

4.8 PROCUREMENT RULES

4.8.1 Introduction

- (1) These Contract Procedure Rules (the Rules) provide a corporate framework for the procurement of all goods, services and works for the Council. The Rules are designed to ensure that all procurement activity is conducted with openness, probity and accountability. Above all, the Rules are designed to ensure both that the Council complies with the statutory framework and obtains value for money including the required level of quality and performance from all contracts that are let. Every contract for the supply of goods and services and for the execution of works made by or on behalf of the Council shall comply with these Rules and the Public Contracts Regulations 2015 (“the Regulations”).
- (2) E-procurement procedures shall be used wherever possible. These include e-tendering, purchase cards, etc. Where appropriate e-auctions may be used, so long as provision is made for this in the advert. Requests for quotations, pre-qualification questionnaires and invitations to tender should wherever practical be issued to tenderers by electronic means. Where e-tendering is utilised then this must be undertaken by way of the the corporate e-tendering system which is managed on the Council’s behalf by the Shared Procurement Unit. .
- (3) Before any tendering exercise is considered, reference must be made to the Council’s procurement and equalities guidelines. The Council is committed to dealing fairly with all relevant discrimination groups as defined in the Equalities Act 2010. A failure to take into account special requirements for these groups in a tender would be a significant corporate failure, affecting the reputation and standing of the Council.
- (4) All procurement arrangements must ensure compliance with the Council’s responsibility in respect of Freedom of Information and Data Protection.
- (5) Any employee who fails to comply with Contract Procedure Rules may be subject to disciplinary action.
- (6) The Council has produced a Procurement workspace available on the intranet which will provide practical guidance in undertaking procurement exercises. This should be adhered to by all officers engaged in procurement activity.
- (7) A Glossary of Terms can be found at the end of this section.

4.8.2 Compliance with Contract Procedure Rules

- (1) The provisions contained in these Rules are subject to the statutory requirements of both the European Union and the United Kingdom. The letting and content of contracts shall conform to all statutory requirements and be subject to any over-riding directives of the European Union relating to contracts and procurement. These Rules cannot be waived, since a failure to comply with European legislation may result in a legal challenge with consequent reputational and financial risk. If you are uncertain, advice should be sought from a member of the Shared Procurement Unit or the Monitoring Officer.
- (2) In estimating relevant contract values, officers shall have regard to the rules regarding aggregation.

Partnerships

- (3) These Rules apply, in addition to other procurements, to any proposal for the Council to become involved in a joint venture or partnership, including the monitoring of any such arrangement.

Where Partnership arrangements, or working with other public bodies, are used in order to procure goods or provide services then consultation must take place with both the Monitoring Officer and the Chief Financial Officer prior to entering into such arrangements. Such arrangements should only be pursued on the basis that appropriate approval from the Council's statutory officers and from appropriate Council bodies have been secured prior to any formal commitments being given .

4.8.3 Normal Procedure

- (1) **These Rules relate to five categories of procurement based on the estimated value of the contract:**
 - a. £1 to £1,000
 - b. £1,001 to £5,000
 - c. £5,001 to £50,000
 - d. £50,001 to £EU Threshold
 - e. Over the EU Threshold
- (2) **In all instances, goods, services or works should be obtained via the methods outlined below :**
 - a. in-house services (for example, printing and design etc.)
 - b. established corporate contracts or framework agreements
 - c. request for quotation
 - d. Tender
 - e. framework contracts established by Purchasing Consortia or other Local Authorities (to be agreed by the Head of Procurement)
 - f. for low-value purchases, Purchasing Cards can be used provided they are not used with the intention of undermining the use of approved or corporate contracts, or to circumvent the procedures set out within this document.

In considering whether to utilise any of the above options Officers must take into account the fact that their use is subject to EU and/or UK Statutory requirements.

