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## **CONTRACT PROCEDURE RULES**

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## **1. Introduction**

1.1 These Rules are standing orders made pursuant to Section 135 of the Local Government Act 1972. Compliance with the Rules and observance of European and domestic law from which they emanate (in particular the principles relating to non-discrimination, equal treatment and transparency) is mandatory for all Officers and Members. The Rules ensure that Procurement Activity is undertaken in a legally compliant, transparent, fair and competitive manner.

1.2 Decisions relating to procurement are among the most important decisions that can be made by the Council, its Members and Officers, because the money involved is public money and the Council is concerned to ensure that high quality Goods, Services and the execution of Works are procured. Efficient use of resources in order to achieve Best Value is therefore an imperative.

1.3 These Rules shall apply to all Procurement Activity where the Council is to procure any Goods, Services or the execution of Works, or enters into a Concessions Contract as either a contracting authority or commissioner of such, regardless of the origin of funding (such as external grants, partnership funding, pooled or joint budgets for example) including where the Council acts as lead authority in any collaborative procurement with other organisations.

1.4 For the avoidance of doubt, these Rules shall apply to Framework Agreements (including Call-off Contracts) and to the appointment of consultants and Nominated Sub-contractors.

1.5 The Council is committed to ensuring a high standard of ethical trade practices across its commissioning and procurement activities. The Council expects its suppliers, service providers and contractors to demonstrate a similar commitment to an ongoing programme of ensuring and, where necessary, improving ethical practices locally and globally. Officers should refer to the Procurement Manual for further guidance.

1.6 Where relevant, the Council shall have regard to the Public Services (Social Value) Act 2012. This requires commissioners and procurers at the pre-procurement stage to consider how what is to be procured may improve social, environmental and economic well-being of the Council's relevant area, how it might secure any such improvement and to consider the need to consult. Officers should refer to the Procurement Manual for further guidance.

#### 1.7. Blacklisting

(a) Denial of a job for discriminatory reasons such as trade union membership was made unlawful, and blacklisting was statutorily prohibited under the Employment Relations Act 1999 (Blacklists) Regulations 2010.

(b) The Council will not enter into contracts with any companies, whether as contractors or subcontractors, which are implicated in blacklisting unless they can demonstrate that they have "self-cleansed" and taken adequate measures to remedy past damage done and prevent any future occurrence.

(c) The Council should not invite tenders from, or award construction contracts to, companies that have breached the Blacklists Regulations.

(d) The Council considers that the blacklisting of individuals amounts to grave misconduct in the course of a business or profession unless the organisation has taken adequate measures to remedy past damage done and prevent future occurrence.

(e) Bidders for Council contracts will be required to certify that they have never blacklisted and if they have must produce to the Council's satisfaction evidence that they have self-cleansed, to include details of the steps taken to remedy past damage done and prevent future occurrence.

1.8 The Monitoring Officer and the APO shall monitor compliance with these Rules and undertake reviews of the Rules from time to time. The Monitoring Officer may present recommendations for amendments to the Rules to the Council from time to time and any such amendments shall be subject to the Council's own ratification procedures. Any failure to comply with any of the provisions of these Rules must be reported immediately to the Monitoring Officer.

Failure by any Officer or Member to comply with or report any failure to comply with the provisions of these Rules may lead to disciplinary action being taken against them.

1.9 These Rules must be read in conjunction with the Council's Constitution and in particular the Financial Procedure Rules, the Procurement Manual and any relevant guidance documents endorsed by the Council.

#### Further Information

Further advice can be sought from:

General Enquiries: APO:

Legal Enquiries: SRO for Legal

## 2. Interpretations and Definitions

2.1 In the event of any conflict between EU law, English law and these Rules and Council Policy, the requirements of EU law shall prevail over English law and the requirements of English law shall prevail over these Rules and Council Policy.

2.2 Any reference to legislation, primary or secondary, shall include any amendments/replacements made from time to time.

2.3 All figures specified in these Rules are exclusive of VAT.

2.4 In the event of any doubt as to the interpretation of these Rules, or as to proper procedure to be followed, advice should be sought from the APO in the first instance.

2.5 In these Rules the words and phrases below have the following meanings:

"Abnormally Low Price"	means a price in a Tender or Quote which is more than 15% lower than the adjusted average price and exceeds the proximity margin that is, is more than 1% lower than the lowest qualifying price, where the <b>adjusted average price</b> is the average of all the tender
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	<p>prices provided excluding the highest tender price, the <b>proximity margin</b> shall be limited to a minimum value of £1,000 and a maximum value of £100,000 and the <b>lowest qualifying price</b> is the lowest price submitted that is more than or equal to 85% of the adjusted average price. “Abnormally High Price” shall be interpreted in the same way.</p>
“APO”	<p>means Authorised Procurement Officer and is the Officer designated by the Chief Finance Officer as the person who is responsible for the provision of advice and support on matters relating to procurement commissioning and contract management within the Council and its partners and includes their nominee.</p>
“ASO”	<p>means Authorised Service Officer and is any Officer, within a directorate of the Council, who has express delegated authority to undertake Procurement Activity. A copy of the delegated authority must be provided to the SRO for Legal.</p>
“Best Value”	<p>has the same meaning as that defined in the Local Government Act 1999 as amended from time to time.</p>
“Bidder”	<p>means any Economic Operator that submits a Quote or a Tender.</p>
“Call-off”	<p>means an order made/call-off Contract entered into under a Framework</p>

	Agreement and are subject to the application of Rule 5.1.
“Chief Finance Officer”	means the Officer appointed by the Council pursuant to S151 of the Local Government Act 1972 or their nominee.
“Chief Internal Auditor”	means the Officer designated by the Chief Finance Officer as the person responsible for the Council’s internal audit function.
“Concession”	means the granting of a right (exclusive or otherwise) to an economic operator to exploit works or services provided for their own gain with or without payment.
“Concession Regulations”	means the Concessions Contract Regulations 2016 SI 2016/273 as amended or replaced from time to time, which implement the EU Procurement Directives.
“Contract”	means a legally binding agreement between the Council and the Contractor for the procurement by the Council of Goods, Services, the execution of Works and Concessions and which incorporates the terms and conditions under which the Goods, Services, execution of Works and Concessions will be provided which, for the avoidance of doubt, includes the appointment of consultant architects, surveyors and other professionals and also any supplier or subcontractor nominated by the Council in connection with a Contract.

