of action set out in the statement from:

- (a) the appropriate Director;
- (b) the Executive Director of Resources and S151 Officer;
- (c) the Relevant Procurement Team; and
- (d) the Director of Law & Governance and Monitoring Officer

and

(3) the Authorised Officer, in conjunction with Legal Services, ensures that contract terms are appropriate taking into account all relevant factors (such as benefit and risk to the Council).

18.4 The exceptions in Rules 18.1 to 18.3 (inclusive) do not apply where the proposed course of action conflicts with the Procurement Regulations.

18.5 The rest of these Rules must still be complied with.

## **19. Exemptions from these Rules**

19.1 The Council does not have the power to waive the applicability of the Procurement Regulations.

19.2 Exemptions from these Rules will only be granted in exceptional circumstances. A lack of foresight and planning resulting in insufficient time to carry out a lawful tendering process will not constitute adequate justification.

19.3 At the conclusion of every Exemption Process whether granted or not the Director/Authorised Officer shall notify the Director of Law & Governance and Monitoring Officer of the final outcome of the process, along with a copy of the complete set of relevant papers.

### **Register of Exemptions**

19.4 The Director of Law & Governance and Monitoring Officer will maintain a register of all exemption requests under this Rule 19 and will provide a copy of this register to the s151 Officer at least every six months, and otherwise as and when requested to do so by the Executive Director of Resources and S151 Officer.

### **Contracts with a value of less than £100,000**

An Authorised Officer may seek an exemption from any of these Rules for a contract with a total value of less than £100,000 from:

- (i) the relevant Director;
- (ii) the Director of Law & Governance and Monitoring Officer ; and
- (iii) the Relevant Procurement Team.

19.5 In order to request an exemption the Authorised Officer must prepare a report setting out:

- (i) the reasons why the exemption is being requested and which Rule(s) an exemption is being requested from; and
- (ii) the process which is intended to be followed instead.

19.6 An exemption will only be granted where the Director, the Director of Law & Governance and Monitoring Officer and the Relevant Procurement Team are satisfied that the exemption is justified on its own special circumstances and have given their consent in writing.

### **Contracts with a value of £100,000 or more<sup>8</sup>**

19.7 A Director may seek an exemption from any of these Rules from:

- (i) the Cabinet or a Portfolio Holder acting under delegated powers;  
or
- (ii) the Chief Executive acting under delegated powers.

19.8 In order to request an exemption the Director must prepare a report setting out:

- (i) the reasons why the exemption is being requested and which Rule(s) an exemption is being requested from;
- (ii) the process which is intended to be followed instead;
- (iii) a legal appraisal from the Director of Law & Governance and Monitoring Officer;
- (iv) a financial appraisal from the Executive Director of Resources and S151 Officer; and
- (v) confirmation that the Relevant Procurement Team has approved the contents of the report

19.9 An exemption will only be granted where the Cabinet, the Portfolio Holder or the Chief Executive is satisfied that the exemption is justified on its own special circumstances and has given their consent in writing.

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<sup>8</sup> See Contract Procedure Rules - Exemption Procedure (with pro forma report) for further details.

## 20. Non-compliance with these Rules

- 20.1 Any officer who becomes aware of any non-compliance with these Rules must notify the Relevant Procurement Team, Legal Services and the Executive Director of Resources and S151 Officer as soon as this is identified. Breaches may be escalated to the relevant Director for further investigation in accordance with the Council's Contract Procedure Rules – Breach Policy.
- 20.2 If the non-compliance cannot be remedied by the taking of any appropriate step or measure, the matter must be notified to the Executive Director of Resources and S151 Officer and the Director of Law & Governance and Monitoring Officer by the relevant Director. Where a particular course of action is specified by both the Executive Director of Resources and S151 Officer and the Director of Law & Governance and Monitoring Officer, this must be complied with.
- 20.3 If a non-compliance has given rise to, or is likely to give rise to illegality or maladministration, the Executive Director of Resources and S151 Officer and Director of Law & Governance and Monitoring Officer must be notified.
- 20.4 If these Rules are not complied with, this will not invalidate any contract entered into by or on behalf of the Council, except where English law provides to the contrary.

