



## Contract Procedure Rules

### CONTENTS

#### GLOSSARY

1	Introduction	3
2	Compliance with these Rules	4
3	Conflicts of Interest and Corruption	5
4	Gifts and Hospitality	5
5	Exemptions to the Rules	5

#### BEFORE PROCUREMENT

6	Assessing the Need	7
7	Valuation of Contracts	7
8	Authority to Purchase	8

#### PROCUREMENT PROCESS

9	Procedure determined by Contract Type and Value	8
10	The PCR Procedure	10
11	PCR 2015 Schedule 3 - Social and other specific services	10
12	The High Value Transaction Procedure	11
13	The Medium Value Transaction Procedure	11
14	The Low Value Transaction Procedure	11
15	The Concession Contracts Procedure	11
16	Receiving and Opening Tenders and Quotes	12
17	Evaluating Tenders and Quotes	12
18	Framework Agreements and use of Council Contracts	13
19	Use of Nominated Sub-contractors	14
20	Awarding Contracts and Audit Trails	14
21	Ordering and Paying for Goods, Services and Works	15
22	Parent Company Guarantees and Performance Bonds	15
23	Conditions of Contract	15

#### POST PROCUREMENT

24	Contracts Register	15
25	Variations and Extensions	15

Field Code Changed

## Glossary

Terminology defined in Regulation 2 of Part 1 of the Public Contract Regulations 2015 (“the PCR 2015”) or Regulation 3 of Part 1 of the Concession Contracts Regulations 2016 (“the CCR 2016”) shall, unless stated otherwise, have the same meanings when used within these rules (the “Rules”).

Other key terms are defined in the glossary below:

Term	Meaning
Best Value	the securing of continuous improvement having regard to economy, efficiency and effectiveness;
Contracts Finder	the web-based portal provided or on behalf of the Cabinet Office for the advertisement of public sector contracts;
Contracts Register	the Council’s own register which includes details of its contracts, commissioned activity, purchase orders involving any one-off and recurring payments, framework agreements and any other legally enforceable agreement relating to the purchase of goods, services or works) with the Council of values of £5,000 or more;
Contract Value	the estimated total value of a contract (excluding VAT) over its full duration (not the annual value) including the value attributable to any extension options and contractually permissible variations;
Council Contract	all contracts, commissioned activity, purchase orders, framework agreements and any other legally enforceable agreements entered into by the Council relating to the purchase of goods, services or works;
ICU	the Integrated Commissioning Unit of the NHS Southampton Clinical Commissioning Group and the Council;
Low Value Threshold	as set out in Table 1;
Find a Tender Service	the UK e-notification service where notices for new procurements are required to be published with effect from 1 <sup>st</sup> January 2021;
PCR Thresholds	the thresholds prescribed for the PCR 2015 as set out in Table 1;
Procurement Teams	the teams (inclusive of those responsible for ICU procurement) and oversight and management of Procurement activities within the Council;
Request for Procurement	the document completed by the Requesting Officer and signed by an authorised signatory which is submitted to the Procurement Teams to initiate a Procurement in accordance with these Rules;
Requesting Officer	the officer submitting a Request for Procurement (whether for themselves or on behalf of another officer);
SME	Any business with fewer than 250 employees and either an annual turnover below £45m or a total balance sheet less than £40m.

Formatted: Font: (Default) Arial

## 1. Introduction

1.1 These Rules govern and set out how the Council shall select suppliers to provide goods, services or works and form part of the Council's Constitution.

1.2 Where within these Rules the Director – Quality and Integration and Head of ~~Procurement and~~ Supplier Management are referred to in the alternative, ~~but~~ the former will be responsible for all procurement activities and matters in respect of health and care services procured and managed via the ICU and the latter will be responsible for all other Council procurement activities and matters. Any reference to the roles of Head of Supplier Management or Director – Quality and Integration shall be taken to include his or her delegate also.  
~~1.2~~

1.3 Where an officer considers that there is good reason to enter into a contract for the purchase of goods, services or works even though it cannot be undertaken in accordance with the procedures specified within these Rules, it shall be managed in accordance with a process agreed by the Chief Executive and the relevant Executive Director.

