

7. Financial Procedures

(c) Contract Procedure Rules



FEBRUARY 2025

CONTRACT PROCEDURE RULES

FOR THE SUPPLY OF GOODS, PROVISION OF
SERVICES AND EXECUTION OF WORKS

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SECTION 1: GENERAL PRINCIPLES

INTRODUCTION

This document is split into 4 sections:

Section 1: General Principles

Section 2: The Procurement

Section 3: Evaluation and Award

Section 4: Contract Management

The Local Government Act 1972 section 135 requires the Council to have standing orders for how it enters into contracts. These Contract Procedure Rules (the “Rules”) are the standing orders required by the 1972 Act. They form part of the Council's Constitution and are, in effect, the instructions of the Council, to officers and elected members, for entering into contracts on behalf of the Council.

These Rules are the Contracting Authority's (the “Council”) rules for the buying, renting and leasing of Goods, Services and Works and apply to all Relevant Contracts made by the Council unless otherwise specified herein.

The aim of these Rules is to assist Officers in achieving best practice and lawful procurement, to ensure that the Council fulfils its duty of delivering Best Value for its council taxpayers and excellent outcomes for its service users.

The Rules also provide a basis for fair competition by providing transparent and auditable procedures to protect the Council's reputation from any suggestion of dishonesty or corruption.

These Rules where the Council acts as accountable body or agent of other public sector funds unless those public sector funds terms and condition specify different or additional arrangements. They are part of the Council's Constitution and therefore Officers have a duty to ensure they have fully understood them and have sufficient authority prior to any contracting activity.

Officers must also ensure that any persons or organisations acting on behalf of the Council fully comply with these Rules.

Officers must also refer to The Corporate Procurement Officer for more detailed guidance throughout the procurement process.

The expectation is of compliance to these Rules and in any cases of doubt advice must be sought from The Corporate Procurement Officer. Failure to follow these Rules may be dealt with as a breach of the Council's standards of conduct and in certain instances may be treated as gross misconduct and give rise to action under the Council's disciplinary policy and procedure. The disciplinary procedure can be found [here](#).

If upon reading the Rules the Officer discovers a lack of clarity or wishes to ensure their comprehension and compliance, they must consult with Procurement for advice and guidance. The Officer shall not be excused from these Rules on grounds of a lack of understanding.

The administration, monitoring and governance of these Rules shall be the responsibility of Procurement.

BASIC PRINCIPLES

All procurement, commissioning, contracting activity, contract management and supplier management activity must:

- comply with these Rules and Financial Instructions.
- achieve Best Value for public money spent
- be consistent with the highest standards of integrity
- comply with the relevant legislation (including the Council's statutory duties and power)
- comply with any relevant Council policies
- support the Council's corporate and departmental aims
- Meet the requirements of any externally funded terms and conditions

All procurements must comply with the following principles of the Act and UK procurement law and policy:

- Delivering value for money
- Maximising public benefit
- Transparency
- Acting and being seen to act with integrity
- equal treatment and have due regard to the National Procurement Policy Statement.

All procurements must also uphold the objectives within our council strategy: -

- Community – listening and responding to communities
- Economy – working with businesses and partners to support our local economy
- Environment – protect our environment, support communities and landscapes and responding to the challenge of climate change
- Homes – take action to tackle the housing crisis and strive to give everyone a chance to live in a safe, warm home
- Infrastructure – provide with partners the services, facilities and travel networks that our residents and businesses need.

OFFICER RESPONSIBILITIES

The Officer responsible for the commissioning, procurement, mobilisation/transition, contracting activity, contract management and supplier management must:

- comply with and ensure that officers they are responsible for comply with these Rules and Financial Instructions
- comply with the relevant legislation
- ensure that any persons or organisations acting on behalf of the Council also fully comply
- take account of all necessary legal, financial, procurement, technical and any other applicable professional advice
- complete mandatory, role specific procurement and associated training, as directed by Procurement.
- Procurement Champions should attend meetings to keep up to date with changes to legislation and upcoming projects.

