

CAMBRIDGE CITY COUNCIL

REPORT OF: Director of Resources

TO: Civic Affairs Committee

26/6/2013

WARDS: All

REVIEW OF CONTRACT PROCEDURE RULES (PART 4G OF THE CONSTITUTION)

1 INTRODUCTION

- 1.1 The current Contract Procedure Rules in the Council's Constitution (Part 4G) were written in 2007. Although they have been amended in parts since then a full review is now required. This work forms part of the Corporate Change Programme Bureaucracy Busting workstream.

2. RECOMMENDATIONS

- 2.1 To approve the changes to Part 4G of the Constitution, Contract Procedure Rules, as shown in appendix 1 to this report for implementation with effect from 1 November 2013.
- 2.2 If approved, to refer the Contract Procedure Rules to the next meeting of Council for ratification.

3. BACKGROUND

- 3.1. The Corporate Change Programme Bureaucracy Busting workstream has identified the Council's procurement processes as a key area of work. In order to carry out a root and branch review of the processes and documents that we use in our procurement activities it is necessary to start with a review of our internal Rules.

3.2. If adopted in the format in Appendix 1, the new Contract Procedure Rules (the Rules) will provide a basis for a lean approach to procurement because:

- Budget holders will take more direct responsibility for and control over their procurements;
- Under the new Rules the level of scrutiny and regulation that a project will receive will be based on an assessment of the risk inherent in the project (which will include the financial value) rather than purely on the basis of financial thresholds (which sometimes bear little relationship to wider project and commercial risks).
- Adopting a risk based approach means that once the budget for a project has been approved, officers will be able to get on with low/medium risk procurements quickly thereby reducing the delivery time for routine new projects. Member scrutiny will be reserved for high value/high risk projects.

4. THE NEW RULES

- 4.1. Prior to starting work on the new Rules we gave the opportunity to frequent users to identify the aspects of the existing rules that hindered their efficient delivery of projects. In summary, users wanted simplicity and clarity with any unnecessary bureaucracy stripped from the processes.
- 4.2. A mature draft of the Rules was sent to three high spend areas whose staff are familiar with the existing rules and who undertake regular procurements and to the internal contract auditors and contract lawyers. Further amendments were made to the document to reflect the feedback that we received. The new Rules have also been reviewed and approved by the Strategic Leadership team and the Corporate Change Board.
- 4.3. The Rules that are now being proposed embody a different approach to procurement in the Authority. In summary we have adopted a risk-based approach so that low/medium risk projects can be dealt with in departments with a minimum of fuss while high risk/high value projects attract a more rigorous approach requiring direct Member authority to issue tenders (and accept offers) and the early involvement of professional advisers within the Council.

This will ensure that limited resources are targeted at projects with a high risk profile where failure would have a significant impact on the services that we provide to the public.

4.4. The main changes to the existing Rules are:

A. Simplified spend levels.

These are:

Below £10,000 - a single quotation is required

£10,000 to £49,999 – a minimum of three written quotations is required

£50,000 to EU threshold/£300,000 for works contracts—public tenders are required

EU threshold and above – EU compliant tenders required

B. Positive steps to encourage local suppliers to compete for Council work by increasing the number of lower value contracts that are advertised on the Council's website and on Source Cambridgeshire (a local advertising portal aimed at the local supply market); and by recommending that at least one supplier based in Cambridge or immediately surrounding area should, wherever possible, be included in the list of suppliers invited to submit quotations.

C. Simplifying the approvals process by removing the requirement for Executive Councillor approval/pre-scrutiny for contracts below £300,000. At the moment, irrespective of the strategic importance of a project or the level of risk, all contracts valued over £75,000 require Executive Councillor approval following pre-scrutiny. This causes a significant bottle-neck.

The new Rules require only contracts over £300,000 (the key decision threshold) to be taken to Committee/Executive Councillor authority unless the relevant Director considers the project to be a high risk one (using the risk indicators on the matrix at Appendix 2).

D. Simplifying the requirements for Parent Company Guarantees(PCG) or Bonds.

At the moment PCGs are required for contracts over £250,000 and Bonds for contracts over £500,000. Often these guarantees are unnecessary and add delay and cost to contracts. Bonds and Guarantees have rarely been called upon since the requirement was introduced and add (in the case of Bonds) avoidable cost to projects. In future for contracts over £300,000 it will be for the relevant Director (in consultation with others as necessary) to assess the risk of the appointed contractor becoming insolvent or breaching a contract and to decide whether a PCG or Bond is necessary.

- E.** Simplifying the contract completion process. At the moment all contracts over £75,000 must be sealed by the Head of Legal Services. This gives rises to unnecessary work for the legal team and can lead to delays in getting the contract completed. In practice sealing is only required for a small number of contracts. Completing a contract by signing is satisfactory for a large proportion of the contracts that we enter into (and is generally quicker).

In future sealing will only be required for high value (over £300,000) or high risk contracts, building and works related contracts and a small number of other contracts. All other contracts can be signed either by the Head of Service (for contracts up to £50,000) or the relevant Director.

- F.** Simplified approach to exemptions from the Rules.

At the moment there are two ways in which permission can be sought to act outside the Rules - exemptions and waivers. Waivers in particular require a long paper trail which can sometimes cause delay. The distinction between the two types of permission has caused confusion among users and is really quite academic.

In future there will be one process to get permission to let a contract without full competition and this has been simplified.

- G.** Simplified presentation of the Rules to make them more accessible and easier to use.

We have provided an easy to follow summary sheet at the beginning of the document which points users to the key rules for each spend level, specifies the advertising that is required, identifies who can give authority to proceed with the procurement and who can sign the resulting contract. Navigating around the current rules has been a problem for some users.

The process for each spend level is self-contained within each section of the document so users will have a single source of information about the relevant spend level.

Hyperlinks to the Quick Procurement Reference Guides will provide ready access to simple guidance and template documents for each stage of the process. This will mean that users will be given the necessary tools to carry out low risk procurements with less need to reference limited specialist resources (although this will remain available to help officers that really need advice).

5. NEXT STEPS

If the Rules are approved in the format at Appendix 1, the next steps will be for the current processes, guides and template documents to be reviewed and “leaned” wherever possible. We will continue to work with the review group that has helped us with the new Rules to put systems in place that are user friendly.

6. CONSULTATIONS

6.1 The following groups have been consulted about the new draft Rules:

- Regular users of the procurement processes
- Internal Audit
- Legal services
- Strategic Leadership Team
- Corporate Change Board
- The Executive
- Chamber of Commerce policy unit (for the purposes of the attached Equalities Impact Assessment)

7. IMPLICATIONS

- (a) **Financial Implications** – there are no financial implications as a consequence of the introduction of a new set of Contract Procedure Rules.
- (b) **Staffing Implications** Regular users of the procurement processes and senior officers have been consulted about the Rules. Detailed guidance and training to enable users to understand and apply the new Rules will be provided before they come into effect in November 2013.
- (c) **Equal Opportunities Implications**
Please see the Equalities Impact Assessment at Appendix 3
- (d) **Environmental Implications**
The Climate Change Rating for these proposals is nil.
- (e) **Procurement**
Covered in the report.
- (f) **Consultation and communication**
Covered in the report

BACKGROUND PAPERS: The following are the background papers that were used in the preparation of this report:

Equalities Impact Assessment at Appendix 3

To inspect these documents contact Deborah Quincey, Strategic Procurement Adviser on extension 7400

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Cambridge City Council

PART 4G: CONTRACT PROCEDURE RULES FOR INCOME AND EXPENDITURE CONTRACTS

**Under Section 135
Local Government Act 1972**

ISSUED [DATE] BY DIRECTOR OF RESOURCES
CIVIC AFFAIRS [DATE]
COUNCIL DECISION [DATE]

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SUMMARY OF KEY CONTRACT PROCEDURE RULES

| Total Value | Competition | Advertising | Authority | Signature | Rules |
|---|--|---|---|---|--|
| Below £10,000 | 1 written Quotation required, and which must demonstrate value for money | None required | Director's delegated authority under scheme of Delegation (Part 3, Section 9 of the Constitution) – this has been delegated to Officers | Signed by Officer responsible for the purchase | Parts 2 & 4 |
| <u>QUOTATIONS</u> £10,000 to £49,999 | Minimum 3 competitive Quotations invited in writing, 1 from a local Supplier wherever possible | Council's website (mandatory) Source Cambridgeshire (recommended) or call-off from framework agreement | Director's delegated authority under scheme of Delegation (Part 3, Section 9 of the Constitution) – this has been delegated to Heads of Service | Signed by Head of Service or Officer authorised by him/her | Parts 2, 3, 5 & 8 |
| <u>NON-EU TENDERS</u> £50,000 to £173,934 (Services & Supplies) £4,348,350 (Works) | Minimum 4 Suppliers invited to Tender | Council's website (mandatory) Source Cambridgeshire (mandatory) or call-off from framework agreement | Below £300,000 – Director's delegated authority Over £300,000 (Key Decision) – Scrutiny Committee & Executive Councillor | Sealed by the Council (as appropriate); or Signed by Director; Contracts over £300,000 (Key Decision) must be sealed | Parts 2, 3, 6 & 8 |
| <u>EU TENDERS</u> Over £173,934 (Services & Supplies) £4,348,350 (Works) | Use Restricted/Open procedure (unless advised otherwise by Strategic Procurement) Minimum 5 Suppliers invited to Tender | OJEU advert (mandatory) Council's website (mandatory) Source Cambridgeshire (mandatory) or call-off from framework agreement | Below £300,000 – Director's delegated authority Over £300,000 (Key Decision) – Scrutiny Committee & Executive Councillor | Sealed by the Council (as appropriate); or Signed by Director and one other Officer; Contracts over £300,000 (Key Decision) must be sealed | Parts 2, 3, 7 & 8 |
| Framework Agreements | <u>NEW Framework:</u> Use Restricted/Open procedure (unless advised otherwise by Strategic Procurement) | <u>NEW Framework:</u> OJEU advert (mandatory) Council's website (mandatory) Source Cambridgeshire (mandatory) | New Frameworks and Call-off Contracts <u>below</u> £300,000 (Key Decision) – Director's delegated authority | New Frameworks must be sealed by the Council | Parts 2 – 8 depending on value See Rules 11 & 46 |
| | <u>EXISTING Framework:</u> Follow the procedure in the Framework Agreement for call-off Contracts and mini-competitions | <u>EXISTING Framework:</u> Not relevant | New Frameworks and Call-offs Contracts <u>over</u> £300,000 (Key Decision) – Scrutiny Committee & Executive Councillor | Call-off Contracts <u>below</u> £300,000 (Key Decision) are signed by Director Call-off Contracts <u>over</u> £300,000 (Key Decision) are generally sealed | |

| EU Thresholds 1 January 2012 – 31 December 2013 | |
|--|------------|
| Services contracts | £173,934 |
| Supplies contracts | £173,934 |
| Works contracts | £4,348,350 |

CONTRACT PROCEDURE RULES

Part 1 Introduction

See [Procurement Quick Reference Guide No.5a The Constitution and Basic Procurement Law \[insert hyperlink\]](#)

The Local Government Act 1972 requires the Council to have standing orders for how it enters into Contracts. These Contract Procedure 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.