1.4 The Rules are based upon: -

1.4.1 the Council's Constitution;

1.4.2 all relevant statutory provisions including the Local Government Act 1988 Part II, Local Government Act 1999, Local Government Act 2000, the PCR 2015, the Local Government (Contracts) Act 1997, the Localism Act 2011, the Public Services (Social Value) Act 2012 and the CCR 2016 (as amended The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020);

1.4.3 any direction by the Council, a Cabinet Member or Committee having appropriate delegated authority and

1.4.4 Council policies and procedures relating to equality and diversity, safeguarding, Council information and communication technology security, security, data protection and social value.

1.5 The Rules do not apply to: -

1.5.1 in-house purchases or in-house service provision (including purchase or service provision from a third party where the contracting authority effectively owns/controls it and the main focus and extent of its activities concerns the contracting entity);

1.5.2 arrangements which establish or implement co-operation between contracting authorities;

1.5.3 arrangements which cover flows of money or pooling of funds between the Council and health bodies (section 75, 76 and 256 agreements under the National Health Service Act 2006 (as amended));

1.5.4 the purchase of land or of any interest in land;

1.5.5 the making or receiving of grants unless an output to be delivered is specified or the terms of the grant otherwise require compliance.

1.6 The Rules have three main purposes:

Formatted: Indent: Left: 1.27 cm, No bullets or numbering

Formatted: Font: (Default) Arial

- 1.6.1 To ensure and enable the demonstration of compliance by the Council with public procurement law including the principles of equality of treatment, non-discrimination, transparency, mutual recognition and proportionality.
- 1.6.2 To ensure the Council strives for Best Value in the way it spends money, so that in turn the Council may be able to offer better and more cost-effective services to the public and other stakeholders and
- 1.6.3 To protect officers who follow the Rules.

1.7 With the exception of procurements undertaken in accordance with the Low Value Procedure (as detailed in Table 1), officers must not engage with a supplier without first engaging with the Procurement Team in accordance with Rules 9-15 (inclusive).

1.8 Executive Directors are responsible for ensuring that their officers comply with these Rules.

1.9 The Head of ~~Procurement and~~ Supplier Management and the Director – Quality and Integration will investigate any incidences of non-compliance with these Rules with assistance from the Procurement Teams.

1.10 The Head of ~~Procurement and~~ Supplier Management and the Director – Quality and Integration is responsible for providing advice on these Rules with assistance from the Procurement Teams.

## 2. Compliance with these Rules

2.1 Compliance with the Rules is mandatory, and any person found to have been acting in breach of these Rules may be subject to disciplinary proceedings. Compliance includes seeking and having proper regard to all legal, financial and professional advice obtained in accordance with these Rules.

2.2 Officers must seek advice from the Procurement Team in any and all instances of uncertainty about whether the Rules apply and how to apply the Rules.

2.3 The Rules work in concert with Council policies and relevant legislation. When conducting procurement activities officers must ensure they also comply with:

- 2.3.1 all requirements of public procurement law;
- 2.3.2 the Council's Constitution;
- 2.3.3 the Council's Records Review and Retention Schedule;
- 2.3.4 the Council's Green City Charter;
- 2.3.5 Council policies including:
  - o the Council's Gift and Hospitality Policy
  - o the Council's Anti-bribery Policy
  - o the Council's Social Value and Green City Procurement Policy
  - o the Council's SCC First Policy

2.4 Officers must ensure that any agents, consultants and contractual partners and suppliers conducting procurement activities on the Council's behalf comply with the requirements of Rule 2.3.

2.5 The Procurement Teams will advise on whether and how the Rules apply in any particular case. Where appropriate, the Procurement Teams may seek legal advice from the Council's Legal and Governance Team.

2.6 Unless expressly directed by the Head of ~~Procurement and~~ Supplier Management or the Service Director - Quality and Integration, the Procurement Teams must manage all Procurements with an estimated Contract Value exceeding the Low Value Threshold.

### 3. Conflicts of Interest and Corruption

3.1 Any interest which may affect the award of a contract under these Rules must be declared. Any officer of the Council participating in a contract award decision or employee of the Procurement Team must provide the Head of ~~Procurement and~~ Supplier Management and Supplier Management or Director – Quality and Integration with an advance written declaration of any such interests. Such interests include the ownership of shares in a potential supplier, previous employment by a potential supplier or the employment of a family member by a potential supplier.