Prior to commencing a procurement or contracting activity the Officer must:

- consider options for delivery of the required Goods, Services or Works
- ensure that there is appropriate Council authority to procure, and sufficient budgetary provision approved and in place.
- identify the size, scope, commercial principles, term and specification of the Goods, Services and Works required.
- check whether the Council already has an available and appropriate Contract in place in the Contracts Register, or an appropriate national, regional or other collaborative contract, Dynamic Market, Framework or Open Framework by reference to the Corporate Procurement Officer.

- Check whether the goods, services or works to be supplied could be delivered under more than one contract or could be awarded in lots.
- Check whether any employee, either of the Council or of a service provider, may be affected by any transfer arrangement and ensure that any Transfer of Undertaking (Protection of Employment) (“TUPE”) issues are considered, and obtain legal and HR advice

For procurement processes with a Total Contract Value above £100,000 the Officer must:-

- conduct the procurement activity in conjunction with The Procurement Officer.
- Prepare a conflicts assessment in relation to the procurement.

For procurement processes with a Total Contract Value above £30,000 the Officer must:-

- conduct the procurement activity approved by The Procurement Officer
- complete a procurement initiation form
- The officer must ensure that they have the authority to procure by referring to the authorised signatories list [1. Authorised Signatories LATEST.xlsx](#)

Officers must ensure that the appropriate Governance process for spending approval is followed. Please refer to the guidance within this document. If appropriate authorisation is not in place this may delay the processing of any relevant Purchase Order/signing of a contract and subsequent payment to suppliers.

Any officer proposing to engage in a procurement process for goods or services above £30,000 shall complete training in the procurement system, before being permitted to participate in any procurement activity. The training will take approximately 1-2 hours to complete and will take you through a hypothetical procurement journey. Officers who complete training will receive a certificate as proof of their training which can be used to support any continuing professional development (CPD) and Personal Development Review (PDR).

MEMBER RESPONSIBILITIES

The Member must:

- a. comply with and ensure that Officers comply with these Rules and Financial Instructions
- b. comply with the Relevant Legislation
- c. ensure that any persons or organisations acting on behalf of the Council also fully comply

- d. take account of all necessary legal, financial, procurement, technical and any other professional advice
- e. comply with the Members' Code of Conduct

PREVENTION OF CORRUPTION AND COLLUSION

All Officers have a duty in law to avoid any form of behaviour that might distort or restrict competition or call in to question the award of a Contract, and must comply with the Council's Code of Conduct concerning inducements or the issue or receipt of gifts, rewards or hospitality

All competitive procurement exercises and resultant contracts must as a minimum :

- a. identify and investigate for suspicious bidding patterns
- b. keep notes of all discussions with candidates.
- c. Signed conflict of interest forms signed by all buying parties involved in the procurement.

Officers are advised that any inappropriate behaviour that is deemed contrary to the Bribery Act 2010, the Fraud Act 2006, the Economic Crime and Corporate Transparency Act, any amending legislation all legislation relating to money laundering and the Council's relevant policies may be dealt with as a breach of the Council's standards of conduct. This may be treated as gross misconduct and give rise to action under the Council's disciplinary policy and procedure, such as dismissal. Such activity may also be reported to the Police.

CONFLICTS OF INTEREST

All Officers, Members and key stakeholders involved in a procurement exercise or the management of the resulting contract must declare in writing to Procurement any conflicts of interests, or perceived conflicts of interest relating to the procurement activity where they, or their spouse or civil partner, or person with whom they are living as husband and wife or civil partner or child of working age, have a vested interest that could conflict with the best interests of the Council as soon as it is identified.

Where a conflict, or perceived conflict of interest exists, Procurement, in consultation with Legal Services, shall consider any appropriate mitigation(s) to be put in place to ensure that such conflicts do not compromise the outcome of the procurement exercise, or whether such Officer, Member or key stakeholder must excuse themselves from the procurement.

Procurement shall maintain a conflict assessment of all declarations of interest and mitigations in a procurement exercise as notified by Officers, Members and key stakeholders and shall share the declarations of interest record with Legal Services and Democratic Services. Further advice and guidance can be obtained from Procurement.