- (3) **Orders and payments for goods, services and works shall be undertaken in accordance with the Financial Procedure Rules. In all cases, the following wording must be included in tender and request for quotation documents:**

“Information in relation to this tender may be made available on demand in accordance with the requirements of the Freedom of Information Act 2000. Tenderers should state if any of the information supplied by them is confidential or commercially sensitive or should not be disclosed in response to a request for information under the Act. Tenderers should state why they consider the information to be confidential or commercially sensitive. This will not guarantee that the information will not be disclosed but will be examined in the light of the exemptions provided in the Act.”

- (4) **Before entering into a contract, the authorised officer must:**

- a. Be satisfied that a specification (where appropriate) that will form the basis of the contract has been prepared (the specification should be retained on the appropriate contract file held within the service), and
- b. Have prepared and documented an estimate of the cost of the contract including, where appropriate, any maintenance and on-going costs (the estimate should be retained on the appropriate contract file held within the service), and
- c. Ensure that all evaluation criteria have been determined in advance, put into order of relative importance with weightings for each element and published in the tender pack; and
- d. For contracts where there are clear risks, and for all contracts over £50,000, produce and maintain a documented risk register for the procurement process and for the eventual contractual relationship. As a minimum documentation should be maintained analysing all risks, identifying how they will be managed, and naming responsible officer(s).
- e. For all contracts greater than £50,000 a draft contract should be produced to accompany the tender documents or contract terms and conditions.

- (5) **Before entering into a contract the authorised officer must:**

- a. Be satisfied about the technical capability of such proposed contractor and be satisfied that s/he has the power and authority to enter into the contract; and

- b. Ensure that these Rules have been complied with, and that the proposed contract represents value for money; and
- c. For all contracts that exceed £50,000, the authorised officer shall undertake appropriate checks to ensure that the proposed contractor has the financial and resource capacity (taking account of contract value and risk) to perform the contract (unless the contractor has already been subjected to a recent satisfactory financial check). Financial vetting shall be undertaken by an officer designated by the Chief Finance Officer, who shall advise on what, if any, security should be provided by the contractor.

(a) Advertising

All tenders shall be advertised and, where appropriate, full details should be available for download from the website <http://www.sourcederbyshire.co.uk/>. As part of the Government's Transparency Agenda details of all forthcoming contracts should be published on the Council's website at the earliest opportunity. Such details should be notified via email to the Chief Financial Officer. Where the contract value is above £25,000 details must also be published on the Government's Contracts Finder website. Details of such contracts must be provided to the Shared Procurement Unit who will arrange for appropriate advertising to be undertaken. Again such communication should be via email. Contract award notices shall also be published on the website and on Contracts Finder within 90 days of the contract being advertised.

- (6) Officers should consider whether the contract will be of benefit to other public sector bodies. If so consideration should be given to including text along the following lines in the advert ;

"Tenderers should be aware that although the contracting authority for the purposes of this procurement is Bolsover District Council, one or more other local authorities and/or public bodies from the Counties of Derbyshire and Nottinghamshire may choose to access the concluded contract, without creating any obligation on behalf of any of them to do so."

Such text should only be incorporated with the approval of the Shared Procurement Unit.

- (7) All EU notices shall be referred, in advance of sending to the OJEU, to the Head of the Shared Procurement Unit to advise on wording.
- (8) Where the contract is over the OJEU threshold the Council must offer by means of the Internet unrestricted and full direct free of charge access to the procurement documents from the date of publication of the notice in OJEU.