The purpose of these Contract Procedure Rules is to set clear rules for the purchase of Works, Goods and Services for the Council and are intended to promote good purchasing practice, public accountability and to deter bribery and corruption, in which the probity and transparency of the Council's procurement process will be beyond reproach or challenge. Accordingly, these Contract Procedure Rules must be followed for **all** Contracts over £10,000 for the supply of Goods and Services to and the carrying out of Works for the Council and where Concessions are sought.

The Council is also subject to EU law with regard to public procurement, which requires all contract procedures, of whatever value, to be open, fair and transparent. These Contract Procedure Rules provide a basis for true and fair competition in Contracts, by providing clear and auditable procedures, which, if followed, will give confidence that the Council has a procurement regime that is fully accountable and compliant with EU law.

Following the Contract Procedure Rules will also help to ensure that the Council obtains value for money when it buys Works, Goods or Services.

These Contract Procedure Rules are to protect the interests of the Council, its officers and elected members and the communities of Cambridge.

Part 1 Definitions

| | |
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| Award a contract | means to accept an offer by a Supplier (following approval by the appropriate decision maker), as evidenced by a written Contract signed or sealed (as appropriate) by <u>both</u> parties and dated [hyperlink to Guide on Process for Award and Signature of Contracts] |
| Award Criteria | means the criteria by which the successful Quotation or Tender is to be evaluated |
| Bond | means an agreement whereby the surety or insurer under the bond pays out a sum of money (often 10% of the Contract value) in the event that the Supplier in a Contract commits a serious breach of contract (that cannot be remedied) or becomes insolvent |
| Business Case | means a written commercial assessment that provides the key facts and rationale for the proposed purchase. A template business case is in the 'Project Management Guidelines' on the intranet at para XXX |
| Central Purchasing Body | means another local authority or 'Contracting Authority' (e.g. ESPO or the Government Procurement Service) which acquires Supplies/Services or awards public contracts or concludes Framework Agreements intended for use by other public sector bodies |
| Collaboration | means a procurement undertaken jointly by the Council and one or more other public bodies with one of the bodies nominated as the lead authority |
| Concession | means a Contract where the payment or part-payment of the Services or Works consists of the grant by the Council of the right for the Supplier to exploit the Services or Works to be carried out |
| Contract | means the bargain or agreement between the Council and a Supplier for the supply of Works, Goods or Services in return for a valuable benefit (usually money) |

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| Contract Document | means the document setting out the terms and conditions of the Contract. A purchase order is a contract document. Although at law a verbal agreement may be a Contract, Contracts for the Council must always be supported by appropriate written contract documents |
| Contractor | see Supplier |
| Corporate Contract | means a Contract for the supply of Works, Goods or Services to the Council as a whole rather than for an individual service area, e.g. stationery. Corporate Contracts are listed on the intranet |
| Delegation | means any power, duty or authority delegated to a chief Officer by the Council as set out in Section 9 of Part 3 of the Council's Constitution |
| Director | means one of the Officers defined in Article 11 para 11.1.2 of Part 2 of the Council's Constitution |
| EU Regulations | means the Public Contracts Regulations 2006 as amended from time to time |
| EU Threshold | means the value in pounds sterling above which the EU Regulations apply to a proposed public contract. The thresholds are set out in the table above. |
| Executive Councillor | means one of the six Councillors who, together with the Leader, comprise the Executive and who have delegated authority to take decisions within their portfolio area |
| Exemption Notification Form | means the form [hyperlink] to be used when applying for an exemption under Rule 57 |
| Financial Regulations | means the rules at Part 4F of the Council's Constitution |
| Framework Agreement | means an agreement between one or more contracting authorities and one or more Suppliers which fixes the terms and conditions under which the Supplier will enter into one or more specific contracts with an authority during the term of the framework agreement, which should be no more than 4 years |
| Goods | see Supplies |
| Grant | means a voluntary transfer of money by the Council to an organisation in accordance with the guidance provided by the Head of Legal Services |
| Head of Service | see Officer |
| ITT | means an Invitation to Tender, and contains documents inviting Suppliers to tender for a Contract |

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| Key Decision | means a decision made in exercise of an executive function by any persons (including Officers) or body which meets one or more of the conditions set out in Article 12.3.2 in Part 2 of the Constitution. In relation to incurring expenditure or making savings, the value is £300,000 and above. |
| Monitoring Officer | means the officer designated under section 5 of the Local Government and Housing Act 1989 to monitor the Council's compliance with the law and rules of administration. The Head of Legal Services is the Monitoring Officer |
| Objectives | means the Council's objectives set out in the Annual Statement each year |
| Officer | means an individual who holds a post on the Council's establishment |
| OJEU | means the Official Journal of the European Union |
| Open Procedure | means a one stage tender process to select an appropriate Supplier. The procedure does not include a pre-qualification stage and allows any interested Supplier to submit a tender |
| Parent Company Guarantee | means the guarantee from a parent company to act in accordance with the Contract in the event that the subsidiary company fails to perform under the terms of the Contract with the Council |
| PQQ | means a pre-qualification questionnaire, which Suppliers have to complete to provide evidence of their legal, financial and technical capacity (including their health and safety and equal opportunities policies) to undertake a Contract for the Council |
| Project Appraisal | means a report to the Executive Councillor on the corporate template seeking approval for the appraisal as required by para 9.3.3 of Part 3 of the Council's Constitution of the financial and Business Case for the proposed procurement in accordance with any guidance issued by the Director of Resources |
| Quotation | means an offer by a Supplier to undertake a Contract of less than £50,000 in value |
| Restricted Procedure | means the process which allows any interested party to request to participate in the Tender procedure but only those invited by the public body following a pre-qualification stage may submit a Tender |
| RFQ | means a Request for Quotation, inviting Suppliers to quote for Works, Goods or Services below £50,000 in value |
| Selection Criteria | means the criteria used for the selection of Suppliers to be invited to tender |
| Services contract | means a Contract for the provision of services to the Council |

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| Specification | means a clear and comprehensive description of the Council's requirements. This will vary according to the value and complexity of the purchase |
| Sponsorship Rules | means the Council's approved rules that regulate the acceptance of sponsorship [hyperlink] |
| Standard Terms and Conditions | means the terms and conditions of contract used for purchase orders and Contracts under £50,000 |
| Supplier | means a supplier of Works, Goods or Services to the Council |
| Supplies contract | means a Contract for the sale or hire of goods to the Council and includes, where appropriate, installation of goods |
| Tender | means an offer by a Supplier in response to an ITT to undertake a Contract of £50,000 or more |
| Tender Record Book | means the book which records the receipt of tenders as maintained by the Central Post Scanning Facility |
| TUPE | means the Transfer of Undertaking (Protection of Employment) Regulations 2006 and any amendment, re-enactment or replacement of them. In general terms, the rules protect employees when their business is taken over by a new employer. |
| Vision Statement | means the Council's published statement from time to time of its aims and objectives |
| Works contract | means a Contract for the construction, repair or maintenance of built asset, e.g. a building or a road |

Part 2

All Contracts, whatever their value

1. APPLICATION AND SCOPE

Apply to:

- 1.1 All Contracts for the supply of Works, Goods or Services (including consultancy) to the Council, regardless of value.
- 1.2 Partnership and collaborative arrangements with other bodies
- 1.3 Concession Contracts

Do not apply to:

- 1.4 Contracts for the purchase or sale of any interest in land (including leasehold interests) for which the Financial Regulations and/or the Code for the Disposal of Land applies.
- 1.5 Contracts of employment for the appointment of individual members of staff, including members of staff sourced through employment agencies under a Corporate Contract.
- 1.6 Grant agreements, where the Council is giving an unconditional grant.
- 1.7 Sponsorship agreements regulated by the Sponsorship Rules.
- 1.8 Supply of Works, Goods and Services **by** the Council. However, the Head of Legal Services and Strategic Procurement must be consulted where the Council is contemplating this route.
- 1.9 Contracts procured in Collaboration with other local authorities where the Council is not the lead authority (subject to the necessary approvals having been obtained from the appropriate decision maker at the Council – see **Rules 21, 26, 35 and 45**). The Contract Procedure Rules of the lead authority shall apply. Assurance should be sought that the lead authority is in compliance with its own contract procedure rules.

2. COMPLIANCE **See Procurement Quick Reference Guide No.1 Probity in Procurement [insert hyperlink]**

- 2.1 Every Contract entered into on behalf of the Council must comply with
 - these Contract Procedure Rules;
 - the Council's Financial Regulations; and
 - all relevant UK and EU legislation.
- 2.2 Each Director is responsible for ensuring that his/her department complies with these Contract Procedure Rules
- 2.3 All members of staff and consultants engaged in any capacity to manage or supervise the procurement of any Works, Goods or Services for the Council **must** comply with these Contract Procedure Rules. The attention of Officers is drawn to the Council's Code of Conduct and Disciplinary Policy. **Non-compliance with these Rules may constitute grounds for disciplinary action.**
- 2.4 Generally, work must not begin under a Contract until the Contract Document has been signed by both parties (or, if the only Contract Document is a purchase order, until the purchase order has been issued) except with the approval of the Head of Legal Services.

3. CONFLICTS OF INTEREST See Procurement Quick Reference Guide No.1 Probity in Procurement [insert hyperlink]

- 3.1 All members of staff must avoid any conflict between their own interests and the interests of the Council. This is a requirement of the Council's Code of Conduct, which all employees of the Council have signed and agreed to be bound by and includes :
- not accepting gifts or hospitality from organisations or Suppliers that the Council has dealings with;
 - not working for organisations or Suppliers that the Council has dealings with;
 - notifying the Head of Legal Services and relevant Director if an Officer has links with (e.g. a family member or close friend works for) an organisation or Supplier who is tendering or quoting for a Contract with the Council or already has a Contract with the Council.
- 3.2 All consultants engaged to act on behalf of the Council must declare that :
- they will avoid any conflict between their own interests or those of any of their other clients and the interests of the Council; and
 - they will notify the relevant Director if they have any links with (e.g. a family member or close friend works for) an organisation or Supplier who is tendering or quoting for a Contract with the Council or already has a Contract with the Council.
- 3.3 If an elected member of the Council or a member of staff has an interest, financial or otherwise, in a Contract or proposed Contract, he/she must declare it in writing to the Director as soon as he/she becomes aware of the interest. An elected member or member of staff who has an interest in a Contract must not take part in the procurement or management of that Contract.