COLLABORATIVE PROCUREMENTS

Where the Council takes the lead procurement role in a collaborative procurement these Rules shall apply, as a minimum. Where another public body takes the lead procurement role the Rules of the lead organisation and any Relevant Legislation shall apply.

If the Council does not take the lead role in the procurement, a copy of the procurement documents must be sent to the Corporate Procurement Officer and saved on the Teignbridge SharePoint. A procurement initiation form must be completed.

Where the Council enters into any formal collaborative procurement arrangements any related collaboration agreement must protect the Council to a level proportionate to the complexity, risk and value involved, whilst at the same time providing the basis for the collaborative approach and delivery of best value.

Where the Council enters or establishes a collaborative procurement, a collaboration agreement must be formalised in writing

PIPELINES

The Corporate Procurement Officer will request a pipeline of potential procurement activity from the procurement champions.

These requests will happen on a bi-yearly basis or should be updated as soon as any material changes occur, eg the award of significant grant. The purpose of this request is to ensure that the market are aware of any upcoming potential procurements and to reduce any barriers to SMEs.

SECTION 2: THE PROCUREMENT

Use of Frameworks, Open Frameworks and Dynamic Markets

Under these Contract Procedure Rules, if procuring through a framework, open framework or dynamic market, the rules under that framework, open framework or dynamic market will take precedence.

If you are establishing a framework, open framework or a dynamic market, please refer to appendix A at the end of this document.

Please note, that some frameworks will still fall under The Public Contracts Regulations 2015 whilst others will fall under The Procurement Act 2023. If you are unsure, please seek advice from The Procurement Officer.

PRELIMINARY MARKET ENGAGEMENT

Preliminary market engagement takes place before the publication of a tender or transparency notice and helps contracting authorities and the market prepare for the procurement. The reasons for doing a preliminary market engagement are as follows:

- a.) Developing the authorities requirements and approach to the procurement
- b.) Designing a procedure, conditions of participation or award criteria
- c.) Preparing the tender notice and associated tender documents
- d.) Identifying suppliers that may be able to supply the goods, services or works required
- e.) Identifying likely contractual terms
- f.) Building capacity among suppliers in relation to the contract being awarded

The format of the preliminary market engagement can be as follows:

- a.) Face to face/online presentations
- b.) Face to face/online webinars
- c.) Workshops
- d.) Site visits
- e.) One to one meetings – which must be evidenced and documented accurately

The preliminary market engagement should not be used as a means to tailor the procurement to a particular supplier.

Contracting authorities can engage with everyone who expresses an interest in a preliminary market engagement. However, it is also possible for a contracting authority to state in the preliminary market engagement notice how numbers will be reduced; for example, if there are too many respondents.

ESTIMATING THE CONTRACT VALUE

An Officer must estimate the value of a contract as the maximum amount it could expect to pay under the contract including, where applicable, amounts already paid.

The amount a contracting authority could expect to pay includes the following:

- the value of any goods, services or works provided by the

- contracting authority under the contract other than for payment;
- amounts that would be payable if an option in the contract to supply additional goods, services or works were exercised;
- amounts that would be payable if an option in the contract to extend or renew the term of the contract were exercised;
- amounts representing premiums, fees, commissions or interest that could be payable under the contract;
- amounts representing prizes or payments that could be payable to participants in the procurement.

In estimating the value of a contract, a contracting authority must take into account all of the facts which are material to the estimate and available to the authority at the time it makes the estimate.

A concession contract is a contract where the supplier and/or the council will be generating an income from the contract. When estimating a concession contract an Officer must estimate the value of a concession contract as the maximum amount the supplier could expect to receive under or in connection with the contract including, where applicable, amounts already received.

The amount a supplier could expect to receive includes the following: -

- (a) amounts representing revenue (whether monetary or non-monetary) receivable pursuant to the exploitation of the works or services to which the contract relates (whether from the contracting authority or otherwise);
- (b) the value of any goods, services or works provided by the contracting authority under the contract other than for payment;
- (c) amounts that would be receivable if an option in the contract to supply additional services or works were exercised;
- (d) amounts that would be receivable if an option in the contract to extpionend or renew the term of the contract were exercised
- (e) amounts representing premiums, fees, commissions or interest that could be receivable under the contract;
- (f) amounts received on the sale of assets held by the supplier under the contract.