4.8.4 Exemptions

- (1) Subject to statutory requirements tenders need not be invited in accordance with these Rules in the following cases:
 - a. In the case of the supply of goods:
 - i. the goods or materials are proprietary articles and, in the opinion of the appropriate Senior Officer (which should be put in writing and retained on the project file), no reasonably satisfactory alternative is available, and
 - ii. Exemptions under this rule have been notified to the Head of the Shared Procurement Unit.
 - b. The work to be executed or the goods or services to be supplied are controlled by a statutory body.
 - c. The work to be executed or the goods or services to be supplied constitute an extension to an existing contract and it is the view of the Senior Officer that it would not be in the interests of the service or the Council to tender the contract. The Senior Officer must ensure that a record of the decision is made on the project file.
 - d. The contract is for the execution of work or the supply of goods or services certified by the appropriate Senior Officer to be required so urgently as to preclude the invitation of tenders. The appropriate Portfolio Holder shall be kept informed of such decisions and a record of the decision shall be retained by the service and a copy sent to the Shared Procurement Unit.
 - e. The contract relates to commissioning, such as projects funded by external grant where, for example, there is no (or insufficient) marketplace to tender for the supply of goods, services or works required.
- (2) Officers should consider using the Council's internal services where appropriate, using established arrangements or shared services. Officers should ensure that the best possible balance of value for money and quality is obtained for the Council.
- (3) Tenders need not be invited where they have been undertaken by any consortium, collaboration or similar body, where the Council is able to access contracts. Officers should contact the Head of Procurement to ensure that any contracts let by such a consortium, collaboration or similar body are in accordance with UK and EU procurement directives and regulations.
- (4) Where the Council acts as lead body on a consortium or collaborative arrangement, the procedures for tendering contained within these Rules shall be followed (including the delivery, opening and acceptance of tenders).

4.8.5 Contracting & Financial Guidelines

- (1) Officers should order goods and services that are required through an arrangement illustrated in Rule 4.8.3.(2). If, however, the Council or the consortium providing them do not have the goods or services or resources available to meet the reasonable needs of the service then an alternative supply may be sourced. In these circumstances the authorised officer must record why the goods or services have been procured through other means, and retain a formal copy of that document. In all circumstances a purchase order must be issued as required by financial regulations.
- (2) It is good practice (for all but small value and routine purchases) to obtain a written quotation. For further information on this, please contact a member of the Shared Procurement Unit.
- (3) **Contracts £1 to £1,000**
Procurement of goods and services estimated to be for amounts up to £1000 shall be by oral or written quotation, unless an arrangement under 4.8.3.(2) has already been established for the goods, services or works required. There is no mandatory procurement involvement.
- (4) **Contracts £1,001 to £5,000**
Procurement of goods and services estimated to be for amounts in the range £1,001 to £5,000 shall be by written quotation from at least three suppliers, unless an arrangement under 4.8.3.(2) has already been established for the goods, services or works required. There is no mandatory procurement involvement.
- (5) **Contracts £5,001 to £50,000**
Procurement of goods and services estimated to be for amounts in the range £5,001 to £50,000 shall be by formal written request for quotation (RFQ) from at least three suppliers, unless an arrangement under 4.8.3. (2) has already been established for the goods, services or works required.
- (6) **Contracts £50,001 to EU Threshold**
Procurement of goods and services estimated to be for amounts in the range £50,001 to EU THRESHOLD shall be by formal open Invitation to Tender (ITT), unless an arrangement under 4.8.3.(2) has already been established for the goods, services or works required, whereupon mini competition will be encouraged with all appropriate suppliers. For evaluation purposes, a standing invitation to the evaluation meeting shall be made to officers from Finance, Legal and Audit along with the relevant Portfolio Holder or substitute and the appropriate commissioning officer.

(7) **Contracts EU Threshold and above**

Procurement of goods and services estimated to be for amounts in the range EU THRESHOLD AND ABOVE shall be by formal open Invitation to Tender (ITT). Where contracts of this value are undertaken then appropriate professional support must be secured from either the Head of the Shared Procurement Unit or from an appropriately qualified external advisor. . You should also ensure that either the Monitoring Officer or the Chief Finance Officer is aware of the position.

In considering whether or not a procurement exercise is subject to OJEU requirements you must consult with Legal Services. In particular you should consider whether extensions to a contract, or operating it for a period in excess of one year will breach OJEU financial limits. Where any contract has a value above or approaching OJEU limits it is the responsibility of the client officer to ensure that appropriate legal advice is secured throughout the tendering and contractual process.