## 21. Schemes of Delegation

- 21.1 Directors must ensure that they have Schemes of Delegation identifying:
  - (i) Authorised Officers; and
  - (ii) the extent of Authorised Officers' delegated authority (including expenditure limits which reflect authorisation limits set out in the Financial Scheme of Delegation).
- 21.2 Authorised Officers may not, under any circumstances, act outside the delegated powers of their Director.
- 21.3 Directors must ensure that all Authorised Officers receive the necessary training to be and remain conversant with these Rules.

## Appendix 1 Definitions

For the purposes of these Rules:

**Abnormally Low Tender** means a tender which gives rise to doubts that the price offered is economically sustainable and will properly deliver the contract.

**Authorised Officers** means those officers of the Council identified as such by Directors in their Schemes of Delegation and approved by the Executive Director of Resources and S151 Officer to undertake procurement and contracting on behalf of the Council (including authorisation of expenditure, preparing and/or negotiating contract documentation, awarding and signing contracts and/or managing contracts) and any Agents as defined in Rule 1.8 of this Part, with such authority;

**Bidder** means a potential Supplier who responds to an Invitation to Tender or Request for Quotations or any person who is invited to submit a tender or quote.

**Contract** means an agreement which:

- (i) may be oral, written, partly oral and partly written or implied from conduct between the Council and another person;
- (ii) gives rise to obligations which are enforceable or recognised by law (i.e. legally binding); and
- (iii) commits the Council to paying or doing something;

and, where the context requires, a reference to a contract means a contract to which these Rules apply<sup>9</sup> and a “**Call-off Contract**” means an order made/call-off contract entered into under a Framework Agreement.

**Director** – for the purposes of these Rules the title “Director” includes Executive Directors and Directors, and, where a Director has delegated their function to a Deputy Director of Head of Service under the Scheme of Delegation it shall include the Deputy Director/Head of Service to whom it has been delegated.

**Framework Agreement** means a contract with a supplier or suppliers which establishes the terms and conditions (in particular as to price) under which Call-off Contracts can be made during the length of the Framework Agreement. This includes government pre-negotiated contracts.

**Invitation to Tender** means the document headed as such and used by the Council to invite providers to bid for the provision of Goods, Services or Works;

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<sup>9</sup> Note that service level agreements or SLAs are not generally legally binding and must not be used with third parties (i.e. outside the Council).

**Monitoring Officer** means the officer appointed under Section 5 of the [Local Government and Housing Act 1989](#). The Monitoring Officer is statutorily responsible for reporting to the council on any proposal, decision or omission by the council, any committee, sub-committee, joint committee or officer which has given rise to, or is likely to or would give rise to a breach of the law or potential maladministration.

**PR Tender** means a tender procedure which needs to be carried out under the Procurement Regulations.

**Person** means any individual, partnership, local authority or incorporated or unincorporated body;

**Procurement Handbook** means the procurement handbook available on the Council's Intranet.

**Procurement Regulations** means the Public Contracts Regulations 2015 and/or the Concession Contracts Regulations 2016 as amended and any successor regulations which specify in detail the procedures by which public authorities shall undertake their procurement (as applicable).

**Procurement Regulations Threshold** means the thresholds set out in Rule 5.4, Table 1 of this Part (as may be revised by the government every two years).