<p>“Contractor”</p>	<p>shall mean the Bidder who the Council enters into a Contract with following the submission of a Quote or Tender and who is appointed by the Council to provide the Goods, Services, execution of Works or Concessions Contract. They may also be referred to as ‘suppliers’, ‘providers’ or ‘service providers’ within certain Council departments.</p>
<p>“Contracts Finder”</p>	<p>means the web-based portal provided for the purposes of Part 4 of the Regulations by or on behalf of the Cabinet Office.</p>
<p>“Decision Maker”</p>	<p>Means any Member or Officer of the Council authorised to take decisions under the Council’s Scheme of Delegation</p>
<p>“Economic Operator”</p>	<p>means any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of Works and/or a work, the supply of Goods or the provision of Services on the market.</p>
<p>“EIR”</p>	<p>means the Environmental Information Regulations 2004.</p>
<p>“Electronic Purchasing System”</p>	<p>means purchases made online or via a telephone system.</p>
<p>“EU Procurement Directives”</p>	<p>means the Public Contracts Directive 2014/24/EU, the Concessions Directive 2014/23/EU and other relevant Directives in force from time to time.</p>

“Exemption”	means the release of the obligation to comply with these Rules.
“Exemption Form”	means the form to be submitted by an ASO for the purpose of recording the authorisation of an Exemption.
“Financial Procedure Rules”	means the written code of procedures forming part of the Council’s constitution which provide a framework for proper financial management and which set out the rules on accounting, audit, administrative procedures and budgeting systems.
“FOIA”	means the Freedom of Information Act 2000.
“Framework Agreement”	means an agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing Call-off Contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
“Goods”	means an inherently useful tangible item required by the Council, from time to time.
“Invitation to Tender”	means an invitation issued by the Council to Bidders to submit a Tender or a Quote for the provision of Goods, Services, the execution of Works or a Concessions Contract in accordance with the Specification or request for

	those Goods, Services, execution of Works or Concessions Contract.
“Key Decision”	has the same meaning as set out in the Council’s constitution.
“Member”	Means an elected member of the Council
“Modification”	means any variation to a Contract.
“Modification Form”	means the form to be submitted by an ASO for the purpose of recording the authorisation of a Modification.
“Monitoring Officer”	means the Officer appointed by the Council pursuant to Section 5 of the Local Government and Housing Act 1989.
“Nominated Sub-contractor”	means a Contractor who the Council may require another Contractor to appoint as a sub-contractor.
“Non-commercial Considerations”	means the matters set out in Section 17(5) of the Local Government Act 1988 as amended by Section 2 of the Public Services (Social Value) Act 2012
“Officer”	means any employee of the Council or one of its partner organisations which shall include any person engaged by the Council to act as an agent or consultant on its behalf.
“OJEU”	means the Official Journal of the European Union.
“PID”	means a Procurement Initiation Document providing details of the Procurement Activity and the authority to commence it as required in accordance with Rule 6.1.

“PQQ”	means “pre-qualification questionnaire” and is the document used by the Council to screen potential Bidders in accordance with the Regulations.
“Procurement Activity”	means the process of procurement by the Council of Goods, Services, the execution of Works and Concessions.
“Procurement Manual”	means the guidance issued from time to time by the APO covering the practical application of these Rules to Procurement Activity
“Procurement Strategy”	means the document which the Council may issue from time to time to set out how it will achieve its procurement objectives.
“Quote”	means a formal offer submitted by a Bidder to the Council in response to a request for Quotes issued under Rule 7 to supply Goods, Services, execute Works or operate a Concession at a defined price.
“Regulations”	means the Public Contracts Regulations 2015 SI 2015/102 as amended or replaced from time to time, which implement the EU Procurement Directives.
“Regulations Threshold”	means the financial threshold identified by the EU Procurement Directives, as amended from time to time, and where applicable, requires the Procurement Activity to be subject to the Regulations or the Concession Regulations.
“Rules”	means these Contract Procedure Rules.

<p>“Scheme of Delegation”</p>	<p>means the scheme identified within the Council’s constitution which delegates powers and duties of the Council to Officers under Section 101 of the Local Government Act 1972 and all other powers enabling such delegation necessary for the discharge of the Council’s functions.</p>
<p>“Services”</p>	<p>means the time, effort and expertise required by the Council, from time to time, and supplied by a Contractor.</p>
<p>“Specification”</p>	<p>means a document setting out the outputs, outcomes and the scope and nature of Goods, Services, execution of Works or a Concession required by the Council from a Procurement Activity.</p>
<p>“SRO”</p>	<p>means “Senior Responsible Officer” and is the Officer designated in the Council’s Scheme of Delegation as having responsibility for the relevant service .</p>
<p>“SRO for Legal”</p>	<p>means the “Senior Responsible Officer for Legal” and is the most senior Officer designated under the Council’s Scheme of Delegation as having responsibility for Legal Services or their nominee or in default of such designation, the Council’s Monitoring Officer.</p>
<p>“Social Value”</p>	<p>Means the improvement to the social, environmental and economic wellbeing of the Borough of Wigan to be secured under Rule 1.6</p>
<p>“Tender”</p>	<p>means a formal offer submitted by a Bidder to the Council at a stated price in</p>

	response to an Invitation to Tender issued under Rule 8 to supply Goods, Services, execute Works or operate a Concession.
“The Chest”	means the Council’s eProcurement system.
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 and as may be further amended from time to time together with any EU Directives including but not limited to the Acquired Rights Directive 2001/23/EC, as amended from time to time.
“Value for Money”	means the optimum combination of whole-life costs, price, quality and benefits to meet the Council’s requirement. Such a term equates to the EU procurement requirement of most economically advantageous offer as well as the duty of Best Value as defined by the Local Government Act 1999 as amended from time to time.
“Works”	means the provision of physical activity which is directed toward the production or accomplishment of something by the Contractor, from time to time.
“Writing”	means the requirement that any document should be in writing is

	satisfied where (apart from the usual meaning of that expression) the text of it is created and transmitted by electronic means, in legible form, and capable of being used for subsequent reference.
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### **3. Basic Principles and Responsibilities**

#### 3.1 Basic Principles

3.1.1 All Procurement Activity must comply with all of the following principles of European

Union (EU) Law:

- (a) free movement of Goods and Services;
- (b) non-discrimination;
- (c) openness/transparency;
- (d) equal treatment for all; and
- (e) proportionality.

3.1.2 All Procurement Activity must be compliant with the latest EU laws, national legislation, the Council's Constitution and have regard to:

- (a) The need to achieve accountability through effective mechanisms which enable Officers and Members of the Council to maintain the highest standards of integrity and honesty and to enable them to discharge their responsibility on issues of procurement risk and expenditure of public money;
- (b) The need to provide consistent procurement policy to suppliers and achieve competitive supply;
- (c) The need to meet commercial, regulatory and corporate priorities of the Council;
- (d). The need to achieve efficiencies by administering procurement processes which are cost effective;
- (e) The need to ensure Value for Money;
- (f) The need to ensure fair-dealing by ensuring that suppliers are treated fairly and without unfair discrimination, including protection of commercial confidentiality where compatible with the Council's obligations under FOIA and EIR;

- (g) The need to maintain integrity by excluding corruption or collusion with suppliers or others from procurement processes;
- (h). The need to ensure informed decision-making based on accurate information;
- (i) The need to ensure legality in the administration of procurement processes and award of contracts;
- (j) The need to promote responsiveness by endeavouring to meet the aspirations, expectations and needs of the community served by the procurement processes;
- (k) The need to provide transparency by ensuring that there is openness and clarity on the Council's procurement policy and its delivery;
- (l) The need to create and retain an audit trail in relation to each Procurement Activity.