3.2 The Head of ~~Procurement and~~ Supplier Management or Service Director – Quality and Integration must either certify that such interests are acceptable or take any necessary action in respect of potential conflicts of interest and the officer should not participate in the evaluation or award of the contract by the Council.

3.3 Officers must be aware of other requirements of the Council's Constitution with regard to conflicts of interest, bribery and corruption.

3.4 Each contract which the Council enters into shall include a provision which entitles the Council to terminate the contract and recover losses from the contractor resulting from such termination if the contractor or anyone acting on the contractor's behalf has:

3.4.1 offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or has done or forborne to do, any action in relation to the obtaining or execution of the contract or any other contract with the Council; or

3.4.2 shown or has forborne to show favour or disfavour to any person in relation to the contract or any other contract with the Council; or

3.4.3 committed an offence under the Prevention of Corruption Acts 1889 to 1916 (or any act or acts as may replace the same) or has given any reward the receipt of which is an offence under the Local Government Act 1972 (or any act as may replace the same) or committed an offence under the Bribery Act 2010.

### 4. Gifts and Hospitality

4.1 No gifts or hospitality should be accepted from any bidders to any contract being let or about to be let by the Council. Acceptance of gifts or hospitality may be a disciplinary offence. Every officer managing a procurement, letting (or planning to let) a contract or managing a contract for the Council must inform the Head of ~~Procurement and~~ Supplier Management or Director - Quality and Integration of any offers of gifts or hospitality. Reference should be made to the Council's policy on Gifts and Hospitality in place at such time and other relevant Council policies.

### 5. Exemptions to the Rules

5.1 No exemption can be given which breaches public procurement law.

5.2 An exemption to these Rules may only be agreed by:

5.2.1 the Director - Quality and Integration (or his or her delegate) or

5.2.2 the Head of ~~Procurement and~~ Supplier Management (or his or her delegate)

5.3 If, after considering a request for an exemption, he or she is satisfied that the exemption is justified because:

5.3.1 the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of the Rules is justifiable; or

5.3.2 the requirement is for works, goods or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or

5.3.3 there are other circumstances which are genuinely exceptional.

5.4 No exemption requests will be considered unless and until a Request for Exemption form has been fully completed and submitted to the Procurement Team. Officers shall not enter into contracts with suppliers, allow services or works to commence, arrange for the delivery of goods until an exemption request is formally approved by the Director - Quality and Integration (~~or his or her delegate~~) or the Head of ~~Procurement and~~ Supplier Management (~~or his or her delegate~~). If an exemption is granted, the provisions of the Council's Financial Procedure Rules must still be followed.

5.5 A record of the decision approving an exemption and the reasons for it must be kept by the Procurement Team, an entry made in the register of approved exemptions and the Contracts Register updated accordingly.

5.6 Approved exemptions will be conditional on the relevant Executive Director providing and agreeing a plan with the Head of Procurement and Supplier Management or the Director - Quality and Integration (~~as appropriate~~) to mitigate the need for further exemptions relating to the Contract.

5.7 An exemption will be deemed to have been approved by the Director - Quality and Integration in the case of a child placement or education funding (or any combination thereof) where:

5.7.1 The value of such placement or education funding is below the relevant PCR Threshold and

5.7.2 All compliant frameworks agreements have been considered and are unable to meet the requirement and in any such instance, Rules 5.4 to 5.6 (inclusive) shall not apply.

This Rule 5.7 applies to services for the placement of a child (including most obviously in a residential home, into foster care or into adoption) and for the provision of associated educational services to that child.

5.8 An exemption shall never be given in relation to either Rule 3 (Conflicts of Interest and Corruption) or Rule 4 (Gifts and Hospitality).

5.9 These Rules may also be varied or departed from when the Service Director of Legal and Business Operations advises that statute or subordinate legislation requires such a variation.

## BEFORE PROCUREMENT

### 6. Assessing the Need

- 6.1 With the exception of activity undertaken in accordance with the Low Value Transaction Procedure, the Requesting Officer must engage with the Procurement Teams as soon as a need which may result in a procurement is identified.
- 6.2 Prior to commencing a procurement, the following options for delivery of the need must be considered:
- 6.2.1 The consequences of not buying the goods or services or having the works done at all;
  - 6.2.2 The Council making the goods or delivering the services or works in-house (in accordance with the SCC First Policy);
  - 6.2.3 The Council providing the goods, services or works as part of a partnership arrangement with another party;
  - 6.2.4 The Council commissioning jointly with another contracting authority;
  - 6.2.5 The Council participating in a shared services arrangement with another council or other public sector entities for services delivery;
  - 6.2.6 The Council utilising a pre-existing Council Contract to fulfil the requirement; or
  - 6.2.7 The Council achieving delivery through any combination of 6.1.2 to 6.1.6.
- 6.3 Where the assessment of the need determines that a procurement is required, the appropriate procedure shall be undertaken in accordance with Rule 9 (Procedure Determined by Contract Type and Value).