**Relevant Procurement Team** means whichever of the following category based teams advises the Authorised Officer:

- (iv) the Environment & Place Team;
- (v) the Health, Education & Social Care Team; or
- (vi) the Corporate & Commercial Team

**Request for Quotations** means the document headed as such and used by the Council to invite providers to bid for the provision of Goods, Services or Works;

**s151 Officer** means the Chief Finance Officer appointed under s151 Local Government Act 1972 and officers to whom the s151 Officer has delegated his or her functions in accordance with the relevant Scheme of Delegation;

**Scheme of Delegation** has the meaning given to it under Rule 21.

**Supplier** means any Person who provides or seeks to provide goods, services or works to the Council.

## Appendix 2

**Table 1 - Pre-Procurement Authorisation, Contract Award Authorisation and Execution Requirements<sup>10</sup>**

### Goods and Services

Cumulative expenditure per contract	Pre- Procurement and Contract Award Authorisation	Execution
Up to but not exceeding £200,000	Authorised Officers in accordance with their delegated financial limits	Less than £25,000 – signed by one Authorised Officer in accordance with their delegated financial limit
		From £25,000 to £200,000 - Signed by Authorised Officers in accordance with their delegated financial limits, and one other officer designated by the Director under the directorate's Scheme of delegation.
Above £200,000 but not exceeding £500,000	Director	Signed by Director and Executive Director of Resources and S151 Officer
£500,000 and above	Director and Executive Director of Resources and S151 Officer	Sealed by the Director of Law & Governance and Monitoring Officer on behalf of the Council on the instructions of the Director and Executive Director of Resources and S151 Officer

<sup>10</sup> Framework Agreements and Call Off Contracts should be authorised in accordance with this Appendix 2. However, Framework Agreements over 500k in aggregate value do not need to be sealed but should be signed by a Director and S.151 Officer. Call Off Contracts over 500k should be sealed in accordance with this Appendix 2.



## Works

<b>Cumulative expenditure per contract</b>	<b>Authorisation</b>	<b>Execution</b>
Up to but not exceeding £500,000	Authorised Officers in accordance with their delegated financial limits	Less than £25,000 – signed by one Authorised Officer in accordance with their delegated financial limit
		From £25,000 to £200,000 - Signed by Authorised Officers in accordance with their delegated financial limits, and one other officer designated by the Director under the directorate's Scheme of delegation.
		From £200,000 to £500,000 - Signed by Director and Executive Director of Resources and S151 Officer
Above £500,000 but not exceeding £2,000,000	Director	Sealed by the Director of Law & Governance and Monitoring Officer on behalf of the Council on the instructions of the Director and Executive Director of Resources and S151 Officer
£2,000,000 and above	Director and Executive Director of Resources and S151 Officer	Sealed by the Director of Law & Governance and Monitoring Officer on behalf of the Council on the instructions of the Director and Executive Director of Resources and S151 Officer

**Table 2 - Procurement thresholds and processes**

<b>Estimated cumulative expenditure per contract</b>	<b>Competition</b>
<p><b>Supplies, Services or Works £25,000 or above but less than £100,000</b></p> <p><b>(Quotations)</b></p> <p><b>***For Supplies, Services or Works between £25,000 and £50,000</b></p>	<p>Authorised Officers must ensure genuine competition by inviting sufficient numbers of Persons (good practice indicates a minimum of 3 selected impartially) to submit written quotations for the goods, services or works required by the Council. Some degree of advertising may be required in accordance with advice from the Relevant Procurement Team.</p> <p>***Except in cases where the subject matter is high-risk or sensitive, the Procurement Team will give limited support during the procurement process. Authorised Officers will be expected to manage the procurement process using available templates, and to report the outcome of the procurement to the Procurement Team.</p>
<p><b>Supplies, Services or Works £100,000 or above but less than the Procurement Regulations Threshold (or Services where over the Procurement Regulations Threshold but are excluded contracts)</b></p> <p><b>(Tenders)</b></p>	<p>Authorised Officers must ensure genuine competition by seeking advertising for tenders on Find A Tender and/or elsewhere if appropriate in accordance with advice from the Relevant Procurement Team.</p>
<p><b>Equal to or exceeding the relevant Public Regulations Threshold</b></p>	<p>Tenders must be advertised on Find a Tender using an appropriate procedure under the Procurement Regulations (as advised by the Relevant Procurement Team).</p>