

4.8 CONTRACT 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 corporate e-tendering system which is managed on the Council’s behalf by the 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 the Freedom of Information Act, Environmental Information Regulations 2004 and the Data Protection Act and the General Data Protection Regulation.
- (5) Generally the rules set out in part 4.8.5 must be followed when procuring all good, services or works. Part 4.8.4 contains the exemptions to the normal rules.
- (6) Any employee who fails to comply with Contract Procedure Rules may be subject to disciplinary action.
- (7) **Definitions of terms used in these rules;**

Code of Practice Means the Council’s Code of Practice for Procurement including accompanying guidance.

Contract Means any form of contract, agreement or other arrangement for the supply of goods, services or works.

Contracting Officer Means any officer who proposes to procure goods services or works.

Goods Covers all supplies and materials that the Council purchases or obtains.

Senior Officer Means one of the following: Chief Executive, Directors, and Assistant Directors.

Services Includes all services which the Council purchases or obtains including advice, specialist consultancy work, agency staff, etc.

Works Includes all construction and repairs in respect of physical assets (buildings, roads, etc.).

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 European rules will remain in place following Britain's departure from EU until at least 31st December 2020. A review of the legal requirements will need to be carried out following the end of the EU transitions period. However it should be noted that the majority of Council contracts are below the thresholds set by the EU and so will not be affected by Brexit. 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 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 Procurement Service or Legal Services.
- (2) In estimating relevant contract values, officers shall have regard to the following rules regarding aggregation. The estimated or proposed contract value is the value or consideration for the contract as a whole (not an annual value) and any contract with an option to extend the contract period will be valued to include any provision for such extension period. For example, a three year option to extend for a further two years will be valued as the consideration for a five year contract.

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 Service Director Finance and Section 151 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 £25,000
- (d) £25,001 to £75,000
- (e) £75,001 to EU Threshold
- (f) Over the EU Threshold

The specific rules for each of the above categories is contained in part 4.8.5 of these rules.

(2) In all instances, goods, services or works should be obtained via one of 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 (following advice from the Procurement Service)
- (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.

(4) Before entering into a contract, the Contracting 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 £75,000, 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).

(5) Before entering into a contract the Contracting 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 £75,000, the Contracting 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 a designated financial officer, who shall advise on what, if any, security should be provided by the contractor.

(6) **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 Procurement Service 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.

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 Procurement Service.

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

4.8.4 **Exemptions to Contract Procedure Rules**

- (1) In exceptional circumstances and 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, no reasonably satisfactory alternative is available. A proprietary article is an item which the vendor has exclusive rights to sell.
- (b) The work to be executed or the goods or services to be supplied are controlled by a statutory body and there is no reasonable prospect that works, goods or services can be executed or supplied by another statutory or non-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 would not be in the interests of the service or the Council to tender the contract. .
- (d) The contract is for the execution of work or the supply of goods or services to be required so urgently as to preclude the invitation of tenders.
- (e) The contract relates to commissioning of 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.

OR

The contract relates to a project where there is no (or insufficient) marketplace to tender for the supply of goods, services or works required

A decision on whether any of the above exemptions applies shall be made only by a Senior Officer by a formal Delegated Decision. In making the decision the Senior Officer shall consult with the Procurement Service and the relevant Portfolio Holder.

- (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 Procurement Service 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.

4.8.5 Contracting & Financial Guidelines

- (1) Contracting officers should look to order goods and services that are required in-house or through a framework or consortium arrangement as 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 or there is no suitable framework then an alternative supply may be sourced following the rules set out below. 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 Procurement Service.
- (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 and preferably from at least three suppliers . 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. There is no mandatory procurement involvement.
- (5) **Contracts £5,001 to £25,000**
Procurement of goods and services estimated to be for amounts in the range £5,001 to £25,000 shall be by request for quotation (RFQ) from at least three suppliers. Contracting officers should seek advice from Procurement prior to commencing the procurement
- (6) **Contracts £25,001 to 75,000**
Procurement of goods and services estimated to be for amounts in the range £25,001 to £75,000 shall be by formal request for quotation (RFQ) from at least three suppliers. Unless Procurement Services advises that a formal Invitations to Tender should be undertake. Details must also be published on the Government's Contracts Finder website, which must be done through the Procurement Service.
- (7) **Contracts £75,001 to EU Threshold**
Procurement of goods and services estimated to be for amounts in the range of £75,001 to EU THRESHOLD shall be by formal open Invitation to Tender (ITT), 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.

8) **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 Procurement Service or from an appropriately qualified external advisor. Both the Monitoring Officer and the Chief Financial Officer must be made aware of the position.

In considering whether or not a procurement exercise is subject to OJEU requirements you must consult with Procurement 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.

(9) **SME Participation**

To facilitate SME participation in awards of contracts consideration should be given to dividing contracts into smaller lots where appropriate. Procurement Services will advise on whether a contract could be divided. Where a contract may be divided the relevant officer shall consult with a Senior Officer. If 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 Contracts Register and the original contract documents held centrally and securely in Legal Services.
- (4) Tenderers may be offered a debrief, to assist them in preparing future bids. The Contracting 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 Legal Services or the Procurement Service for advice.