### 7. Valuation of Contracts

- 7.1 An estimated Contract Value likely to provide the most economically advantageous outcome for the Council must be identified prior to commencing a procurement.
- 7.2 Where the duration of the contract is indeterminate, the estimated Contract Value must be the estimated value of the contract over a period of four years.
- 7.3 The estimated Contract Value must be referenced within the Request for Procurement.
- 7.4 If a requirement is or can be related to another Council procurement or is for goods, services or works which are, or may also be, procured by another part of the Council and/or on a recurring basis, this may affect the Contract Value for the purpose of these Rules (i.e. the requirements for aggregation may apply). Officers must obtain guidance from the Procurement Teams before commencing such a procurement.
- 7.5 The Council may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots whilst at all times adhering to Regulation 46 of the PCR 2015. Such a decision shall be made by the Procurement Teams.
- 7.6 The value of any contract must not be:
- 7.6.1 underestimated deliberately or
  - 7.6.2 calculated by disaggregating (subdividing) it from other elements of the procurement or from other related procurements in order to reduce the

Formatted: Font: (Default) Arial

perceived Contract Value or avoid the application of procedures set out in these Rules.

- 7.7 If the Council has a single requirement the value of which is over a threshold set out in Table 1 but which the Council wishes to meet by entering into multiple Procurements, then the value of the multiple procurements may need to be aggregated for the purpose of these Rules and advice must be sought from the Procurement Team in these instances.
- 7.8 Artificially underestimating and/or disaggregating the Contract Value are clear breaches of the Rules and may lead to disciplinary proceedings being initiated.

## **8. Authority to Purchase**

- 8.1 The Constitution governs the limits within which the Executive Directors and their authorised officers may authorise purchases on behalf of the Council and these limits must not be exceeded. The Executive Director: Finance and Commercialisation maintains a list of authorisation limits which specifies a maximum financial limit for each transaction for each authorised officer.
- 8.2 Executive Directors must ensure that procurement activity is undertaken by authorised officers who can demonstrate knowledge and understanding of these Rules and skills appropriate to the task. These officers should already have authority under the above list and if not, must be granted authority by the Executive Director: Finance and Commercialisation.
- 8.3 Officers must ensure that the appropriate budget holder has the funds in place for any proposed contracts and that the necessary budget approval from Finance has been obtained prior to commencement of the procurement process. This must be validated before a decision is made to award a contract.

## **PROCUREMENT**

### **9. Procedure Determined by Contract Type and Value**

- 9.1 The Rules and the associated procedures vary according to Contract Value, with stricter, more rigorous procedures for higher value transactions. This is to ensure that the benefits of a more thorough, complex procurement process are not outweighed by the cost of the procedure, relative to the value of the goods, services or works in question.
- 9.2 Notwithstanding the Contract Value or procurement procedure utilised, all procurements undertaken by the Council must adhere to public procurement principles of equality of treatment, non-discrimination, transparency, mutual recognition and proportionality and such adherence must be demonstrable if challenged.
- 9.3 Officers must always engage with the Procurement Team prior to starting procurement activity for all procurements other than those with a Contract Value below the Low Value Threshold.
- 9.4 In respect of all procurement procedures other than those undertaken in accordance with the Low Value Transaction Procedure, unless otherwise directed by the Head of ~~Procurement and~~ Supplier Management or the Service Director - Quality and Integration Procedure, a Request for Procurement must be completed, signed by an



officer authorised in accordance with the Officer Scheme of Delegation and submitted to the Procurement Team prior to the commencement of any procurement.