4. PREVENTION OF BRIBERY AND CORRUPTION See Procurement Quick Reference Guide No.1 Probity in Procurement [insert hyperlink]

- 4.1 A Contract may be terminated immediately, and any losses to the Council arising from the termination recovered from the Supplier, if the Supplier, or anyone acting on his behalf (with or without the Supplier's knowledge) :
- offers or promises or gives a financial or other advantage to any elected member of the Council, any member of staff or any consultant in connection with the Contract; or
 - requests, agrees to receive or accepts a financial or other advantage so that some action in relation to the Contract is performed improperly.
- A declaration to this effect must be included in the RFQ and ITT.
- 4.2 Any elected member of the Council, member of staff or consultant who becomes aware or has reason to believe that a Supplier or potential Supplier has committed one of the corrupt acts referred to in **Rule 4.1**, must report that to the Monitoring Officer and/or the Head of Internal Audit immediately.
- 4.3 A shareholding in a body not exceeding a total nominal value of £1000 or 1% of the nominal value of the issued share capital (whichever is less) is not a pecuniary interest for the purpose of this Rule.
- 4.4 The Chief Executive must maintain a record of all declarations of interest notified by elected members and Officers.

5. DUTIES OF DIRECTORS

- 5.1 To ensure that all Contracts within his/her department comply with Contract Procedure Rules, Financial Regulations and all applicable public procurement legislation. To plan the procurement of and manage Contracts within his/her department to ensure that Contracts
- deliver value for money;
 - are operated effectively, efficiently and economically; and
 - are operated within the terms of the Contracts themselves, so that the Council is not at risk of being in breach of Contract.
- 5.2 To ensure that Strategic Procurement are advised of any Contracts over £10,000 entered into by his/her department.
- 5.3 Another Director or Officer within his/her own department may be authorised to carry out his/her duties in respect of a particular Contract or Contracts generally.
- 5.4 To keep adequate records to show compliance with Contract Procedure Rules, Financial Regulations and all relevant legislation in his/her department.

6. CALCULATING THE CONTRACT VALUE See [Procurement Quick Reference Guide No.7 Calculating the estimated value of your Contract \[insert hyperlink\]](#)

- 6.1 The Director responsible for each Contract must have obtained budgetary approval equal to the estimated value for the Contract before any offers are sought.
- 6.2 The value of a Contract is the **total** amount that the Council expects to pay or receive for the Contract, including any Contract extension period and any options within the Contract. This may be a lump sum (e.g. £20,000) or a periodic payment (e.g. £4,000 per year for a 5 year Contract = £20,000). If the Contract is for an uncertain term (e.g. a “rolling” Contract), the value is the amount the Council expects to pay or receive over four years.
- 6.3 The Director must not try to avoid compliance with these Contract Procedure Rules or the EU Regulations by splitting a procurement for the same or similar Works, Goods or Services into smaller, separate Contracts. If it will achieve better value for money, Contracts for the same or similar Works, Goods or Services must be aggregated into a single Contract of greater value.

7. HIGH RISK OR COMPLEX CONTRACTS See [Procurement Quick Reference Guide No.3a Managing Risk in Procurement Projects \[insert hyperlink\]](#)

- 7.1 The Director must undertake a risk assessment in accordance with Council guidance [\[insert hyperlink to Procurement Risks document\]](#). Advice from Legal Services and Strategic Procurement must be sought for the following Contracts:
- with a value above the EU Threshold
 - that involve leasing arrangements (Accountancy team must also be consulted)
 - where the Supplier’s terms and conditions are to be used
 - potentially involving the transfer of staff under TUPE
 - where the Supplier may hold any money on behalf of the Council
 - for software or licences
 - where an advance payment to the Supplier is envisaged
 - that are high risk or complex in any other way as indicated by the risk assessment

8. GRANT FUNDING AND THIRD PARTY FUNDING

- 8.1 Officers must fully comply with these Rules in respect of Contracts funded by grants or other third party funding.
- 8.2 Advice must be sought from Legal Services to ensure that the Council's terms and conditions comply with the grant conditions imposed by the funder.
- 8.3 Officers are responsible for ensuring that any funding agreement has been completed satisfactorily before entering into any contractual commitments in respect of the grant with third parties.

9. DEEDS, SEALING AND SIGNING OF CONTRACTS [\[hyperlink to Guide on Process for Award and Signature of Contracts\]](#)

- 9.1 Generally, a Contract can be signed by hand by the Director or Head of Service. In the event of a dispute, the Council can make a claim under the Contract for up to 6 years.
- 9.2 Some Contracts must be executed as deeds and are sealed by the Council by affixing the Common Seal. In the event of a dispute, the Council can make a claim under the Contract for up to 12 years. This applies to the following Contracts:
- Contracts over £300,000 (Key Decision) – unless agreed otherwise by Legal Services
 - New Framework Agreements
 - All building and Works-related Contracts – unless agreed otherwise by Legal Services
 - Where there is no consideration (ie money or money's worth) by one party (e.g. Grant agreements, where the Council is paying a voluntary sum to an organisation but the organisation is not giving anything in return)
 - Other high risk Contracts (as advised by Legal Services) where a longer limitation period of 12 years is required.
- 9.3 Before a Contract can be sealed by the Council, the Officer must provide Legal Services with the relevant decision to award in writing from the appropriate decision maker [\[hyperlink to Decision to Award Form\]](#)

10. USE OF CORPORATE CONTRACTS

If there is a Corporate Contract for the supply of any Works, Goods or Services, the Director must utilise that Contract, rather than awarding a separate contract for his/her own department.

11. USE OF FRAMEWORK AGREEMENTS, COLLABORATIVE PROCUREMENT AND PURCHASING CONSORTIA

- 11.1 Officers must follow the Council's Principles for Partnership Working [\[insert hyperlink\]](#)
- 11.2 Strategic Procurement must be consulted before joining or buying from consortia, buying groups or Framework Agreements [\[insert hyperlink to Framework Guidance document\]](#)
- 11.3 Where the expenditure will be more than the EU Threshold, and for Works contracts over £300,000 (Key Decision), Legal Services must be consulted before joining or buying from a Framework Agreement.

- 11.4 To select a Supplier for a call-off Contract under a multi-Supplier Framework Agreement or to conduct a mini competition, the Director, in consultation with Strategic Procurement, must follow the procedure set out in that Framework Agreement.
- 11.5 Successful and unsuccessful Suppliers who participated in a mini-competition must be notified of the decision to award the call-off Contract. The notification letter must be sent by e-mail or fax.
- 11.6 Where a Contract is procured through another local authority or public body (acting as lead authority), the contract procedure rules of that organisation shall apply. Assurance should be sought that the organisation is in compliance with its own contract procedure rules
- 11.7 A decision at the appropriate level will still be required to award a Contract procured through the consortia, buying groups or Framework Agreements (see [Rules 21, 26, 35 and 45](#)). This applies both to Framework Agreements set up by the Council alone and to Framework Agreements set up by another public authority.

12. PURCHASING CARDS

- 12.1 A purchasing card can only be used where provided by the Director of Resources and used strictly in accordance with the Purchasing Card Guidance [\[insert hyperlink\]](#)
- 12.2 Any use of a purchasing card other than in accordance with these Rules could lead to disciplinary action

13. SOCIAL VALUE AND SUPPORTING LOCAL ENTERPRISES INCLUDING VOLUNTARY AND COMMUNITY ORGANISATIONS

- 13.1 Officers should use the Council's purchasing power to support local organisations and to add value to the local geographical area wherever possible where this provides equal or better value for money for the Council than any alternative.
- 13.2 Officers must set out the Council's support for the living wage in the RFQ, ITT and the Contract Document.
- 13.3 Where appropriate, Officers should incorporate questions in the RFQ or ITT and evaluate responses to any of the following that are relevant to the subject matter of the procurement:
- local economic benefits
 - social value benefits
 - local employment
 - local apprenticeships
 - any other benefit that supports the local economy and well-being of the City of Cambridge

Part 3

INITIAL PROCUREMENT STEPS

14. PRE-PROCUREMENT STEPS

- 14.1 The Officer must ensure that the complexity, risk and value of any proposed procurement over **£30,000** is considered fully by setting out the following issues in sufficient detail proportionate to the value of the procurement in a Business Case:
- taking into account the requirements of any review of their service
 - considering the need for the expenditure and its priority
 - defining the objectives of the procurement, undertaking appropriate consultation, and relating these to the Vision Statement and Objectives
 - assessing and managing the risks of the procurement (see [Rule 7](#))
 - considering the most appropriate method of procurement e.g. internal or external sourcing, partnering, Collaboration or use of purchasing consortia.
- 14.2 For Services Contracts over the EU Threshold, in addition to the issues in [Rule 14.1](#) the Business Case must:
- identify how the procurement might improve the economic, social and environmental well-being of Cambridge when seeking authority to invite tenders
 - take into account the Council's Vision Statement, Environmental Objectives and Strategic Objectives in Portfolio Plans when considering the social value priorities for the procurement.

15. AUTHORITY TO INVITE AND EVALUATE QUOTATIONS AND TENDERS AND TO AWARD CONTRACTS

Prior to commencing a procurement exercise, relevant approval must be obtained from the appropriate decision maker to invite and evaluate Quotations and Tenders and (if relevant) delegation to award Contracts – see [Rule 21, 26, 35 and 45](#) and [Procurement Quick Reference Guide No.9 Approvals and Scrutiny \[insert hyperlink\]](#)

16. PRE-TENDER MARKET RESEARCH AND CONSULTATION

See [Rules 24, 31 and 41](#).

17. ADVERTISING AND SELECTION OF SUPPLIERS

- 17.1 If a Contract (regardless of value) may be of interest to both local Suppliers or Suppliers in EU member states, a sufficiently accessible advertisement must be published. Generally, the greater the likely interest, the wider the advertising coverage should be.
- 17.2 An advertisement should be placed in the following:
- Council's website – mandatory for all Contracts over £10,000
 - Source Cambridgeshire – mandatory for all Contracts over £50,000 and recommended for all Contracts under £50,000

- OJEU – mandatory for Contracts above the EU Threshold
 - National specialist journals and/or websites – as considered appropriate by the Director
- 17.3 Officers are responsible for ensuring Suppliers are suitably assessed. The assessment process shall establish that potential Suppliers have sound:
- economic and financial standing
 - technical ability and capacity
 - insurance cover
- 17.4 The Selection Criteria will be either in the RFQ, PQQ or Open Procedure ITT and must be designed to establish the capability of the Supplier to undertake the work (ie look 'backwards' at the Supplier's qualities).
- 17.5 Once Suppliers have been selected, all Suppliers who have submitted a RFQ or PQQ must be informed of the outcome of the selection stage.
- 17.6 Where Suppliers are selected without an advertisement, the Officer must assess potential Suppliers against criteria that:
- are relevant to the purchase, ensure equality of treatment, and the outcome gives value for money
 - do not include non-commercial considerations or matters that discriminate against EU Suppliers
 - confirm their financial soundness (appropriate to the value and importance of the Contract)
 - confirm their technical ability and capacity (including any necessary qualifications and/or licences)
 - confirm suitable insurance cover

18. STANDARDS AND AWARD CRITERIA

- 18.1 Irrespective of the value of the procurement, potential Suppliers must comply with the relevant European or international standards that apply to the Works, Goods or Services. Strategic Procurement must be consulted if other, or exclusively British, standards are to be used.
- 18.2 Award Criteria must be designed to assess the suitability of the offer being made to the Council for the purchase being made (ie looking 'forward') and must be appropriate to the purchase and ensure equal treatment of Suppliers and value for money for the Council. The basic criteria shall be one of the following:
- "lowest price" where payment is made by the Council
 - "highest price" where payment is received by the Council (e.g. a Concession)
 - "most economically advantageous" where considerations other than price also apply e.g. "quality"
- 18.3 If "most economically advantageous" is used, it must be further defined by use of sub-criteria. Any sub-criteria must be relevant to the subject matter of the Contract. These may include, for example:
- price
 - service standards (including equality issues where appropriate)
 - quality of goods
 - operating costs
 - technical merit

- delivery dates
- cost effectiveness
- environmental considerations
- aesthetic and functional characteristics
- safety (including Safeguarding arrangements where appropriate)
- after-sales service
- technical assistance

18.4 Award Criteria must **not** include:

- non-commercial considerations
- matters which discriminate against Suppliers from the EU
- matters already evaluated during the selection process (Selection Criteria) – see [Rules 17.3 – 17.6](#)

18.5 Award Criteria and sub-criteria must be set out in the RFQ or ITT.

Part 4 – BELOW QUOTATION LEVEL

Contracts below £10,000

19. COMPETITION

The Director must obtain **one** oral Quotation confirmed in writing for Contracts below £10,000 in value, and must be able to demonstrate that the Council is receiving value for money. Where appropriate, relevant consultation must be carried out.