3.1.3 Where relevant Procurement Activity will take account of the Greater Manchester Commissioning Strategy entitled "Commissioning for Reform" issued by the Greater Manchester Combined Authority and the National Health Service and other similar strategies arising from the devolution of powers to the Greater Manchester Combined Authority.

### 3.2 The Responsibilities of Officers and Members

3.2.1 Officers and Members involved in Procurement Activity must comply with these Rules, the Council's Financial Procedure Rules, the Council's Employees' Code of Conduct and Members' Code of Conduct. They must also have due regard to any guidance provided by relevant Officers.

3.2.2 Officers and Members involved in Procurement Activity must ensure that any agents, consultants and contractual partners acting on their behalf also comply with these Contract Procedure Rules, are made aware of the Council's Whistleblowing Policy and the Council's information governance and incident reporting requirements and that these policies are fully explained to them.

## **4. Contracts to which these Rules do not apply**

4.1 These Rules do not apply to the following:

- (a) employment contracts for Officers engaged on a PAYE basis;
- (b) Contracts relating solely to the disposal or acquisition of securities;
- (c) Contracts for the acquisition or disposal of an interest in land and property unless the Contract places obligations on the purchaser to carry out works in which case the Regulations may apply. Advice should be sought from the SRO for Legal in this case. Please note that, in any event, separate rules apply to the disposal of land and property.
- (d) Contracts for the appointment of Counsel or the appointment of experts for the purpose of legal proceedings, or potential legal proceedings by the SRO for Legal Services.

## **5. Contracts which do not require full competition**

The following circumstances may be exempt from the requirement of Rule 7 (Quotes) and Rule 8 (Tenders). The ASO may still be required to complete an Exemption Form in accordance with Rule 10.2 in certain circumstances.

### 5.1 Call-off Contracts

5.1.1 Call-off Contracts where a suitable Framework Agreement has been identified in accordance with Rule 6.3 so long as the requirements of the Framework Agreement have been complied with.

### 5.2 Exemptions as prescribed by legislation

5.2.1 Certain other arrangements contained in European or domestic legislation may permit an exemption from the requirement for competition.

5.2.2 Regulation 77 of the Regulations permits contracts for certain specified services to be awarded for a limited period to organisations owned or managed by employees. No awards should be made under this regulation without the approval of the SRO for Legal.

### 5.3 Shared Services and Partnership Working

5.3.1 Certain arrangements with other local authorities, National Health providers and other public bodies may benefit from the exemptions described in Rule 5.2. No

Procurement Activity of this kind which is intended to benefit from such an exemption may be undertaken without approval from the APO and the SRO for Legal.

## **6. Pre-Procurement Process**

### 6.1 Authority to carry out Procurement Activity

6.1.1 Any Procurement Activity carried out on behalf of the Council must be carried out by an ASO with the appropriate express delegated authority as required by the Scheme of Delegation.

Where any Procurement Activity with a value of more than £5,000 is to be carried out, the ASO must prepare either a Quote or Tender PID prior to starting the relevant Procurement Activity. In preparing the PID the ASO must show that they have the authority and funding available to carry out the Procurement Activity.

### 6.2 Appraisal of the Procurement Activity

6.2.1 The ASO, together with the APO if required, must conduct and document an options appraisal of the route to market and consider the following:

- (a) Value for Money;
- (b) The need for the commission and its priority;
- (c) The objectives of the commission;
- (d) The appropriate decision making route;
- (e) Preparation of a register of any risks associated with the commission and how to manage them;
- (f) The market, including the outcome of any pre-procurement market engagement carried out under Rule 6.4;
- (g) TUPE and pensions;
- (h) Which procurement method is most likely to achieve the commissioning objectives;

(i) Existing and compliant Framework Agreements or other arrangements including any opportunity for joint procurement or delivery with another public body or other organisation;

(j) Business continuity management;

(k) The impact on privacy;

(l) The capacity to manage the procurement and the Contract to be awarded;

(m) Any requirement for consultation;

(n) Whether the Contract should be awarded in the form of separate lots in accordance with regulation 46 of the Regulations;

and

(o) Social Value and the duty to secure continuous improvement in accordance with Best Value.

6.2.2 No Procurement Activity involving the purchase of computer software or hardware or other information or communication technology services may be commenced without the approval of the SRO for Information and Communication Technology

6.2.3 Once the Procurement Activity has commenced, the activity will be monitored by following the gateway process set out in the Council's Procurement Manual:

6.2.4 Where award for a Contract for services may result in employees of the Council or its Contractor transferring to a new employer, the advice of the SRO for Human Resources and the SRO for Legal must be obtained before the commencement of the Procurement Activity to ensure compliance with TUPE, and other related legislation, and to assess the implications in respect of pension arrangements.

6.2.5 The ASO must ensure that an appropriate Specification or request for a Quote commensurate to the scope of the Goods, Services, execution of Works or Concessions Contract required is written prior to the commencement of any

Procurement Activity. Approval must be sought from the SRO for Legal where it is proposed that a Specification or request for a Quote is not used.

6.2.6 For procurement under the Regulations Thresholds, the use of PQQ's is no longer permitted by the Regulations. However, the Regulations do permit the use of suitability assessment questions where they are relevant to the subject matter of the procurement and are proportionate. Further guidance on suitability assessment questions may be sought from the APO but in any event, advice must be sought from the APO where it is proposed that such questions are to be used.

### 6.3 Framework Agreements

6.3.1 Where, following an options appraisal as required by Rule 6.2, a suitable Framework Agreement is identified and it is intended to award a Call-off Contract, the ASO must ensure that:

(a) Any Call-off Contract is entered into in accordance with the terms of the relevant Framework Agreement; and either

- i) a mini-competition (the tender process required by the Framework Agreement) is held in accordance with rules of the Framework Agreement; or
- ii) an Exemption has been obtained to allow a direct award to a Contractor.

6.3.2 For the avoidance of doubt, a Framework Agreement is considered suitable where it has either been entered into by:

(a) the Council in compliance with these Rules; or

(b) another local or public authority, a local or public authority purchasing consortium or central government where the Framework Agreement has been tendered and awarded in accordance with EU public procurement legislation, and the Council is identified as a participating authority.

6.3.3 Where a Framework Agreement has been set up following an EU Tender, there must be full compliance with EU rules when awarding Call-off Contracts under it.

## 6.4 Pre-Procurement Market Research and Consultation

6.4.1 The ASO responsible for the Procurement Activity should actively consider whether to conduct market consultations with a view to preparing the procurement and informing potential Bidders of their procurement plans and requirements and ensuring that the procurement exercise attracts competitive bids. In doing so, the ASO:

(a) may consult potential Bidders in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, prior to a request for a Quote or an Invitation to Tender provided this does not prejudice any potential Bidders; and

(b) must not seek or accept technical advice on the preparation of a request for a Quote or an Invitation to Tender from anyone who may have a commercial interest in the tender, as this may prejudice the equal treatment of all potential Bidders or distort competition.