SME Participation

- (8) To facilitate SME participation in awards of contracts consideration should be given to dividing contracts into smaller lots where appropriate. Where a decision is taken not to divide a contract into lots then the responsible officer must maintain a written summary of the reasoning underlying that decision.

4.8.6 Probity

- (1) In every instance appropriate written documentation must be retained together with the rationale for the decision making process. This documentation shall meet as a minimum the requirements specified in the 2015 Public Contract Regulations. In addition any information that may be required for submitting annual reports to the Government or other agencies must be maintained.
- (2) Documentation in either paper or electronic format must be appropriately filed and retained for an appropriate period of time. The Council's Document Retention Policy will provide appropriate background guidance but ultimately the senior officer involved must determine the retention period.
- (3) All contracts for goods, services and works must be registered on the Shared Procurement Unit Contracts Register and the original contract documents held by the relevant department.
- (4) Tenderers may be offered a debrief, to assist them in preparing future bids. The relevant officer should also keep a record of all debrief requests and responses.

- (5) In accordance with EC Procurement Directive 2004/18/EC, any company responding to an EU tender shall be excluded from the tender process if it, or its directors have been convicted of; corruption, bribery, cheating the revenue, fraud or theft, fraudulent trading, an offence in connection with taxation, an offence under Counter Terrorism legislation or money laundering. Where a service has information relating to the above, contact the Monitoring Officer or the a member of the Shared Procurement Unit for advice.

Bribery Act 2010

Section 7 of the Bribery Act provides that a relevant commercial organisation (including a local authority) is guilty of an offence if a person associated with it bribes another person with the intention of obtaining or retaining business or an advantage in the conduct of business for the commercial organisation. Conviction of a commercial organisation under section 7 of the 2010 Act will attract discretionary rather than mandatory exclusion from public procurement.

Regulation 23(1) sets out the mandatory disqualification criteria: a contracting authority must treat a prospective bidder as ineligible and not select that bidder if it, or its directors, has been convicted of (among other things) conspiracy; corruption; bribery; fraud; or money laundering.

The contracting authority must have actual knowledge that the bidder, its directors or any other person who has powers of representation, decision or control of the economic operator has been convicted of these offences.

Regulation 23(4) sets out discretionary criteria, allowing the contracting authority to choose not to qualify the economic entity. The criteria include: bankruptcy, being the subject of a receiving order, winding up order or administration order (or similar); conviction of a criminal offence relating to the conduct of its business or profession; commission of an act of grave misconduct in the course of its business or profession; and failure to fulfill obligations relating to the payment of social security contributions or taxes.

Regulation 23(4) only applies to the economic operator itself, not to its directors or others with the necessary level of control.

4.8.7 Receipt and Custody

- (1) Below are the rules for receipt and custody of tender documents:

- a. The Council's preferred approach is that all tenders are managed by way of a corporate e-tendering system. This system will be operated on the Council's behalf by the Shared Procurement Unit. It provides a clear electronic audit trail of the tender process.

Where an e-tender process is not considered to be suitable then the following procedure should be used

- b. No tender will be considered unless it is:

Contained in a plain envelope which shall be securely sealed and shall bear the word 'TENDER' followed by the subject to which the tender relates or the number of the tender concerned, but shall not bear any distinguishing matter or mark to indicate the identity of the sender. Prospective tenderers shall be notified accordingly.

- (2) Subject to 4.8.7. (1) a. tenders where the estimated value exceeds £50,000 shall immediately on receipt be consecutively numbered and remain in the custody of the Governance Team until the time appointed for opening. Any officer receiving tenders shall indicate on the envelope the date and time of its receipt by him or her.
- (3) Requests for quotation (RFQ) where the estimated cost does not exceed £50,000 may be addressed impersonally to the appropriate Senior Officer.
- (4) Responses to pre-qualification questionnaires (PQQs) and quotations (RFQ's) are not deemed to be tenders and should be returned to the originating officer, either via hard copy or electronically via email or e-tendering system.