20. STANDARD TERMS AND CONDITIONS [\[hyperlink to standard terms and conditions\]](#)

20.1 All Contracts must be in writing and a purchase order must be issued for every Contract.

20.2 All Contracts below £10,000 shall clearly specify:

- what is being supplied
- the price
- when the Contract will be performed (start and end dates)
- provision to terminate the Contract
- that the Contract is subject to the Council's Standard Terms and Conditions unless Legal Services approve an alternative

21. AUTHORITY TO ENTER INTO A CONTRACT – below Quotation level

21.1 Under the scheme of Delegation, Directors have authority to enter into Contracts below the Quotation level, provided that a budget has been allocated for that expenditure. Directors have agreed to delegate this authority to Officers for Contracts below £10,000 in value.

22. SIGNATURE OF THE CONTRACT – below Quotation level

22.1 Contracts below the Quotation level must be signed for and on behalf of the Council by the Officer responsible for the Contract.

Part 5 - QUOTATIONS

Contracts from £10,000 to £49,999

See [Procurement Quick Reference Guide No.13a How to Request for a Quotation \[insert hyperlink\]](#)

23. COMPETITION

A minimum of **three** competitive Quotations in writing must be sought. Wherever possible, one Quotation must be from a local Supplier.

24. PRELIMINARY STEPS – Quotations

24.1 Prior to the issue of the RFQ, potential Suppliers may be consulted in general terms about the nature, level and standard of Works, Goods or Services, Contract packaging and other relevant matters provided this does not discriminate against any potential Supplier.

24.2 Officers must not seek or accept technical advice about the preparation of a Specification or RFQ from anyone who may have a commercial interest in them if this prevents equal treatment or distorts competition.

24.3 Advice should be sought from Strategic Procurement prior to any pre-Quotation market research or consultation.

25. STANDARD TERMS AND CONDITIONS [\[hyperlink to standard terms and conditions\]](#)

25.1 All Contracts must be in writing and a purchase order must be issued for every Contract as appropriate.

25.2 All Contracts shall clearly specify:

- what is being supplied
- the price and terms for payment by the Council
- when the Contract will be performed (start and end dates)
- that the Contract is subject to the Council's Standard Terms and Conditions unless Legal Services approve an alternative, e.g. because the procurement is unusual or represents a significant risk to the Council

25.3 The Supplier's terms and conditions must not be used unless agreed otherwise by Legal Services.

25.4 All Contracts must provide for payment by the Council after supply of the Works, Goods or Services or as agreed by the Director responsible. Exceptionally, and only with the consent of the Director of Resources, a Contract may provide for payment in advance

25.5 Terms and conditions must be issued with the RFQ.

26. AUTHORITY TO INVITE AND EVALUATE QUOTATIONS AND AWARD CONTRACTS [See Procurement Quick Reference Guide No.9 Approvals and Scrutiny \[hyperlink\]](#)

Directors have delegated authority under the scheme of Delegation as set out in Part 3, Section 9 of the Constitution to invite and evaluate Quotations and to award Contracts below £300,000 (Key Decision) provided that a budget has been allocated for that expenditure. Directors have agreed to delegate this authority to Heads of Service for Contracts from £10,000 to £49,999.

27. REQUEST FOR QUOTATION

- 27.1 Select at least **3** Suppliers to be invited to quote, at least one of whom should, whenever possible, be based in the City of Cambridge or immediately surrounding area. The shortlist must be selected from responses to an advertisement on the Council's own website (mandatory) and Source Cambridgeshire (recommended).
- 27.2 Be satisfied that the Suppliers invited to quote have the technical ability and capacity (including their health & safety and equal opportunities policies as appropriate) to undertake the Contract for the Council and this can only be demonstrated via a competition, unless the Suppliers are selected from a Framework Agreement or other purchasing consortia.
- 27.3 The RFQ must contain sufficient information about the Council's requirements in the form of a Specification to enable a competitive price to be obtained.
- 27.4 The RFQ must state whether Quotations will be evaluated on the basis of most economically advantageous to the Council or on the basis of price only.
- 27.5 The RFQ must state that the Council is not bound to accept any Quotation.
- 27.6 All Suppliers must receive the same RFQ at the same time and subject to the same conditions, and this includes any subsequent information.
- 27.7 Allow sufficient time for submission of Quotations. The recommended minimum is **10** working days from the date of the RFQ, but this may vary depending on the urgency or complexity of the requirement.
- 27.8 The Head of Service shall keep a record of:
- the criteria used to select Suppliers to provide a Quotation
 - details of Suppliers requested to provide a Quotation
 - any checks carried out in respect of Suppliers
 - the basis of selection of a Quotation, ie most economically advantageous or lowest price – see **Rule 18 and Procurement Quick Reference Guide No.14 Evaluation of Tenders or Quotations** [\[insert hyperlink\]](#)

28. AWARD OF THE CONTRACT – Quotations

As soon as practicable after the decision to award the Contract has been made, the Head of Service must write to inform the successful and unsuccessful Suppliers of that decision. [\[hyperlink to standard letters\]](#)

29. SIGNATURE OF THE CONTRACT – Quotations

- 29.1 Contracts for Quotations must be signed for and on behalf of the Council by the Head of Service responsible for the Contract or an Officer authorised by him/her.
- 29.2 Unless ordered using a purchase order, the work under the Contract must not start until the Contract has been signed by both parties, unless agreed in advance with Legal Services. See guide on Process for Award and Signature of Contracts [\[insert hyperlink\]](#)

Part 6 – NON-EU TENDERS

Contracts from £50,000 to the EU Threshold

See Procurement Quick Reference Guide No.13c Inviting a Tender (ITT) [\[insert hyperlink\]](#)

30. COMPETITION

Competitive Tenders must be sought for Contracts of £50,000 or more in value.

31. PRELIMINARY STEPS – Non-EU Tenders

- 31.1 Prior to the issue of the ITT, potential Suppliers may be consulted in general terms about the nature, level and standard of Works, Goods or Services, Contract packaging and other relevant matters provided this does not discriminate against any potential Supplier.
- 31.2 Officers must not seek or accept technical advice about the preparation of a Specification or ITT from anyone who may have a commercial interest in them if this prevents equal treatment or distorts competition.
- 31.3 Advice should be sought from Strategic Procurement prior to any pre-tender market research or consultation.

32. SPECIFICATION – Non-EU Tenders **See Procurement Quick Reference Guide No.10 Specification Writing [insert hyperlink]**

- 32.1 A clear and comprehensive Specification of the Council's requirements must be prepared with regard to the Works, Goods or Services to be supplied.
- 32.2 The Specification should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the Director to see whether the Council's requirements are being met by the Supplier.
- 32.3 If an Officer is intending to allow Consultants who assist in the preparation of a Specification to be invited to tender for the Contract, advice must be sought from Strategic Procurement and Legal Services.

33. TERMS AND CONDITIONS – Non-EU Tenders

- 33.1 The Director must use the Council's standard contract for Contracts below the EU Threshold for inclusion in the ITT **[insert hyperlink]** which shall clearly specify:
- the price and terms for payment by the Council; and
 - when the Contract will be performed (start and end dates).
- 33.2 The Supplier's terms and conditions must not be used unless agreed otherwise by Legal Services.
- 33.3 All Contracts must provide for payment by the Council after supply of the Works, Goods or Services (which includes performance related milestones). Exceptionally, and only with the consent of the Director of Resources, a Contract may provide for payment in advance.
- 33.4 Terms and conditions must be issued with the ITT.

34. BONDS AND PARENT COMPANY GUARANTEES

Refer to **Rule 44**.

35. AUTHORITY TO INVITE AND EVALUATE TENDERS AND AWARD CONTRACTS – Non-EU Tenders See **Procurement Quick Reference Guide No.9 Approvals and Scrutiny** [[insert hyperlink](#)]

35.1 Directors have delegated authority under the scheme of Delegation as set out in Part 3, Section 9 of the Constitution to invite and evaluate Tenders and to award Contracts below £300,000 (Key Decision) provided that a budget has been allocated for that expenditure.

35.2 For Contracts of £300,000 (Key Decision) and above, consent from the relevant Scrutiny Committee and Executive Councillor to invite and evaluate Tenders (and, if appropriate, delegation to award Contracts) must be obtained before any procurement documents are issued. In order to get a report to the relevant Scrutiny Committee, the Officer must publish a short description of the proposed procurement on the Council's Forward Plan at least 3 months prior to the relevant Committee meeting. In order to obtain authority, a budget must have been allocated for the proposed expenditure.

36. TENDER PROCEDURE – Non-EU Tenders

36.1 The Tender procedure must be followed when letting Contracts of £50,000 or more in value.

36.2 Select a shortlist of at least **4** Suppliers to be invited to tender from responses to an advertisement on the Council's own website and Source Cambridgeshire (both mandatory).

36.3 To ensure genuine competition, a minimum number of **4** Suppliers must be invited to tender. If there are fewer than **4** expressions of interest in being invited to tender or fewer than **4** satisfactory PQQs (where a PQQ is used), then the minimum number of Suppliers to be invited to tender may be reduced as appropriate. Strategic Procurement must be consulted if there is only one remaining suitable Supplier.

36.5 The ITT [[insert hyperlink](#)] must include :

- instructions to tenderers;
- the Council's Specification;
- the terms and conditions of Contract;
- a form of tender for completion by the tenderer. The form of tender must acknowledge that the Council is not obliged to accept the lowest or any tender. The form of tender must also state that the tender will remain open for acceptance by the Council for a period of **90 days** after the last date for receipt of tenders, or such other period as appropriate;
- if appropriate, a pricing document for completion by the tenderer; and
- if the Contract may involve the transfer of employees under TUPE, from the Council to a Contractor or from one Contractor to another, all relevant information relating to those employees in an anonymised format **provided** tenderers have signed a confidentiality undertaking. It is the responsibility of the Director to obtain full and accurate employee information in sufficient time to include it in the ITT.