ANTI-AVOIDANCE

Officers should not artificially sub divide or disaggregate procurements in order to evade the rules. There are exceptions to the rule where there are good reasons to not aggregate, for example, just because a contracting authority buys printers from a particular supplier, it does not necessarily mean that they should necessarily buy all of their toner, paper and servicing from that same supplier if they believe they can get a better deal elsewhere.

IR35 AND PROCURING CONSULTANTS

If you are seeking to engage personal service from an individual (sometimes referred to as a consultant, contractor or freelancer), you must consult your HRBP and ensure you follow HR guidance [Use of consultants/freelancers \(sharepoint.com\)](#). This will ensure we are compliant with HMRC tax legislation IR35, also known as 'Off-payroll working'; employment legislation (that workers receive their statutory right eg to sick pay, maternity leave etc); and also our contract with Comensura.

The off-payroll working or IR35 rules are designed to stop 'contractors' working as 'disguised employees', by taxing them at a rate similar to employment, and it affects all contractors who do not meet HMRC's definition of self-employed. As a Local Authority and end client it is us that must determine if IR35 applies and ensure correct tax and NI is deducted. This is a hot topic and currently subject to HMRC scrutiny and potentially significant financial penalty.

AWARD CRITERIA FOR CONTRACTS OVER £100,000

Officers must liaise with The Councils Climate Change Officer for all contracts over The Procurement Act 2023 threshold

Officers must include at least 10% social value in their award criteria for contracts over £100,000

WHERE A CONTRACT VALUE CANNOT BE ESTIMATED

Where it is not possible to estimate the value of a contract in accordance with the above, the value must be treated as being above the Threshold Value applicable to the Act.

PROCUREMENT THRESHOLDS

Threshold	Procedure
£0 - £29,999 (incl. VAT)	<p>Minimum of 1 written quotation e.g. via email demonstrating value for money. However, ideally you should seek 3 written quotations to fully demonstrate best value for money.</p> <p>Supply Devon can also be used as a tool to gather quotes https://www.applegate.co.uk/supply/devon</p> <p>Suppliers based in a TQ9, TQ11, TQ12, TQ13, TQ14, EX2, EX6 or EX7 postcode must be sought first. If no suppliers within these postcodes can fulfil the requirement, officers can then look to suppliers based in Devon. If there are no suppliers that can fulfil the requirement in Devon then please seek national suppliers.</p>
£30,000 - £99,999 (inc. VAT)	At least 3 like-for-like comparable quotes via a formal Request for Quotation (RFQ) procedure via the e-tendering system

	<p>(eTS) www.supplyingthesouthwest.org.uk or Supply Devon https://www.applegate.co.uk/supply/devon demonstrating best value for money.</p> <p>Suppliers based in a TQ9, TQ11, TQ12, TQ13, TQ14, EX2, EX6 or EX7 postcode must be sought first. If no suppliers within these postcodes can fulfil the requirement, officers can then look to suppliers based in Devon. If there are no suppliers that can fulfil the requirement in Devon then please seek national suppliers.</p> <p>If an officer receives less than 3 quotes then a waiver must be completed explaining why less than 3 quotes were received or sought</p>
£100,000 (incl. VAT) – The Procurement Act Threshold	A formal tender via the eTS demonstrating best value for money awarding to the most advantageous tender
Over The Procurement Act Threshold	A formal tender via the eTS demonstrating best value for money awarding to the most advantageous tender

ICT Contracts	Please refer to Strata Service Solutions Commercial Procedures
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CONDITIONS OF PARTICIPATION

The Procurement Officer will determine the conditions of participation in a competitive flexible procedure that are necessary to determine a supplier's eligibility, financial standing, and technical capacity. The conditions of participation shall be supplied to all Suppliers requesting to participate in the procurement. The Procurement Officer will notify the procurement champion/project lead regarding any excluded or debarred suppliers.