4.8.8 Opening and Evaluation of Tenders

- (1) Where e-tendering is used, all tenders will be submitted to and held in a secure electronic vault. This may only be opened by the Shared Procurement Team after the due date for tenders has closed. The Executive Member and representatives from Finance, Legal and Audit may attend.
- (2) Where the e-tendering procedure is not used tenders shall be opened and recorded at one time and by not less than two officers designated for that purpose. The designated Executive member may be invited and a Governance Officer should be present.
- (3) Tenders submitted in hard copy must be opened by the same officers and at the same time as documents received via any e – tendering system where it is operating alongside the manual system.

- (4) In respect of tenders with a value in excess of £50,000, any officer from the Finance, Legal or Internal Audit sections has the right to attend any tender opening. Where the corporate e-tender system is used they have the right to consider the details of the tender submission – including date of submission etc – as recorded within that system.
- (5) Once opened, tenders shall be passed to the evaluation team which may include the relevant Portfolio Holder or substitute. The lead officer of the evaluation team is responsible for ensuring that the team is adequately resourced to ensure compliance with the Public Contract Regulations and with accepted good practice. A report outlining the results of the evaluation process will then be presented to Executive, if necessary, to approve the award of the contract.

4.8.9 Late Tenders

Where a tender is submitted in competition and is received after the specified time then it shall be disqualified. No late tender will be accepted except by the Head of the Shared Procurement Unit or by the Monitoring Officer who may give consideration as to whether disqualification of such a tender would pass a reasonableness test. . Any such tender should be returned promptly to the tenderer who should be notified accordingly. The tender envelope may be opened to ascertain the name and address of the tenderer concerned.

4.8.10 Acceptance

- (1) Contracts shall be evaluated and awarded in accordance with the evaluation criteria issued with the tender documentation. Only those tenders that comply with the evaluation criteria shall be considered for acceptance. Tenders must be evaluated on the basis of “most economically advantageous” tender (MEAT) that complies with the requirements of tender documents, is not excluded by virtue of Regulation 57 of the Regulations and meets the selection criteria. Cost-effectiveness and price quality ratio may be taken into account when determining MEAT.
- (2) A tenderer who submits a qualified or conditional tender shall be given the opportunity to withdraw the qualification or condition without amendment to the tender. If the tenderer fails to do so the tender must be rejected.
- (3) Prior to final contract award, the contractor must provide evidence of adequate insurance to cover both public and employers’ liability, and produce such evidence during the life of the contract at the reasonable request of the authorised officer.
- (4) For all procurements covered by the EU Directives, a statutory minimum standstill period after the award decision is issued is required to allow companies an opportunity to challenge the decision. The standstill time depends on the circumstances and is set out in

Regulation 87 of the Regulations.

- (5) The notification of the award decision to unsuccessful bidders, based on the most economically advantageous tender, must be issued in line with the timescales of the standstill period and should contain:
- the award criteria;
 - the reasons for the decision, including the characteristics and relative advantages of the successful tender and the score (if any) obtained by the recipient and the successful tender;
 - the name of the winning tenderer;
 - confirmation of the dates and duration of the standstill period.

For all sub-OJEU threshold contracts, the following details of contracts that have been awarded should be advertised on the Contracts Finder website:

- name of contractor;
 - date contract entered into;
 - contract value;
 - whether contractor was SME or VCSE.
- (6) All contracts must be notified to the Head of the Shared Procurement Unit, including performance monitoring information, with a copy to the Chief Financial Officer.

4.8.11 Nominated/Named Sub-Contractors and Suppliers

It is recommended that contracts are awarded to a single entity or lead contractor, who in turn will take contractual responsibility for the performance (and risks) for all sub-contractors and supply-chains. This reduces the risk of the Council becoming party to disputes between contractors.