36.6 Sufficient time must be allowed for submission of tenders. The minimum is **20** working days from the date of the ITT, but this may vary depending on the urgency or complexity of the requirement and, if less than 20 working days, is subject to prior approval from the Director responsible for the Contract.

36.7 Amendments to ITT documents, made after the invitations have been sent out, must be clearly headed "**ITT Amendment**" and sent to all Suppliers who have been invited to tender. One or more amendments must be numbered consecutively. Amendments

must be sent out in sufficient time to allow Suppliers to adjust their Tenders before close of Tenders. If necessary, the tender period must be extended to allow for this.

- 36.8 Officers are permitted to provide clarification of an ITT to tenderers but any clarifications must be issued to all tenderers at the same time.
- 36.9 Until the Contract has been awarded (ie signed or sealed, as appropriate, and dated), the information obtained at the opening of tenders is confidential to those involved in the opening process and those directly involved in evaluation of the Tenders. Confidentiality must be maintained and any breach reported to the Council's Monitoring Officer.
- 36.10 On receipt, the Tenders must be:
- date stamped
 - marked with the time of receipt on the Tender envelope
 - initialled by the receiving representative of the Director of Resources
 - stored safely to guard against any amendment of its contents
 - logged immediately in the Tender Record Book
- 36.11 The Director of Resources must ensure that all Tenders are opened at the same time once the tender period has ended. A representative of the Director of Resources and the Officer or his/her representative must be present at the Tender opening.
- 36.12 A tender that does not comply with the instructions to tenderers or is conditional must be treated as non-compliant and rejected. **Non-compliant tenders must not be evaluated unless the Strategic Procurement Adviser advises otherwise.**
- 36.13 Upon opening, the Officer must record in the Tender Record Book:
- the Works, Goods or Services to be supplied;
 - the name of each tenderer;
 - the amount of each Tender or such other information as may be relevant to the procurement;
 - the date and time of opening of each Tender;
 - the names of all persons present at the time of opening.
- The Director's representative must certify the record as correct.
- 36.14 Negotiations with Suppliers who have tendered for a Contract are not permitted by EU law and are therefore unlawful, regardless of whether the value of the Contract is above or below the EU Threshold. After Tenders have been opened, **and before the Tenders have been scored**, the Officer, in consultation with Strategic Procurement may require one or more Tenders to be clarified by the tenderer. Clarification questions and answers must be fully documented and the relevant clarifications incorporated in the Contract Document. Clarifications must not make any substantive changes to the Tender. Tenders must not be scored until clarifications have been completed.
- 36.15 A Supplier's Tender is his offer to the Council, which the Council may accept as it stands. Once submitted, a tenderer cannot alter the amount of the Tender or any of his Tender proposals. If a tenderer attempts to alter his tender after the last date for receipt of Tenders, he must be given the opportunity to stand by or withdraw his original Tender. The Council may correct an obvious arithmetical error e.g. £2000 + £2000 = £5000 can be corrected to £4000.

37. EVALUATION OF NON-EU TENDERS – see **Rule 18** and **Procurement Quick Reference Guide No.14 Evaluation of Tenders or Quotations [insert hyperlink]**

- 37.1 Confidentiality of Tenders and the identity of tenderers must be maintained at all times and information about one tenderer's response must not be divulged to another tenderer.
- 37.2 The Head of Legal Services must be consulted before responding to a Freedom of Information request regarding a current or recent tendering process.
- 37.3 Tenders should normally be evaluated on the basis of 'most economically advantageous' to the Council. The basis of evaluation must be stated in the ITT. If the basis of evaluation is 'most economically advantageous', the criteria for evaluation must be set out in the ITT with the weightings to be given to them.
- 37.4 If the basis of evaluation is price only, only the lowest compliant Tender (if payment is to be made **by** the Council) or the highest compliant Tender (if payment is to be made **to** the Council) may be accepted.
- 37.5 If the basis of evaluation is 'most economically advantageous', an appropriate evaluation panel must consider the Tenders and evaluate them against the criteria and weightings stated in the ITT. The evaluation panel may include service users and/or external consultants but must not include elected members of the Council.
- 37.6 All valid Tenders received must be evaluated, and in accordance with the published Award Criteria.
- 37.7 Tenders must be accepted in accordance with the outcome of the evaluation or not at all.
- 37.8 If no suitable Tenders are received, Strategic Procurement must be consulted as to how the Works, Supplies or Service concerned may be procured.
- 37.9 A Tender that exceeds the budget allocated may only be accepted by the Director if it is within **5%** or less of the approved budget from the Business Case and approval to the additional expenditure is obtained from the Director of Resources **before** the Tender is accepted.
- 37.10 If a Tender exceeds the budget allocated by more than **5%** then either
- a fresh Tender exercise is undertaken; or
 - the Director must obtain the approval of the relevant Executive Councillor and the Director of Resources to accept the Tender.
- 37.11 For Concession Contracts, **Rules 37.9** and **37.10** shall apply if the Tender received is less than the Contract value by **5%** or more
- 37.12 If all valid Tenders are too high to be accepted and there is no further allocation of additional funds, the Director may delete part of the Specification and ask all Suppliers invited to tender to re-price and then re-submit their Tenders. In such cases, the Director must set out the deletion in a bill of reductions or other document, to be incorporated into the Contract Document.
- 37.13 If the Contract will result in the application of the TUPE, the Director must ensure that the successful tenderer has dealt with all employee matters including pay, conditions of employment and pension rights and benefits in his Tender and will give all appropriate indemnities in the Contract. Human Resources and Legal Services must be consulted early in all such cases.
- 37.14 The Director is responsible for producing a full tender report for the purposes of an audit trail and record keeping, which should :
- confirm that the Tender procedure has complied with these Contract Procedure Rules;
 - list the tenderers invited and Tenders received;
 - list the evaluation criteria and weightings; and

- show the scoring of Tenders on evaluation.

If the Director is not the decision maker, the Tender report must be sent to the decision maker before the decision to award the Contract is made.

38. AWARD OF THE CONTRACT – Non-EU Tenders

38.1 Refer to [Rule 35](#).

38.2 As soon as practicable after the decision to award the Contract has been made, the Director must write to inform the successful and unsuccessful tenderers of that decision.

38.3 If an unsuccessful Supplier requests in writing reasons for the decision, the Officer must comply with the Council's corporate response standard but in any event a written response must be provided within **10** days of the request.

39. SIGNATURE OF CONTRACT – Non-EU Tenders

39.1 The Supplier must not be allowed to begin work on the Contract until the Contract Document has been signed or sealed as appropriate by both parties. See guide to Process for Award and Signature of Contracts [\[insert hyperlink\]](#)

39.3 Contracts for Tenders must be signed for and on behalf of the Council by the Director responsible for the Contract personally (unless advised by Legal Services that the Contract should be sealed due to the risk or complexity of the Contract).

39.4 An award letter or letter of intent must not be used instead of a Contract (unless agreed otherwise by Legal Services).

39.5 Works Contracts are generally executed as deeds, by affixing the Council's Common Seal (unless agreed by Legal Services that the Contract can be signed).

Part 7 – EU TENDERS

Contracts over the EU Threshold

See [Procurement Quick Reference Guide No.13c Inviting a Tender \(ITT\) \[insert hyperlink\]](#)

40. COMPETITION

Competitive Tenders must be sought for Contracts over the EU Threshold.

41. PRELIMINARY STEPS – EU Tenders

41.1 Strategic Procurement must be consulted to determine the most appropriate method of conducting the procurement, taking into account the principles in the [[“Guide” – insert hyperlink](#)].

41.2 At the same time as consulting Strategic Procurement, full instructions must be given to Legal Services to draft or approve terms and conditions of Contract.

41.3 A business case must be prepared, which must include provision for resources for the management of the Contract for its entire duration.

42. SPECIFICATION – EU Tenders [See Procurement Quick Reference Guide No.10 Specification Writing \[insert hyperlink\]](#)

42.1 A clear and comprehensive Specification of the Council's requirements must be prepared with regard to the Works, Goods or Services to be supplied.

42.2 All Works, Goods and Services must be specified by reference to European standards, or national standards if no European standards are set. Named products or manufacturers must not be specified. Although the words “or equivalent” may be used, it is preferable to describe the features of a particular product.

42.3 The Specification should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the Director to see whether the Council's requirements are being met by the Supplier.

42.4 All necessary professional and technical advice and assistance must be obtained in preparing the Specification, to ensure a comprehensive document that expresses the Council's requirements and protects its interests. If it is intended to allow Consultants who assist in the preparation of a Specification to be invited to tender for the Contract, advice must be sought from Strategic Procurement and Legal Services. The people who prepare the Specification should, as a rule, be part of the panel that will evaluate the Tenders.

42.5 Generally, the OJEU contract notice or other advertisement inviting Tenders must not be published until the Specification has been drafted.

43. TERMS AND CONDITIONS – EU Tenders

43.1 Full instructions must be given to Legal Services at the earliest opportunity to draft the terms and conditions of contract or to approve standard terms and conditions of contract e.g. JCT.

43.2 The Director must :

- Require the Supplier to maintain appropriate and adequate levels of insurance cover, in consultation with the Council's Support Services Manager, for (as appropriate) employer's liability, public liability, products liability, all risks/contract

works and professional indemnity insurance. Unless otherwise agreed by the Support Services Manager, the minimum levels of cover shall be

- £5 million for employer's liability insurance
- £5 million for public liability and products liability insurance
- £2 million for professional indemnity insurance.

All policies must contain an 'indemnity to principal' clause (ie the Supplier's insurance policy will be extended to the Council as if the Council was the insured person).

- Ensure that the Supplier holds the required insurance cover at the start of the Contract and renews the policies as necessary during the Contract period.
- 43.3 All Contracts, whatever their value, must provide for payment by the Council after supply of the Works, Goods or Services (which includes performance related milestones). Exceptionally, and only with the consent of the Director of Resources, a Contract may provide for payment in advance.

44. BONDS AND PARENT COMPANY GUARANTEES

- 44.1 For every Contract of £300,000 or more in value, the Director must decide, taking appropriate advice, whether the circumstances justify the Council requiring the Supplier to provide a Parent Company Guarantee. If the Supplier does not have a parent company or the parent company is not approved under **Rule 44.4**, the Supplier may be required to provide a Bond.
- 44.2 If a Bond is required, the amount of the Bond must be not less than **10%** of the total Contract value or the whole of the annual Contract value, unless agreed otherwise by the Director of Resources.
- 44.3 A Bond may be required where the Council intends to make staged payments in advance of receiving the whole of the deliverable under the Contract and there is concern about the financial stability of the provider.
- 44.4 The parent company or the surety for a Bond must be approved by the Director of Resources.
- 44.5 All Parent Company Guarantees and Bonds must be in a form approved by Legal Services. A specimen of the Parent Company Guarantee and Bond must be included in the ITT.