- 9.5 Tender or quote documentation appropriate to the procedure being undertaken must be developed to reflect size, scope, and type of specification where required (i.e. input versus output or outcome specification) and any other specific terms and conditions which are key to the subject-matter, subject always to Rule 23 (Conditions of Contract).
- 9.6 Where a competition has been undertaken in accordance with any of the procedures in Table 1 and only a single tender has been received, a contract may be awarded, subject to a value for money review being undertaken and an audit trail demonstrating compliance with the relevant procedure being available for inspection.
- 9.7 All contractual agreements entered into must specify the goods, services or works to be provided, state the price to be paid, and include appropriate terms and conditions of contract in accordance with Rule 23 (Conditions of Contract).
- 9.8 Where a procurement relates to services (or services together with the purchase or hire of goods or the carrying out of works), an assessment of the required services must be undertaken by the procuring officer in conjunction with the Procurement Team to ensure compliance with the Public Services (Social Value) Act 2012.
- 9.9 In respect of any procedure where more than one quote or tender is being requested, a quote or tender from at least one SME must be sought.
- 9.10 In respect of any procedure where at least three quotes are being requested, quotes from at least two local suppliers ~~from within the Southampton city boundary~~ must be sought subject to such suppliers existing within the local area. "Local" shall mean within the city of Southampton or if the requirement cannot be sourced within Southampton within the county of Hampshire.

9.11 In respect of all procedures other than those undertaken in accordance with the PCR Procedure, where it is deemed appropriate by the Procurement Team when considering value for money, the sector/market and risks, the procurement may be reserved by supplier location (in respect of services only) or to SMEs and Voluntary, Community and Social Enterprises (VCSEs) (in respect of supplies, services and works) in accordance with Procurement Policy Note (PPN) 11/20 – Reserving Below Threshold Procurements, and other relevant legislation.

Commented [RK1]: To reflect PPN11/20

~~9.119.12~~ 9.119.12 Advice must be sought from the Procurement Teams at the earliest opportunity if a request for de-brief is received from a tenderer or a candidate.

~~9.129.13~~ 9.129.13 Table 1 (below) shows the relevant procedure to be followed depending upon the nature of requirement and its estimated Contract Value.

**Table 1**

Type of Contract	Estimated Contract Value (excluding VAT) and relevant thresholds	Procedure to be followed	Rule (in this document)
For goods and services	£189,330* or above	The PCR Procedure	10
For works	£4,733,252* or above	The PCR Procedure	10

Formatted: Font: (Default) Arial

Type of Contract	Estimated Contract Value (excluding VAT) and relevant thresholds	Procedure to be followed	Rule (in this document)
PCR 2015 Schedule 3 - Social and other specific services	Up to £663,540*	The High Value Transaction Procedure	12
For goods or services	£25,000 - £189,329	The High Value Transaction Procedure	12
For works	£25,000 - £4,733,251	The High Value Transaction Procedure	12
For goods, services and works	£105,000 - £24,999	The Medium Value Transaction Procedure	13
For goods, services and works	Up to £94,999 ("the Low Value Threshold")	The Low Value Transaction Procedure	14
Concession Contracts	All Contract Values	The Concession Contract Procedure	15
* Please note that these are the "PCR Thresholds" and are applicable between 1 January 2020 and 31st December 2021.			

## 10. The PCR Procedure

- 10.1 The PCR Procedure shall be managed by the Procurement Team and approved by the Head of Procurement and Supplier Management or the Service Director – Quality and Integration.
- 10.2 Minimum timescales relating to tender procedures are governed by the PCR 2015 and these must always be followed.
- 10.3 In accordance with Rule 10.2, a Contract Notice must be published in the Find a Tender Service and in Contracts Finder.
- 10.4 Advertisements published additional to those under Rule 10.3 (for instance in the local press or trade journals):
- 10.4.1 must not appear on Contracts Finder or in any other form of publication before a Contract Notice is published on the Find Tender System and
- 10.4.2 must not contain any information additional to that contained in the Contract Notice.
- 10.5 All contracts tendered under this procedure must allow for a ten-calendar day standstill period between when the decision to award is communicated and the contract being entered into.
- 10.6 In accordance with Rule 10.2, all contracts awarded pursuant to the PCR procedure must be publicised by means of a Contract Award Notice transmitted no later than 30 calendar days after the date of the contract award.