Advice must be sought from the APO in all instances about how such consultations should be undertaken.

## 6.5 Estimating the Total Value of a Contract or Framework Agreement

6.5.1 The Council must not split Contracts or Framework Agreements to avoid public procurement rules or calculate the value of Contracts in such a way as to deliberately avoid exceeding the Regulation Thresholds or any threshold identified in these Rules. All Contracts should be dealt with according to their total value and all Officers must calculate the total value (excluding VAT) of any Contract. The value of a Contract should be calculated as follows and applies to the aggregate value of the Contract:

**Yearly contract value multiplied by Contract Period in years (including any option to extend) = Total value.**

Where the duration of the contract is indeterminate, this should be taken to be the estimated value of the contract over a period of four years.

ASO's should also consider any other Procurement Activity being undertaken by the Council which may be taken into account in calculating the value.

6.5.2 The value of a Framework Agreement means the estimated amount payable by the users of the Framework Agreement for the Goods, Services or execution of Works (excluding VAT) under Call-off Contracts entered into over the entire possible duration of the Framework Agreement.

6.5.3 Framework Agreements must not be for a period exceeding four years (including options to extend) unless otherwise authorised by the SRO for Legal.

6.5.4 The value of the Contract or Framework Agreement will determine which procurement route to follow in accordance with Table 1 below subject to Rules 6.5.6 and 6.5.7:

Table 1

<b>Value</b>	<b>Procurement Route</b>	<b>Officer Approval</b>	<b>Required Method for Communicating Opportunity</b>
£1-£29,999.99	Minimum one written quote	Two tier threshold, officer approval level TBC – potentially £0-£10,000 level and £10,000 to £30,000 level	No requirement to use the Chest
£30,000-£74,999.99	Minimum three quotes or: Open Invitation to Tender	Officer approval level TBC	The Chest and Find a Tender Service
£75,000 - the PA threshold	Open Tender	Officer approval level TBC	The Chest and Find a Tender Service
Above the PA threshold	Procurement in accordance with the Open Procedure or Competitive Flexible Procedure (CFP)	Officer approval level TBC	The Chest and Find a Tender Service

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6.5.5 Where the value of the Contract is above the Regulations Thresholds, the ASO and the APO will determine which procurement route to follow in accordance with the Regulations or the Concession Regulations as the case may be. The Regulations set out a number of different procurement routes which may be used dependent on the type of Procurement Activity being undertaken but the procedures set out in the Regulations must be followed closely to ensure compliance.

6.5.6 Irrespective of the value in Rule 6.5.4 Contracts and Framework Agreements that are subject to European Union grant funding requirements shall be advertised in accordance with published guidance, ERDF National Procurement Requirements (ERDF-GN-1-004) as amended from time to time.

6.5.7 The ASO and APO shall ensure that, where proposed Contracts or Framework Agreements, irrespective of their value, might be of interest to potential Economic Operators located in other member states of the European Union, a sufficiently accessible advertisement is published.

## 6.6 Standards and Award Criteria

6.6.1 Before inviting Quotes or Tenders, the ASO, with support from the APO, must ascertain any relevant British, European or international standards which apply to the subject matter of the Contract. The ASO must include those standards or equivalent where they are necessary to describe the required quality. In any instances of uncertainty, external advice can be obtained if it is proposed to use standards other than European standards.

6.6.2 The ASO must define award criteria that are appropriate to the Procurement Activity and designed to secure an outcome giving Value for Money for the Council. The basic award criteria shall include one of the following:

- (a) Most economically advantageous tender (“MEAT”) - where considerations other than price also apply;
- (b) Lowest price - where payment is to be made by the Council;

(c) Highest price - where payment is to be received by the Council.

6.6.3 If MEAT is the chosen award criteria, based on cost and quality, this should be scored by a panel of three or more Officers and /or independent experts using criteria which must:

- (a) be strictly observed at all times throughout the tender process;
- (b) reflect the principles of Best Value;
- (c) include price;
- (d) consider whole life costing;
- (e) be weighted according to their respective importance;
- (f) include, where applicable, the quality of the Bidder's proposals to accept a transfer of staff under TUPE;
- (g) avoid discrimination or perceived discrimination on the basis of nationality or other cause contrary to any of the Council's policies;
- (h) result in the Contract being awarded to the most economically advantageous tender, i.e. the tender that achieves the highest score in the objective assessment.

The award criteria must not include Non-commercial Considerations or matters which discriminate against suppliers from the EU

6.6.3 The ASO must seek advice from the APO or through the gateway process to ensure any award criteria are compliant with relevant legislation and best practice.

## **7. Quotes**

### **7.1 Requests for Quotes**

7.1.1 All requests for Quotes must be placed on The Chest and, where appropriate, Contracts Finder in accordance with Table 1 at Rule 6.5. including those in mini-competitions under Framework Agreements and all Quotes received must be stored on The Chest.

7.1.2 When requesting a Quote, an appropriate description of the Goods, Services, execution of Works or Concession (commensurate with the value of the Contract) setting out the Council's requirements in sufficient detail must be provided to prospective Bidders to enable the submission of competitive Quotes.

7.1.3 The request for a Quote shall also make reference to or include the following as a minimum:

- (a) the terms and conditions of Contract that will apply; and
- (b) notification that Quotes are submitted to the Council on the basis that they are compiled at the Bidder's expense; and
- (c) a description of the award criteria as appropriate and in accordance with Rule 6.6;
- (d) the date and time by which a Quote is to be submitted by; and
- (e) that the Council is not bound to accept any Quotes submitted.

7.1.4 The proposed form of Contract must comply with Rule 9 and where possible the Council's standard terms and conditions of Contract must be used. Advice must be sought from and approval given by the SRO for Legal where alternative terms and conditions are used.

7.1.5 Where requests for a Quote are sought from more than one prospective Bidder, where possible, the request must be sent to each Bidder at the same time and contain the same conditions. Any supplementary information must be given on the same basis.

## 7.2 Submission and Receipt of Quotes

7.2.1 Bidders must be given a reasonable period in which to prepare and submit a proper Quote, consistent with the complexity of the Contract requirement.

7.2.3 Quotes must be opened in accordance with Table 2 set out in Rule 8.4

7.2.3 In the event that an Abnormally Low Price or Abnormally High Price is received, the ASO must take advice from the APO on how to proceed.

7.2.4 Any Quote (including all associated documents) submitted after the specified date and time for submission of Quotes shall only be accepted or considered by the Council in exceptional circumstances and only with approval from the SRO for Legal.