4.8.12 Engagement of Consultants

- (1) An authorised officer may only appoint external consultants or advisors providing professional or consulting services if such services are not available within the Council or if Council officers providing them do not have the resources to meet the needs of the service. Where such services are available in-house, the authorised officer must consult with a Senior Officer before taking any decision to make an external appointment.
- (2) Consideration should be given to using appropriate framework agreements for business, professional, and ICT consultancy services.
- (3) External consultants and technical officers engaged to supervise contracts must follow these Rules as applicable and their contracts for services must state this requirement.

- (4) Procurement plans and / or tenders prepared by external consultants on behalf of the Council **must** be referred to the Monitoring Officer, Chief Financial Officer, or the Head of the Shared Procurement Unit for approval and advice.
- (5) The relevant officer is required to submit a Request for Service form (found on the intranet) to the Head of Procurement in respect of all consultancy and advisor contracts where the value of the contract is above £5,000.
- (6) All contracts for external consultants and advisors shall explicitly require that the consultants or advisors provide without delay any or all documents and records maintained by them relating to the services provided on request of the authorised officer, and lodge all such documents and records with the Authorised Officer at the end of the contract.
- (7) The authorised officer shall ensure that any consultant working for the Council has appropriate indemnity insurance.

4.8.13 Contract Conditions

Every contract for goods and services regardless of value shall be in writing and shall be based on the standard terms and conditions held by the Shared Procurement Unit.

Every contract over £50,000 shall be in a form approved by the Senior Principal Solicitor or their nominee.

4.8.14 Extending Existing Contracts

- (1) The Authorised Officer, subject to the budget being available, and after consultation with the appropriate Senior Officer, may extend a contract subject to the extension being within the scope of the original scheme (subject to Rule 4.8.4 1 (c)).
- (2) If the original contract was subject to the EU procurement regulations, the contract can only be extended if it meets one or more of the six statutory grounds as set out in Regulation 72 of the Regulations.

4.8.15 Performance Bonds and Guarantees

- (1) In the case of all contracts valued above £50,000 the authorised officer shall determine, based on advice from the Chief Finance Officer, the degree of security (if any) required to protect the Council from a contractor default. This may be a performance bond or some other form of financial or performance guarantee.
- (2) Where an order is placed with an in-house service and work forming part of that order is sub-contracted to an external company, then the provisions of Rule 4.8.15 (1) will apply.

- (3) Where a performance bond and/or parent company guarantee is required, then the tender documents must provide for this.

4.8.16 Liquidated Damages

Any contract which is estimated to exceed £100,000 in value or amount, and is for the execution of works, or for the supply of goods or materials by a particular date or series of dates, shall provide for liquidated damages. The amount to be specified in each such contract shall be determined by a Senior Officer in consultation with Legal Services and appropriate stakeholders.

4.8.17 Further Information

- (1) **Agreements shall be completed as follows:**

Total value	Method of Completion	Solicitor to the Council
Up to £50,000	Signature	Solicitor to the Council Assistant Director – Governance and Solicitor to the Council and Monitoring Officer
£50,001 and above	Sealed	See (3) below

- (2) **Signature**

The Authorised Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

- (3) **Sealing**

Where contracts are completed by each side adding their formal seal, the affixing of the Council's seal will be attested by the Monitoring Officer together with the Chairman or in their absence, the Vice-Chairman of the Council, or in their absence, another Councillor.

An entry of every sealing shall be made and consecutively numbered in a book kept for the purpose. The seal must not be affixed without the authority of the Council, Executive, a committee or under delegated powers. A contract must be sealed where:

- the Council may wish to enforce the contract more than six years after its end; or
- the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; or

- where there is any doubt about the authority of the person signing for the other contracting party; or
- the Total Value exceeds £50,000.

(4) **Archiving and lodgment of records**

The original sealed contract must be deposited with the relevant department and recorded on the Contracts Register.