## 11. PCR 2015 Schedule 3 - Social and other specific services

- 11.1 Regulations 74 to 76 of the PCR 2015 set out specific services which may be procured by applying this more flexible procedure.
- 11.2 In respect of procurement for these services, the High Value Transaction Procedure shall be followed unless otherwise directed by the Head of ~~Procurement and~~ Supplier Management and Supplier Management or the Service Director – Quality and Integration.

## 12. The High Value Transaction Procedure

- 12.1 Subject to Rule 12.2, the contract opportunity must be advertised by the Procurement Team at the start of the tender procedure. Information on the contract opportunity must be published on Contracts Finder within 24 hours of being advertised elsewhere.
- 12.2 The tender procedure shall be that identified as the most appropriate by the Procurement Team.
- 12.3 Tenders should be sought by the Procurement Team unless the Procurement Team determines that by virtue of its complexity at least three written quotes will allow Best Value to be demonstrated.

## 13. The Medium Value Transaction Procedure

- 13.1 At least three quotes should be sought by the Procurement Team unless:
  - 13.1.1 the Procurement Team determines that by virtue of its complexity, a tendering exercise should be undertaken to demonstrate Best Value for the requirement or
  - 13.1.2 the Procurement Team determines that only one supplier exists for the specific requirement.
- 13.2 Where appropriate for the requirement in question, the opportunity will be advertised on the Council's on-line tendering system portal for electronic tendering at the start of the procurement procedure.

## 14. The Low Value Transaction Procedure

- 14.1 If the Contract Value of the procurement is less than the Low Value Threshold then there is no requirement for an officer to engage with the Procurement Team however, officers must contact the Procurement Team when in any doubt over the value of the procurement, how the procurement should be conducted and/or whether disaggregation applies.

Officers must obtain at least one written quote from a supplier before a supplier can be selected. Where possible, this should include a quote from a local supplier, ("local" to be interpreted in accordance with Rule 9.10).

- 14.2
- 14.3 Officers must be reasonably certain, all things considered, that the contract that is being entered into represents Best Value.

14.4 Officers must provide the Procurement Team with any and all requested information relating to the contracts and suppliers to facilitate completion of the Contract Register

Formatted: Font: (Default) Arial, 11 pt

Formatted: Font: (Default) Arial

[and to enable the Council to meet its obligations in respect of the Local Government Transparency Code 2015.](#)

## **15. The Concession Contracts Procedure**

- 15.1 Concession Contracts are arrangements where operational risk lies with the provider and payment consists of the right to exploit the services or works or those rights along with some payment. Where the value is equal to or above £4,733,252<sup>1</sup> the procurement of a Concession Contract is governed by the CCR 2016.
- 15.2 Officers must always obtain advice from the Procurement Team at the earliest opportunity if the letting of a Concession Contract is being considered, regardless of the estimated Contract Value.
- 15.3 Unless expressly directed by the Head of ~~Procurement and~~ Supplier Management or the Service Director – Quality and Integration, the Procurement Team shall identify the appropriate route to market and manage any related procurement for Concession Contracts.

## **16. Receiving and Opening Tenders and Quotes**

- 16.1 Responses to an invitation to tender or quote must be received according to the format of response specified in the invitation to tender or quote and no later than the time specified for submission of tenders or quotes in the invitation to tender or quote.
- 16.2 Emailed tenders and quotes received are acceptable but copies must be retained in the relevant file by the Procurement Team (for PCR, High and Medium Value Transaction and Concession Contract Procedures) and the procuring officer (for those undertaken in accordance with the Low-Value Transaction Procedure).
- 16.3 Tenders or quotes received for all procurement procedures (except the Low Value Transaction Procedure):
  - 16.3.1 must be managed by the Procurement Teams using the Council's on-line tendering system portal for electronic tendering where appropriate. Electronic tender responses must be received, time stamped and opened in accordance with the approved procedures implemented in that system and
  - 16.3.2 a record of opened and rejected tenders and quotes as well as candidates who did not submit a tender or a quote must be recorded on a list of tenders or quotes invited by the Procurement Team.

## **17. Evaluating Tenders and Quotes**

- 17.1 All tenders and quotes should be evaluated against criteria that state the basis for how the contract will be awarded. In respect of procurements exceeding the Low Value Threshold, this evaluation must be determined in liaison with the Procurement Team prior to the issue of the invitation to tender or quote and must include mandatory and [\(where relevant\)](#) desirable requirements linked to the subject matter of the contract.
- 17.2 The evaluation criteria must be detailed in the document used to invite tenders or quotes and must not be changed during the procurement process. Requests for variant bids (i.e. a proposal for a solution that differs from the solution set out by the

---

<sup>1</sup> This is the Concession Contract Regulation threshold with effect from January 2020.