7.2.5 If fewer than the minimum number of Quotes is received as stipulated in Table 1 in Rule 6.5, then advice must be sought from the APO as to whether to proceed. In any event an Exemption will be required in order to proceed.

### 7.3 Amendments to Quotes

7.3.1 The Council may accept amendments to Quotes, including those in mini-competitions under Framework Agreements, providing they are received prior to the closing date for submissions. In such circumstances, any alterations must be made by resubmitting a new Quote and clearly highlighting which Quote (and associated documents) is correct and which should be considered as part of the Procurement Activity.

### 7.4 Evaluation of Quotes

7.4.1 All compliant Quotes, including those in mini-competitions under Framework Agreements, must be checked by the ASO to ensure they are arithmetically correct. The ASO may seek advice from the APO if there is any doubt. If arithmetical errors are found they should be notified to the Bidder, who should be requested to confirm, correct or withdraw their Quote.

7.4.2 Where MEAT is used as the award criteria, all evaluations including an explanation of the reasons for the scores should be recorded on The Chest. The ASO must then confirm to the APO that the Contract can be awarded in accordance with Rule 7.5 by updating the PID.

7.4.3 Officers must ensure transparency and fairness during the evaluation process.

### 7.5 Contract Award – through a Quotation Process

7.5.1 The Contract will be awarded in accordance with the award criteria used.

7.5.2 No Contract may be awarded unless budget release has been obtained in accordance with the Financial Procedure Rules

7.5.3 Where the Quote is not within the relevant approved budget but additional budgetary provision is available, the relevant ASO, with the approval of the Chief Finance Officer, may accept the Quote ensuring compliance with the Financial Procedure Rules.

7.5.4 The approval to award the Contract must be given in accordance with the Council's Scheme of Delegation.

7.5.5 All award decisions must be recorded in the PID, signed and dated by the ASO, and a copy of the approval given under Rule 7.5.4 attached.

7.5.6 Once the decision has been made and the approval given to award the Contract, the ASO must send a Contract award letter to the winning Bidder(s).

7.5.7 Prior to commencement of the Contract, the Contract must be completed in accordance with Rule 9.2 unless Rule 9.2.5 applies.

7.5.8 The APO will, where necessary, advise on the formalities for completion of the contract by parties other than the Council and how to ensure that the Contract is legally binding.

## **8. Tenders**

### **8.1 Invitations to Tender**

8.1.1 All Tender opportunities must be placed on The Chest and, where appropriate, Contracts Finder in accordance with Table 1 at Rule 6.5.

8.1.2 The Invitation to Tender, shall include the following where appropriate:

- (a) A form upon which the Bidder can provide details of its bid ("Form of Tender");
- (b) A reference to the Council's ability to award in whole, in part or not at all;
- (c) A Specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- (d) The terms and conditions of Contract that will apply;
- (e) A requirement for Bidders to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the Bidder to any other party (except where such a disclosure is made in confidence for a necessary purpose);

- (f) A requirement for Bidders to fully complete and sign all Tender documents including the Form of Tender and certificates relating to canvassing and non-collusion;
- (g) Notification that Tenders are submitted to the Council on the basis that they are compiled at the Bidder's expense;
- (h) A description of the award procedure and the evaluation criteria to be used to assess Tenders including any weightings as considered appropriate and in accordance with Rule 6.6. The evaluation criteria must be clear, concise and unambiguous and must be approved by the APO in consultation with the ASO. The evaluation criteria cannot be amended once published in the Invitation to Tender;
- (i) The requirement to provide evidence of appropriate data processing and data handling security measures including the results of any independent assessments;
- (j) The requirement to provide evidence of appropriate arrangements for the safeguarding of vulnerable adults and children and arrangements for reporting concerns where relevant to the subject matter of the Contract including the results of any independent assessments;
- (k) Whether alternative proposals or variants will be considered and on what terms, such terms to be clear in their impact on price and other essential criteria and to be considered only in accordance with the evaluation criteria set out;
- (l) The method by which any arithmetical errors discovered in the submitted Tenders are to be dealt with and in particular, whether the overall price prevails over the rates in the Tender or vice versa;
- (m) Whether the Council is of the view that TUPE will be applicable in relation to the procurement activities;
- (n) Whether additional arrangements will be required in relation to pension provision;
- (o) Provisions relating to the Council's termination rights in the event that corruption is discovered;
- (p). The relevance and application of any parent company guarantees and/or bonds;

(q) That the Council is not bound to accept Tenders; and

(r) In Contracts for construction, the Council's Standard questions regarding the Employment Relations Act 1999 (Blacklists) Regulations 2010.

8.1.3 The proposed form of Contract must comply with Rule 9 and where possible the Council's standard terms and conditions of Contract must be incorporated. Advice must be sought from and approval given by the SRO for Legal where alternative terms and conditions are used.

8.1.4 All Bidders invited to Tender must be issued with the same information at the same time and contain the same conditions. Any supplementary information must be given on the same basis.

8.1.5 All communications relating to Tenders must be recorded on The Chest.

## 8.2 Pre and Post Tender Clarification Procedures

8.2.1 Providing pre-Tender clarification to potential or actual Bidders, or seeking clarification of a Tender, is permitted subject to Rule 8.2.3.

8.2.2 Post-tender clarification may be undertaken with Bidders only where it is essential in order to be completely clear about any fundamental aspect of the Tender submission before the completion of the Tender evaluation process and subject to Rule 8.2.3.

8.2.3 All pre- and post-tender communication must be conducted either in writing or in a meeting recorded by the ASO. All correspondence or meetings must be documented and the record retained on The Chest. Where a meeting is required, there must always be more than one Officer present.

8.2.4 At all times during the clarification process, the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.

8.2.5 Unless otherwise permitted by the Regulations or Concession Regulations, in no circumstances are post-award negotiations permitted.

## 8.3 Submission and Receipt of Tenders

8.3.1 Bidders must be given a reasonable period in which to prepare and submit a proper Tender, consistent with the complexity of the Contract requirement and in accordance with the Regulations.

8.3.2 Any Tender (including all associated documents) submitted after the specified date and time for submission of Tenders shall only be accepted or considered by the Council in exceptional circumstances and only with approval from the SRO for Legal.

8.3.3 All Tenders received, including those in mini-competitions under Framework Agreements, must remain unopened until the specified closing date and time has passed.

8.3.4 If less than the minimum number of Tenders is received as stipulated in Table 1 in Rule 6.5, then advice must be sought from the APO on how to proceed. In any event an Exemption will be required in order to proceed.

#### 8.4 Opening Tenders

8.4.1 Tenders are to be opened in accordance with the following Table 2:

Table 2

Value of Contract:	£0 -£499,999.99	£500,000 and above
Officers required to be present:	ASO and Service Manager designated by appropriate Director.	Portfolio Holder or other Cabinet Member and an Officer from the Democratic Services section.
Expected Duration:	Within 2 working days of the deadline for submission.	Within 2 working days of the deadline for submission.