45. AUTHORITY TO INVITE AND EVALUATE TENDERS AND AWARD CONTRACTS – EU Tenders [See Procurement Quick Reference Guide No.9 Approvals and Scrutiny \[insert hyperlink\]](#)

- 45.1 Directors have delegated authority under the scheme of Delegation as set out in Part 3, Section 9 of the Constitution to invite and evaluate Tenders and to award Contracts below £300,000 (Key Decision) provided that a budget has been allocated for that expenditure.
- 45.2 For Contracts of £300,000 (Key Decision) and above, consent from the relevant Scrutiny Committee and Executive Councillor to invite and evaluate Tenders (and, if appropriate, delegation to award Contracts) must be obtained before any procurement documents are issued. In order to get a report to the relevant Scrutiny Committee, the Officer must publish a short description of the proposed procurement on the Council's Forward Plan at least 3 months prior to the relevant Committee meeting. In order to obtain authority, a budget must have been allocated for the proposed expenditure.

45.3 The OJEU contract notice or other advertisement inviting Tenders must not be published until the Director or Scrutiny Committee/Executive Councillor (as appropriate) has made the decision to invite and evaluate Tenders and the decision has been recorded in writing.

46. ESTABLISHING A NEW FRAMEWORK AGREEMENT

46.1 Legal Services and Strategic Procurement must be consulted before setting up a new Framework Agreement for the Council.

46.2 Prior to commencing a Tender exercise to set up a new Framework Agreement, approval must be obtained from the relevant decision maker – see [Rule 45](#).

46.2 A Framework Agreement must not be longer than **4 years** unless specifically agreed with the Head of Legal Services.

46.3 A Framework Agreement may be entered into with a single Supplier. However, a multi-Supplier Framework Agreement must be entered into with a minimum of **3** Suppliers.

47. TENDER PROCEDURE – EU Tenders See [Procurement Quick Reference Guide No.13c Inviting a Tender \(ITT\) \[insert hyperlink\]](#)

47.1 The Tender procedure must be followed, in consultation with Strategic Procurement and Legal Services, when letting Contracts above the EU Threshold or when setting up a new Framework Agreement.

47.2 The Director must first establish whether the EU Regulations apply to a proposed Contract and if so the appropriate EU Regulations must be followed (as defined in consultation with Legal Services and/or Strategic Procurement).

47.3 Sufficient time should be built into the Tender procedure to prepare the Specification and terms and conditions of Contract. This will enable a smooth, timely and lawful Tender procedure.

47.4 The selection of Suppliers to be invited to tender for the Contract must follow the requirements of the EU Regulations. The Contract must be advertised in OJEU. OJEU notices must only be placed by Strategic Procurement (or, where used, a Central Purchasing Body such as ESPO), in consultation with Legal Services. Directors or consultants must not place OJEU notices themselves.

47.5 Whether or not the EU Regulations apply to a proposed Contract, a sufficient number of Suppliers must be invited to tender to ensure genuine competition. The minimum number is **5**. If there are fewer than **5** expressions of interest in being invited to tender or fewer than **5** satisfactory PQQs, then the minimum number of Suppliers to be invited to tender may be reduced, with the approval of Strategic Procurement and Legal Services.

47.6 Where a PQQ is used, as soon as possible after the selection of the shortlist of Suppliers to be invited to tender, Officers must write to any Suppliers who submitted a PQQ but who were not selected, informing them why they were not selected. If a Supplier who was not selected asks for further information on why he was unsuccessful, the Director must make arrangements for the de-briefing within **5** days.

47.7 The ITT must include :

- the criteria and sub-criteria against which Tenders will be evaluated, the weightings that will be attached to the criteria and sub-criteria and the method of scoring to be used;

- instructions to tenderers;
 - the Council's Specification;
 - the terms and conditions of Contract, in a form drafted by or approved by Legal Services;
 - a form of tender for completion by the tenderer. The form of tender must acknowledge that the Council is not obliged to accept the lowest or any tender. The form of tender must also state that the tender will remain open for acceptance by the Council for a period of **90 days** after the last date for receipt of tenders, or such other period as appropriate.
 - if a performance Bond is required, the form of tender must require the tenderer to state the amount, if any, by which his price will be increased for the provision of the Bond;
 - if appropriate, a pricing document for completion by the tenderer; and
 - if the Contract may involve the transfer of employees, from the Council to a Contractor or from one Contractor to another, all relevant information relating to those employees in an anonymised format **provided** tenderers have signed a confidentiality undertaking. It is the responsibility of the Director to obtain full and accurate employee information in sufficient time to include it in the ITT.
- 47.8 The time allowed for submission of PQQs and Tenders must comply with EU Regulations.
- 47.9 Amendments to ITT documents, made after the invitations have been sent out, must be clearly headed "**ITT Amendment**" and sent to all Suppliers who have been invited to tender. One or more amendments must be numbered consecutively. Amendments must be sent out in sufficient time to allow Suppliers to adjust their Tenders before close of Tenders. If necessary, the Tender period must be extended to allow for this.
- 47.10 Until the Contract has been awarded, the information obtained at the opening of Tenders is confidential to those involved in the opening process and those directly involved in evaluation of the Tenders. Confidentiality must be maintained and any breach reported to the Council's Monitoring Officer.
- 47.11 On receipt, the Tenders must be:
- date stamped
 - marked with the time of receipt on the Tender envelope
 - initialled by the receiving representative of the Director of Resources
 - stored safely to guard against any amendment of its contents
 - logged immediately in the Tender Record Book
- 47.12 The Director of Resources must ensure that all Tenders are opened at the same time once the tender period has ended. A representative of the Director of Resources and the Officer or his/her representative must be present at the Tender opening.
- 47.13 A Tender that does not comply with the instructions to tenderers or is conditional must be treated as non-compliant and rejected. **Non-compliant Tenders must not be evaluated unless the Strategic Procurement Adviser advises otherwise.**
- 47.14 Upon opening, the Officer must record in the Tender Record Book:
- the Works, Goods or Services to be supplied;
 - the name of each tenderer;
 - the amount of each Tender or such other information as may be relevant to the procurement;

- the date and time of opening of each Tender;
- the names of all persons present at the time of opening.

The Director's representative must certify the record as correct.

48. CLARIFICATION AND NEGOTIATION – EU Tenders

- 48.1 Negotiations with Suppliers who have tendered for a Contract through an Open or Restricted Procedure are not permitted by EU law and are therefore unlawful. After Tenders have been opened, **and before the Tenders have been scored**, the Director **must** consider whether advice is required from Strategic Procurement or Legal Services to determine whether one or more Tenders need to be clarified by the tenderer.
- 48.2 Clarifications must be designed to ensure that the Council has fully understood the Tender submitted. Clarifications must not make any substantive changes to the Tender.
- 48.3 Clarification questions and answers must be fully documented in a form approved by Legal Services and the relevant clarifications incorporated in the Contract Document.
- 48.4 Tenders must not be evaluated and scored until clarifications have been completed.

49. EVALUATION OF TENDERS – EU Tenders [Procurement Quick Reference Guide No.14 Evaluation of Tenders or Quotations \[insert hyperlink\]](#)

- 49.1 Tenders should normally be evaluated on the basis of 'most economically advantageous' to the Council. Exceptionally, Tenders may be evaluated on the basis of price only. The basis of evaluation must be stated in the OJEU contract notice and in any other advertisement.
- 49.2 If the basis of evaluation is price only, only the lowest compliant Tender (if payment is to be made **by** the Council) or the highest compliant Tender (if payment is to be made **to** the Council) may be accepted.
- 49.3 If the basis of evaluation is 'most economically advantageous', an appropriate evaluation panel must consider the Tenders and evaluate them against the criteria and weightings stated in the ITT. The evaluation panel may include service users and/or external consultants but may not include elected members of the Council. The evaluation panel should, as a rule, comprise those people who have had significant input into drawing up the Specification.
- 49.4 All valid Tenders received must be evaluated. Each member of the evaluation panel must make full notes of his/her evaluation and pass the notes to the project lead for retention as part of the record of the procurement.
- 49.5 Tenders must be accepted in accordance with the outcome of the evaluation or not at all.
- 49.6 If no suitable Tenders are received, the Director must consult Strategic Procurement as to how the Works, Supplies or Service concerned may be procured.
- 49.7 A Tender that exceeds the budget allocated may only be accepted by the Director of Resources if it is within **5%** or less of the original estimate and approval to the additional expenditure is obtained from the Director of Resources **before** the Tender is accepted.
- 49.8 If a Tender exceeds the budget allocated by more than **5%** then either
- a fresh Tender exercise is undertaken; or

- the Director must obtain the approval of the relevant Executive Councillor and the Director of Resources to accept the Tender.
- 49.9 If the Contract will result in the application of the TUPE, the Director must ensure that the successful tenderer has dealt with all employee matters including pay, conditions of employment and pension rights and benefits in his Tender and will give all appropriate indemnities in the Contract. Human Resources and Legal Services must be consulted early in all such cases.

50. AMENDMENTS AND ALTERATIONS TO TENDERS – EU Tenders

- 50.1 A Supplier's Tender is his offer to the Council, which the Council may accept as it stands. Once he has submitted his Tender and it has been clarified if necessary, a tenderer is not permitted to make any alteration to the amount of the Tender or any of his Tender proposals.
- 50.2 If a tenderer attempts to alter his offer after the last date for receipt of Tenders, he must be given the opportunity to stand by or withdraw his original offer. Correction of an obvious arithmetical error in a fixed price Tender, may be accepted e.g. £2000 + £2000 = £5000 can be corrected to £4000.
- 50.3 A Tender that is qualified or expressed to be conditional upon the Council's acceptance of alterations to the Specification or the terms and conditions of Contract must be treated as non-compliant and rejected. **Non-compliant Tenders must not be evaluated.** This does not prevent the Council inviting variant bids (provided this was set out in the OJEU notice). If variant bids are invited, tenderers must be required to submit a mandatory reference bid based on the Specification and terms and conditions included in the ITT as well as their separate variant bid, so that all bids may be compared fairly.
- 50.4 Before a Tender has been accepted, a Director may ask all tenderers to hold their Tenders open for a longer period. Tenders should in any event remain open for acceptance for a period of **90 days** from the latest date for receipt of Tenders, or such other period as the Director considers appropriate, and the form of tender must make this clear.

51. AWARD OF THE CONTRACT – EU Tenders

- 51.1 Refer to **Rule 45** in respect of authority to award a Contract.
- 51.2 The Director is responsible for producing a full tender report for the purposes of an audit trail and record keeping, which should:
- confirm that the Tender procedure has complied with these Contract Procedure Rules.
 - list the tenderers invited and Tenders received;
 - list the evaluation criteria and weightings; and
 - show the scoring of Tenders on evaluation.
- 51.3 If the Director is not the decision maker, the recommendation to the decision maker to award the Contract must include the name of the successful tenderer, the length of the Contract and any options for extension and the price or estimated price of the Contract.
- 51.4 As soon as possible after the decision to award the Contract has been made, the Director must write to inform the successful tenderer of that decision. The letter **must** state that award of the Contract is subject to signature by both parties of the Contract Document, which will be sent to the tenderer by Legal Services. The letter must be sent by e-mail or fax.