The Council shall treat an excluded supplier as ineligible and shall not select any supplier who is an excluded supplier.

The Procurement Officer shall only agree to the selection of a Supplier once they are objectively satisfied that the Supplier is not an excluded supplier and are satisfied about the supplier's:

- (a) eligibility;
- (b) suitability to pursue a professional activity;
- (c) economic and financial standing; and
- (d) technical or professional ability.

CLARIFICATIONS

Throughout the tendering process, suppliers must send all clarifications through the eTS. Officers must respond to all clarifications by the deadline stated within the tender documentation.

If any communication occurs outside of the eTS, officers must inform The Procurement Officer and all suppliers who are involved in the tender.

Clarifications must be downloaded and saved within sharepoint as a back up document storage.

EXEMPTION OF THE CONTRACT PROCEDURE RULES

No variation or exemption may be made which will result in a breach of the Procurement Legislation or threshold.

A variation or exemption may be granted on any one or more of the following grounds:

- (i) the nature of the market has been investigated and is considered to be such that a departure is justified because the Contract can only be performed by one supplier or best value as likely to be achieved by approaching one supplier; or
- (ii) the contract is required in circumstances of urgency that could not reasonably have been foreseen; or
- (iii) the Council has a contract with an organisation already engaged by the Council for similar and related works, goods or services and it is considered that there would be significant benefit to extend the existing contract to cover any additional requirement without exposing the Council to unacceptable risk; or
- (iv) where any Procurement Legislation or other legislation prevents a procurement process being followed; or
- (v) contracts for supplies, materials, services or works which are available only as proprietary or patented articles, services or works from one Supplier or supplier and for which a Senior Officer decides that there is no reasonable alternative available including contracts for repairs, or the supply of, parts to such articles or works; or
- (vi) the Council would incur or suffer increased costs or loss of income that would be significant compared to the overall Contract Value;
- (vii) Advantageous terms on insolvency - where the award of the public contract to a particular supplier will ensure terms particularly advantageous to the contracting authority due to the

fact that a supplier (whether or not the one to which the contract is to be awarded) is undergoing insolvency proceedings.

OPENING AND REGISTRATION OF TENDERS

- 8.1 All tenders received by the date and time set for receipt of tenders and which meet the requirements of Contract Procedure Rule 7.1(i) will be opened at the same time by the relevant Senior Officer or their nominee after the time set for their receipt.
- 8.2 The names of the tenderers and the amounts will be recorded in the eTS.

SECTION 3: EVALUATION AND AWARD

EVALUATION OF QUOTATIONS AND TENDERS

All members of the evaluation panel must complete a declaration of interest form to ensure they have no conflicts of interest when evaluating the tenders.

All members of the evaluation panel must read the evaluation guidance document.

Before evaluating tenders, the verifier must check that the tenders comply with any instructions to tenderers, pricing schedule and any other explicit requirements (e.g. submission of method statements).

For procurements over The Procurement Act threshold, the price will be redacted from the tender submissions and sent to the evaluation team. The price will be revealed to the evaluation team at the moderation meeting.

The criteria and weightings described in the Invitation to Tender must be used in scoring any tenders.

ALTERATIONS TO TENDERS

Errors identified before closing date

If an error is identified in the specification or other tender documentation before the closing date for the return of tenders, all tenderers are to be told about the error promptly and allowed to adjust their tenders.

Errors identified after closing date

If an error is identified in the specification or other tender documentation after the closing date for the return of tenders, all tenderers are to be told about the error and given the chance to either withdraw or amend their tender.

Where examination of tenders shows errors or discrepancies which would affect the tender figure in an otherwise successful tender the tenderer shall be told of the errors and discrepancies and given the chance of confirming or withdrawing his offer, or in the case of arithmetical errors, of correcting them. If the tenderer withdraws, the next tender in competitive order is to be examined and dealt with in the same way.

POST-TENDER NEGOTIATION

Post-tender negotiations for contracts below any relevant Procurement Legislation thresholds shall not be conducted where to do so might distort competition particularly with regard to price. If post-tender negotiations are necessary following the submission of a tender, then such negotiations must only be undertaken with the tenderer who has previously submitted the most advantageous tender as assessed against the tender evaluation method. Full and proper records shall be kept of any post-tender negotiations.