Council) must be scored against the same evaluation criteria as a tender or quote which meets the Council's stipulated requirements.

- 17.3 Contract awards must be based on the identification of the most economically advantageous tender or quote and the evaluation criteria must reflect this.
- 17.4 An evaluation to determine the most economically advantageous tender or quote involves scoring tenders or quotes objectively using criteria which must:
  - 17.4.1 be relevant to the specific procurement's size and scope;
  - 17.4.2 be pre-determined and listed in the invitation to tender or quote, as the case may be;
  - 17.4.3 be strictly observed at all times throughout the procurement procedure;
  - 17.4.4 reflect the principles of Best Value;
  - 17.4.5 include price, quality and social value (where appropriate);
  - 17.4.6 consider whole-life costings, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal must be taken into account;
  - 17.4.7 indicate how the Council will score tenders or quotes and be capable of objective assessment;
  - 17.4.8 be weighted according to their respective importance which must be detailed in the document used to invite tenders or quotes;
  - 17.4.9 address, where applicable, the bidder's proposal to accept a transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
  - 17.4.10 avoid discrimination or perceived discrimination on the basis of nationality or other cause contrary to the any of the Council's policies.
- 17.5 Any resulting contract awarded must be awarded to the bidder who submits the most economically advantageous tender or quote (i.e. the quote or tender that achieves the highest score in the evaluation).
- 17.6 The Procurement Team (or procuring officer in respect of procurements under the Low Value Transaction Procedure) must obtain clarification or explanation from suppliers who submit tenders or quotes which appear abnormally low and may reject a tender or quote if the evidence supplied is not satisfactory to justify the low tender or quote.
- 17.7 The results of the evaluation process must be recorded in writing.
- 17.8 Unless otherwise required by law, evaluators must not disclose information contained within tenders or quotes returned by a supplier to any third party.

## **18. Framework Agreements and use of Council Contracts**

- 18.1 Before first use by the Council, the use and terms of all framework agreements (including those of the Crown Commercial Services and other public purchasing organisations), must be approved in writing by:
  - 18.1.1 a solicitor from the Council's Legal and Governance Team and
  - 18.1.2 the Head of ~~Procurement and~~ Supplier Management or the Service Director - Quality and Integration.

18.2 Framework agreements approved in accordance with Rule 18.1 may be used by the Council (as part of the procurement procedures in Rules 9-15) following an assessment by the Procurement Team, including whether they are considered to offer Best Value for the need in question and when considering performance on previous or current contracts (or both) by the relevant framework contractors.

18.3 Where the Council has in place specific contracts with suppliers to provide goods, services or works which are suitable for the requirement, these contracts, where capable of doing so, must be used to source [a requirement](#) ~~relevant needs~~ unless directed otherwise by the Head of ~~Procurement and~~ Supplier Management or the Service Director - Quality and Integration.

#### **19. Use of Nominated Sub-contractors**

19.1 Officers must not nominate the use of specific sub-contractors without the prior written consent of the Head of ~~Procurement and~~ Supplier Management or the Service Director - Quality and Integration.

19.2 Any nominated sub-contractors must have been selected through use of the appropriate tender or quote procedure as if the Council were contracting directly with the sub-contractor.

#### **20. Awarding Contracts and Audit Trails**

20.1 Executive Directors must ensure that the appropriate budget holder has the funds in place to sustain a contract prior to award.

20.2 A contract must only be awarded and signed by an officer authorised to do so in accordance with the officer's scheme of delegation subject to receipt of confirmation from an Executive Director (prior to award) that the appropriate budget holder has the funds in place to sustain the contract.

20.3 For all contracts where the Contract Value exceeds the PCR Threshold for goods or services or, in the case of a works contract, £200,000, the contract must either:

20.3.1 be made under the Council's seal in accordance with the Constitution; or

20.3.2 signed by at least two duly authorised officers of the Council authorised by the Service Director: Legal & Business Operations.

20.4 The decision as to whether to sign or to seal a contract shall rest with the Service Director, Service Director of Legal and Business Operations. For the avoidance of doubt, no contract shall be attested by or signed by any councillor.