- 51.5 At the same time as informing the successful tenderer, the Director must write to each unsuccessful tenderer (and each Supplier who was invited to tender but who did not submit a Tender). The standstill letter to the unsuccessful tenderers must be sent by e-mail or fax. **See Procurement Quick Reference Guide No.15 The Standstill Period [insert hyperlink]**
- 51.6 The standstill letter must be approved by Strategic Procurement and Legal Services before being issued.
- 51.7 If an unsuccessful tenderer asks for further information on why he was unsuccessful, the Director must immediately i.e. the same day arrange for the de-briefing.
- 51.8 The Contract Document must not be signed or sealed (as appropriate) before the expiry of **10** days (the standstill period) following the date the notification of the decision to award the Contract (the standstill letter) was sent.

52. SIGNATURE OF THE CONTRACT – EU Tenders

- 52.1 The Supplier must not be allowed to begin work on the Contract until the Contract Document has been signed or sealed as appropriate by both parties unless the written consent of the Head of Legal Services is obtained. See Guide to Process for Award and Signature of Contracts **[insert hyperlink]**
- 52.2 All Contracts executed as deeds must have the Council's Common Seal impressed on them, witnessed by the Head of Legal Services or an Officer authorised by him.
- 52.3 All Framework Agreements, Bonds and Parent Company Guarantees, and all Contracts of £300,000 (Key Decision) or more must be executed as deeds, unless agreed otherwise by Legal Services. Legal Services may direct that other Contracts must be executed as deeds due to the risk or complexity of the Contract.
- 52.4 Contracts over the EU Threshold (that are not deeds) must be signed for and on behalf of the Council by the Director who is responsible for the Contract and one other Officer unless the Head of Legal Services advises otherwise.

Part 8

For Contracts that have commenced

- 53. CONTRACT MANAGEMENT** See **Procurement Quick Reference Guide No.17 Managing your Contract and Preparing for the Next** [\[insert hyperlink\]](#)
- 53.1 Work under a Contract must not begin until the Contract Document has been signed or sealed and dated unless the written consent of the Head of Legal Services is obtained.
- 53.2 The Director must ensure that Strategic Procurement are advised of any Contracts entered into by his/her department.
- 53.3 Strategic Procurement or a Central Purchasing Body (such as ESPO) shall arrange for publication of a Contract award notice in OJEU, if appropriate.
- 53.4 For all Contracts over £50,000, the relevant Head of Service shall appoint a Contract manager for the duration of the Contract.
- 53.5 The Contract manager is responsible for :
- managing the Contract and ensuring that it is carried out in accordance with its terms and conditions
 - monitoring the Supplier's performance and ensuring compliance
 - monitoring cost and value for money requirements
 - monitoring equalities and sustainability data, where appropriate
 - monitoring user satisfaction and risk management
 - formal and documented periodic reviews (as a minimum, these should be quarterly)
 - making the Supplier aware that he is expected to comply with the Council's policies
 - ensuring that the Supplier maintains the insurance policies required by the Contract
 - agreeing and recording any minor changes to the Contract before they are carried out
 - keeping a record of all valuations, payments, claims, monitoring, changes and certificates under the Contract. Payments must only be made against a valid invoice
 - deducting liquidated damages, if appropriate
 - in consultation with Legal Services and the Director of Resources, consenting to sub-contracts, and assignments and novations to new Suppliers
 - managing the transition between the ending of one Contract and the beginning of another.
- 53.6 The Director **must** consult Legal Services for consideration of the Council's legal position :
- before any Contract is to be terminated or suspended

- in the event of a claim for payment not clearly within the terms and conditions of Contract
 - before making any deduction from payments due to a Supplier or withholding payment from a Supplier (unless provision is made for this in the Contract)
 - before settling any dispute
 - before making any extension to a Contract or variation of the scope of a Contract
 - In the event that a Supplier enters into receivership or goes into liquidation.
- 53.7 At the end of any Contract over the EU threshold, the Contract manager must provide a written report to the relevant Director evaluating the extent to which the Contract met the purchasing need and contractual objectives as set out in the original Project Appraisal or Business Case.
- 53.8 If the Contract is to be re-let, the Contract manager's report should be available in sufficient time to inform the approach to re-letting any subsequent Contract.

54. RECORD KEEPING

- 54.1 For Contracts between £10,000 and £50,000 the following records must be kept:
- RFQ issued and Quotations received
 - Exemptions and the reason for them
 - The reason(s) why the lowest price was not accepted
 - Written communications with the successful Supplier or unsuccessful Suppliers
 - Approval decisions from the appropriate decision make.
- 54.2 For Contracts above £50,000 the following records must be kept:
- Approval decisions from Directors and Executive Councillors
 - Details of approved budget
 - Details of any options appraisal and resulting Business Case
 - Method used for obtaining Tenders
 - Written communications with Suppliers
 - Contracting decisions (e.g. withdrawal of an ITT; who to invite to submit a Quotation or Tender; award of Contract; decision to terminate a Contract; variation or extension to a Contract) and the reasons for them
 - Exemptions and the reasons for them
 - Award Criteria in descending order of importance
 - Tender documents issued and received from Suppliers
 - Records relating to Evaluation of Tenders
 - Clarifications and any post-tender negotiations, including minutes of any meetings and correspondence
 - Contract Documents
 - Post-Contract monitoring information
 - Written communication with the successful Supplier throughout the Contract period
- 54.3 Records must be retained for **6 years** for Contracts signed by hand and for **12 years** for Contracts signed/sealed as Deeds.

54.4 Written records relating to unsuccessful Suppliers may be microfilmed, scanned or stored after 12 months from Contract award, provided there is no dispute about the award.

55. EXTENSION TO DURATION OF CONTRACT

55.1 An extension to a Contract is an additional period at the end of the Contract, during which the Works or the Services to be carried out are a repetition of the Works or Services under the original Contract.

55.2 Unless a Contract specifically includes an option to extend its term, that Contract may not be extended unless an appropriate exemption is approved. The Contract will cease to exist at the end of its term.

55.3 If a Contract specifically includes an option to extend its term **and** :

- the OJEU notice or other advertisements for the Contract stated that an extension Contract may be awarded; and
- the estimated value of the Contract in the OJEU notice or other advertisements took account of the potential extended Contract; and
- the extension represents good value for money for the Council,

then the Director may make a decision to award the extension Contract.

Once the extension has expired, that Contract will cease to exist.

56. VARIATION TO THE SCOPE OF CONTRACT

56.1 Provided that a budget has been allocated for that expenditure and value for money can be demonstrated, the Director may agree with a Supplier for him to carry out additional related Works or Services that were not included in the original Contract but which through unforeseen circumstances have become necessary and which either

- cannot for technical or economic reasons be carried out or provided separately from those included in the original Contract without major inconvenience to the Council; or
- could be carried out or provided separately but are strictly necessary to the later stages of the Contract.

56.2 Authorisation for the additional spend must be obtained from the appropriate decision maker.

56.3 Officers must consult Strategic Procurement or Legal Services before varying a Contract

Part 9

Exemptions to the Contract Procedure Rules

EXEMPTIONS

- 57.1 An exemption to the Contract Procedure Rules is a permission to let a Contract without complying with one or more of the Rules relating to competition requirements, e.g. by negotiating with one or more Suppliers prior to awarding a Contract.
- 57.2 An application for an exemption to allow a Contract to be let without genuine competition will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not permit an exemption to the Rules. If an application to let a Contract without genuine competition is granted, the Officer responsible for the Contract must demonstrate that the price obtained is not in excess of the market price and that the Contract represents best value for money.
- 57.3 An exemption cannot be granted for Contracts over the EU threshold unless agreed with Legal Services that there are no cross-border competition requirements.
- 57.4 Only the Director of Resources, in consultation with the Head of Internal Audit and the Strategic Procurement Adviser, may grant an exemption to let a contract without genuine competition. Applications for exemptions must be made in writing using the Exemption Notification Form [\[hyperlink\]](#), copied to the relevant Director and signed by the Officer requiring an exemption.
- 57.5 Officers are responsible for ensuring that exemptions to the Rules are approved in advance of any action undertaken.
- 57.6 The Head of Internal Audit will keep a register of all exemptions.
- 57.7 An exemption may be granted subject to conditions

AUTOMATIC EXEMPTIONS

- 57.8 A written application will NOT be required for an automatic exemption, which will be granted where the relevant Director is satisfied that any of the following apply:
- (a) following completion of a procurement exercise within the previous 6 months, no satisfactory Tender or Quotation has been received;
 - (b) relates to the hiring of performance artists (and the Council's existing rules for selecting artists has been complied with);
 - (c) relates to Goods, Services or Works which are required urgently as a consequence of an emergency or some other unforeseen event or circumstance.

DRAFT

ASSESSMENT OF PROCUREMENT RISKS

In order to identify whether your low/medium value project is a high risk one that requires the Lead Officer to take the additional steps identified below when planning a procurement, please decide whether any of the risks listed in column 1 apply to your contract. If they do, please take the additional steps identified in column 3

| Type of risk | Does this risk apply to your procurement Yes/No (please indicate) | Additional requirements |
|--|--|---|
| Your contract is likely to involve the transfer under TUPE of staff into or out of the Council or between contractors. | | Contact Legal, Procurement and HR at the first stages of project planning to ensure appropriate technical input from the outset. Ensure that clear information about TUPE is included in all your procurement documents starting with the advertisement/OJEU notice. |
| You are proposing or a collaborative or shared procurement/contract | | Contact Legal and Procurement at the outset of the project for advice about: <ul style="list-style-type: none"> • The need for a memorandum of understanding between the collaborating parties; • The type of procurement to be undertaken – whether a Framework contract or not. • Which authority is leading and providing the legal support for the project. Notify your Director of the proposed collaboration |
| Your contract involves the leasing or | | Contact Legal, Procurement and VAT officer at the outset of the |

| Type of risk | Does this risk apply to your procurement Yes/No (please indicate) | Additional requirements |
|---|--|---|
| sale/transfer of the Council's capital assets to the contractor eg leasing office space, transferring vehicles, equipment | | project |
| The contract requires the contractor to use a sub-contractor nominated by the Council | | Contact Legal and Procurement at the outset of the project. Nominating sub-contractors should be avoided if at all possible |
| Your contract is a construction contract or a contract for construction related services eg architecture. | | <p>Contact Legal. Do not use the Council's standard terms and conditions for these contracts. Unless the Head of Legal agrees, these contracts may not be completed by the Lead officer, Head of Service or Director.</p> <p>Construction and some construction-related contracts need to be under seal rather than signed. Only the Head of Legal Services can complete contracts under seal.</p> |
| The contractor will be holding the Council's money | | <p>Contact Legal, Finance and Procurement. If at all possible the Council should avoid situations where a contractor holds money for the Council (eg for the sale of on-line tickets/collection of payments from Council tenants etc). If this is unavoidable you will need advice about how to safeguard the Council's position effectively.</p> <p>Notify your Director about the proposed procurement.</p> |
| Your contract is to be funded from external sources including grant money. | | <p>Contact Legal and Procurement. You will need to ensure that your procurement/payment provisions/contract conditions/contract management fulfils any grant conditions. Failure to fulfil the grant conditions could lead to funding being withdrawn.</p> |
| Your contract will involve the Council being responsible for another body's | | Eg some types of collaborative projects. Contact Legal, Procurement and Finance for advice at the outset of the project. |