#### 8.5 Amendments to Tenders

8.5.1 The Council may accept amendments to Tender submissions, including those in mini-competitions under Framework Agreements, providing they are received prior to the closing date for submissions.

8.5.2 A Tender may be amended after the closing date for submission if the amendment is made only in order to correct an arithmetical error. Such amendments may only be made with the prior approval of the APO.

## 8.6 Evaluation of Tenders

8.6.1 If a PQQ or an expression of interest prior to PQQ was used, all those Bidders must be given feedback at the relevant stage.

8.6.2 In the event that an Abnormally Low Price or Abnormally High Price is received, the ASO must take advice from the APO on how to proceed.

8.6.3 All compliant Tenders, including those in mini-competitions under Framework Agreements, must be checked by the ASO to ensure they are arithmetically correct. If arithmetical errors are found they should be notified to the Bidder, who should be requested to confirm, correct or withdraw their Tender.

8.6.4 Where MEAT is used as the award criteria, all evaluations including an explanation of the reasons for the scores should be recorded on The Chest. The ASO must then confirm to the APO that the Contract can be awarded by updating the PID.

8.6.5 Officers must ensure transparency and fairness during the evaluation process.

## 8.7 Contract Award – through a Tender process

8.7.1 The winning Tender shall be awarded the Contract in accordance with the award criteria used.

8.7.2 No Contract may be awarded unless budget release has been obtained in accordance with the Financial Procedure Rules.

8.7.3 Where the Tender is not within the relevant approved budget but additional budgetary provision is available, the relevant ASO, with the approval of the Chief Finance Officer, may accept the Tender ensuring compliance with the Financial Procedure Rules.

8.7.4 The approval to award the Contract must be given in accordance with the Council's Scheme of Delegation.

8.7.5 All award decisions must be recorded in the PID, signed and dated by the ASO, and a copy of the approval given under Rule 8.7.4 attached.

8.7.6 A Contract which has a contract value above the Regulation Thresholds can only be awarded after a notice of the proposed award has been given to all unsuccessful Bidders and the 10 day standstill period has elapsed from the date the notice was given. If the 10 days expire on a non-working day, then the notice period will be deemed to have lapsed on the next working day.

8.7.6 Once the decision to award a Contract is made, each Bidder must be notified by either the ASO or the APO in writing of the outcome. All Bidders must be notified simultaneously and as soon as possible of the intention to award the Contract to the successful Bidder(s) and this should be done via The Chest. The letters must include a description of the relative advantages of the successful Tender.

8.7.7 Prior to commencement of the Contract, the Contract must be completed in accordance with Rule 9.2 unless Rule 9.2.5 applies.

8.7.8 The SRO for Legal will, where necessary, advise on the formalities for completion of the contract by parties other than the Council and how to ensure that the Contract is legally binding.

8.7.9 The APO must publish a contract award notice in the OJEU and on the Council's website no later than 30 days after the date of award of the Contract (48 days in the case of a Concession Contract) where a Contract value exceeds the Regulations Threshold and has been tendered pursuant to the Regulations or is subject to the relevant provision of the Regulations or Concession Regulations relating to Contract award. The notice must also be published on Contracts Finder if required by the Regulations or Concession Regulations as the case may be.

8.7.10 ASO's should ensure they have the necessary information to provide feedback to unsuccessful bidders in the event of a request under regulation 55 of the Regulations.

8.7.10 Contract award letters, feedback to Bidders and the Contract terms and conditions, including any incidental documentation must be approved by the APO prior to sending where the value of the Contract is over the Regulations Thresholds.

## 8.8 Enquiries about the Tender process

8.8.1 The confidentiality of Tenders and the identity of Bidders must be preserved at all times insofar as this is compatible with the Councils' obligations under FOIA and EIR.

8.8.2 If the Council receives a request for information under the FOIA as a result of the debriefing process, the request must be referred to both the APO and the relevant Officer of the Council who deals with such requests. The Council will be responsible for responding to the request.

8.8.3 Any challenges, complaints or requests for feedback, clarification or further information must be referred to the APO who will advise on how to respond and notify the SRO for Legal.

## **9. Contract Provisions and Contract Formalities**

### 9.1 Contract Provisions

9.1.1 All Contracts must be in writing and must set out the parties' obligations, rights and risk allocations. Advice must be sought from APO as to the appropriate form of Contract to be used and must incorporate the Council's standard terms and conditions. Any deviations from these standard terms must be approved by the SRO Legal.

9.1.2 All Contracts, irrespective of value, shall, where appropriate, clearly specify as a minimum:

(a) What is to be supplied (i.e. the Works, Goods, Services, matters or things to be furnished, had or done);

(b) The provisions for payment (i.e. the price to be paid and when) with a statement of discounts or other deductions;

(c) The time, or times, within which the contract is to be performed;

(d) The provisions for break clauses. All Contracts of a duration of more than five years shall contain provision for review and, if appropriate, a break at five yearly intervals;

- (e) The provisions for the Council to terminate the Contract and seek damages in the event of the Contractor's default;
- (f) The provision for collateral warranties from sub-contractors;
- (g) The policies and procedures that must be complied with;
- (h) Data protection requirements to ensure that Council data is held in accordance with Council policy and appropriate information security safeguards. In addition that the Contractor must report any potential wrongful disclosure to the Council's Data Protection Officer, and allow the Council access to the Contractor's processes to enable an independent information security assessment to be performed as required;
- (i) Where relevant to the subject matter of the Contract, provisions for the safeguarding of vulnerable adults and children and arrangements for reporting concerns;
- (j) That the Contractor may not assign or subcontract without prior written consent;
- (k) Any insurance requirements;
- (l) Health and safety requirements;
- (m) Ombudsman requirements;
- (n) Business continuity requirements, if relevant;
- (o) Disability Discrimination Act 2005/ Equality Act 2010 requirements;
- (p) FOIA/EIR requirements;
- (q) a right of access to relevant documentation and records of the Contractor for monitoring and audit purposes;
- (r) security for the due performance of the Contract unless the ASO in consultation with the APO considers this to be unnecessary.

9.1.3 The APO and SRO for Legal can provide advice on Contract specific terms and conditions.

## 9.2 Contract Formalities

9.2.1 Once a decision to award has been made in accordance with Rule 7.5.4 or 8.7.4, the Contract must be either signed by the Officer(s) authorised under the Council's Scheme of Delegation or executed under Seal and in accordance with Rule 9.3.2.

9.2.2 Where the Contract is to be in writing, the ASO or the SRO for Legal must arrange for the Contract including all schedules and appendices to be signed by all parties. This can be done in two ways:

(a) Sending bound hard copies of the Contract to the winning Bidder(s) for signing;  
or

(b) Sending electronic copies of the Contract to the winning Bidder(s) for printing, binding and signing.

9.2.3 Before arranging for the Contract to be signed or sealed on behalf of the Council, the ASO must check that the returned signed Contract has not been amended or altered by the winning Bidder(s) without prior written agreement by the Council.