20.5 A full and complete audit trail of all procurement activity resulting in the award of a contract, framework or dynamic purchasing system must be retained by the Procurement Team as required by regulation 84 of the PCR 2015 and in accordance with the Council's Records Review and Retention Schedule.

20.6 With the exception of procurements undertaken in accordance with the Low Value Procurement Procedure, the Procurement Team shall produce and retain:

20.6.1 a report containing information including contract value, the names of bidders rejected at the selection stage and the reasons for their rejection (for the PCR Procedure) including any conflicts of interest identified and how they were addressed and

20.6.2 an audit trail of the Procurement and decision-making process in respect of any procurement which is withdrawn prior to contract award.

20.7 In respect of all contracts awarded exceeding £25,000 in Contract Value (including those awarded as call-off contracts under framework agreements), the name of the contractor, the date on which the contract was entered into and the value of the contract must be published on Contracts Finder within a reasonable time of the contract award.

## 21. Ordering and Paying for Goods, Services and Works

21.1 No pre-payment for goods, services or works may be allowed above the value of the Low Value Threshold, without the prior written consent of the Executive Director: Finance & Commercialisation and the Service Director of Legal & Business Operations.

## 22. Parent Company Guarantees and Performance Bonds

22.1 The requirement for a bond, parent company guarantee, or other security must be determined in consultation with the Head of ~~Procurement and~~ Supplier Management or the Service Director - Quality and Integration.

## 23. Conditions of Contract

23.1 Unless expressly agreed by the Service Director of Legal and Business Operations all transactions regardless of value must use a model form of conditions of contract provided and approved by the Service Director of, Legal and Business Operations.

23.2 The Head of ~~Procurement and~~ Supplier Management in conjunction with the Service Director of Legal and Business Operations, must:

23.2.1 keep a list of all model forms of conditions of contract that gives details of when the conditions were last updated; and

23.2.2 review all current model forms of conditions of contract, on a regular basis including when applicable legislation is introduced.

## POST PROCUREMENT

### 24. Contracts Register

24.1 The Head of ~~Procurement and~~ Supplier Management and the Service Director - Quality and Integration must maintain and publish the Contracts Register.

~~24.2~~ The Contracts Register is maintained by the Procurement Team and published on the Council's website to enable the Council to meet its obligations in respect of the Local Government Transparency Code 2015.

[24.2](#)

### 25. Variations and Extensions

Formatted: Indent: Left: 0 cm, Hanging: 1.27 cm, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Indent at: 0.74 cm

Formatted: Font: (Default) Arial

- 25.1 Any variation to an existing contract (including an extension to contract duration) must demonstrate Best Value and must not be instigated solely to avoid or delay the requirement to conduct a procurement.
- 25.2 All variations to a contract must be made in accordance with the provisions of the PCR 2015 where relevant.
- 25.3 Officers must ensure that the appropriate budget holder has the funds in place for the variation and that the necessary budget approval from Finance has been obtained.
- 25.4 Officers must always obtain advice from the Procurement Team before agreeing any variations to contracts if the variation is not already expressly provided for within the terms and conditions of the contract.
- 25.5 All variations approved in accordance with these Rules must be documented in writing and signed by an authorised signatory on behalf of the Council and counter-signed by the supplier.
- 25.6 Subject to any legal restrictions and compliance with these Rules, Executive Directors must authorise a variation to an existing contract where such variation is provided for within the terms and conditions of the contract.
- 25.7 In respect of contracts below the PCR Threshold and subject to any legal restrictions and compliance with these Rules, any variation to an existing contract where the consequent change in price (determined in accordance with the contract terms) is such that the annual value of the variation is:
- 25.7.1 less than £25,000 or 15% of the original annual Contract Value (whichever is the lesser), the variation must be authorised by the relevant Executive Director, provided that the value of the contract post-variation remains below the PCR Threshold;
  - 25.7.2 equal to or greater than £25,000 or 15% of the original annual Contract Value (whichever is the lesser), the variation must be authorised by the Director - Quality and Integration (or his or her delegate) or the Head of ~~Procurement and~~ Supplier Management
- 25.8 In respect of contracts above £5,000 in Contract Value, officers must ensure that any agreed variations are communicated to the Procurement Team and the Procurement Team shall record all such variations on the Contracts Register.