4.8.7 Receipt and Custody

- (1) Tenders are managed by way of a corporate e-tendering system operated on the Council's behalf by the Procurement Service. This provides a clear electronic audit trail of the tender process.
- (2) Responses to pre-qualification questionnaires (PQQs) and quotations (RFQs) 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 Procurement Service after the due date for tenders has closed.
- (2) 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 Extension of Deadline for Receipt of Tenders

Where a tender is submitted in competition and is received after the specified time then it shall be disqualified. Before the specified time has been reached, the Monitoring Officer may determine whether to extend the deadline.

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) A voluntary waiting period is operated for procurements below the EU threshold, at the discretion of the Procurement Service.
- (6) 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.
- (7) All contracts must be notified to the Procurement Service, including performance monitoring information, with a copy to the Service Director Corporate and Legal Services.
- (8) All contracts with a value above the Key Decision threshold must be approved by the Executive. All other contracts may be authorised by a Senior Officer.
- (9) Where a contract is awarded via a delegated decision following a procurement exercise, the procurement process carried out and the results of the procurement will be published to Members along with the delegated decision notice.

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) The Council 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 Contracting 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. Advice should be sought from the Procurement Service.
- (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 Legal Services and Service Director Finance and Section 151 Officer for approval and advice and the relevant Portfolio Holder be informed.

- (5) The Contracting Officer is required to submit a Request for Service form (found on the intranet) to the Procurement Service in respect of all consultancy and advisor contracts where the value of the contract is above £5,000. In estimating relevant contract values, officers shall have regard to the rules regarding aggregation-see rule 4.8.2.
- (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 Contracting Officer at the end of the contract.
- (7) The Contracting 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 specify:

- (1) the work, materials, matters or things to be furnished had or done;
- (2) the price to be paid, with a statement of discounts or other deductions; and
- (3) the time, or times within which the contract is to be performed

Every contract over £75,000 shall be in a form approved by Legal Services.

4.8.14 Extending Existing Contracts

- (1) Rule 4.8.4 (1)(c) enables contracts to be extended. The Contracting Officer must ensure that there is sufficient budget available for the extension.
- (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 £75,000 the authorised officer shall determine, based on advice from the Service Director Finance and Section 151 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.

4.8.17 Further Information

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

Total Value	Method of Completion	
Up to 75,000	Signature	an officer authorised to sign contracts
£75,001 and above	Sealed	See (3) below

- (2) **Signature**
The Contracting Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it, i.e. an Executive minute or a formal Delegated Decision or if below the DD limit (£50,000) a written authorisation from the Senior Officer.
- (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 or anyone authorised by the Monitoring Officer together with a 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 £75,000

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

The original signed/sealed contract must be recorded on the Contracts Register and stored securely within Legal Services.

Appendix A - Financial Thresholds and Aggregation Rule

Contract Value		Process	Award Procedure based on	Contract Opportunity Publication/Route	Documentation
From	To				
£0	£1,000	Oral quotation	Preferably at least 3 oral quotations	No mandatory procurement involvement	Employee identifying need to record details on quotation database.
£1,001	£5,000	Written quotation	Minimum of three written quotations	No mandatory procurement involvement	Employee identifying need to record details on quotation database.
£5,001	£25,000	RFQ (Request for quotation)	Quotations based on a RFQ document with simplified Ts&Cs	Advise to be obtained from Procurement Services before commencing procurement.	Must be based on a written specification provided to the supplier by the Council. Quotation may be delivered by e-mail or provided through an electronic RFQ system. Council Ts&Cs must be accepted.
£25,001	£75,000	RFQ (Request for quotation) Procurement may advise to undertake a formal tender in which case the procedure below should be followed.	Quotations based on a RFQ document with simplified Ts&Cs	Mandatory procurement involvement. Advertised in Source Derbyshire and the electronic RFQ system (INTEND). Contracts over £25,000 also published on Contracts Finder.	Must be based on a written specification provided to the supplier by the Council. Quotation may be delivered by e-mail or provided through an electronic RFQ system. Council Ts&Cs must be accepted.

£ 75,001	Up to EU Threshold as amended each year	Formal tender (report to Executive if over the Key Decision Threshold)	Full tender process	Mandatory procurement involvement. Advertised in Source Derbyshire and Contracts Finder, if appropriate INTEND, Specialist publication if appropriate	ITT documentation as relevant with sealed bids which may be submitted via an electronic tendering process. Must be based on a written specification provided to the supplier by the Council. Council Ts&Cs must be accepted.
EU Threshold	above	Formal tender	Full tender process	Mandatory procurement involvement. OJEU, Advertised in Source Derbyshire , if appropriate INTEND, Specialist publication if appropriate	PQQ and ITT documentation as relevant with sealed bids which may be submitted via an electronic tendering process. Must be based on a written specification provided to the supplier by the Council. Council Ts&Cs must be accepted.

NB The Contract Value shall be calculated as follows: The estimated or proposed contract value is the value or consideration for the contract as a whole (not an annual value) and any contract with an option to extend the contract period will be valued to include also any provision for such extended period (e.g. a three year contract with an option to extend for a further two years will be valued as the consideration for a five year contract).