The Council may require a Supplier to provide information supplementing the information provided in their tender.

The Council may require a Supplier to clarify information relating to their eligibility, economic and financial standing or technical or professional ability or information included in their tender provided this does not discriminate either in favour or against the Supplier.

Where any further information or post-tender negotiation results in a fundamental change to the specification or contract terms the contract shall not be awarded but shall be re-tendered.

ABNORMALLY LOW BIDS

If a bid is deemed “abnormally low” by the evaluation team must investigate abnormally low bids and give the supplier an opportunity to demonstrate that it will be able to perform the contract for the contract price proposed before disregarding that tender. If the supplier does not satisfy the contracting authority, the tender may be disregarded.

An example of an abnormally low bid: -

Supplier A (abnormally low)	£100,000
Supplier B	£200,000
Supplier C	£210,000
Supplier D	£220,000
Supplier E	£240,000

MODERATION

The moderator will create an evaluation template and send it to the project team for completion.

When evaluating a tender, all evaluators must evaluate separately and send their evaluation sheets to the moderator. The moderator will then call a moderation meeting where all evaluators must attend and agree a consensus score for each scored question. The moderator should be the procurement officer where possible. Where this is not possible, the moderator must be separate to the evaluation team.

It is the responsibility of the moderator to keep a record of how the evaluation team have reached each consensus score. It is at this stage the moderator will reveal the pricing to the evaluation team.

INTENTION TO AWARD A CONTRACT

Once the evaluation team and the moderator have agreed a winner, letters will be drawn up sent out to all bidders.

Demonstrating best practice, an 8 working day standstill period will be observed. However, if an 8 working day standstill cannot be observed, a written justification must be written and sent to the procurement officer.

SECTION 4: CONTRACT MANAGEMENT

SIGNING OF CONTRACT

Total Value	Method of Completion	By
Purchase orders - up to £30,000	Electronic Order or Signature	Authorised officer
Contracts and licences up to £100,000 with the Council's Standard Terms and Conditions	Signature	<i>Business Lead / Business Manager</i> or Nominated Deputy (Rule 22.2.3)

Contracts and licences up to £100,000 with Non Standard Terms and Conditions	Signature	<i>Business Lead / Business Manager, on the advice of the Council's Solicitor</i>
Above £100,000	Signature or Sealing	<i>Business Lead or the Council's Solicitor</i>
Contracts under a framework or dynamic market		
ICT Contracts	Method of completion in line with limits above and involving Strata Service Solutions Ltd.	As above and involving Strata Service Solutions Ltd.

CONTRACT MANAGEMENT

An appropriate Officer will be appointed to act as the Contract Manager, to conduct regular reviews of the Supplier's performance against the requirements and key performance indicators specified in the Contract and monitor compliance against contractual obligations for the life of the Contract.

All contracts should be managed proportional to the contract risk and value. Officers must use the contract management matrix to determine this.

It is important that a good specification is drawn up to lead to a successful contract.

CONTRACT MODIFICATION

Changes will only be made where the Regulations, the Tender documents and / or the terms and conditions explicitly permit the change. With regards to NEC contracts these have allowable "compensation event" clauses.

TERMS AND CONDITIONS OF CONTRACTS

All contracts must be signed by the appropriate officer. If using standard terms and conditions, JCT, NEC or a contract under a framework, these do not need to be seen by legal. Anything outside of this needs to be reviewed by the council's solicitor.

APPENDIX A – ESTABLISHING A FRAMEWORK

It is envisaged that The Council will not be establishing any frameworks. Therefore, the following is appended to these contract procedure rules.

When establishing a framework, an Officer must estimate the value of a framework as the sum of the estimated values of all the contracts that have or may be awarded in accordance with that framework. The Officer must include the Corporate Procurement Officer when establishing a framework

In the case of a framework awarded under an open framework, the value of the framework is to be treated as including the value of all frameworks awarded, or to be awarded, under the open framework.