9.2.4 Rules 9.2.1 to 9.2.3 do not apply to purchases made through an Electronic Purchasing System (EPS).

9.2.5 All Contracts which are to be formally completed in writing must be completed before the Goods are supplied, or the Service, execution of Works or Concession Contract begins, except in exceptional circumstances, and then only with the prior approval from the SRO for Legal.

9.2.6 A purchase order must be raised in the appropriate eProcurement system for all goods, services and works requirements to be procured through an EPS and for all Contracts. The purchase order must refer to the terms and conditions of the Contract between the Council and the Contractor.

9.2.7 The ASO must ensure that the person signing on behalf of the Contractor has requisite legal authority to bind the Contractor. Where there is any doubt, the ASO must seek advice from the SRO for Legal.

### 9.3 Contracts under Seal

9.3.1 A Contract must be sealed where:

- (a) The Council wishes to extend the liability period under the Contract and enforce its terms for up to 12 years; or
- (b) The price to be paid or received under the Contract is a nominal price and does not reflect the value of the goods or services; or
- (c) There is any doubt about the authority of the person signing for the other contracting party; or
- (d) As determined by the SRO for Legal.

9.3.2 The seal must be affixed in accordance with the provisions of the Council's Constitution.

### 9.4 Transfer of Contracts

9.4.1 No Contract should be transferred from one Contractor to another without first consulting the APO. Contracts can only be transferred if approved by the Chief Finance Officer and SRO for Legal or their nominees in accordance with the Council's Scheme of Delegation.

## **10. Exemptions and Modifications**

### 10.1 Exemptions

10.1.1 These Rules are mandatory but in limited circumstances, it may be necessary to seek an Exemption from these Rules and guidance from the APO must be sought before any Procurement Activity commences for which an Exemption may be required.

10.1.2 An Exemption cannot be given where this would contravene the Regulations, the Concession Regulations or any other legislation.

10.1.3 Exemptions will only be considered in exceptional circumstances. Examples of circumstances which may be considered exceptional could include the following:

- (a) Proprietary or patented goods or services are proposed to be purchased which, in the opinion of the ASO, are only obtainable from one person and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented goods is available; or
- (b) The ASO can demonstrate that no genuine competition can be obtained in respect of the purchase of particular Goods, Services or execution of Works; or
- (c) The ASO is satisfied that the Services or execution of Works are of such a specialist nature that they can only be carried out by one person (e.g. statutory undertakers); or
- (d) Goods are proposed to be purchased by or on behalf of the Council at a public auction; or
- (e) Goods or Services are proposed to be purchased which are of a specialist or unique nature (such as antiquities for museums or a particular performance artist); or
- (f) Repairs or parts if the only option is to repair or buy new parts for existing equipment or buildings, and there is only one supplier.
- (g) To comply with legal requirements;
- (h) The Contract is for Goods, Services or the execution of Works which are required in circumstances of extreme urgency for example where immediate repairs are required to buildings, structures and other assets damaged by fire, bad weather or vandalism;
- (i) The provision of a service urgently required due to the failure of a Contractor through unsatisfactory performance or the appointment of an administrator receiver or liquidator to administer its affairs. The Contract should be re-let at the earliest opportunity in compliance with these Rules;
- (j) Where an extension for a particular period can be justified, for example where a Service review includes the intention to co-terminate relevant Contracts within a reasonable period;

(k) Where fewer than the required numbers of Tenders have been received and it is considered unlikely that a further tendering exercise will result in more Tenders being received.

10.1.4 Where the circumstances set out in Rule 10.1.3 apply, the ASO, in conjunction with the APO and the SRO for Legal, shall ensure that the Contract terms and conditions are appropriate taking into account all relevant factors (such as benefit and risk to the Council) and ensure that the Contract complies with Rule 9.

## 10.2 Procedure for Exemptions

10.2.1 To apply for an Exemption the ASO must fill in the Exemption Form, have it signed by the relevant Assistant Director and submit it to the Chief Internal Auditor for consideration and recommendation. The Exemption Form must then be approved by being signed (electronically or by hand) in accordance with the table below:

Table 3

Value of Contract	Decision Maker
Up to £,49,999	Chief Internal Auditor in consultation with the SRO for Legal.
£50,000 and over	Chief Finance Officer (or Chief Executive if the contract is to be let by the Resources and Contracts Department) in consultation with the Chief Internal Auditor and the SRO for Legal.

10.2.2 The ASO must ensure that the Exemption Form provides full details of the request and any supplementary documentation to support the request.

10.2.3 No commitment should be made to a potential Contractor prior to authorisation.

10.2.4 The Chief Internal Auditor is responsible for ensuring a complete record of all Exemptions is maintained. A record of the decision approving an Exemption and the reasons for it must be stored electronically on The Chest.

10.2.5 In circumstances of extreme urgency, the relevant decision maker in 10.2.1 above may authorise an Exemption in writing without the need to complete an Exemption Form. The written authorisation provided in accordance with this Rule 10.2.5 must be stored electronically on The Chest. As soon as practicable an Exemption Form must be submitted and approved in accordance with this Rule

10.2.6 All Exemptions granted will be reported to the Audit, Governance and Standards Committee as part of the Annual Procurement and Commissioning Report

### 10.3 Modifications to a Contract or Framework Agreement

10.3.1 Subject to Rule 10.3.2 a Modification may be permitted if any of the limited criteria below applies:

(a) the Contract contains clauses allowing such Modifications provided that such clauses:

- i) state the scope and nature of possible Modifications as well as the conditions under which they may be used, and
- ii) do not provide for Modifications that would alter the overall nature of the Contract or the Framework Agreement;

(b) the Modification is for additional Works, Services or Supplies by the original Contractor that have become necessary and were not included in the initial procurement, where a change of Contractor:

- i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or
- ii) would cause significant inconvenience or substantial duplication of costs for the Council,

(c) where all of the following conditions are fulfilled:—

- i) the need for the Modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;

ii) the Modification does not alter the overall nature of the contract;

(d) where a new Contractor replaces the one to which the Council authority had initially awarded the Contract as a consequence of—

i) a clause or option in conformity with Rule 10.3.1(a); or

ii) a takeover of the Contractor following corporate restructuring, including takeover, merger, acquisition or insolvency, by another Economic Operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail any other substantial Modifications to the Contract;

PROVIDED THAT the proposed Modifications, irrespective of their value, are not substantial within the meaning of Rule 10.3.3;

10.3.2 A Modification will only be permitted if:

(a) The proposed Modification is for an increase in price of less than 10% of the initial Contract value or £100,000 (whichever is the lower) where there is sufficient budgetary provision and such a Modification is in compliance with the Financial Procedure Rules; or

(b) The Modification is for an increase in value of more than 10% of the initial contract value or £100,000 (whichever is the lower) but not more than 50% of the initial contract value and the procedure set out in Rule 10.4.4 has been followed:

10.3.3 A Modification of a Contract or a Framework Agreement during its term shall be considered substantial for the purposes of Rule 10.3.1 where one or more of the following conditions is met:—

(a) the Modification renders the Contract or the Framework Agreement materially different in character from the one initially concluded;

(b) the Modification introduces conditions which, had they been part of the initial procurement procedure, would have:

i) allowed for the admission of other candidates than those initially selected,

ii) allowed for the acceptance of a Tender other than that originally accepted,

or

- iii) attracted additional participants in the procurement procedure;
- (c) the Modification changes the economic balance of the Contract or the Framework Agreement in favour of the Contractor in a manner which was not provided for in the initial Contract or Framework Agreement;
- (d) the Modification extends the scope of the Contract or Framework Agreement considerably;
- (e) a new Contractor replaces the one to which the Council had initially awarded the Contract in cases other than those provided for in Rule 10.3.1(d).
- (f) any increase in price is higher than 50% of the value of the original Contract or Framework Agreement.