| Type of risk | Does this risk apply to your procurement Yes/No (please indicate) | Additional requirements |
|--|--|---|
| money. | | Notify your Director about the proposed procurement. |
| Your contract is for services that are politically sensitive or contentious where the failure/default of the contractor would lead to the Council's public facing services being compromised/serious adverse publicity | | <p>Discuss with the Director (or officer to whom responsibility has been delegated) whether the decision to procure should be referred to the Executive Councillor (with or without pre-scrutiny) rather than taken at an officer level.</p> <p>Contact Procurement/Legal/Finance. If the contract is for a critical service where failure could jeopardise the delivery of public facing services extra safeguards will need to be incorporated in the procurement including:</p> <ul style="list-style-type: none"> • Stringent financial stability checks • Requiring Bonds and/or Parent Company Guarantees (if applicable) • Carefully drafted default and termination provisions in the contract • Clear requirements for regular management information reports • Clear contract management and monitoring regime |
| The contract is for a new or innovative service/initiative that the Council has not provided before | | Contact Legal at the outset of the project to ensure that the Council has the power to act in the way you propose |
| The contract services need to start before the contract documents have been agreed and or completed. | | This will be in <u>exceptional cases only</u> and you will need to contact the Head of Legal Services for permission before any services start in these circumstances. Legal will decide whether a Letter of Intent or similar is required to cover the pre-contract completion period. |
| The contract is likely to be company that | | Contact Legal as early as possible to let them know that these |

| Type of risk | Does this risk apply to your procurement Yes/No (please indicate) | Additional requirements |
|--|--|---|
| is not registered in the UK or will be guaranteed by a company that is not registered in the UK guarantor | | circumstances are likely. |
| You or the Contractor are proposing that the contractor's own terms and conditions are used. | | Contact Legal at the outset of the project. In some circumstances eg contracting with a Bank, the use of the contractor's terms and conditions is unavoidable and you just need to be aware of the impact of the contract terms |
| Your contract may involve particular issues with confidentiality, data protection, intellectual property rights or software, or the contractor is likely to need access to the Council's computer server or web sites. | | Contact IT Client services and Legal at the outset of the project |
| The contract value will exceed the EU procurement thresholds. | | Contact Legal and Procurement at the outset of the project. In some cases it may be possible to use an existing (EU compliant) framework agreement rather than run an entirely new procurement but that will have to reviewed properly as part of options analysis work. |
| You intend to make use of an existing Framework Agreement for the first time | | Consult Legal and Procurement at the outset of the project. Where use of a Framework Agreement is validated, repeat uses will generally not need to be referred back to Legal or Procurement. |
| You intend to contract with a supplier who has a known previously poor performance/ delivery track record | | Consult Legal and Procurement at the outset of the project. There may be occasions where this situation is unavoidable and the commercial/ contract approach will need to seek to minimise risk of delivery/ service failure. Notify your Director about the proposed procurement. |

Cambridge City Council Equality Impact Assessment

Completing an Equality Impact Assessment will help you to think about what impact your strategy, policy, plan, project, contract or major change to your service may have on people that live in, work in or visit Cambridge, as well as on City Council staff.



The template is easy to use. You do not need to have specialist equalities knowledge to complete it. It asks you to make judgements based on evidence and experience. There are guidance notes on the intranet to help you. You can also get advice from David Kidston, Strategy and Partnerships Manager on 01223 457043 or email david.kidston@cambridge.gov.uk or from any member of the Joint Equalities Group.

1. Title of strategy, policy, plan, project, contract or major change to your service:

CONTRACT PROCEDURE RULES - PART 4G OF THE CONSTITUTION

2. What is the objective or purpose of your strategy, policy, plan, project, contract or major change to your service?

The Rules set out the framework for the conduct of procurement within the Authority

3. Who will be affected by this strategy, policy, plan, project, contract or major change to your service? (Please tick those that apply)

Residents

Visitors

Staff

A specific client group or groups (please state):
Organisations that bid, or want to bid, for Council contracts

4. What type of strategy, policy, plan, project, contract or major change to your service is this? (Please tick)

New

Revised

Existing

5. Responsible directorate and service

Directorate: Resources

Service: Strategic Procurement

6. Are other departments or partners involved in delivering this strategy, policy, plan, project, contract or major change to your service?

No

Yes (please give details):

Procurement is undertaken by all departments and services and the Rules will therefore apply to and be implemented by all parts of the Authority. External organisations that bid for our contracts will have to do so in compliance with our Rules and they are therefore affected by the regime that is put in place.

A fundamental requirement of procurement processes is that all potential bidders are treated equally.

7. Potential impact

Please list and explain how this strategy, policy, plan, project, contract or major change to your service could **positively** or **negatively** affect individuals from the following equalities groups.

When answering this question, please think about:

- The results of relevant consultation that you or others have completed (for example with residents, people that work in or visit Cambridge, service users, staff or partner organisations).
- Complaints information.
- Performance information.
- Information about people using your service (for example whether people from certain equalities groups use the service more or less than others).
- Inspection results.
- Comparisons with other organisations.
- The implementation of your piece of work (don't just assess what you think the impact will be after you have completed your work, but also think about what steps you might have to take to make sure that the implementation of your work does not negatively impact on people from a particular equality group).
- The relevant premises involved.
- Your communications.
- National research (local information is not always available, particularly for some equalities groups, so use national research to provide evidence for your conclusions).

(a) Age (any group of people of a particular age, including younger and older people)

The Rules will not have any positive or negative impact on any particular age group.

(b) Disability (including people with a physical impairment, sensory impairment, learning disability, mental health problem or other condition which has an impact on their daily life)

The Rules will not have any positive or negative impact on any particular disability group.

(c) Gender

The Rules will not have any positive or negative impact on any particular gender group

(d) Pregnancy and maternity

The Rules will not have any positive or negative impact on any applicants that are pregnant or who have children

(e) Transgender (including gender re-assignment)

The Rules will not have any positive or negative impact on any particular transgender group.

(f) Marriage and Civil Partnership

The Rules will not have any positive or negative impact in terms of marriage or civil partnerships

(g) Race or Ethnicity

The Rules will not have any positive or negative impact on any particular racial or ethnic group.

(h) Religion or Belief

The Rules will not have any positive or negative impact on any particular religion or belief group

(i) Sexual Orientation

The Rules will not have any positive or negative impact in terms of the sexual orientation of any bidder or potential bidder for Council contracts

(j) Other factor that may lead to inequality (please state):

We consider that the extension of the requirement to advertise opportunities to apply for Council contracts and the requirement to include at least one locally based supplier on lists of suppliers to be invited to submit quotations will increase opportunities for SME and local companies which in the past have complained about the difficulty of accessing local work. The next stage in this project - to review the detail of the processes and to simplify the template documents (especially for lower value and low risk work)- will, we expect, further increase access to Council opportunities.

8. If you have any additional comments please add them here

9. Conclusions and Next Steps

- If you have not identified any negative impacts, please sign off this form.
- If you have identified potential negative actions, you must complete the action plan at the end of this document to set out how you propose to mitigate the impact. If you do not feel that the potential negative impact can be mitigated, you must complete question 8 to explain why that is the case.
- If there is insufficient evidence to say whether or not there is likely to be a negative impact, please complete the action plan setting out what additional information you need to gather to complete the assessment.

All completed Equality Impact Assessments must be emailed to David Kidston, Strategy and Partnerships Manager, who will arrange for it to be published on the City Council's website. Email david.kidston@cambridge.gov.uk

10. Sign off

Name and job title of assessment lead officer: Deborah Quincey, Strategic Procurement Adviser

Names and job titles of other assessment team members and people consulted:

Paul Necus, Head of Specialist Service

Steve Crabtree, Head of Internal Audit

Alka Kingham Contracts solicitor

Cambridge Chamber of Commerce - Policy Team

David Horspool, Director of Resources

Date of completion: 17th June 2013

Date of next review of the assessment: June 2015

Action Plan

Equality Impact Assessment title:

Date of completion:

| Equality Group | Age |
|---|------------|
| Details of possible disadvantage or negative impact | |
| Action to be taken to address the disadvantage or negative impact | |
| Officer responsible for progressing the action | |
| Date action to be completed by | |

| Equality Group | Disability |
|---|-------------------|
| Details of possible disadvantage or negative impact | |
| Action to be taken to address the disadvantage or negative impact | |
| Officer responsible for progressing the action | |
| Date action to be completed by | |

| Equality Group | Gender |
|---|---------------|
| Details of possible disadvantage or negative impact | |
| Action to be taken to address the disadvantage or negative impact | |
| Officer responsible for progressing the action | |
| Date action to be completed by | |

| Equality Group | Pregnancy and Maternity |
|---|--------------------------------|
| Details of possible disadvantage or negative impact | |
| Action to be taken to address the disadvantage or negative impact | |
| Officer responsible for progressing the action | |
| Date action to be completed by | |

| Equality Group | Transgender |
|---|--------------------|
| Details of possible disadvantage or negative impact | |
| Action to be taken to address the disadvantage or negative impact | |
| Officer responsible for progressing the action | |
| Date action to be completed by | |

| Equality Group | Marriage and Civil Partnership |
|---|---------------------------------------|
| Details of possible disadvantage or negative impact | |
| Action to be taken to address the disadvantage or negative impact | |
| Officer responsible for progressing the action | |
| Date action to be completed by | |

| Equality Group | Race or Ethnicity |
|---|--------------------------|
| Details of possible disadvantage or negative impact | |
| Action to be taken to address the disadvantage or negative impact | |
| Officer responsible for progressing the action | |
| Date action to be completed by | |

| Equality Group | Religion or Belief |
|---|---------------------------|
| Details of possible disadvantage or negative impact | |
| Action to be taken to address the disadvantage or negative impact | |
| Officer responsible for progressing the action | |
| Date action to be completed by | |

| Equality Group | Sexual Orientation |
|---|---------------------------|
| Details of possible disadvantage or negative impact | |
| Action to be taken to address the disadvantage or negative impact | |
| Officer responsible for progressing the action | |
| Date action to be completed by | |

| Other factors that may lead to inequality | |
|---|--|
| Details of possible disadvantage or negative impact | |
| Action to be taken to address the disadvantage or negative impact | |
| Officer responsible for progressing the action | |
| Date action to be completed by | |