10.3.4 For the purposes of Rule 10.3.2, if several successive Modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive Modifications.

10.3.5 A Modification is not permitted where it would take the Contract value above the Regulation Thresholds.

10.3.6 A Contract must not be modified without consulting the APO or the SRO for Legal.

#### 10.4 Procedure for Modifications

10.4.1 Approval must be obtained to any Modification in accordance with the Council's Scheme of Delegation and where appropriate Rule 10.4.5. In addition a Modification under Rule 10.3.2(b) must be approved by the Chief Finance Officer (or Chief Executive if the contract is to be let by the Resources and Contracts Department).

10.4.2. Where Rule 10.3.1(a) applies the conditions set out in the relevant clause must be complied with

10.4.3 the ASO must fill in the Modification Form and ensure that it provides full details of the Modification and any supplementary documentation to enable the Decision Maker giving the approval to make a fully informed decision.

10.4.4 Where Rule 10.3.2(b) applies the ASO must submit the Modification Form to the APO and SRO for Legal for consideration before any approval is sought under Rule 10.4.1

10.4.5 In giving approval, the Decision Maker must take account of any advice given by the APO and the SRO for Legal and the ASO must ensure that such advice is included in any report to the Decision Maker.

10.4.6 No commitment should be made to a potential Contractor prior to approval.

10.4.7 The ASO is responsible for ensuring a complete record of all Modifications is kept and a record of the decision approving a Modification and the reasons for it must be stored electronically on The Chest.

## **11. Declarations of Interest and Anti-Bribery and Corruption**

11.1 The Council's reputation with regards to Procurement Activity is important and should be safeguarded from any imputation of dishonesty or corruption. All elected Members of the Council and Officers are reminded of their responsibilities in relation to gifts, hospitality and any conflicts of interest and should ensure they comply with the obligations set out in the Council's Members' Code of Conduct and the Officers' Code of Conduct respectively and any other relevant policies, guidance or strategies relating to bribery, fraud and corruption issued or endorsed by the Council from time to time.

11.2 Any Officer or Member must declare any interest which could influence their judgement in relation to Procurement Activity in accordance with the Council's Codes of Conduct.

11.3 No gifts or hospitality should be accepted from any Bidders involved in Procurement Activity except in accordance with the Council's Codes of Conduct. Relevant interests, gifts and hospitality should be registered on the Council's e-register:

<http://thehub/MyEmployment/Working-life/Your-responsibilities/Financial-and-non-financial-interests.aspx>

## **12. Contract Management**

12.1 All Contracts must have a Council Contract Manager (“Contract Manager”) for the entirety of the Contract. In the event that there is no named Contract Manager the ASO will fulfil the role of Contract Manager.

12.2 The Contract Manager will be responsible for reviewing monitoring and evaluating the Contract to ensure that its provisions and the services within it are being followed and performed as they should be. The Contract Manager should understand the Specification, contractual terms and the performance framework and must manage activity ensuring that Contracts do not require any extensions beyond the permitted or planned expiry.

12.3 During the life of the Contract, the Contract Manager should monitor the Contract in respect to the following:

- (a) Performance (against agreed KPIs where relevant) ensuring that where performance falls below expected standards this is managed promptly;
- (b) Compliance with the Specification and Contract;
- (c) Cost, ensuring that there are no unanticipated variations in price or spend;
- (d) Any Social Value requirements;
- (e) Risk Management ensuring risks associated with the Contract are identified and managed and any risk registers are kept up to date;
- (f) Safeguarding where appropriate; and
- (g) User satisfaction;

12.4 The final certificate for payment for any capital Contract should not be paid until the Contract Manager or ASO has performed a reconciliation of all Works completed against the approved costs of the scheme.

12.5 The SRO for Legal and the Chief Finance Officer shall be consulted before any settlement is reached in a dispute or claim arising from any Contract.

12.6 Where any sum or damages is payable to the Council as a result of the default of a Contractor for example where completion of Works is delayed beyond the contractual completion date it shall be the duty of the ASO to claim whatever liquidated or other damages may be due under the terms of the Contract and no waiver of such sum or damages may be given without the approval of the SRO for Legal and the Chief Finance Officer.

12.7 Where the Contract is to be re-let, any information gathered by the Contract Manager should be available to inform the approach to re-letting the next Contract.

12.8 The APO can provide advice and support on good practice in performance management of Contracts.

12.9 All Contracts must be included and published on the Contracts Register maintained by the APO in line with the Local Government Transparency Code 2014. This is a mandatory requirement and it is the responsibility of the SRO for each service to ensure that they have informed the APO of the Contracts they are responsible for and provided them with the information necessary to update the Contracts Register accordingly.

### **13. Retaining Relevant Documents**

13.1 All records in relation to the award of Contracts and the associated procurement process, including completed PIDs and other supporting documentation, shall be stored on the Chest or such other electronic filing system as the APO may designate to be available for inspection by the Council's internal and external auditors, or appropriate Officers, immediately upon request. Records will be retained in accordance with the Regulations, the Concession Regulations and any other relevant legislation applicable to electronic record retention. The records must contain sufficient information to enable the Council to provide any information required by any regulatory authority or under the FOIA or the EIR and in particular to comply with its duty under regulation 84 of the Regulations and Regulation 45 of the Concession Regulations

13.2 Hard copies of all written contracts shall be retained as follows:

(a) Contracts with a value between £5,000 and £249,999.99 for six years after the end of the Contract

(b) All sealed Contracts and Contracts with a value of £250,000 and above for twelve years after the end of the Contract

(c) Contracts that are grant funded regardless of value must comply with retention period above or the terms and conditions of the grant, whichever is the longer

13.3 If legislation related to any individual Contract stipulates a longer retention period than this, then the legislation requirements takes precedence over the Council's minimum periods.

13.4 Once executed, the Council shall retain one original of the complete Contract documents in line with the timescales in the table above and one copy of the complete Contract documents shall be provided to the Contractor. The Council's original will be retained by the SRO for Legal.